ZANGBAH and GRABUL, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 18, 1934. Decided May 4, 1934.

1. An indictment predicated upon the Revised Statutes, and more particularly drafted in accordance with one of the forms set out therein, should not be quashed on motion of the defendant for multiplicity of charges contained in one of the counts.
2. A judgment in a criminal case will be reversed if the verdict of the trial jury was manifestly against the evidence adduced at the trial.
3. It is reversible error for a trial judge to direct a jury that the minority should agree with the majority.
4. The verdict of a jury will be set aside if it is shown that after retiring to deliberate the jury sought and obtained advice from the County Attorney.
5. It is error for a trial judge to allow the jury in a criminal case to bring in a verdict after learning that the jury could not agree.

Appellants were convicted in the Circuit Court of the Second Circuit, Grand Bassa County, of the crime of riot. On appeal to this Court, *judgment reversed,* and defendants discharged.

H. L. Harmon for appellants. *The Solicitor General* for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

In the month of April, 1931, one Saybasson while on an errand from one Benjamin Logan to the Marmbahn section of the country died; and the body was upon orders of the said Logan brought back to "John's town" for burial. Boe-yu-poo, Solomon Harrington, and Grabul, the last named being one of the appellants, went to John's town demanding the dead body, claiming that according to the custom they, with Zangbah, the other appellant who subsequently came upon the scene, had the right to

bury the corpse. The record further shows that upon the arrival of Zangbah with a number of carriers the dead body was carried off to Noryou's town against the will and consent of, but without any forcible opposition from, Benjamin Logan and his people then present.

One Tompogie subsequently arriving for the funeral found the dead body gone and claiming that he had a superior right to the privilege of burial collected fourteen men, and went to Noryou's town to retake the remains. Upon their arrival the title to the corpse not having been settled in a manner mutually satisfactory to the two contending branches of the family and others claiming the honor of burial, a fight ensued, and that was the genesis of this case.

When information of this affair reached Logan, he complained to the County Attorney for Grand Bassa, and the latter instituted proceedings charging Zangbah, Solomon Harrington, Boe-yu-poo and Grabul with riot.

The appellants and others (defendants in the court below) were indicted for the crime of riot at the May term, 1931, of the Circuit Court of the Second Judicial Circuit, by the grand jurors of the aforesaid county, and were tried and convicted at the August term of said court, 1931, His Honor the late H. Tôô Wesley, Circuit Judge, presiding by assignment. The appellants excepted to the verdict of the petit jury, and on the 21st day of August, 1931, filed a motion in arrest of judgment. The court overruled said motion, and proceeded to render final judgment. To this judgment, as well as to sundry other rulings of the court below, the appellants excepted and have brought this case before this Court upon a bill of exceptions for review. Having briefly given a synopsis of the history of the case we shall now proceed to consider the several points laid in the bill of exceptions.

The first point set out in the bill of exceptions is as follows:

"Because Your Honour the judge overruled defend-

ants' motion to quash the indictment upon which they were tried, when said indictment is indistinct and not framed with sufficient certainty, in that, said indictment contains a duplicity of charges in count one being charged with riot, and assault and battery with intent to kill, which charges ought to have been separated so as to enable the state to elect and the same to present a triable issue."

This count of the bill of exceptions will compel us to repeat the opinion handed down by this Court at its November term, 1933, in the case *Mason* v. *Republic,* 4 L.L.R. 81. In that opinion it is clearly pointed out that when an indictment is predicated upon the Revised Statutes of Liberia, and more particularly under any one of the forms set out therein, this Court will not support attacks to quash such an indictment framed, as we have held, in accord with the statute laws of the country. It is therefore the opinion of this Court that said count is not well taken in law, because, as has been shown, " 'Where a statute prescribes or implies the form of the indictment, it is usually sufficient to describe the offense in the words of the statute. . . .' " *Mason* v. *Republic, supra,* at 90.

In count two of the aforesaid bill of exceptions the defendants set out that:

"The verdict of the petit jury is manifestly against the evidence adduced at the trial and the charge laid in the indictment, the indictment having specifically charged the defendants with having carried a riot on Benjamin Logan's town against Logan and his people, and the evidence substantially proved that Benjamin Logan, and one Tompogie, and their people, committed riot on defendants and their people."

Upon careful perusal of the testimony of the witnesses for both prosecution and defense, there is nothing apparent to show that Zangbah and Grabul were the parties who committed the riot as laid in the indictment, but, on

the contrary, it is proven substantially that it was Benjamin Logan, Tompogie, and their people, who committed the riot on the defendants and their people, on the fourteenth day of April, 1931, in the town of Noryou. Record sheets 7–8, Benjamin Logan's testimony. Record sheets 10–11 and part of sheet 12, See-Wee's testimony. Record sheet 12 and part of 13, Weacon's testimony. Record sheet 13 and part of 14, Conwheay's testimony. Record sheets 14, 15 and part of 16, Kiedee-wee's testimony. Record sheets 16–17, Tompogie's testimony.

The foregoing references are to the gist of the evidence on the part of the prosecution in the case, which evidence does not support the indictment against accused. We cannot understand how from this evidence the petit jury arrived at its verdict, as there is no shadow of evidence to prove the charge alleged against the defendants in this case. In criminal cases the prosecution must prove the defendant guilty beyond a reasonable doubt. *Dunn* v. *Republic,* 1 L.L.R. 401 (1903); *Dyson* v. *Republic, id.* at 481 (1906). We are therefore of the opinion that the verdict of the petit jury in this case is manifestly against the evidence adduced at the trial of this case and it is therefore illegal.

Count three of the bill of exceptions brings us to the point which reads as follows:

> "And also because His Honour the judge presiding over the trial of said case instructed the jury in his charge to the effect, to wit: that in case the doubt in the minds of the jury during their deliberation is not serious and persistent, the minority should fall in and yield to the majority and bring a verdict."

The question that presents itself for our consideration growing out of this instruction of the trial judge to the jury in the case is, has the trial judge the legal right to give such instructions to an impanelled jury in the trial of a case? The statute of Liberia provides that:

"A jury shall consist of twelve persons, who shall

> solemnly swear or affirm immediately before the trial, that they will well and truly, try the issue joined, between the parties, and a true verdict give according to evidence." Liberian Statutes (Old Blue Book), ch. VII, p. 47, § 4, under "Trial."

This statute is mandatory and must be strictly followed.

Before closing on this important point raised by defendants' counsel, we will further remark that in the trial of a criminal case "should there be a reasonable doubt in the minds of the jury, the benefit of such doubt should operate in favour of the accused."

Having carefully considered this point we have arrived at the conclusion that the jury was influenced by the misdirection of the judge in bringing a verdict of guilt against the defendants, when there was no evidence adduced at the trial of the case to warrant said conviction; and that it was reversible error for the trial judge to instruct the jury that the minority should agree with the majority. B.L.D., "Verdict."

We will now proceed to the fourth point of the bill of exceptions which reads as follows:

> "And also because on the tenth day's session of the court when the court was considering defendant's motion in arrest of judgment, the County Attorney in contesting counts two and three of said motion admitted that the foreman of the petit jury, one Luke Rowell, had sent one Samuel Anderson to him, informing him that the jury could not agree on their verdict; that four of the jurymen had 'dissented' and that he, the County Attorney, sent them a message that in case of doubt, the minority must yield to the majority and bring a verdict; which statement the said Samuel Anderson on oath in open court confirmed, all of which statement the court would not allow to form part of the records in the case."

Before making any comment on this point in the bill of exceptions we will first observe that it was illegal on

the part of the County Attorney to give any advice to the jury, even if they asked it, because it is strictly forbidden under our statute for the jury to communicate with any person whomsoever on anything in connection with the case which they are impanelled to try, except the officer who is sworn to attend them. To permit any communication, especially of this kind, between the jury and the County Attorney is not only unwarranted in law, but reprehensible; and if permitted cannot but lead to a perversion of justice; hence this Court will not allow a verdict thus obtained to stand. Statutes of Liberia (Old Blue Book), ch. IX, 51, § 10.

The statute which provides for trial by jury expressly declares that when there is no possibility of the jury's agreeing they may be discharged and a new trial awarded. Statutes of Liberia (Old Blue Book), ch. IX, 51, § 11. We are therefore of the opinion that the trial judge erred in allowing the jury to bring in a verdict after hearing that there was no prospect of the jury's agreeing.

Count fifth of the bill of exceptions reads as follows:

> "And also because the court refused to sustain, but overruled, the defendant's motion in arrest of judgment."

From inspection of the aforesaid motion we are of opinion that the trial judge did not err in overruling said motion because the points raised in said motion are points for a new trial, and not for arrest of judgment.

It is true that the record shows that the verdict of the jury upon which the judgment in the case was predicated was not unanimous, and hence under ordinary circumstances there should not be an acquittal of the prisoners, but that the case should be remanded for a new trial as was contended by the Solicitor General during the course of his argument. But, inasmuch as the record further shows that it was Benjamin Logan, Tompogie, and their people who went riotously to the town of Noryou, and there riotously and unwarrantedly attacked Zangbah,

Grabul, Solomon Harrington and Boe-yu-poo, and their people, this Court feels that it is far more just to reverse the judgment of the court below, and order the prisoners discharged without further proceedings, the more so as according to the statutes of Liberia this Court has "appellate jurisdiction both as to law and fact over all causes tried in the Courts of the Republic, except the Court for the Trial of Impeachments, and the Court for the Trial of Legislative Contests, and shall correct and redress all errors, and reverse, affirm, alter, or modify any order, decision, judgment, or decree, which may be made or rendered by any Court, except as herein provided." 2 Rev. Stat. § 1407; see also Lib. Const., art. IV, sec. 2.

The judgment of the court below should therefore be reversed and the defendants discharged; and it is so ordered.

Reversed.