NATHANIEL V. MASSAQUOI, **KOLI S. TAMBA**, and **FRANK TARR GRIMES, JR.**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

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

Argued May 17-20, 24-27, November 23-26, 29, 30, December 2, 6-9, 14-16, 20-23, 1943, January 10-12, 1944. Decided February 4, 1944.

1. Where a trial is irregular and improperly conducted, judgment will be reversed and a new trial awarded.

2. Where the allegations in an indictment do not show any acts on the part of defendants that, if guilty, would render them liable to capital punishment or even a sentence of life imprisonment, the trial court should grant appearance bonds.

3. In an indictment for an attempt to commit a crime, it is essential to aver that the defendant did some act which, directed by a particular intent which is to be averred, would have apparently resulted, in the ordinary course of things, in a particular crime.

On appeal to this Court from a conviction for sedition, *judgment reversed and remanded* and bail granted to appellants.

A. B. Ricks and *C. Abayomi Cassell* for appellants. *The Attorney General* and *D. C. Caranda* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

At the November term, 1940 of the Circuit Court for the First Judicial Circuit, Montserrado County, with His Honor Elkanah A. Monger, then a circuit judge, presiding by assignment, the following eleven persons were indicted for sedition: James S. Wiles, S. David Coleman, Al-Haj Massaquoi, Nathaniel V. Massaquoi, Kolli Tamba, Frank Tarr Grimes, Jr., Henry B. Cole, Joseph Holcombe, Henry McBorrough, James D. Cassell and Varnee Gray; but when the case came up for trial at the said term of court, James S. Wiles and S. David Coleman were granted severances from the remaining nine defendants because of a motion therefor filed by the former and then serious illness of the latter sufficiently certified by a competent physician. Upon arraignment of the said remaining nine defendants and, as the record discloses, before making their respective pleas, the prosecution entered a nolle

prosequi in favor of Henry Mc-Borrough, one of the said nine defendants; however, the remaining eight joined issue with the prosecution by each entering a plea of not guilty of the charge alleged against them in the indictment, which indictment reads in words and figures as follows, to wit:

"The Grand Jurors for the County of Montserrado and Republic of Liberia upon their oath do present : that James S. Wiles, S. David Coleman, Al-Haj Massaquoi, Nathaniel V. Massaquoi, Kolli Tamba, Frank Tarr Grimes, Jr., Henry B. Cole, Joseph Holcombe, Henry McBorrough and James D. Cassell of the City of Monrovia and Varnee Gray of the City of Clayashland, all of the County of Montserrado and Republic of Liberia, defendants heretofore to wit :-

"On the first day of January in the year of our Lord nineteen hundred and forty (A.D. 1940) and on divers other times and days between the said first day of January in the year of our Lord nineteen hundred and forty (A.D. 1940) up to and including the thirty-first day of October in the year of our Lord nineteen hundred and forty (A.D. 1940) in the City of Monrovia, County of Montserrado and Republic of Liberia then and there being the said defendants not having the fear of God before his eyes, but being moved by the instigation of the devil, wickedly devising and intending the peace and tranquility of the said Republic of Liberia to disturb and stir, move and excite insurrection and rebellion against the Government of the Republic of Liberia, and the said defendants in furtherance of their intention, that is to say, to defy, subvert and overthrow the constituted authority of the Government of the Republic of Liberia did within the time aforesaid, with force and arms, unlawfully, falsely, maliciously, wickedly and seditiously compass, imagine and intend to raise, stir, and move and excite insurrection and rebellion against the Government of the Republic, and in order to fulfil and bring to effect the said seditious and subversive intention and the overthrow of the constituted authority of the Government of the Republic of Liberia, the said defendants within the time aforesaid, that is to say, on the first day of January in the year of our Lord nineteen hundred and forty (A.D. 1940) and on divers other times and days between the said first day of January in the year of our Lord nineteen hundred and forty (A.D. 194o), up to and including the thirty-first day of October in the year of our Lord nineteen hundred and forty (A.D. 1940), in the City of Monrovia, County and Republic aforesaid and in furtherance of their subversive intention and the overthrow of the constituted authority of the Government of the Republic of Liberia, defendants aforesaid did promote the convening of private meetings in the City of Monrovia, County and Republic aforesaid, the object of which was to assassinate Edwin Barclay, President of the Republic of Liberia, and other members of the Cabinet, Colonel Isaac Whisnant,

Liberian Army, Aid-de-Camp of the President of Liberia, Moses N. Grant, Major Commanding Liberian Frontier Force, Captain Alford C. Russ of the Liberian Frontier Force and David F. M. Dean, Captain, Liberian Frontier Force, then and thereby to defy and subvert the constituted authority of the Government of the Republic of Liberia; and also the said defendants in order to fulfil and bring to effect their subversive intention as aforesaid did in the time aforesaid and in the City aforesaid invite several citizens to take part in their meetings the object of which was to defy, subvert and overthrow the constituted authority of the Government of the Republic of Liberia by assassinating Edwin Barclay, President of the Republic of Liberia, Clarence L. Simpson, Secretary of State, Republic of Liberia, and other members of the Cabinet, Colonel Isaac Whisnant, Liberian Army, Aid-de-Camp of the President of Liberia, Moses N. Grant, Major Commanding Liberian Frontier Force, Alford C. Russ, Captain, Liberian Frontier Force and David F. Dean, Captain, Liberian Frontier Force; contrary to the form, force and effect of the statute laws of Liberia in such cases made and provided and against the Peace and Dignity of this Republic.

"And your Grand Jurors aforesaid upon their oath aforesaid do say that the said James S. Wiles, S. David Coleman, Al-Haj Massaquoi, Nathaniel V. Massaquoi, Kolli Tamba, Frank Tarr Grimes, Jr., Henry B. Cole, Joseph Holcombe, Henry McBorrough, James D. Cassell and Varnee Gray, defendants, in manner and form aforesaid, and at the time and place aforesaid the crime of Sedition did do and commit; contrary to the form, force and effect of the statute laws of Liberia in such cases made and provided and against the Peace and Dignity of this Republic."

Against the empanelling of the petit jury to try this issue thus joined and with a view toward safeguarding their own interests and rights, the defendants through their counsel asked the court for a ruling as to how many peremptory challenges each of them would be entitled to, and the judge replied that each of them would be entitled to four peremptory challenges. The said defendants then inquired as to whether or not the court considered the matter for which they were being held to answer a capital offense, they already having been denied bail upon application, whereupon the court confirmed its opinion already given in the following words :

"The court says in reply that it does not enact law and has to take the statute as it stands; but it does not consider this case as a capital offence. The court says further that each defendant is entitled to four challenges [obviously meaning peremptory challenges] as stated before and the prosecution is entitled to only four challenges in keeping with the opinion of the Supreme Court handed down in the case : Bryant et

al., vs. Republic, decided 31st Dec. 1937. [6 L.L.R. 128 (137).]"

To this ruling of the judge of the court the prosecution excepted ; yet it is both peculiarly and inexplicably puzzling that, with this ruling of His Honor Judge Monger against the prosecution's contention that it was a capital offense which, on the face of the record before us, seems to be legally correct and sound, the defendants through their counsel made no application at that stage for the granting of bail to those who, as it was shown, had previously been denied same by other judges before the trial was begun.

In all legal proceedings there is a time when, a place where, and a manner in which every step necessary to be taken in the progress of the trial has to be punctiliously followed ; otherwise a point may be lost. The argument of defendants that they had before the trial made unavailing applications to sundry circuit judges for bail was no excuse for their neglect to renew said application at this, the psychological, moment, when the trial judge gave a ruling that he did not consider this case to involve a capital offense, for he would then have been compelled to grant the bail in conformity with the aforesaid ruling or place himself on the horns of a dilemma by refusing bail, and an exception following such inconsistent rulings would have brought both these matters squarely before this Court for decision.

It would appear from the atmosphere of the trial court that undue importance was attached to this case as it stood at the time of the indictment so that, besides the prosecution taking advantage of it in the establishment of its case, the defendants were either unwilling to assert and insist upon their rights, particularly in a demand for bail, or were speculating on a possible modified sentence upon an eventual verdict against them. However, since there is no submission before us whereby we may be justified in reviewing and passing upon the soundness of the ruling of the trial judge on the question of the number of peremptory challenges to which each of the defendants was entitled at the trial, whatever has been said thereon can be safely considered obiter dictum.

After the empanelling of the jury the trial which proceeded lasted well over a month, during which hectic period both sides marshaled before the court their sides of the case. The prosecution strenuously endeavored to show that the defendants were guilty of the charge alleged against them in the indictment, and in addition the prosecution went beyond the allegations in the indictment and imported into the case allegations against the defendants which were *dehors* the indictment, whilst the defendants, besides denying the truthfulness of the charge alleged against them,

made strong efforts to prove that it was the law officers of the Government together with sundry others named in the prosecution's said evidence who had testified as witnesses for the prosecution that were guilty of the seditious conspiracy attempted to be laced up against them, the said defendants.

With a view to giving a clear picture of what is sedition under our statutes it would be necessary to review said statutes and, in this respect, to observe that sedition has not usually been a common law offense since it is an offense against the state and, as such, there is hardly any, or very limited, literature on it by common law writers. The respective statutes of each country have therefore to be almost always and invariably resorted to and depended upon. In a review of the statutes on sedition in this country, we find the Criminal Code of 1914, which in plain and clear language repealed the Criminal Code of 1900. In the Criminal Code of 1914 sedition is defined thus :

"Any citizen of Liberia who with intent to stir up rebellion and to set on foot, incite or in anywise promote insurrection against the authority and government of the Republic, shall write about said government to any native tribe or tribes within the limits of Liberia, or to any chief or chiefs of such tribes, any word or words, phrase or phrases imputing to the government of Liberia unfairness in its treatment of such tribe or tribes; or who with similar intent shall create or seek to create among any such tribe or tribes disaffection to the Government of Liberia, or who with such intent shall counsel or advise or in anywise encourage any such tribe or tribes to renounce their allegiance to the Republic of Liberia ; or who shall write or cause to be written any communication to a foreign state or to any official thereof proposing either the dismemberment of the Republic, or presenting to such foreign government, or official any matter of complaint against the government of Liberia properly the subject of domestic enquiry and adjustment with intent in so doing to overturn, subvert or in anywise affect the stability of the Republic ; or who shall do or cause to be done any act having a tendency to cause discontent among any tribe or tribes within the limits of Liberia and incite them to revolt, shall be guilty of sedition." Crim. Code of 1914, ch. VII, § 107.

After the visit of the International Commission of Inquiry to Liberia in 1930 and the submission of its report which created great feeling against the administration then in power and which resulted in the resignation of the then ruling head of Government and the selection of the then Secretary of State to succeed as President, certain politically ambitious citizens took up and continued the fight for what was considered the protection and conservation of the privileges and rights of the aborigines of the country, and, as the message of His Excellency the President to the national

Legislature at its extraordinary session in 1932 showed, there was a big crusade on the part of these politically ambitious citizens to stir up, contaminate, and disaffect the native population in order to bring about a subversion of the constituted authority of the Government. Consequently, the President recommended the passage of another sedition act which would serve as a deterrent to these subversive acts pointed out by the President in his said message and as a safeguard of the well-being and welfare of the state; and the Legislature during that same session before which the message was delivered passed the following very strongly worded act:

"Whereas the frequent uprising of certain tribes in this Republic has been traced to the evil influence and illicit propaganda of disaffected and disloyal citizens and to other persons resident within the territory of the Republic ; and

"Whereas whilst sustaining allegiance to the Government of the Republic of Liberia and enjoying the full benefits of citizenship and protection, evil disposed persons have sown seeds of political discontent and unrest among certain elements of the population by inciting them to insurrection and rebellion against the Government of the Republic; and

"Whereas such pernicious activities have produced in the past great destruction of life and property, the restraint of trade, the disturbance of public peace, the stimulation of imaginary grievances, and the destruction of that friendly understanding and internal harmony which are necessary for the promotion of national progress, unity and concord and

"Whereas certain individuals have undertaken to convene groups of persons from time to time at public and private rendezvous in order to challenge and defy the authority of the Government; and

"Whereas it is becoming increasingly habitual for evil minded persons to make false representations, disrespectful and defamatory allusions to the Head of the Nation with intent in so doing to impugn and degrade the dignity and respect due to the Presidential Office; and

"Whereas it becomes the duty of the Government to stamp out such evil conduct and influence by the enactment of suitable laws; therefore

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section 1. It is hereby declared seditious for any citizen of Liberia or other person resident within the territory of the Republic who shall stir-up *[sic]* rebellion or set on foot, incite or in any wise promote insurrection against the authority of the Government of the Republic or

(a) Who shall communicate by speech or in writing to any tribe, Chief of a tribe, or other person any statement imputing to the Government unfairness in the treatment of the Native population if untrue, or in any other class or section of the community with the intent in so doing to cause discontent and political unrest among them; or

(b) Who shall write or inspire the writing of any document to a foreign Government or any official thereof making representations on any matter properly the subject of domestic enquiry and adjustment; or

(c) Who shall convene or promote the convening of any meeting, public or private, the object of which shall be to defy, subvert or overthrow the constituted authority of the Government3.or

(d) Who shall write or speak in a disiespectful or defamatory manner of the incumbent of the Presidential Office with intent in so doing to show disrespect to the Head of the State and degrade the Office and thereby bring disintegration into the organization of the Government." L. 1932 (E.S.), ch. III, preamble,. § 1.

It would appear that the situation was not remedied by the passage of the act last cited, for three to four years after the passage thereof the Legislature brought into being another act more strongly worded than the 1932 Act and entitled : "An Act Providing Protection to the Head of the State and Amending the Statutory Mode of Trial and Penalty for Treason, Sedition, Conspiracy and Attempt Against the Nation or its Official Head," and which reads as follows:

" 'Head of the State' shall mean the President of the Republic, and shall include Diplomatic Representatives of Foreign Governments near this Capitol.

"The term 'Treason' shall be defined in this Special Act as [it] is defined in Section 105, page 29 of the Criminal Code of Liberia A.D. 1914.

"The term 'Sedition' shall be defined in this Special Act as [it] is defined in Section 107, page 29 of the Criminal Code of Liberia A.D. 1914, and the Act of the

Legislature passed and approved February 8, A.D. 1924. Act of the Legislature passed and approved August 11, A.D. 1932.

"The term 'Conspiracy against the State' or its Official Head, shall be defined in this Special Act as [it] is defined in Section 32, page 38 of the Criminal Code of Liberia A.D. 1914.

"The term 'Attempt' shall be defined as [it] is defined in Section 29, page *s* and Section 31 page 6 of the Criminal Code of Liberia A.D. 1914, including an attempt to injure the reputation or destroy the life of any of the officials named in section 2 of this Act, or attempt to impair the existence of the body politic or otherwise affect the safety and tranquility of the people or the State.

"Whereas the object and end of the Constitution, in the institution, maintenance and administration of government is to secure the existence of the body politic, to protect it and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights and the blessings of life ; and,

"Whereas, there appear to exist certain perfidious acts by citizens and aliens in the Republic, the result of which is calculated to undermine the object of the institution of this government and to endanger the life and property of the Official Head of the State ; and

"Whereas, the Legislature is empowered to declare the mode of trial and punishment for such crimes and misdemeanors for the safety of the State and the individuals who compose it; Therefore

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section 1. That from and immediately after the passage of this Act, the charges of Treason, Sedition, Conspiracy and act or attempt against the State or its Official Head under investigation in the Republic, by the Department of Justice and all future charges of a similar nature, within the Republic, shall be dealt with and the trial proceed in the following manner:—

(a) That upon information filed by the Department of Justice before any circuit judge available, whether assigned or not, in any particular circuit where any of the above offences are alleged to have been committed, without reference to, whether in or out

of term time,

(b) The circuit judge shall immediately assume jurisdiction, summons *[sic]* and impanel a special jury to inquire into said charge or charges, and upon sufficient evidence being produced to warrant the defendant or defendants being put on trial, an indictment shall immediately be found, a petty jury summoned and impanelled and the defendant or defendants put upon trial without the least possible delay, in keeping with the Statute law governing trials in criminal cases.

"Section 2. The punishment for 'Treason', 'Sedition' and 'Conspiracy' shall be the same as provided in the Criminal Code of Liberia A.D. 1914; except that the fine provided in said penalties shall refer to each individual defendant or participant in the crime.

"Section 3. The punishment for 'Attempt' to commit any of the crimes herein specified, but failing to effect its accomplishment, shall be the same as the punishment for the commission of the particular crime attempted ; where death or other serious bodily injury is the result of any of the above acts, or the safety of the nation seriously imperilled, the punishment shall be death or imprisonment for life.

"Section 4. Any existing law or parts of law, statutory or common, conflicting with the provisions of this Special Act be and the same are hereby repealed.

"This Act shall take effect immediately and be published in hand-bills.

"Any law to the contrary notwithstanding. "Approved March 2, 1936." L. 1935-36, ch. XVIII.

It is clear that the intention of the Legislature was to make the Sedition Act of 1935-36 as strong and as forceful as was possible and so the Legislature incorporated into the act the prior legislation on sedition already quoted.

Insinuations have been made that these sedition acts are unconstitutional and unwise and therefore should be declared so; but, as far as the records of this case show, the point was never fairly and squarely presented, in the manner in which constitutional issues should be presented, for an opinion and decision. Yet in face of this there have been unjust imputations that the courts have been remiss in making judicial declarations as to the legal sufficiency of these enactments. It is therefore necessary for us to reiterate what His Honor Mr. Chief Justice Grimes said in his concurring

opinion in *Delaney v. Republic,* 4. L.L.R. 251 (1935):

"The courts are not at all concerned with whether or not a law as enacted by the Legislature is good or bad, useful or not.

For,

"While the courts may, and, when the question arises and is properly presented, must, determine the constitutional power of the legislature to enact a particular statute, where a law does not transcend the limits of legislative power it cannot be held invalid by the courts because they may question the wisdom of the enactment. Within constitutional limits, the necessity, utility and expediency of legislation are for the determination of the legislature alone. The remedy for unwise legislation is not in the courts but remains in the people, who, by making the necessary changes in the legislative body, may have the unwise, improvident or pernicious legislation of one legislature corrected by another. . 25 R.C.L., 'Statutes,' § 60; *Roberts v. Roberts, 1* L.L.R. 107, esp. 112 (1878)." *Id.* at 256-57.

It is also clear that in construing the Act of 1935-36 the intention of the Legislature has not been correctly interpreted or understood by the prosecution in this case in that there has been a rather strong effort in the presentation of its case before the trial court and even before this Court to confuse the charge of sedition with the charge of attempt against the nation or its official head. The trial judge also seems to have agreed with or been so persuaded by the prosecution when he allowed a strong trend of evidence in support of a charge on the latter ground when the defendants were being held for sedition. There is also a notable absence by the defense of any great attempt to resist this. It is our opinion that proof of facts tending to show overt acts of an attempt against the head of the state, whether consumated or not, is improper in a prosecution for sedition and it is even more so when the commission of such attempts or acts have not been charged in the indictment so as to give the defendants the notice required by our statutes. According to the phraseology of the said 1935-36 Act, the crime of attempt against the nation or its official head is intended to be a separate and distinct offense which is not to be confused with sedition.

The bill of exceptions before us in this matter embodies twenty-one counts; but we do not propose to pass upon all of them and will therefore confine ourselves to such of them as would be necessary to the determination of this appeal.

Count one of said bill of exceptions relating to the trial judge's ruling on the question of the number of peremptory challenges to which each of the defendants was entitled is not properly before us in that there is no record that the said defendants excepted to the judge's ruling. On the other hand, the only exception appearing on this point was that saved by the prosecution when it also was told that it was entitled to only four peremptory challenges, so that, barring what has already been said herein and *en passant,* we find ourselves unable to pass upon it.

Counts two to fifteen of the bill of exceptions all appear to be exceptions taken by the defendants to the rulings and opinions of the judge on the admission and rejection of certain sundry testimony and other evidence at the trial. Whilst it is not deemed necessary to the determination of this case to pass upon these exceptions severally, it appears essential, however, to point out two outstanding irregularities which seem to have pervaded the entire atmosphere of the trial and which, perhaps, were responsible for the manner in which the case found its termination in a conviction :

(1) During the whole period of testimony of witnesses for the prosecution, the defendants appeared to have been unduly restricted and limited in their scope of cross examination whereby the test of the truth of a witness' testimony can be made; his interest, motives, inclinations, and prejudices tested ; and his means of obtaining a correct and certain knowledge of what he has testified to, and the manner in which he has used those means, ascertained. In the case *Bryant v. Bryant,* 4 L.L.R. 328, decided February 1, 1935, the trial court refused to compel the husband who was suing his wife for divorce to state from whom and under what circumstances the letters with which he wished to criminate his wife were obtained ; the trial court's ruling was condemned, this Court relying upon section 446 of volume 1 of Greenleaf on *Evidence* (16th ed. 1899). So, too, every effort made by the defense in this case to test the interest, motives, inclinations, and prejudices of the witnesses was disallowed by the court upon objections by the prosecution to the questions, the prosecution making these protests in the following manner : "Witness not on trial." The curtailment of this sacred right of the defendants in the cross-examination of the several witnesses who were adduced to testify against them was both irregular and improper and had the tendency to prejudice the defendants' interests and rights under the law, and should be condemned.

(2) The prosecution also appears to have gone into court with a claimed strong arm of the law in its support because it felt, possibly, that it was representing the sovereignty of the people, and the trial judge seems to have been converted to, or

sympathetic with, this view, as is evidenced by the several incorrect rulings against the defendants and the apparently overbearing manner in which the prosecution was conducted. In this connection it is deemed expedient to emphasize, we hope for the last time, that "a court can never be the agent . . . of any government; nor can it properly align itself on the side of the prosecution in any case." *Yancy v. Republic,* 4 L.L.R. 268, 276, 1 New Ann. Ser. toy (1935) In said case :

"The attention of the learned Attorney General was directed to ( ) the undue restriction by the trial judge of appellant's right to cross-examine the witnesses adduced against him; and (2) the fact that, although the evidence adduced tended in our minds to prove that appellant had by force and violence obtained the money, the subject of the prosecution, from Paramount Chief Bloh and his people, yet it did not appear to us that upon such facts the conviction could legally stand since the indictment charged the appellant with obtaining money under false pretenses which charge implies secretiveness, stealth and fraud rather than open force and violence. *At this stage the learned Attorney General mounted as it were upon a pair of stilts and in a very supercilious manner announced to the Court that the represented two million people,* and therefore insisted that the conviction should stand. He was immediately checked, and rebuked in this course by Mr. Chief Justice Grimes who directed him to read and expound . . . the following citation from Wharton's *Criminal Evidence, vol.* I, § 1 :

`In civil suits both parties are subjects of the State, with equal rights in the eyes of the law. For the one or the other a verdict must be found, and this verdict must be on a preponderance of proof, however slight, no matter how long a jury may hesitate, no matter how evenly the scales may for a time hang. The parties, viewing them in the aggregate, enter the contest with advantages about equal, and are entitled to equal privileges. On the other hand, in a criminal prosecution, the State is arrayed against the subject; it enters the contest with the prior inculpatory finding of a grand jury in its hands; with unlimited command of means; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty, often in striking contrast to that of a defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt.'

"The proper duty of the court is to defend the rights of the oppressed against the oppressor, the rights of the weak against the strong, be the strong president, emperor, king, prince, potentate, or magnate; and hence, whenever there is a matter in litigation in which it appears that one side is weak and the other strong, the court must lean, if

at all, on the side of the weak until it shall have satisfied itself that every privilege given by the law to the humblest litigant at its bar shall have been allowed him; and if, thereafter, it appears that judgment should be given against him the court will be able so to decide without any qualms of conscience. . . ." *Id.* at 275-76. (Emphasis added.)

The attitude of the trial judge during the case seems to indicate a leaning towards the side of the prosecution, which obviously was the stronger of the two contenders, and this fact is more strikingly borne out by a statement made by the said judge in his ruling on the three defendants', now appellants, motion in arrest of judgment, which ruling is now quoted :

"The court in ruling on count one of the motion in arrest of judgment says that under the Act passed 2nd March 1936, the punishment for an attempt to commit any of the crimes specified in said Act is the same as if the act was committed. The charge as well as the evidence shows that there was an attempt to assassinate the President of the Republic of Liberia, and such act the court feels would have seriously impaired the nation had it been accomplished. Under the penal clause of said statute, where the safety of the nation is seriously impaired the punishment may be death or life imprisonment. This court not being disposed to administer the death sentence denied the defendants the twelve peremptory challenges which had been previously provided for only in such cases where the punishment would be capital. . . ." See record, minutes of trial court December 26, 1940.

This phase of the trial judge's ruling on the motion in arrest of judgment, besides being incorrect insofar as it states that the indictment charged that there was an attempt to assassinate the President, which was never alleged in the indictment so as to have been a legitimate subject of proof during the trial, clearly shows or indicates the conclusion on the part of the judge of the guilt of defendants even before hearing one witness at the trial, for he declares that it was because he was indisposed to impose the death sentence on the defendants that he denied them the twelve peremptory challenges which had been provided for by the law.

It is the opinion of the Court that much of the evidence for the prosecution admitted during the trial was both irregularly and improperly received, particularly such evidence as tended to prove facts not alleged in the indictment on which the defendants were tried. A careful study of the said indictment would show that though it is nicely worded almost all of the allegations showed or tried to show several things that the defendants intended to do, without a particular allegation of an attempt to do any of the acts which had been mentally conceived. It was, therefore, error on the

part of the trial judge to have permitted the admission of evidence which tended to prove the alleged attempt made on the life of the President on the Barracks Road and to have permitted the admission into evidence of sundry bulletins anonymously written when there was no allegation concerning the bulletins in the indictment and when their authorship and/or circulation had not conclusively been traced to the defendants or to any of them.

"At common law such facts must be set forth as show that the attempt is criminal in itself. Attempts may be merely in conception, or in preparation, with no causal connection between the attempt and any particular crime; in which case, as has been seen, such attempts are not cognizable by the penal law. On the other hand, when an attempt stands in such connection with a projected, deliberate crime, that the crime, according to the usual and likely course of events, will follow from the attempt, then the attempt is an offense for which an indictment lies. Now it is a familiar principle of criminal pleading, that when an act is only indictable under certain conditions, then these conditions must be stated in the indictment in order to show that the act is indictable. Nor does it make any difference that the offense is made so by statute. Thus statutes make indictable revolts and obtaining goods under false pretenses ; yet an indictment charging simply that the defendant 'made a revolt,' or 'obtained goods under false pretences, would be scouted out of court. On *the same reasoning, in* an *indictment for an attempt to commit a crime, it is essential to aver that the defendant did some act which, directed by a particular intent, to be averred, would have apparently resulted, in the ordinary and likely course of things, in a particular crime." i* Wharton, Criminal Law § 231, at 302-03 (11th ed. 1912) . (Emphasis added.)

"It may be proper in this place to observe that in treason the rule is that no evidence can be given of any overt act which is not expressly laid in the indictment. But the meaning of the rule is, not that the whole detail of facts should be set forth, but that no overt act, amounting to a distinct independent charge, though falling under the same head of treason, shall be given in evidence unless it be expressly laid in the indictment. If, however, it will conduce to the proof of any of the overt acts which are laid, it may be admitted as evidence of such overt acts. This rule is not peculiar to prosecutions for treason. . . . It is nothing more than a particular application of a fundamental doctrine of the law of remedy and of evidence; namely, that the proof must correspond with the allegations, and be confined to the point in issue." Greenleaf, Evidence § 256, at 398 (16th ed. 1899).

This error on the part of the judge in the admission of these sundry species of evidence seemed to have been conceded by the able and erudite Attorney General

who argued this case before us for, when pressing questions came to him from several members of the Bench as to which of the acts of the Legislature he based his prosecution upon, since obviously there were no allegations in the indictment tending to show attempts against the nation or its official head, he in each case replied that he based the prosecution on the following portions of the Sedition Act of 1932:

"It is hereby declared seditious for any citizen .. .
(c) Who shall convene or promote the convening of any meeting, public or private, the object of which shall be to defy, subvert or overthrow the constituted authority of the Government. . . ." L. 1932 (E.S.) ch. III, § 1.

Being pressed further to reconcile the life imprisonment sentence rendered against the defendants with the provisions of the said 1932 Act wherein the maximum penalty is seven years imprisonment with confiscation of property and a fine, the learned Attorney General soft pedalled his argument for sustaining the sentence of life imprisonment by invoking the principle of law that appellate courts are vested with the legal authority to reduce sentences imposed by trial courts where the sentences are considered excessive. Whilst the Court might have been impressed with this plausible argument of the learned Attorney General, the indictment does not charge any convening of meetings at any time or place where at any of the seditious matters alleged were discussed. It simply charges the "promotion" of such meetings. The trial on the whole was both improper and irregular and the learned Attorney General himself, in his brief and during his argument before this Court, called it a "mob trial." It has been difficult, because of the above, for this Court to appreciate intelligently the Attorney General's strenuous efforts to get this Court to sustain the conviction which has evolved out of what he himself has styled a "mob trial."

Because of the atmosphere at the trial and also because of the fact that certain lines of evidence were admitted during the trial which were irrelevant and yet had a tendency to unduly influence the minds of the jury, it is the opinion of the Court that the new trial asked for should have been granted ; but what seems to be peculiarly strange is that neither the defendants nor the prosecution, in the face of all that has been said herein, seems keen for a remand of the case for a new trial even though it was prayed for and was denied. The unwillingness of the prosecution seems to be founded on what it considers the undue advantage taken of its lawyers and of several of its witnesses by the defendants at the trial, which conduct was condoned by the court. In the trial the defense attempted to drag a "red herring" across the trial by attempting to show that it was they, the prosecution's lawyers and some of its witnesses, who were guilty of sedition and not they, the defendants who were on trial.

This is one of the irregularities and inconsistencies allowed at the trial that has accounted for a conviction in this manner. As far as the Court is aware, this kind of practice is unprecedented and should not be permitted because it simply has the tendency to muddle and confuse the trial upon the issue joined.

"It is competent for the defendant to show by any legal evidence that another person committed the crime with which he is charged, and that he is innocent of any participation in it. But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tend clearly to point out such other person as the guilty party. Remote acts, disconnected and outside of the crime itself, cannot be separately proved for such a purpose. An *orderly* and *unbiased* judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant should be permitted by way of defense to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty." 8 R.C.L. *Criminal Law* § 178, at 185-86 (1915). (Emphasis added.)

It is necessary to observe that much of the evidence, both written and oral, for the prosecution was procured through -regimentation and intimidation. Among the evidence thus obtained, the depositions of John Logan before the Attorney General and the written statement of Frank Tarr Grimes which has been greatly emphasized may be mentioned. In the case of Logan, it appears that when first called before the Attorney General he gave a statement which was reduced to writing by the Attorney General and sworn to and signed by the said Logan. Twice after, he was called before the same official and told that it was discovered that he had not told all that he knew and that an opportunity was being given him to exonerate and clear himself. In the last instance, he was told-that it was his last chance. Under the circumstances, can it not be concluded legally that whatever evidence was given under these circumstances was obtained by threat and coercion? It is clear to us that it was thus obtained.

In the case of the written statement made and submitted by Frank Tarr Grimes, one of the defendants, through the Honorable Wilkins H. Tyler, the Court cannot but conclude from the testimony of the said Frank Tarr Grimes, of his wife, and of one Miss Brooks that same was prepared and submitted upon a promise of some definite benefit; and whilst the Honorable Mr. Tyler's testimony does not seem to admit this, yet the notes written to him by the said Frank Tarr Grimes which he has put in evidence seem to break down his own testimony in this respect. We now quote these three notes marked : "F1," "G1" and "H1," respectively:

"F1."

"COUNTY JAIL, */0/24/40.*

"MY DEAR HON. TYLER,

"I have completed my statement and am prepared to confirm it openly as well as corroborate it. It is a lengthy thing. But to tell you the truth, Hon. Tyler, I trust your word, but I am really doubtful of the Attorney General. And since he is the main prosecution man to whom I shall be responsible for my statement I feel that he ought to treat me as a state witness is supposed to be treated ; that is RELEASE ME ON THE LEGAL WITNESS BOND and let me confirm and swear to my statement. But I can assure you that my statement is the weightiest the Government can ever procure, and every word more or less can be corroborated. So please see after my release or arrange everything outside for me with the authorities. Impress upon them that if they really mean to have convincing and corroborated evidence, then they cannot do without statement. . . .

"Your obedient servant,
[Sgd.] F. TARR GRIMES."

"G1."

"DEAR HON. TYLER,

"Herewith my statement. I'm really depending on you. It is the whole matter as I know to the best of my ability. Do put everything thru for me. Holcomb is the main other person to corroborate all I have said. Regards.

"Sincerely, [Sgd.] GRIMES."

“H1

"DEAR HON. TYLER,

"I have received your message this a.m. by Ma Danlete and my wife in regards to the matter and my release. But as you also would like to have my Bond, please have one typed for me; of course I do not know what kind of Bond is required or what kind I would be released on. So I am asking that you kindly prepare one for me since you will need it to take to the President to secure my release. Do *[sic],* don't let them 'trick' me.

"Due regards and best wishes. Thanks.
F. TARR GRIMES."

The learned Attorney General argued strongly that, even if the said written statement of Frank Tarr Grimes is considered to have been procured upon inducement, yet the Honorable Mr. Tyler is not one of such persons whose efforts at inducement, threat, or coercion to secure a confession would militate against the admission of the statement into evidence at a trial and against the prosecution. Whilst this argument is superficially true, yet it is also a principle of law that, notwithstanding such a statement embodying a confession was made to a person not a law officer, it would be inadmissible where the maker had the belief that the person to whom he made it was competent to offer him or secure for him the benefits or privileges suggested or anticipated. It is readily seen from the letters already quoted that Frank Tarr Grimes believed in the capability of the Honorable Mr. Tyler to secure for him the benefits or privileges which he the said Frank Tarr Grimes expected, and which also seem to have been suggested in the event of his making and submitting the written statement.

Because of the several irregularities and improprieties committed during the trial of the case pointed out herein, it is the opinion of the Court that the judgment of the lower court should be reversed and a new trial awarded in a manner not inconsistent with the principles herein enunciated and with as little delay as is possible; and it is hereby so ordered.

And in view of the fact that the indictment upon which the defendants, with the rest of the other defendants who have been acquitted, are charged does not on its face allege any acts on the part of the defendants which under the law of sedition, if guilty, would render them liable to capital punishment or even a sentence of life imprisonment, the Court orders that the said three defendants, now appellants, will, by the trial court, be immediately placed under appearance bonds of five hundred dollars, each to further answer said charge in the manner herein ordered ; and that upon filing said bonds they should be immediately released from actual custody.

Reversed.