In re C. ABAYOMI CASSELL, Counsellor at Law, Respondent.

DISCIPLINARY PROCEEDING ON CHARGES OF PROFESSIONAL MISCONDUCT AND CONTEMPT OF THE SUPREME COURT.

Argued March 22, 23 and 27, 1961. Decided May 19, 1961.

1. The Legislature is only *primus inter pares* with the other two branches of government; none is more important than the others; none can function without the others and still maintain the objectives of the Constitution; and none, in this sense, is either weaker or stronger than the others.
2. The judiciary is the anchor which holds stablized government in balance; without it vested interest might suffer, sacred rights might be violated, constituted authority might be challenged, and in fine, administrative chaos could result.
3. Although the Constitution and the law do not require the Attorney General to give advice either to the President or to any head of a department without previous request, nevertheless, in the proper performance of his duties he should advise on any matters which adversely affect public rights, whether asked to do so or not.
4. It is a duty of the Attorney General to prepare opinions on all matters of proper moment, or which involve public interest; and although these opinions might not have the weight of judicial decisions, they nevertheless serve to guide the government in proper and lawful administration.
5. The ethical and primary duty of a prosecutor is not to convict, but to afford the defendant charged with crime a fair and impartial trial. Fairness of trial must comprehend justness of the laws under which the defendant answers; and the justness of those laws must be measured against the defendant's rights under the Constitution.
6. Whenever the constitutionality of a statute is challenged, it is the duty of the Supreme Court to test the said statute as applied to a given case by the Constitution; and the Court's decision on such an issue decides that issue for all time. If such a decision be against the statute, the law immediately loses its authority, its usefulness and its validity, and becomes a nullity. In such cases there is no necessity for legislative repeal or for removal from the statute books to give effect to the invalidity of the statute.
7. Of the members of the President's cabinet, the Attorney General is the only one who might professionally or technically disagree in opinion with the President on any issue and be within the proper, proprietary and legal performance of his duty; every other cabinet member must agree with the policy of the administration or resign.
8. Any Attorney General who is either unable to, or who fails to advise against any acts of government which, in his opinion, infringe the constitutional rights of the citizens is useless to the administration and unfit to continue in office because he thereby fails to be that efficient legal adviser to the President and bold protector of the rights of the citizens which the law requires him to be.

9. The power to hold a member of the bar in contempt is an inherent power of the Supreme Court of Liberia, and cannot be questioned by any international organization or foreign state; nor does the Court have to answer questions from any source as to what it considers contemptuous.
10. It is peculiarly the duty of a counsellor at law to maintain the respect due the courts and judicial officers; and any breach of this duty constitutes contempt.
11. Deceit by a counsellor at law amounting to an abuse of the functions of his office may be punished as a contempt. Where the conduct of a counsellor at law, whether in or out of court, is disrespectful to a judge, such conduct constitutes contempt; if it be in court and in connection with the hearing of a case it is direct contempt; and if it be outside the court it is constructive contempt.
12. Freedom of speech or of the press should not be interpreted as license to exceed the constitutional liberty a citizen should enjoy. The liberty of the press is the right to publish truth with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals.
13. The Supreme Court will punish for contempt any deceptive practice which might have the tendency to reflect discreditably upon the judicial branch of the government, or which might tend to belittle it for its decisions, or which might embarrass it in the performance of its duties, or which might show disrespect to it or its Justices, or which might defy its authority.

Respondent, formerly Attorney General of the Republic of Liberia, was charged with professional misconduct and contempt of the Supreme Court of Liberia in circulating a paper containing criticisms of the administration of justice in Liberia at an international conference of jurists in Nigeria. After hearing on the charges, respondent was *disbarred.*

C. Abayomi Cassell, respondent, *pro se. O. Natty B. Davis* and *Momolu S. Cooper, amici curiae.*

MR. JUSTICE PIERRE delivered the opinion of the Court.

The International Commission of Jurists is an organization which could be regarded as international in the sense that its membership is drawn from countries all over the world. It was organized a few years ago for the stated purpose of "weaving new threads of thought and fresh ideals in the old fabric" of the governing systems of the countries to which its members belong. This organization held a conference in Lagos, Nigeria, in January of

this year, to which judges and lawyers from several countries were invited.

Some time before the meeting of the conference, the agenda of the items to be discussed was circulated in countries where members of the organization resided and from which attendance had been invited. The invitees were asked to prepare papers on any of several subjects listed on the said agenda. The respondent in the instant case, Counsellor C. Abayomi Cassell, as one of the lawyers invited from Liberia, was asked to prepare a paper on the subject: "The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Liberian Society."

This paper Counsellor Cassell prepared as far back as October of last year and sent to the commission's headquarters in Geneva, Switzerland. There it must have been mimeographed; and perhaps, from there, it was transmitted for circulation among the delegates at the conference in Lagos.

After the conference had met and adjourned, the Chief Justice of the Supreme Court of Liberia, who had also been invited and had attended, returned to Monrovia and brought copies of the Cassell paper which had been distributed by the conference's secretariat. The Chief Justice felt that certain portions of the paper were basically untrue as to accusations of restraints certain Liberian statutes allegedly laid on the rights of citizens. He felt that the document was generally contemptuous because it asserted Counsellor Cassell's belief that certain statutes, under which he, as Attorney General, had prosecuted citizens for the commission of crimes for which he had prayed judgments of our courts, constituted restraints on the constitutional rights of those citizens. He characterized his insistence that the courts render judgments against those citizens, growing out of the said prosecutions, as an instance of deception practiced on the courts.

The Chief Justice felt that the counsellor's conduct in

allowing circulation of a document so basically untrue, and so destructively critical of the judiciary of Liberia, in the presence of the head of the judicial branch of the government and at this international conference, was disrespectful, humiliating and embarrassing to the Chief Justice and to his office; was conduct unworthy of a counsellor of the Supreme Court Bar; and constituted gross constructive contempt.

In this light charges were prepared against Counsellor Cassell, and he was accordingly cited to appear and show cause why he should not be made to answer on several enumerated counts. The citation was served and returned by the marshal, and the matter was assigned for hearing on March 13, 1961. Thus matters stood when the *Liberian Age* for March 3, 1961, published the text of the charges made against the learned counsellor. Just here we would like to record that, during his argument, Counsellor Cassell held that publication of the charges in the *Liberian Age* was legally improper because the matter was still pending and not yet determined. Later events were to show the paradox of this contention. However we would like to state it as our opinion in passing that *verbatim* publication of court precepts or documents without comment cannot constitute irregularity, and therefore is not contemptuous, since it affects the rights of neither of the parties.

Whilst the case was still *sub judice,* most unbecoming letters were written from abroad to members of this Court, discussing the merits and demerits of the issues involved. One of these was addressed to Mr. Justice Harris, the senior Associate Justice presiding in the absence of the Chief Justice. It is very surprising that the letters were all written by persons who are supposed to be lawyers. In another letter written by an official of the international commission, addressed to Counsellor Cassell, and which he read during his argument, the commission clearly anticipated trouble growing out of positions

taken by delegates at the Lagos conference. The relevant portion of that letter reads as follows:

"My dear Chris:

"I had intended to write to you immediately following the African conference, but I was unable to do so due to a number of urgent matters arising after our return to Geneva, in addition to the task of preparing the final stages of the ten-week mission to Latin America of Dr. Lalive and myself. I am writing this short note to you simply to let you know how much I enjoyed seeing you again and hope we shall be able to repeat a meeting soon.

"In a way, I am asking a favor of you. Some of my friends at the conference were critical of their governments and authorities—objectively so—and it is quite possible that some of them may get into difficulties as a result. I am thinking primarily of our friends in East Africa; today's newspaper account of the breakdown of negotiations in London would seem to indicate that they may go into active opposition and all that it implies. In the event of any trouble that may arise over objective statements made at Lagos, we in the commission want to give our friends all the support and protection we can. I am sure that we can count on you should protest actions by the commission be necessary. This is the least we can consider under such circumstances; and our friends and collaborators should be aware of our attitude."

It is peculiarly significant that an official of the commission should have written a letter of this tenor to Counsellor Cassell. We recall that in 1951, and during his incumbency as Attorney General, Counsellor Cassell prosecuted Mr. D. Twe and his associates for sedition on an indictment containing several counts, the fourth of which charged Mr. Twe with sedition because he had referred internal affairs of Liberia to the United Nations for action, and had sent copies of his complaint to Britain

and America. (*Sie, et al.,* v. *Republic,* 12 L.L.R. 59 (1954)). In this letter the same counsellor is being asked to assist in supporting and protecting citizens of other countries who might have done the same thing he prosecuted Twe for in 1951.

The tone of the above-quoted letter is strange to us in Liberia because, as we have understood and practiced the rules of law for the entire life of our judicial existence, we have strictly avoided inciting or encouraging citizens of other countries in any acts which could be regarded as objectionable to constituted authorities in their respective countries. Circumstances in this case are also strange to us because matters which are pending before the courts of the country—be those courts however inferior—should not be discussed or commented upon, to or before the judges thereof, before rendition of judgments. And we have always held it to be most improper for the judges who must decide these matters to be questioned on what is likely to be the court's decision.

The citation under which Counsellor Cassell was asked to appear and answer embodied three main points; and these, succinctly stated, are as follows:

1. (a) That when Counsellor Cassell wrote: "There are certain penal laws, such as those for treason, sedition, conspiracy, false publication, and for the protection of the head of the State," which in his opinion, "lay restraints on the free exercise of what might properly be considered as constructive criticism of the government, or of certain officials who may be subject to just criticism, and mainly restrict the flowering of a strong and continuing opposition party, so essential to the proper working of a democracy," Counsellor Cassell was contemptuous because, as Attorney General for more than twelve years, he indicted, prosecuted and convicted citizens under these statutes, and prayed the

courts of Liberia to render judgments against the citizens so charged and convicted, and these judgments were rendered upon his insistence.

(b) That in his presentation of these cases before the courts, Counsellor Cassell insisted upon punishments for all who were charged by him under the very statutes he now claims restrained constitutional rights; and all such punishments were inflicted upon the strength of his pretended good faith in prosecution.

(c) That at no time during any one of the several prosecutions which he originated and conducted did Counsellor Cassell protest the enforcement of the laws which he subsequently stated he knew restrained the rights of citizens.

(d) That, since Counsellor Cassell swore to protect the Constitution and uphold the laws of Liberia, if he knew any statutes to be in conflict with the rights citizens should enjoy under the Constitution, and still insisted upon such statutes being enforced by the courts, such conduct showed insincerity of motive in discharging his duties as a counsellor, and constituted an abuse of his oath. Besides, the said act placed this Court in a ridiculous light and held it up to national and international ridicule.

(e) Knowing the statutes to have been restraints on the rights of the citizens, and yet to have insisted upon the judgments growing out of convictions of these statutes, was unethical conduct because, besides being an insincere presentation of the law before the courts, his act of now denouncing the said statutes belittled the judgments he had prayed for and been granted on the said laws.

(f) As Attorney General, it was his duty to have

advised the government against enforcing oppressive legislation, and to have suggested steps for its repeal or amendment. Instead, although he presented to the Legislature annual reports in which recommendations were often made, yet at no time did he recommend repeal of those statutes he now claims restrained the rights of citizens he prosecuted and convicted, and whom he urged the courts to punish for crimes.

(g) Although for more than twelve years he was, as the Attorney General, in a legal position to have advised against statutes he knew restrained the rights of the citizens, his not having done so until asked to resign is an act contrary to his oath as a member of this bar, which oath still binds him as a private practitioner.

2. In Count "2" of the citation it is charged that Counsellor Cassell also wrote in his paper published in Lagos:

"In the past, the Bar of Liberia enjoyed an excellent reputation for the fearless defense of the rights of the individuals in Liberian society. Today, although strides and advances are being made on some fronts in Liberia, the judiciary appears to me to be the weakest link in the chain."

The citation charges this statement to be contemptuous because:

(a) The weakness of the Liberian judiciary was not a subject relevant to the discussions scheduled for the conference; nor was the said alleged weakness the concern of any of the delegates at the conference or of the conference itself. Therefore the only reason Counsellor Cassell could have had for volunteering dis-

cussion on the weaknesses of the Liberian judiciary was for the purpose of holding it up to international ridicule.

(b) The counsellor's act of attempting to raise the subject of the weakness of the Liberian judiciary at an international conference where the weakness of no state was a subject for review can only be viewed as a deliberate and intentional attempt to deride the courts of Liberia and thereby question internationally their efficiency and judicial usefulness. And this is conduct unbecoming a counsellor of the Supreme Court bar.

(c) According to usage in all courts in Liberia, lawyers are arms of the courts, and as such it is their duty to advise for the good of the judiciary and the courts. Counsellor Cassell not only failed to perform this duty, but preferred to conceal from Liberians, from the bar and from the courts, what he regarded as weaknesses in the Liberian judiciary, and to point them out at an international conference which was without jurisdiction or authority to pass upon them. And this was an act unbecoming a counsellor of the Supreme Court.

3. The third count of the citation which charged Counsellor Cassell with contempt alleged that the act of circulating such a document, or allowing it to be circulated (which document so falsely and discreditably reflected upon the judiciary of which the Chief Justice is head, in his presence and at an international conference) was disrespectful, embarrassing and humiliating to the Chief Justice and his office, and therefore constituted contempt.

Answering these charges, the learned counsellor contended, after having denied any intention to commit contempt, that:

1. He had made several complimentary references to the judiciary in his paper published in Lagos, such as:

   "It must, however, be admitted that there has never been any great or extreme abuse in the application of these particular laws, and more often than not the judiciary, particularly at the highest level, has struck down any attempt at the unrestricted use or abuse of them."

   After quoting other references, he prayed that he be discharged from answering further in contempt.
2. The allusion, in his paper, to weakness of the judiciary was not intended as an attack on the judiciary, but rather referred to the judiciary's dependence on the other two branches of government. He, therefore, in Counts "2" and "3" of his returns, disavowed any attempt to be contemptuous by such reference, and prayed to be discharged from further answering in contempt.
3. In Count "4" of the returns, he raised the constitutional right of every citizen to write and speak freely on any subject. He contended that the citation had not charged him with having made a false, libellous, or malicious statement; therefore in view of the fact that freedom of expression is essential to the security of freedom in a state; and since the Bill of Rights inhibits the restraint of it, he should not be held to answer further.
4. In Count "5," Counsellor Cassell pleaded that the right of absolute privilege which he enjoyed as a lawyer, and which he also enjoyed as Attorney General, should bar his being called to answer for any acts of his done whilst in that office.
5. In Count "6," Counsellor Cassell contended that the question of his not having recommended repeal or amendment of statutes which he claimed restrained the rights of citizens he prosecuted, was

political, and therefore should not be the subject of judicial review. He further contended on this point in Count "7" that the question of whether he ever recommended repeal of the penal laws was confidential as to his relations with either the President or the Legislature, and therefore he should not be called upon to disclose anything related thereto. In Count "8," he argued that even the courts, which are more powerful than any appointed office such as his was, are without authority to repeal or amend statutes, and that only the Legislature might exercise such a right; and further, that if he were indeed answerable for not having recommended repeal or amendment of these statutes, he could not be held to answer for more than misfeasance, malfeasance or non-feasance.

6. Count "9" of the returns postulates that, whereas Counsellor Cassell, as Attorney General, might have "appeared" to hold one view with respect to the penal statutes referred to in his paper, since his views at that time were purely in the realm of thoughts, ideas and opinions, and were therefore "abstract and ephemeral," to compel him to answer in contempt for them, now that he had expressed a contrary view, would be to set a dangerous precedent whereby innocent persons could be easily enmeshed and entrapped and thereby denied due process of law.
7. In Count "10" of the returns Counsellor Cassell denies that he ever presented an "unfair, untruthful, insincere, unethical or contemptuous matter or argument" before any court, and insists that, in his prosecutions under the statutes he "firmly believed from the evidence obtained from preliminary investigations" that the defendants therein were guilty of violating the laws in question. He

concludes that it was his sworn duty to prosecute such defendants.

8. Counsellor Cassell contends, in Count "11," that this Court must be laboring "under an unjustified misapprehension that he did by the submission of the paper in question" hold up the judiciary branch of the government to ridicule, or in any manner defame or degrade it.
9. Count "12" denies that the Court has been hindered, embarrassed, belittled, or degraded by the publication of the paper, or that justice has been obstructed in any manner and maintains that, therefore, constructive contempt was not shown.
10. In Count "13," Counsellor Cassell denies that he had never recommended or suggested means whereby the judiciary of Liberia might have been strengthened, and alleges that he served on the government's court commission which went to America in 1957 to study methods of improving our judicial system; that the Commission had made a report which he had signed; and that this report had led to revision of the rules of the courts of Liberia.
11. For the benefit of this opinion we think it necessary to quote Count "14" of the returns word for word. It reads as follows:

> "14. And also because it is respectfully submitted that the whole idea or purpose of the international commission of jurists in holding this conference of African jurists was to be helpful to them in the reformation of existing systems and the formation of new systems of jurisprudence. It is further respectfully submitted that, in its effort to bring the rule of law to the peoples of the earth, and in particular to Africa, its purpose was *'to weave new threads of*

thought and fresh ideals into the old fabric in such a way as to retain its beauty and continuity without undermining its inner strength.' With this objective clearly in view, a careful reading and consideration of the conclusions reached by the conference should convince one that, if carried into effect, they would be of unlimited and immeasurable benefit to the peoples and states of Africa."

He therefore asked to be discharged from further answering in these contempt proceedings.

Of the three counts upon which Counsellor Cassell is charged in contempt, we regard only the first and third as of sufficient merit to warrant our judicial consideration in these proceedings. Although we shall review the second count for the sake of the record, propriety does not dictate, nor do we think it sufficiently important to a decision in this matter, that we join issue with Counsellor Cassell in his belief in the weakness of the judiciary of Liberia. Taking the subject on which Counsellor Cassell wrote in context with the weakness of the judiciary which he alleged, it is hard to see that he could have meant anything other than that, due to the said alleged weakness of the judiciary, the individual in Liberian society is no longer fearlessly defended; and therefore the rights of individuals are restrained by the judgments rendered on convictions obtained by prosecutions conducted for violations of the penal statutes he referred to. That, of course, is Counsellor Cassell's personal opinion; his saying so does not weaken the judiciary; nor could his failure to have said so in any way added to its strength.

The judiciary is only as weak as the concept of those who imagine it to be so; and it is as strong as the will of those who worship within its shrine. Under our constitutional form of government, the three coordinate branches came into being at the same time and for the same pur-

pose: 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. Among these blessings is the guarantee that the rights of citizens will be protected and defended, not only by one of the branches, but by all three working in harmony within separate orbits, to preserve the rights of all who compose our society. In the light of this view, we have not been able to bring ourselves to agree with the too-often expounded theory that there are degrees of importance in the functions and usefulness of the three branches. The Legislature is only *primus inter pares* with the other two; none can function without the others and still maintain the objectives of the Constitution; nor, in this sense, is any weaker or stronger than the others. The judiciary is the anchor which holds stabilized government in balance; without it, vested interest might suffer, sacred rights be violated, constituted authority be challenged; and in fine, administrative chaos could result. Whilst it is true that the judiciary is dependent upon the executive branch for the enforcement of its mandates and judgments, it is equally true that the executive branch must wait for the courts to try violators of the laws which regulate society, and may not exceed the limits of punishments set by the courts for these violations. It is true that the courts cannot enact the laws which govern our society, but it is also true, under our system, that a law enacted by the Legislature and approved by the President, might be nullified by the judiciary and made void. Andrew Jackson is said to have made the remark: "John Marshall has made his decision; now let him enforce it." Irresponsible as this expression might seem to be, no President would go beyond mere words to defy the Supreme Court in the performance of its constitutional duties.

Counsellor Cassell spoke about reforms, perhaps implying that these might be needed to strengthen the judiciary. The Constitution has provided ample means, and has laid

down the methods by which reforms should be brought about; and no one has authority to resort to means other than as provided by law. The authority for all reforms is laid in Article I, Section 2nd of the Constitution:

> "All power is inherent in the people; all free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness require it."

The manner of bringing about reforms is laid in Section 5th of the same Article in these words:

> "The people have a right at all times, in an orderly and peaceable manner, to assemble and consult upon the common good; to instruct their representatives, and to petition the government, or any public functionaries for the redress of grievances."

There is no law which authorizes a citizen who wants reforms in the institutions of the government of Liberia to resort to foreign countries or international forums to effect them. Since when have Liberians become incapable of instituting reforms if and when they are needed?

There are three main reasons why criticisms are generally made. The first reason is to apprize a party of the error of his ways; the second is to suggest reform; and the third is to ridicule. Only the first two of these could be regarded as constructive. The circumstances surrounding the publication made at the Lagos conference immediately rule out the first two reasons, since if Counsellor Cassell's purpose was intended as constructive, why could he not have made his publication in Liberia, as the Constitution has given him the right to do, and where the said criticism could have been effective?

Before going into the merits of the issues involved, we would like to discuss certain phases of Counsellor Cassell's paper, since he has annexed it to his returns and argued it during the hearing. The rights of individuals in Liberia, as they are exercised under the Constitution by the citizens, have always been guarded by the courts; and in so far

as the State's right to infringe them has been challenged, there is no instance where a final determination of any particular case on the highest judicial level has not afforded ample redress to every aggrieved litigant, even against the State. It must be admitted, and indeed it is an elementary principle of the basic law of Liberia, that the rights of citizens are protected as a constitutional essential and necessity which should be enjoyed in every political society without partiality or discrimination. Whether the literal effectiveness of the basic requirements of a free society have been denied to the citizens in Liberia can be judged by Counsellor Cassell's own admission that there "has never been any great or extreme abuse in the application of these particular laws." However, it might be of interest to remind ourselves that, whilst the courts protect the citizens against abuse of their rights, society has also to be protected against criminal acts and statutory violations. It would be unrealistic for anyone to contend that the individual right of a single citizen is more important and should be given greater consideration than the over-all protection which should be guaranteed to the rights of all of the citizens collectively. Therefore, the enforcement of laws against the commission of crimes is not a restraint on the exercise of the right of a law-abiding citizen to criticize the Government. The preservation of the body politic is as important as the protection of rights of individuals; and the courts or the judiciary must give serious attention to them both, if constituted authority is to be maintained and the rule of law given any meaning. Hence, penal codes to discourage and punish the commission of crime are necessary to the safety of the State.

The paper under review seems to imply that the enforcement of the penal statutes referred to restrains the rights of the citizens to criticize irregularities in the operations of the Government of Liberia, and restricts lawful political opposition to the party in power. How far the latter can be shown to be true must be measured in terms

of whether there has been opposition to the party ticket at the various elections for change of administration in our political history; and with respect to the former, we have only to cite the constitutional privilege of every citizen to freely write and speak on any subject, being responsible for the abuse of the privilege.

It is believed by some that, in order for a country to be democratic in its government, there must necessarily be maintained, at all times, two or more political parties. This is untrue both in respect to the rule which controls popular government under a Constitution such as ours, and in respect to the right of the people, in the exercise of free choice at the ballot, to elect whom they will have to represent them in the Legislature, or in the executive branch of the government. The ultimate aim of a political party is to furnish the machinery which will insure the means for its members to exercise their franchise at the polls. But this might be done in a political society with two parties, or in a society with one party, or in a society with no organized political party at all, so long as in any case the people are free to choose by ballot whom they would have to govern them.

In countries which can afford it, two or more parties are regularly maintained. This entails certain necessary requirements. In order to make the practice intelligently reasonable, there must be average education of the majority of the population, whereby the citizens can understand the meaning of a political party, and there must also be economic independence to afford the convenience of two or more parties. But the two-party system, so often praised, is not foolproof, and is not without its evils and corruptions, as can be noted from reports coming from outstanding two-party democratic countries where irregularities at the ballot have been claimed. Even where the citizens can afford the convenience of two parties, the electorate may still be free to vote for any candidates of their choice, whether they belong to some party or not. So,

for any sensible person to contend that a two-party system is mandatorily necessary to the maintenance of democratic government is both absurd and untrue. Maintaining two parties in a constitutional democracy is not as simple as a magician pulling a rabbit out of a hat; on the contrary, the effective realization depends on two major factors, one tangible (money) and the other intangible (education).

There are some who fail to understand the proper meaning of their right to exercise the constitutional privilege of orderly and peaceable assembly, and have embarked upon destructive criticism of measures of government instead of laying their grievances before their representatives as the law requires. Some have resorted to stealthy, unpatriotic, and even subversive means of assembly to accomplish their aims. Any government that tolerates or condones such behavior of citizens is at once incompetent and a threat to the safety of constituted authority. It is true that an administration conceivably could get out of hand; could disregard the rights and liberties of the citizens; and could become generally oppressive. But the rights of the people to assemble, to consult for the common good, to instruct their representatives, and to petition the government for the redress of grievances, are checks against such an eventuality. It was the exercise of these constitutional rights which removed public servants from office in Liberia in the past.

Be that as it may, our Constitution has also given every citizen the right to call into question any act of the Legislature which infringes his rights and privileges. Reported cases of this Supreme Court will show that this right has been enjoyed from the earliest days of our history, up to and including the present time. A party litigant is entitled to, and has never failed to enjoy, the right of appeal from every decision of a subordinate court in Liberia. If the statute or procedure on which he was convicted was felt to be in contravention of his rights, the constitutionality of the law or procedure has always been

raised and fairly passed upon by the Supreme Court; and where the contention of the appealing party was justified, the act or the offending portion thereof has in every case been declared void. Our citizens enjoy the right of habeas corpus, and this right may not be suspended for more than twelve months at any time, and then only upon authority of the Legislature. On the other hand, failure to appeal any oppressive laws or judgments is the responsibility of the aggrieved party, and should not in fairness be blamed on the judicial organs of the government; especially so when appeals in all criminal cases in Liberia are free from every expense. It is heartening to note, however, that Counsellor Cassell was good enough to admit that there has not been any abuse by the courts in the application of the enacted statutes of this country.

No one in Liberia may answer for crime, except petty offenses, but upon presentment of a grand jury; and no one may be convicted of such crimes but by judgment of his peers. No one may be detained without benefit of bail, except in capital crimes. Every person detained is entitled to an examination and a speedy trial, and to be released from custody where proof of his guilt is not evident or the presumption thereof great. These are a few of the rights the individual enjoys in our Liberian political society; and if, in the face of these, any penal statutes could restrain the rights of citizens, we wonder if the judiciary could be blamed. In the enjoyment of basic rights, as those rights should be enjoyed by the individual irrespective of his color, his caste, his religion or sex, the individual in Liberian society has as much freedom under our Constitution as any citizen in any country in the world, without excepting the most avowed and professed democratic nations.

We are unable to agree that, because we elected to adopt certain customs and practices of other nations in our political society, we are not as capable as they are of giving practical effect to such customs and practices. Whilst it

is true that our laws are more or less borrowed from or fashioned after theirs—and they should therefore be more conversant with a correct application of them—it is also true that we have not shown ourselves to be any worse in their practical applications. There are customs and practices centuries old which, in some cases, compare favorably with the best laws of modern society. One would have been prepared to shout hallelujah from the housetop in support of Counsellor Cassell, had he advocated that we begin to find ways and means of showing the world the wisdom of some of our native laws and customs, and of adopting the best portions of them to practical use in our courts; had he urged that we emulate the good things in other societies, and discard all that is evil, hypocritical, and therefore unfit for our use in building a proper democratic institution; had he admonished us to ignore what is unsuited for developing a correct and honorable concept on this continent. Instead, the counsellor has declared that we "will have to learn to understand and appreciate what true democracy means." This unqualified statement leaves us to wonder if he intended that we learn to appreciate everything we know to exist in some alleged democratic societies of today. It can be stated without fear of successful contradiction that, judging from international occurrences of recent times, there is very little that any nation can conscientiously teach another with respect to what is true democracy.

Let us look at segregation and discrimination, shamelessly practiced by some political societies where one class or color of citizens is forbidden from enjoying the same rights and privileges given to other citizens. Under the laws of those countries where this barbaric and inhumane practice is enforced by the political machines, the said practice is declared illegal. Yet it is still condoned, against loud protests, and sometimes in utter disregard of judicial decisions. How far the efforts of the world have succeeded in eradicating this evil practice, even among

member nations of the United Nations, is common knowledge. Yet Counsellor Cassell declares that we must learn true democracy from them.

The term, true democracy, is relative, and has been used to excuse ugly, unclean and inhumane practices of a privileged class. No practice in any political society can be worse than segregation. We make these references to show that there is no ideal, true democracy in the world today, in the sense that some would imagine perfection of the system. We must learn to appreciate the unqualified equality of the human person, irrespective of race, creed, nationality or political affiliations, in our great struggle toward the brotherhood of man and the goal of making this world a better place to live in.

In Liberia, judges—whether of the Supreme Court or of any of the subordinate courts—are appointed by the Chief Executive, upon the Senate's advice and confirmation. They hold office during good behavior, but may be removed by the President on the address of two-thirds of both houses of the Legislature meeting for that purpose, or by impeachment and conviction thereon. The law requires that they shall not actively participate in, or be affected by politics. Hence, unlike in some countries, judges in Liberia do not come to their offices to satisfy any political demand or contingency. There have been instances when they have resigned, have been retired on pensions for illness or infirmity, or have been removed by the Legislature for conduct unbecoming their exalted positions. The improper removal of judges referred to in a portion of Counsellor Cassell's paper, and which he strenuously argued before us, might have had reference to any one of the instances when removal was made for one or the other of the above reasons; but it is hard to see that, in view of the circumstances attending any particular case, a threat greater than what should have been expected from the literal application of the law was thereby presented against the security of a judge's tenure of office. It is true

that "good behavior" could be stretched to any proportions, and could be made to adjust to any situation or circumstance; but the Constitution has left its correct interpretation in the hands of the legislators, and until amendment of the particular provision, there is nothing that could be done about it. But one wonders if Counsellor Cassell could conscientiously blame anyone other than the framers of the Constitution for such an arrangement. Perhaps Counsellor Cassell might have forgotten when he wrote: "Never in my own time have I heard of any inquiries or investigations having been held into the character or ability of any nominee," that as recently as 1957, the Senate refused to confirm Chief Justice Shannon, who had been appointed to office by the President during the recess of the Legislature. The Constitution had not, nor has any statute in implementation thereof, given the Legislature authority to remove a judge, beyond the two methods mentioned: trial or impeachment by the Senate, and joint address of two-thirds of both houses.

Some of us have thought, perhaps mistakenly, that the purpose of the requirement of Senate confirmation was to give an opportunity for the people, through that body, to investigate the character, deportment, ability and general worthiness of the nominee. In fact it would seem that, under a constitutional government such as ours, this is indeed the main purpose of Senate confirmation of an executive appointee. Of course the counsellor admits that this constitutional requirement is being met, but says that it is only done as a matter of form by the Senate.

This is a point raised in the counsellor's paper and touched upon in his argument before us; therefore, after citing a few instances in the history of our courts, we would like to leave it to the judgment of the world to say whether or not there is a free judiciary in Liberia.

In 1885, Chief Justice Parsons held the Attorney General in contempt of court, in a matter of habeas corpus, for ordering what amounted to a countermand of an order of

the Court. A fine was imposed on this member of the cabinet, failing the payment of which he was to be committed to jail. (See *Proceedings Upon a Writ of Habeas Corpus,* 1 L.L.R. 190 [1885]).

In *Wolo* v. *Wolo,* 5 L.L.R. 423 (1937), it was shown that an act of the Legislature seeking to divorce the parties thereto, was passed into law, and was approved by the President. Subsequent developments necessitated court action growing out of heated controversy between husband and wife, which eventually came before the Supreme Court. In passing upon the several issues raised in the pleadings, Mr. Chief Justice Grimes said, in a lengthy opinion, as summarized in syllabi at 5 L.L.R. 424:

> ". . . it is within the sole purview of the legislative power to prescribe what shall be the legitimate grounds for divorce, and by which of the courts same shall be tried.
>
> "But, to determine whether or not the tribunal be indeed a court of justice and thereby capable of divesting a party of his vested rights or whether the party has been proceeded against after due process of law is wholly a judicial function; and no department of government can exercise judicial functions but the court itself."

The act seeking to divorce the parties was therefore declared unconstitutional and void.

In 1955, the Attorney General arrested a number of citizens charged with smuggling. He held them in prison without benefit of bail, even though the crime is bailable under our penal statutes, and although they had demanded bail which was their right under the Constitution. I think Counsellor Cassell should be able to recall that their petition for habeas corpus was vigorously, but unsuccessfully, resisted by him as Attorney General. It certainly should have appealed to the counsellor then, that the constitutional rights of those citizens were due more consideration from him.

As recently as the October, 1956, term of the Supreme Court, the Justice presiding in Chambers held the Attorney General in contempt for improper, defiant and contemptuous criticism of a decision rendered against the State in a remedial proceeding growing out of a criminal case while the case was still on appeal, and before it could be heard by the bench *en banc*. The learned counsellor cannot have forgotten this little incident in his administration as Attorney General, because there is no better example of a clear attempt by an executive official to intrude upon the sacred province of this Court, and by high-handed methods try to challenge her constitutional authority, and undermine her prestige. I do not think any Attorney General in our history has gone that far to defy the Supreme Court.

We should think these instances sufficient to show whether or not the Liberian judiciary is independent of influences from the legislative or executive branches of the government. There is no reason why a judge in Liberia should feel called upon either to allow himself to be influenced by anyone, or to feel insecure in his tenure, in view of the constitutional safeguards surrounding his appointment and continuance in office. These safeguards are as follows:

1. He is appointed by the President with the advice and consent of the Senate.
2. He remains in office for life pending good behavior.
3. His salary may not be diminished during his tenure.
4. He can only be removed from office by the action of two-thirds of both houses of the Legislature meeting for that purpose, or by impeachment by the Senate.

Students of the law know that these are basic, fundamental safeguards to insure independence of the judiciary in any democratic society.

The ability of judges in a democratic society is indeed a very delicate subject, and certainly not appropriate to an international conference where the delegates of one coun-

try might be induced to discuss the ability or qualifications of the judges of another. There is not a single country in the world today which can claim that its judges know more about the laws of its country than other judges know about the laws of theirs. But what is more, there is not a single judge or lawyer in the world who can say, with any amount of modesty, or propriety, or truthfulness, that he knows the law. The law is one of those subjects that can never be completely mastered by any one human being. Until recently—that is within the last ten or fifteen years—Liberian lawyers were trained only within this country; and with that training they successfully manned the judicial posts of the nation. Today we still do not have more than five percent of them being trained abroad. But raising the question of the qualification of Liberian judges at an international conference seems irrelevant, unpatriotic and strange under the circumstances. This point in Counsellor Cassell's paper brings to mind the issues raised at President Roosevelt's appointment of Mr. Justice Black to the United States Supreme Court. There seems to have been an unprecedented hue and cry in the United States over his appointment; and even though the Senate confirmed him, there was for some time general disapproval, and some questioned his legal ability. Today Mr. Justice Black is known to be among the finest legal minds, and shines as one of the brightest and ablest jurists of our time. His opinions, whether in concurrence or dissent, have been acknowledged—and by some of his original opponents—as being exemplifications of expert legal knowledge combined with a respect for the law and the rights of human beings. Thus the fact that the appointment of a nominee to the office of a judge does not meet the approval of every lawyer could not be regarded as an indication of his inefficiency.

The bar association of a country can be no stronger, and can make no progress greater than the conscientious and patriotic efforts of the members to have it fulfil its in-

tended duty to the judiciary system of that country. We agree that an impotent and inefficient leadership of the bar association, can adversely affect the future of the judiciary, and the country as well; but it must also be admitted that the members of the bar are to blame for any such sorry situation; and this does not excuse any lawyer in Liberia from blame for the alleged indifference Counsellor Cassell claims to be so apparent in the association. How can the bar be expected to fulfil its proper role when Counsellor Cassell himself has been silent in respect to alleged conditions except to voice his criticisms at an international conference? The Constitution of Liberia and the rules of the association provide for change in administration whenever the people or members require it. Therefore, if the judiciary branch of the government is indeed the weakest link in our political chain, as the learned counsellor has written, and perhaps for that reason is incapable of properly assuming responsibility for protecting the rights of the citizens as he has implied, and if some of that weakness can be attributed to an inefficient bar association, why didn't Counsellor Cassell, as a member of the organization bring this weakness to the attention of the association? It should be realized that each member of the association owes his country and the profession a patriotic and ethical duty which the counsellor, by his Lagos publication, seems to have neglected. The alleged conditions complained of in his paper could be easily remedied if he and other members of the bar could get the moral courage to face the facts and assert themselves for the betterment of the association and the perpetuation of an institution left to us by our fathers.

In criminal cases, legal representation is afforded every defendant by the State if and when he is unable to secure it for himself. This is a right enjoyed in the courts of Liberia to which we feel every litigant is entitled. Therefore, in every criminal court in the country, a defense counsel is appointed and commissioned, and serves in all

cases *in forma pauperis.* We do not have any free legal aid organizations, as exist in some countries; and we do not think that the absence of any such organizations constitutes a threat to the protection of the rights of the individual; especially so, since free-of-cost hearings of all matters—civil or criminal—in the Supreme Court are afforded to indigent parties.

We come now to consider the merits of the issues raised in the case before us. Before going into these, and in order to arrive at a proper determination of this matter, it might be of interest that we consider what are the duties of an Attorney General. Those duties have been defined as follows:

> ". . . His duties are to prosecute and conduct . . . suits in the Supreme Court . . . and give his advice upon questions of law when required by the President, or when requested by the heads of any of the departments, touching matters that concern their department. . . ." BOUVIER, LAW DICTIONARY *Attorney General of the United States* (Rawle's 3rd Rev. 1914).
>
> ". . . the office of attorney-general is a public trust which involves, on the discharge of it, the exercise of an almost boundless discretion by an officer who stands as impartial as a judge. . . ." *Rush* v. *Cavenaugh,* 2 Barr (Pa.) 187, 189 (1845).

According to the authorities referred to, *supra,* the primary duties of an Attorney General are to prosecute all criminal proceedings on behalf of the State against the commission of all crimes, and to advise the government on questions of law. We have also relied on 4 CYC. 1028–29 *Attorney General,* and 7 C.J.S. 1222–26 *Attorney General* §§ 5–7.

As we understand it, the duties of the Attorney General are properly performed when such performance is in keeping with his oath of office "to protect the constitution and uphold the laws of Liberia." Hence, although most authorities do not command that the Attorney General

give advice, either to the President or to any head of a department without previous request, nevertheless, in the proper performance of his duties he should advise on any matter which adversely affected public rights, whether asked to do so or not. In support of this view we quote from *Ruling Case Law:*

> "Accordingly, as the chief law officer of the state, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interest may, from time to time, require; and may institute, conduct, and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights." 2 R.C.L. 917 *Attorney-General* § 5.

Both in America and in Liberia, it is part of the duty of the Attorney General to prepare opinions on all matters of proper moment, or which involve public interest; and these opinions are published as public documents. Although they might not have the weight of judicial decisions, they nevertheless serve to guide the government in proper and lawful administration. We cannot agree with Counsellor Cassell, therefore, when he insists in Count "8" of his returns that, holding office at the pleasure of the President, he did not have the right to advise against legislation he might have regarded as unwise.

When President King offered to appear before the International Commission of Inquiry in July, 1930, his Attorney General, Mr. Grimes, voluntarily advised against it, and protested in these memorable words:

> "Important as would be the damage done to the power and prestige of the government administratively and politically were Your Excellency to appear and testify before this Commission, or any other tribunal save only the Honorable Senate in a matter of impeachment, I have not herein dilated upon that aspect of the question, preferring within the short time at my disposal

> to limit myself to the constitutional phase to which I invite Your Excellency's most careful consideration, not only in your own interest, nor of the present administration alone, but also because of the bad precedent that might be set, and the possibility of adversely affecting the prerogative of the President of Liberia for all time." (OPINIONS, ATTORNEY GENERAL LIBERIA, p. 419)

This legal advice, although volunteered by the Attorney General, and not in harmony with the decision of the President, was nevertheless heeded, and it averted a national embarrassment.

As Attorney General, Counsellor Cassell should have known whether or not particular statutes infringed the rights of citizens; and in keeping with the proper performance of his duty to protect public rights, should have advocated the necessary steps to correct the alleged evils in the law. That was his duty morally, professionally, and officially. But to have known the laws to be evil, as he has now claimed, and yet to have prosecuted citizens under them, to have secured convictions against them; to have asked for their imprisonment—and in one instance the death sentence—on those convictions and now to denounce the said statutes as having restrained the rights of the citizens he asked for judgments against—is to call into question the said judgments, and that is to belittle them. The ethical and primary duty of a prosecutor is not to convict, but to afford the defendant charged with crime a fair and impartial trial. Fairness of trial must comprehend justness of the laws under which the defendant answers; and the justness of those laws must be measured against the defendant's rights under the Constitution.

Further arguing Count "8" of his returns, the learned counsellor contended that, whilst it is within the competence of the Supreme Court to declare acts of the Legislature unconstitutional, when so declared the acts still stand on the statute books until repealed. We would like

to state it as our opinion that, whenever the constitutionality of a statute is challenged, it is the duty of this Court to test the protective rights of the said statute, as it should apply in the given case, by the Constitution; and the Court's decision of the issue decides the point for all time. If such a decision be against the statute, the statute immediately loses its authority, its usefulness and its validity, and becomes a nullity. In such cases, there is no necessity for legislative repeal or for the removal of a law from the statute books to effectuate its invalidity. The Supreme Court of Liberia enjoys this right, as does the Supreme Court of America. Enactments of Parliament may be interpreted by the British courts; but those enactments, it has been said, cannot be invalidated, except by Parliament itself. However, in the light of the counsellor's publication, if any penal statutes have laid restraints on the constitutional rights of litigants in Liberian courts, those litigants have not been without proper redress under the Constitution. If they have not applied for redress against such infringements, it could not be the concern of anyone other than those who have allegedly suffered silently.

When the November, 1939, term of the Supreme Court opened, the then Attorney General had been appointed to office and commissioned by the President only a short time previously. In reporting this change in personnel of the official leader of the bar, Mr. Chief Justice Grimes said, among other things, in his opening address:

> "I am sure that one of the most cherished objects of us all is that of improving the administration of justice in this Republic to the utmost possible state of perfection, and that is a task which neither this Court if left alone, nor he (the Attorney General) in his new position unaided, can successfully achieve. The administration of justice is bipartite, *i.e.,* partly judicial and partly executive. At the head of the former is the Chief Justice; and the Attorney General is he who is the responsible head of the latter."

Thus spoke the Chief Justice concerning the office of the Attorney General, a position he had held with outstanding ability and mentionable pride before his elevation to the bench. In the light of all of the foregoing, it is difficult to see how any reasonable and fair mind could possibly justify Counsellor Cassell in what he has done against the Liberian bar, against the judiciary, and against the country, in the face of the circumstances charged in the citation for contempt.

The counsellor has argued that only the President has the right to advise a change of bad legislation, and that members of the cabinet are mere servants of his will, and must obey instructions. But authorities have defined the Cabinet as a "council or advisory board" to the President (see BOUVIER, LAW DICTIONARY *Cabinet* [Rawle's 3rd Rev. 1914]), each member advising in the particular field of his appointment; so we cannot agree with this part of Counsellor Cassell's argument. But if what he has said is indeed true, then members of the cabinet are no more than mere "rubber stamps," and are therefore not performing the proper duties of their respective offices as advisers to the President. We cannot bring ourselves to believe that this is true of the cabinet.

For a long time during Counsellor Cassell's argument, he dwelt at length on two points: (1) that under the Constitution he had every right to write and speak freely on any subject, and should not have been called to answer for having done so; and (2) that under the head of privilege, he could not be asked to reveal any confidential conversations or communications had between himself and the President whilst he served as Attorney General. He therefore would not say, in answer to a question from the bench, whether or not he had ever recommended changes in the statutes upon which he convicted citizens, which statutes he now claims restrained their constitutional rights.

Coming to the question of privilege as it should be en-

joyed by the Attorney General in his relations with the President, we would like to state it as our opinion that, of the members of the President's cabinet, the Attorney General is the only one who might professionally or technically disagree in opinion with the President on any issue and be within the proper and legal performance of his duties. All other cabinet members must agree with policy of the administration or resign, if they are to maintain any semblance of honorable respectability. Equally so, any Attorney General who is either unable to, or who fails to advise against any acts which in his legal opinion infringe the constitutional rights of the citizens is useless to the administration and unfit to continue in office, because he thereby fails to be that efficient and competent legal adviser to the President, and bold protector of the rights of the citizens, which the law requires him to be.

The Supreme Court of Liberia has, during all the years of its history, welcomed criticisms from Liberian lawyers concerning our judicial practices; but those criticisms have, in the majority of cases, been patriotic and constructive, and advanced for the purpose of bettering our judicial practices. It is expected that lawyers, in keeping with the traditions of the profession, will revolt against any practices which infringe the constitutional safeguards of Liberian citizens or of litigants in Liberian courts. The Supreme Court of Liberia has not in the past, and will not now, tolerate improper behavior against the courts by members of the profession, and defiant and disrespectful behavior of judges, whether at international conferences or anywhere else, no matter what might be the opinion of some who assert new-fangled ideas under the supposed rule of law. Unless the lawyers of our country can enjoy the right to constructively criticize flagrant violations of law, and wilful infringements of the rights of the people, we shall have fallen short of what is expected of the profession in our political society, and of the dreams our fathers dreamt on coming to these shores out of slav-

ery. While this Court will not condone license to be insubordinate or subversive, we deprecate and denounce the improper habit of concealing our alleged faults from ourselves where a proper reference to them might do the country the greatest good; and we question the patriotism and the professional good intentions of any Liberian lawyer who prefers to take our alleged faults into foreign countries and before international forums, and there paint the country and its institutions in the blackest hues, and attempt to drag her good name and honor through the filthiest slime of prejudiced and stilted half-truths. That, the Supreme Court will not tolerate from any member of the bar, because such behavior is unworthy of the profession in Liberia; is repulsive to decency in any political society; and in the last analysis, is conduct of which any citizen should be ashamed.

Reporting our alleged misdeeds to an international conference, or to a sister state, is like bringing the behavior of a truant child to the attention of persons other than its own parents; they can do nothing but wish in vain that the child had been theirs to discipline. It is hard to understand the purpose of over-magnifying one's own faults before a forum which is without jurisdiction to enforce corrections, and to states which have their own closets with their own skeletons. No conscientious and truthful Liberian can say that our government is a model of operational perfection; but neither can anyone say that there is a single government under the sun, which can boast of democratic perfection. In a recent United States Information Service Daily News Report, a statement alleged to have been made by Mr. Mennen Williams just before he left America for his African tour is reported; and the Assistant Secretary is quoted therein as having said:

> ". . . the things we are seeking are the things mankind will never completely achieve, but will be seeking to the last day of history . . . the highest degree of freedom, the highest material benefits and the greatest

opportunity for mental and spiritual achievement of all the people. . . ."

And we might add: The moral courage to be able to speak the truth at all times and under all circumstances; to achieve that standard of civilization, humanitarian decency, and intelligent common sense to enable man to realize that whether he likes it or not, the Creator of the universe has made him, and regards him as his brother's keeper, whether that brother be black or white, rich or poor, religious or pagan. And further, that man's world will never be what he wants it to be, because there will never be a paradise on this earth, unless man ceases to sin against his fellow-man.

There is no government in the world today which has reached such a state of perfection that it is above violations and errors, because there is no government in the world today run by people other than human beings. What purpose can any citizen have of magnifying our errors to foreigners, instead of reporting them to ourselves, besides to suggest a non-existent perfection in themselves? Our errors, such as they are—and we do have our errors—are our own in no less degree, and certainly to no great extent, than the faults of other nations belong to the citizens of those countries. Therefore, no sister state, no foreign organization, and definitely no foreigner has the competence, or is clothed with jurisdictional authority to call us into question because we ask lawyers of our bar to answer in contempt for what we regard as unbecoming behavior.

In 1929, and during the early 1930s, when colonial rule in Africa was at its high water mark, when the law of the jungle (might makes right) prevailed all over Africa, and when some conditions existing in Liberia at the time were not unlike what obtained in many places on this continent then, certain powers indicted Liberia because of the existence of these conditions, and accused her of having dealt in slavery—of course, only as to the existence of the system as it was found in Liberia, but not as the same system could be found in other parts of Africa under colonial

rule. In the face of this open and shameless injustice, and whilst we struggled before the then League of Nations to rid ourselves of the stigma and to avoid the traps that had been set to ensnare us into being mandated, a counsellor of this Court prepared and submitted a document similar to the subject of these proceedings, in which he condemned this country. This act was loudly denounced by the bench and bar at the time. Counsellor Cassell was a member of the profession then, and we cannot recall that he gave support to the act at that time; but we could be mistaken. However, Mr. Chief Justice Johnson, who had been accredited as adviser to the Liberian delegation in Geneva, and in whose presence the counsellor had submitted his document as Counsellor Cassell did before the Chief Justice in Lagos, returned to Monrovia in time to open the November term of the Supreme Court that year. In his opening address delivered from this bench, he said in reporting the incident: "It is among members of the Supreme Court bar that we first look for loyalty to the country, and whenever a counsellor of this Court resorts to indicting Liberia before an international forum, he is a traitor and unworthy of the silk of the profession." We can perceive no difference between these two cases.

The right to punish for contempt is unquestionably an inherent right of the Supreme Court of Liberia. In *In re Ricks,* 4 L.L.R. 58, 63–64 (1934), when Counsellors Ricks and Bull were cited for contempt, Mr. Justice Russell, speaking for a unanimous bench, quoted the following authority in support of the judgment rendered against these aforesaid counsellors:

> "The power to punish for contempt is as old as the law itself, and has been exercised from the earliest times. In England it has been exerted when the contempt consisted of scandalizing the sovereign or his ministers, the law-making power, or the courts. In the American states the power to punish for contempt, so far as the executive department and the ministers of state are concerned, and in some degree so far as the legislative

department is concerned, is obsolete, but it has been almost universally preserved so far as regards the judicial department. The power which the courts have of vindicating their own authority is a necessary incident to every court of justice, whether of record or not; and the authority for issuing attachments in a proper case for contempts out of court, it has been declared, stands upon the same immemorial usage as supports the whole fabric of the common law." 6 R.C.L. 489 *Contempt* § 1.

As Mr. Justice Cardozo said in *Clark* v. *United States,* 289 U.S. 1, 12 (1932):

"We must give heed to all the circumstances, and of these not the least important is the relation to the court of the one charged as a contemnor. Deceit by an attorney may be punished as a contempt if the deceit is an abuse of the functions of his office (*Bowles* v. *United States,* 50 F. 2d 848, 851; *United States* v. *Ford,* 9 F. 2d 990), and that apart from its punishable quality if it had been the act of someone else."

Disrespectful conduct to a judge, whether in or out of court, is contempt; if it be in court and in connection with the hearing of a case, it is direct contempt; and if it be outside the court, it is constructive contempt. (See: 12 AM. JUR. 418 *Contempt* § 40; 17 C.J.S. 66–70 *Contempt* § 25b; 4 CYC. 908–11, 921–2 *Attorney and Client.*) Quoted and cited hereunder are a few other authorities on the subject:

"It is peculiarly the duty of an attorney to maintain the respect due to courts and judicial officers, and any breach of this duty is a contempt. . . . So the presentation to the court of a feigned issue or of a fictitious case is a contempt of the court." 6 R.C.L. 493–94 *Contempt* § 7.

But it is not necessary to cite authority beyond our own decided case to support this Court's inherent right to punish lawyers for contempt under the present circumstances. Respect for constituted authority has been the foundation

of the stability of the Republic of Liberia for these past 113 years of our autonomous existence. In *Liberian Bar Association* v. *Gittens,* 7 L.L.R. 253 (1941) this Court held Counsellor James A. Gittens to answer in contempt for disrespect shown to the Chief Justice out of court, as in this case. The difference between that case and this is that Counsellor Gittens recognized the error of his conduct and filed returns in which he asked this Court's forgiveness. There is a great difference in attitude between the returns filed in that case and the returns filed in this case.

Woven into the text of one of the documents quoted in this opinion, and in much of the correspondence we have received from abroad in this case, is the contention that whatever Counsellor Cassell did or said in Lagos was done or said in his private capacity, and therefore he should not be answerable in contempt therefor. We lay it down now for the future guidance of all lawyers in Liberia that the Supreme Court deems all members of the profession to be bound by their professional oath so long as they remain members of the bar, whether they be in their private or official capacities, and whether they be in or out of the country. A lawyer's loyalty to his country and the profession should never be relaxed. Lawyers who practice before our courts must have and show respect for the dignity and authority of the courts, or the courts will do without their professional services. That is the discipline demanded of Liberian lawyers in the past; and that is the discipline we shall continue to demand.

Before concluding this opinion, we would like to make it plain that no one has questioned Counsellor Cassell's right to write freely on the subject he chose for the conference. Under our Constitution he enjoys that right as a citizen and as a lawyer. The impression that the citation for contempt sought to curb his freedom to write what he liked was first broached from abroad, and we have not been able to understand why the simple wording of the citation should have been so misinterpreted. On the ques-

tion of freedom of the press, we would like to say that this freedom should not be interpreted as license to exceed the constitutional liberties a citizen should enjoy. Many years ago, Chancellor Kent said:

> ". . . that the liberty of the press consists in the right to publish with impunity, truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals." *People* v. *Crosswell,* 1 Johns. (N.Y.) 337, 393–94 (1804).

Too often some of us are wont to use this constitutional privilege from motives other than could be called good, and for ends far removed from justifiable; therefore the Constitution has made the use of the privilege subject to personal responsibility for its abuse. (See 6 R.C.L. 510–511 *Contempt;* 12 AM. JUR. 413–14 *Contempt* § 32.)

Other lawyers might have written what Counsellor Cassell wrote, provided it is true, and made a different impression on the Court, since they might not have prosecuted under the statutes referred to as restraints of the rights of the citizens. All we ask of lawyers who would write of and concerning the judiciary and/or the courts, is that their reports be the truth, conscientiously and constructively presented. This Court will punish for contempt any false, or deceptive practice which might have the tendency to reflect discreditably upon the judicial branch of our Government, or which might tend to belittle it or its decisions, or which might embarrass it in the performance of its duties, or which might show disrespect to it or its judges, or which might defy its authority.

In view of the foregoing, we are of the considered opinion, that the respondent, Counsellor Cassell, is guilty of contempt of the Supreme Court; and because of the gravity which we attach to his contemptuous act, we do hereby disbar him as a lawyer and forbid his further practice of law before any of the courts of this country. And it is so ordered.

Respondent disbarred.