PRINCE N. A. BROWNE, WILLIAM SAYDEE, and MOSES KPADEH, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued November 26, 1973 to January 14, 1974. Decided January 31, 1974.

1. An indictment is sufficient if it informs the accused of the time, place, circumstances, and conditions of committing or attempting to commit a criminal act, stated with sufficient certainty to enable him to defend himself against the charge.
2. Under appropriate circumstances an arrest may be made without a warrant, but the arrested person must thereafter be taken before the nearest available magistrate or justice of the peace without unnecessary delay.
3. A conspiracy against the life of the President is a capital offense.
4. A conspiracy is a combination between two or more persons to do a criminal or unlawful act or a lawful act by criminal or unlawful means, and no overt act is necessary to constitute the crime of conspiracy.
5. In ordering the preparation of a supplemental venire, it is improper for a trial judge to select the names of persons to comprise such venire.
6. The thrust of the bias or prejudice needed for the disqualification of a judge must clearly be against the accused, not merely against the offense with which the accused is charged.
7. The general rule is that an accomplice is competent to testify for the prosecution, though the testimony must be accepted cautiously in the absence of corroboration.
8. But the testimony of a feigned accomplice needs no corroboration.
9. The constitutional prohibition against excessive punishment can only be invoked when punishment is over and above what the law prescribes.

The appellants were indicted for conspiring among themselves and with others to assassinate the President of Liberia and two of his brothers, seize power, and thereby overthrow the legally constituted Government of the Republic. The plot was thwarted by security officers who had been alerted to the plans by a fellow officer of two of the conspirators, who thereafter kept the Government apprised of the plot's progress. The appellants were apparently taken into custody on March 26, 1973, but were not indicted before April 4, 1973, nor arrested under a warrant until April 5, 1973, remaining in cus-

tody during that time. At the trial the prosecution presented numerous witnesses, including a conspirator who was not being tried. A verdict of guilt was returned by the jury, and the trial court sentenced the three defendants to death. An appeal was taken from the judgment. In argument before the Supreme Court, a principal contention of appellants' counsel was that the crime of which they were found guilty was punishable only by a term of years. The Supreme Court reviewed the evidence presented at the trial and deemed it sufficient to support the verdict. Nor did the Court find any reversible error in the lower court. As to the initial illegal detention, subsequent adherence to law had negated any wrong done to defendants. The majority of the Supreme Court ruled the conspiracy to assassinate the President a capital offense, for the reasons inferentially, that the safety of the nation was imperiled thereby, because the President embodied the Executive branch of Government, whose cessation for a time would result from his death. Mr. Justice Horace dissented, disagreeing with the part of the majority opinion holding the crime to be a capital offense, deeming such conspiracy punishable by imprisonment only, stating that an overt act in furtherance of the conspiracy charged was required by statute to constitute the crime a capital offense. The majority of the Supreme Court *affirmed* the judgment of the lower court.

C. Abayomi Cassell and *Joseph J. F. Chesson* for appellants. The *Minister of Justice,* the *Solicitor General,* the *County Attorney for Montserrado County,* and *Jesse Banks* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

Argument in this case began in the Supreme Court on November 26, 1973, and continued for fifteen days up to

and including January 14, 1974, the longest argument in the history of the Supreme Court of Liberia. Our rules require that except for special leave of the Court, each party shall be entitled to only four hours of argument, two to open and two to close. Rule VIII, Part 1, Rules of the Supreme Court (1972). The parties on both sides requested, and the Court granted, suspension of the rule in this case to accommodate the lengthy briefs of both sides.

It is not often that we get to hear cases where sentiment runs as high as it has done in this case, but the Court must always seek to avoid the influence of unmeritorious gossip which attends cases of this magnitude. This was one of the reasons which made it necessary to extend time for argument in this case. As human beings we are all liable to error, but as a court we should not allow ourselves to be drawn into the whirlpool of unpleasant feelings which might exist between the parties who appear before us for the adjudication of their matters. In this case the record shows that there was unfortunately a great deal of unpleasant feelings between the parties and between counsel in the trial court. While we might allow it for laymen, it is unbecoming for lawyers. The object of the trial was to determine the truth or falsity of the charges made. There should be no room for unpleasant exchanges in the discharge of this primary duty.

Another serious matter is the language in which the lawyers have couched their criticism of the judge's adverse rulings against them during the trial of this case. To say the least, not only is it unbecoming of counsellors who wear the silk of this bar, but it is crude and vulgar, and such language should never appear in documents coming before the Supreme Court, whether it be used against a judge or against a brother lawyer. The Court will not tolerate it in the future.

An indictment is a written statement charging the commission of a criminal act. It is not in itself evidence and

its contents must be proved by the testimony of witnesses and/or other evidence. Its sole purpose is to charge an offense and inform the accused of what will be proved against him. It is sufficient under our law if it informs the accused of the time, place, circumstances, and conditions of committing or attempting to commit a criminal act, stated with sufficient certainty to enable him to defend against it, *Seton* v. *Republic,* 4 LLR 238 (1935); *Yancy* v. *Republic,* 5 LLR 216 (1936). In a case involving sedition, *Massaquoi* v. *Republic,* 8 LLR 204 (1944), the Court held that 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. Now let us see what the two-count indictment in this case charged the defendants with having done or attempted to do.

"The grand jurors, good and lawful men and women of the County of Montserrado, Republic of Liberia, duly sworn and empanelled to inquire in the name and by authority of the Government of the Republic of Liberia, do upon their oaths present Prince N. A. Browne, William Saydee and Moses Kpadeh, defendants for a felony, to wit: conspiracy against the State, committed in manner and form as follows:

"1. The aforesaid Prince N. A. Browne, William Saydee and Moses Kpadeh, citizens of the Republic of Liberia, between the 1st day and the 30th day of November, 1972, the exact date presently unknown to the grand jurors, and the 9th, the 17th, the 19th, and the 21st days of January 1973, at the Ministry of Defense, Commonwealth District of Monrovia, and divers other places such as Todee Military Academy, the home of co-defendant Prince Browne, Schiefflin Military Base, and at the home of Col. John Howard, Sinkor, Monrovia, and divers other days and times

. . . while in the employ of the Liberian Government serving in the capacities of Assistant Minister of Defense for Coast Guard Affairs, and commissioned officers of the Liberia National Guard Brigade, and owing allegiance and fidelity to the President, Government, and the said Republic of Liberia they, in utter disregard of their allegiance and fidelity to their Country, concertedly, unlawfully, wickedly, maliciously and traitorously met at the aforesaid places to plan, conspire, contrive, combine and confederate with other evily disposed persons to the grand jurors unknown . . . to assassinate William R. Tolbert, Jr., President of the Republic of Liberia, Senator Frank Emmanuel Tolbert, President pro tempore of the Liberian Senate and Stephen A. Tolbert, Minister of Finance, on the 23rd day of January, 1973, while the President of Liberia was to deliver his Annual Message to the National Legislature at the E. J. Roye Building; but . . . their plans to assassinate, seize power, take control by force and violence and to overthrow the legally constituted Government of the Republic of Liberia were changed from the 23rd of January, 1973, to the 22nd of the aforesaid January, 1973, at Roberts International Airport, contrary to the statute laws of Liberia in such cases and provided and against the peace and dignity of the Republic of Liberia.

"2. And the grand jurors aforesaid, upon their oaths aforesaid, do present: that on the 21st of January, 1973, in the Commonwealth District of Monrovia, County and Republic aforesaid, the aforesaid Prince N. A. Browne, William Saydee and Moses Kpadeh, while serving in the capacities of Assistant Minister of Defense for Coast Guard Affairs of the Republic of Liberia and commissioned officers of the Liberian National Guard Brigade . . . in furtherance of their said concerted, malicious, wicked and felonious design

. . . Col. John Howard and co-defendant Prince N. A. Browne drove together in co-defendant Prince N. A. Browne's car on the Schiefflin Highway, (and Prince N. A. Browne) importuned Col. John Howard to join them in their wicked design to kill and murder the aforesaid William R. Tolbert, Jr., President of the Republic of Liberia, Senator Frank Emmanuel Tolbert, President pro tempore of the Liberian Senate and Stephen A. Tolbert, Minister of Finance . . . averted only by the revelation of their plan by the security officers of the state; then and thereby the crime of conspiracy against the state the defendants 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."

These counts have charged that on specific dates mentioned therein, and at places in Montserrado County specifically named, the defendants, who were employees of the Government and citizens of the Republic, met, planned, conspired, contrived, combined, and confederated together to wickedly, unlawfully, and traitorously assassinate the President of Liberia and his two brothers.

These counts charge that this act was planned for January 23, 1973, while the President was delivering his Annual Message to the National Legislature, but that the plans were subsequently changed and the date for execution of the plot changed to January 22, the date on which the President, with other officials, was to visit Roberts International Airport, to inspect the British Concorde aircraft. The indictment charges that the defendants, with others unknown to the grand jurors, in disregard of their allegiance and fidelity to the President, the Government and the Republic, planned by the assassination of the President to seize power, take control by force and violence, and thereby overthrow the legally constituted Government of the Republic of Liberia.

The indictment has charged that the aforesaid acts amounted to conspiracy against the State and its official head, constituting a felonious crime. That execution of the said plot was only averted by the timely revelation of the plot by security officers, who informed the Government of the plans. To this indictment the defendants in the court below pleaded not guilty. A jury returned a verdict against the accused. Judgment was rendered upon this verdict and an appeal was announced and completed whereby this case has come before us.

In the recitation of facts in the appellants' brief, it is stated that up to the time of argument in the Supreme Court no writ of arrest had been served on them as required by the criminal statutes. Our law requires that in all criminal cases a writ of arrest must be issued by the Clerk, served on the accused, and returned by the ministerial officer affecting service. The procedure applies without regard to whether the offense charged is a misdemeanor or a felony.

The police have a right under the applicable Criminal Procedure Law to arrest without a warrant any person committing a crime or reasonably suspected of having committed a crime. 1956 Code 8:57. Nonetheless, where an arrest is made without a warrant, the arresting officer "shall take the arrested person without delay before the nearest available magistrate or justice of the peace." *Id.*, 8:58.

Even though the prosecuting officers of the State have authority to investigate, it does not empower them to apprehend persons and detain them indefinitely, without a warrant charging a specific crime. The Constitution has preserved to citizens and persons within our borders rights against arbitrary arrest and illegal detention. The powerful writ of habeas corpus was intended to provide redress for such eventualities, whenever they do occur. The Constitution states that no one should be deprived of

his liberty but by the law of the land. Article I, Section 8th.

Under the new Criminal Procedure Law a peace officer may arrest a person in the instances enumerated.

> "(a) He has a warrant commanding that such person be arrested, or
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> "(b) He has been informed on good authority that a warrant for the person's arrest has been issued; or
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> "(c) He has reasonable grounds to believe that the person is committing or has committed an offense." Rev. Code 2:10.2(1).

The Criminal Procedure Law also protects the rights of persons arrested without a warrant.

> "An officer making an arrest where a warrant has not been issued, without unnecessary delay, shall take the arrested person before the nearest available magistrate or justice of the peace. The officer shall forthwith prefer a complaint under oath or affirmation setting forth the offense which the arrested person is charged with committing and cause a warrant of arrest to be issued thereon." *Id.*, § 10.11(2).

In neither of the Codes, the 1956 Code or the Revised Code, is authority given by the Criminal Procedure Law to officers to arrest where a warrant has not been issued without going before a magistrate or justice of the peace with the arrested person as soon as possible thereafter. Nor are they authorized to detain anyone beyond a reasonable time after arrest without sanction of a court of competent jurisdiction. The constitutional rights of an arrested party could not otherwise be protected: (a) to have a speedy trial, and (b) not to be deprived of his liberty except by the law of the land. Art. I, Secs. 7th and 8th. According to the record the accused were taken into custody by the police without a warrant on March 26, 1973, and were not indicted nor arrested thereunder until April 5 of that year, ten days later. This

was clearly in violation of the Constitution and the Criminal Procedure Law cited.

We have considered due process of law, which the appellants claim they were deprived of when they were arrested and detained for a considerable number of days without being charged. We repeat that it was improper for the accused to have been arrested and detained without being taken before a court of competent jurisdiction within a reasonable time thereafter. We would like to emphasize, however, that the accused themselves are not without blame for having suffered this injustice, for they did not avail themselves of the two courses open to them in such a circumstance: (1) they had a right to demand preliminary examination before a magistrate or justice of the peace, at which hearing it would have been determined whether a crime appeared to have been committed, and if so, a warrant would have been issued, or they would have been discharged from further custody; (2) they could have applied for a writ of habeas corpus, to inquire into the legality of their detention without a warrant, and without having been charged. Their failure to have availed themselves of either one of these courses cannot be blamed upon the State, no matter how wrong and illegal their detention was. But, the subsequent finding of an indictment by the grand jury, and their arrest in consequence thereof, have corrected any irregularity practiced upon them. Raising the question after indictment and arrest is like closing the stable door after the horse has gone.

Let us go back to due process of law as we understand it to apply in criminal cases. The Declaration of Rights contained in Article I of our Constitution guarantees rights to every person charged with crime. (1) The right not to be held for infamous or capital crime unless upon presentment by a grand jury; (2) the right to be seasonably furnished with a copy of the charges; (3) the right to be confronted with the witnesses against him;

(4) the right to have compulsory process for obtaining witnesses in his favor; (5) the right to have a speedy, public and impartial trial by a jury of the vicinity; (6) the right not to be compelled to give evidence against himself; (7) the right not to be twice put in jeopardy of life or limb; (8) the right not to be deprived of life, liberty, or privilege but by judgment of his peers or the law of the land; (9) the right not to be searched or seized on a criminal charge or on suspicion, unless upon the strength of a warrant; (10) the right not to be subjected to excessive bail nor excessive fines, nor excessive punishment.

These rights the Constitution has guaranteed to everyone charged with a crime or suspected of having committed a crime. These rights have been enforced by the courts of our country from the earliest days of our independence. And whenever any of these rights have been denied or refused a party, the courts have never failed to give redress to the person, unless upon good cause shown. The appellants have contended that they were deprived of their rights when they were seized without warrant. We have already passed upon this charge made against the prosecution. The enjoyment of these constitutional rights, in any given case, is the enjoyment of due process of law.

In *Wolo* v. *Wolo,* 5 LLR 423, 428 (1937) Mr. Chief Justice Grimes in speaking for a unanimous bench, dwelt at some length on due process of law.

> " 'The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial." Somewhat similar is

the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered.' "

Other authority has surveyed the background of the doctrine of due process.

"Origin of Guaranty. The principle that no person shall be deprived of life, liberty or property except by due process of law did not originate in the American system of constitutional law, but was contained in I Magna Carta as a part of ancient English liberties. Chapter 39 of I Magna Carta (sometimes referred to as "Chapter 29"), confirmed on the 19th day of June, 1215, declared: 'no freeman shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him, nor send upon him, but by the lawful jugment of his peers or by the law of the land.' It has been said that the principle was known before I Magna Carta and that it was originally designed to secure the subject against the arbitrary action of the Crown and to place him under the protection of the law. It is settled beyond question that this principle came from England to America as part of the common law and has been a fundamental rule of the judicial system of every state in the Union which adopted the common law. When first adopted in I Magna Carta, the phrase 'law of the land' had reference to the common and statute law then existing in England; and when embodied in constitutions in the Country, it referred to the same common law as previously modified and as far as suited to the wants

and conditions of the people." 12 AM. JUR., *Constitutional Law,* § 568.

However, aside from detention, after arrest made without warrant, for a number of days before their indictment, we have not been able to find in the record any other instance where the parties were not accorded in full measure their constitutional rights.

However, the Supreme Court is bound by the certified record of the trial court, which must have been taxed by counsel on both sides before being sent up for appellate review. During argument we specifically inquired of counsel on both sides as to whether the clerk of the trial court had notified the parties to call at his office and tax the record; both sides admitted that they were so notified. We have to be satisfied, therefore, that everything appearing in the record represents what actually took place in the court below.

Upon inspection of the record it is seen that a copy of a warrant of arrest dated April 4, 1973, the date of the indictment, was executed by the arrest of the accused and returned by the sheriff on April 5, 1973. We are, therefore, of the opinion that the illegal detention of the accused was nullified by the indictment and the subsequent execution of the warrant of arrest issued pursuant to the indictment.

Among the several pre-trial motions filed in this case, was an application that bail be fixed pending trial. The grounds submitted therefor were: (1) that the crime of conspiracy against the State with which they were charged under section 53 of the Penal Law contained in the 1956 Code is punishable by only seven years imprisonment for the alleged conspiracy to assassinate the President of Liberia, for the safety of the State was not imperiled and neither death nor serious bodily injury resulted from the alleged conspiracy charged in the indictment; (2) that in count two of the indictment they are charged with hav-

ing contrived to overthrow the legally constituted authority of the Government of Liberia by murdering William R. Tolbert, President of the Republic of Liberia, which as stated before would be punishable by imprisonment for not more than seven years; (3) that they contended in the said application for bail that in the absence of the showing of any overt act in furtherance of the alleged conspiracy, or bodily injury, or death resulting therefrom, the crime charged cannot be regarded as a capital offense.

For greater clarity we have set forth the section of the Penal Law under which the accused were charged and tried.

> "1. Any two or more persons who conspire together to destroy the life or to injure the person, property, or reputation of the President or of any diplomatic representative of a foreign government are guilty of conspiracy against the State.
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> "2. If the agreement is an agreement to commit a felony, each such person is punishable by imprisonment for not more than seven years. In any other case, each such person is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than three years; provided, however, that where death or serious bodily injury results, or where the safety of the nation is seriously imperiled, each such person is punishable by death or by imprisonment for life." 1956 Code 27:53.

The section is divided into three parts: (1) where the agreement is to commit a felony, short of an attempt to take the life or injure the person of the President, the punishment in such case is imprisonment for seven years; (2) where the agreement is to commit an act short of a felony, the punishment shall be a fine of not more than five hundred dollars or imprisonment for not more than three years; and (3) where death or serious bodily injury results from the agreement to commit the act, "or where

the safety of the nation is seriously imperiled" thereby, the punishment shall be death or life imprisonment.

Therefore, all the State needed to do in this case under the statute was to prove that there was an agreement by the accused to assassinate the head of State. It was not necessary to prove that bodily injury was actually inflicted, nor that actual death occurred. The statute is specific: "an agreement to destroy the life, or to injure the person . . . of the President . . . is punishable by death or by imprisonment for life." Let us consider other authority on the crime of conspiracy, including the common law, aside from the language of the statute itself.

> "It has been said that there is perhaps no crime an exact definition of which it is more difficult to give than the offense of conspiracy. The essentials of a conspiracy, whether viewed with regard to its importance in a criminal prosecution or its significance in a civil action for damages, are commonly described in this general language: It is a combination between two or more persons to do a criminal or an unlawful act or a lawful act by criminal or unlawful means. This definition perhaps is not perfectly accurate, but is sufficient as a general description of the offense.
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> "Combination. To constitute a conspiracy there must be a combination of two or more persons; one person cannot conspire with himself.
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> "The agreement. To constitute a conspiracy there must be unity of design and purpose, for the common design is of the essence of the conspiracy.
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> "Character of agreement. No formal agreement between the parties to do the act charged is necessary. It is sufficient that the minds of the parties meet understandingly so as to bring about an intelligent and deliberate agreement to do the acts and commit the offense charged, although such agreement be not manifested by any formal words. If two persons pursue by their acts the same object often by the same

means, one performing one part of the act and the other another part of the act, so as to complete it with a view of the attaining of some object which they were pursuing, this will be sufficient to constitute a conspiracy. Previous acquaintance is unnecessary, and it is not essential that each conspirator should know the exact part to be performed by the other conspirators in execution of the conspiracy.

"Means. If the object of the conspiracy is unlawful, the means contemplated to effect such object are immaterial, either in a criminal prosecution to punish the perpetrators for entering into the combination or recover of them the damages inflicted by carrying out the object of the conspiracy; and it is not even necessary that the means should have been agreed upon.

"Overt Act. At common law no overt act is necessary to constitute the offense of conspiracy, and the rule is of universal application, except so far as it may be changed or limited by special statutory enactment." 8 CYC. 620–624.

"Essentials of the offense. The crime of conspiracy consists of several distinct elements. The first of these is that there must be a combination of two or more persons to constitute a conspiracy; one may plot or plan alone, but he cannot conspire alone. The second element is that there must be a real agreement, combination or confederation with a common design; mere passive cognizance of the crime or unlawful act to be committed or mere negative acquiescence is not sufficient. The agreement, however, need not be of any special form; it need not be in writing or in any other express form. In fact, the agreement is almost always a matter of inference deduced from the acts of the persons accused which are done in pursuance of an apparent criminal purpose. The agreement need not state the means by which the conspiracy is to be accomplished or what part each conspirator is to play.

The third essential is the existence of an unlawful purpose or act accomplished by unlawful means. It is the nature of the purpose or the nature of the means by which the purpose is to be accomplished which imparts to the confederacy its criminal character.

"Intent. As in other offenses, a criminal intent is a necessary element of the crime of conspiracy. Ordinarily, however, the intent will be inferred from the nature of the combination. The mere fact that the parties agree to undertake and successfully accomplish the performance of an unlawful act does not constitute the crime of conspiracy unless they were actuated by a criminal motive or intent. In many cases this inference will be irresistible; in others the jury may find that although the object of the agreement and the overt act were unlawful, the accused parties nevertheless acted under a misconception or in ignorance without any actual or criminal motive.

"Overt act. The criminal offense of conspiracy is complete at common law as soon as the confederacy or combination is formed. The legal character of the offense depends neither upon the object which is intended to follow it nor upon the act which does follow it; it is the same whether the object of the conspiracy is accomplished or abandoned. It may be followed by one overt act or a series of them, but in the absence of statutory modification of the common law rule, the offense is complete without any subsequent overt act. The reason for this rule is that the confederacy of several persons to effect any injurious objects creates such a new and additional power to cause injury that it requires criminal restraint, although no such restraint would be necessary were the same things proposed, or even attempted to be done by any person singly." 11 AM. JUR., *Conspiracy,* §§ 4–6.

"It is not essential to criminal liability for con-

spiracy that any overt act should have been committed in furtherance thereof, unless otherwise provided by statute." 15 A.C.J.S., *Conspiracy,* § 5.

As can be seen the conspiracy statute under which the appellants were indicted and tried is in complete accord with universally accepted legal authority.

The Government of Liberia is divided into three departments, each necessary to the continued existence of the political society. In order that organized government continue to exist under our Constitution, the functions of these three departments must in no way be imperiled or obstructed. In other words, there must be a Legislative department constituted according to law, capable of being called into session as necessity demands; a legally constituted Executive department and a legally constituted Judiciary must actually exist. Whenever any one of these three great departments no longer exists, and, therefore, cannot function, government as provided for under the Constitution no longer exists.

Government as defined by BOUVIER'S LAW DICTIONARY, is "that institution or aggregate of institutions by which a state makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon people forming a state." In our case there must be three legally constituted coordinate branches to form our Government, and these three branches established by, for, and of the people who compose the political society, must function continuously and in keeping with the Constitution, or the rules enacted by the Legislature. These three branches the Constitution has designated as the Legislature, the Executive, and the Judiciary, and has defined the functions of each.

Any event occasioning the untimely death of the majority of the members of the Legislature, making it impossible for a quorum to enact the laws and perform other legislative duty, would dangerously affect orderly government under our system, at least for the time necessary to

restore the Legislature. The same thing applies to the Judiciary; in both these great departments a quorum is necessary for the transaction of business.

It is not so with the Executive department. All of the power and authority it represents is vested in one person, the President. To kill him would be to effectively destroy constitutional government and legally established authority under our system. The death of the President eliminates the Executive department altogether, whereas the other departments can continue as long as a quorum assembles. With the destruction of the Executive department, constitutional government is also destroyed.

It has been contended that on the death of the President, the Vice President succeeds to his duties. This is, of course, correct. But on the death of the President some period of time must elapse before the Vice President can be sworn into office, a period during which there is no President and, therefore, no Executive branch of Government. No matter how short the time required to administer the oath to the Vice President, for that time there is an interregnum and no government exists.

Watson, in his treatise on the American Constitution, has commented on the nature of the Executive branch.

> "The immunity of the President is because of the official position. He is a great and necessary part of our Government. The Legislative branch is complete composed of many members, while the Judicial branch is a collective body and it would be difficult to interfere with either numerically so as to interfere with the administration of the Government. But it is wholly different with the Executive branch. One man constitutes all there is of that, and upon him the Constitution has placed many great and important duties, and these duties are constant. He does not sit in authority at stated intervals like Congress and the courts. There is no recess in the discharge of his official duties. From the time he takes the oath until

> his office expires there is a continuity of official obligations and duties sacredly and solemnly imposed upon him by the Constitution. Anything which impairs his usefulness in the discharge of his duties, however slight, to that extent the Government is weakened. There is no sacred charm in the personality of the President that protects him. It is only because of his official relation to the Government. If he should be imprisoned, that would prevent the discharge of many official duties which the Constitution imposes upon him. How could he receive ambassadors, and other public ministers, while in jail? How could he see that the laws are faithfully executed when the law was keeping him a prisoner in a dungeon? How could he command the army and navy in time of war if he were locked in a cell? Subjecting him to civil process might result in his being imprisoned and therefore he is not amenable to it. The President is the only constant and continuing factor in the division of governmental power under our Constitution which is necessary to its existence. This is because the Constitution has imposed upon him many duties which he must discharge and he must personally be free, that is, there must be no restraint of his person in order that he may be able to discharge them. 2 WATSON, CONSTITUTION OF THE UNITED STATES, 1023–4.

Our Constitution imposes the same obligations upon the President; therefore, any plot or plan to kill the President, or to capture and detain him and thereby render it impossible for him to perform his Constitutional duties, which are constant, is a plot to bring about an interregnum, or to bring to an end orderly government as established by our fathers in 1847. And according to the statute cited above under which the indictment in this case was drawn, any person or group of persons who so engage themselves, or who can be proved to have so engaged themselves, have violated this statute and com-

mitted a capital crime. We shall see later in this opinion whether or not it has been proved that the appellants so engaged themselves. But we are of the opinion that conspiracy against the life of the President is a capital offense and being a capital offense, the trial judge did not err in denying the application for bail.

The question of what is a capital crime has been raised. BOUVIER'S LAW DICTIONARY defines it to be a crime for which the death penalty is inflicted as punishment, as does BLACK'S LAW DICTIONARY.

Another pre-trial motion filed by appellants in the court below was a motion to quash the venire, and to dismiss the jurors summoned to serve at the May 1973 Term of court, the term at which the trial took place. Our law requires that the selection of jurors to serve in the circuit courts be made from lists submitted by "commonwealth districts, cities, municipal districts, and townships in the judicial districts" in which the trial takes place. Rev. Code 1:22.3, 2:14.2. In Montserrado County, the county in which the trial was held, the law authorizes the First Judicial Circuit Court (Criminal Assizes) to summon forty-two citizens to do jury service at each term of court in the normal trials of criminal cases. In the selection of a panel, should these forty-two persons prove insufficient to make up the number required to hear the case, that is to say, should the exercise of the parties' rights to challenge either for cause, or peremptorily, exhaust the number summoned to serve for the particular term of court, the judge shall then order the preparation of a supplemental venire to summon a sufficient number of citizens to facilitate the selection and empaneling of the fifteen persons required by law. Rev. Code 1:22.3. It has not been denied that this was done in this court.

In capital cases, however, each defendant is entitled to peremptory challenges more than double the number allowed in ordinary criminal cases.

"Peremptory challenges. The Republic and the defendant shall each be allowed three peremptory challenges, except that if the defendant is being tried for a capital offense, he shall be entitled to twelve peremptory challenges and the Republic to six." Rev. Code 2:19.3(6).

In addition to the peremptory challenges, each party is also entitled to an indefinite number of challenges for cause. *Id.*, 19.3(3). Therefore, in this case the presence of thirty-six jurors to satisfy the peremptory challenges of the three defendants, and six for the State in addition to an indefinite number for cause for each of the defendants, were absolutely necessary. They had to be summoned before trial and after the defendants had pleaded to the indictment. We understand that this was also done.

The appellants contended in their motion, and also in their brief, that the manner employed to summon these jurors for the supplemental venire was illegal and, therefore, their rights were prejudiced thereby. They also say that some of those summoned among the forty-two comprising the venire for that term of court were not present and did not answer when their names were called. Those summoned but not present were Joseph B. Moore, Viney Sawa, Jerry Knuckles, and Caroline Pratt. Appellants contend that instead of the judge summoning these persons to show cause why they should not be held in contempt for failure to obey the summons, he ordered the clerk of court to prepare a supplemental venire comprised of Nancy Greenfield, Esther Anderson, Golu Fireman, and Cathrine Clark, whose names, they contend, were announced by the judge after first having written them down. If this is true, we do not hesitate to pronounce this act of the judge improper. Any juror thereby selected would have been illegally chosen and any verdict returned by the jury on which he served would have had to be set aside. But a review of the record

shows that none of the four persons named by the judge to the supplemental venire served on the jury in this case. In fact, one of the jurors summoned and not present, Joseph B. Moore, was later selected and served as foreman of the jury. We do not think, therefore, that the improper action of the judge in any way prejudiced either side at the trial.

The appellants have contended that prior to the selection of the jury, a number of citizens had been seen in a room adjoining the courtroom and that these persons were not summoned for jury service in accord with the law. That is, they had not been selected from a list of names obtained from the various political subdivisions of Montserrado County. Although this has not been said in so many words, the appellants have implied that all of the persons seen in the room adjoining the courtroom had been handpicked as prospective jurors by the prosecution and were, therefore, prejudiced against the defendants.

We have quoted the statute which gives each defendant charged with a capital offense twelve peremptory challenges and any number of challenges for cause. It seems to us that the rights of the parties were adequately protected by the challenges which the law gave them the right to use, and which they did use at the trial in selecting the jury. They had a right to challenge for cause every person in the room adjoining the courtroom until the whole lot were rejected. The law gave them this right and no one, and we emphasize no one, could have questioned their use of that right.

We would like to make it clear that the issuance of a supplemental venire was not in accord with the statute which requires that the various subdivisions of the county where trial is held submit a list of qualified persons for jury service, to be summoned ten days before opening of the term of court. A supplemental venire can only be ordered issued after the venire of forty-two persons has been exhausted by challenge or otherwise. In such cases,

the judge orders a supplemental venire prepared, calling bystanders from every quarter of the city or commonwealth district in which the trial is taking place to do jury service. However, the Judiciary Law has exempted certain categories from jury service. Any person not falling within any one of these categories must serve upon being summoned or answer for refusal to do so.

> "Classes exempted. The following classes of persons are exempted from service as jurors:
>
> "(a) Members of the armed services in active service, and all marshals, sheriffs, constables, police officers and firemen;
>
> "(b) Public officers in the executive, legislative or judicial branches of the Republic of Liberia or any political subdivision thereof who are actively engaged in the performance of official duties;
>
> "(c) Physicians, clergymen, teachers and nurses who are actively engaged in the practice of their profession, and lawyers, whether actively engaged in their profession or not." Rev. Code 17:18.3(1).

It would seem that any person who was allowed to remain on the jury selected must have been satisfactory to the parties on both sides or he would have been challenged. But should this not be so, and jurors were not satisfactory but were not challenged, that constitutes a waiver under our Criminal Procedure Law and forecloses any right to contend that the selection of the jury was not absolutely fair. Rev. Code 2:19.3(4).

Another pre-trial motion was filed by the appellants in the court below, for the judge to recuse himself and adjourn the case until the next term of court, which was denied. It should be noted that when this motion was filed, the defendants had already pleaded to the indictment, even though the jury had not been selected and sworn.

The substance of the motion for the judge's disqualification was that the judge had accused defense counsel

of dilatory tactics in moving to quash the venire, that in undue haste he had continued the trial while they unsuccessfully sought a remedial writ in the Supreme Court and that the judge was not impartial, indicated by his almost immediate denial of the motion to quash the venire.

The mere assertion of bias or prejudice without positively showing some prejudicial act by the judge, will not justify the refusal of a judge to perform his plain duty in the case. It is just as improper for a judge to refuse to sit on a case without legal grounds for him not to do so, as it is for him to sit knowing that adequate reasons exist for him not to sit in the case.

The thrust of the prejudice or bias which disqualifies a judge must be clearly against the accused, not merely against the offense with which the accused is charged. We presume that every judge abhors crime, and will not approve violation of law. But every judge has to try those accused of crimes and the violation of law. Should judges be disqualified because of their known abhorrence for crime? If the answer is in the affirmative, who would try criminal cases? We are in full agreement with the position taken by the court below in denying the motion for recusation.

And now we come to the evidence in this case. We will analyze the testimony of the witnesses on both sides, beginning with the State. Major Jimmy Freeman was the State's first witness.

He testified that there was a plan to assassinate the President and his brother Frank Tolbert, President pro tempore of the Senate, and to seize his other brother, Stephen A. Tolbert, who is Minister of Finance, and have him account for Government funds, thereby overthrowing the Government. Jimmy Freeman, a major in the National Guard, admitted that he was one of the participants in the plot. He recalled that as Executive Officer of the Todee military base he was approached by Lt. Col. Moses K. Kpadeh, who is one of the defendants, and who

was in charge of the Todee base. Freeman testified that on a day he could not remember Lt. Col. Kpadeh left him in charge of the base and went to Monrovia on official business.

Freeman testified that on Kpadeh's return from Monrovia, Kpadeh told him that while in Monrovia he, Col. William Saydee, another one of the defendants, and Prince N. A. Browne, Assistant Minister of Defense for Coast Guard Affairs, and also a defendant, met in the latter's home and decided to overthrow the present Government of Liberia. The witness further testified that he had told Kpadeh that he could not decide whether or not to join the plot until he had met Col. Saydee. He did meet Saydee the following weekend and Col. Saydee confirmed the existence of the plot to overthrow the Government. It was then decided between them that they should meet with Assistant Minister Prince N. A. Browne.

The witness testified that on the weekend of November 25, 1973, he, Col. Saydee, and Col. Kpadeh met in Monrovia at the B.T.C., and from there they went to the home of the Assistant Minister. He testified that when they got there he was introduced to the Assistant Minister whom he had met before as a member of a lodge in Schiefflin. The Assistant Minister is then supposed to have asked him if he had heard all of the plan, to which he replied that he had once before been accused of plotting to overthrow the Government. The defendants then encouraged him to not be afraid. Assistant Minister Browne is alleged by the witness to have then remarked: "Even when the late President died, Lt. Col. Victor Stewart and myself jumped in our uniforms, well armed, and moved to the Mansion to shake the President's hand, which we could have gotten rid of him then, but there is a time for everything. Col. Victor Steward came back to me and said, 'what shall I do now?' But I told him to leave it alone, there is a time for everything."

Freeman testified that he still was not satisfied, since

he felt that President Tolbert and the Presidents of Guinea and Sierra Leone were close friends, and might intercede. Assistant Minister Browne is then alleged to have assured him by saying "that will be taken care of." The witness testified that it was at this time that he joined the conspiracy.

The witness further testified and a portion of his testimony is quoted.

> "Then I asked the question, who will be the President after assassination? My reason for asking this question is that men you see in uniform have various assignments. Col. Saydee is the Adjutant General, in keeping with his assignment he only sends out orders and we execute the orders in the field. Col. Kpadeh is an infantryman like myself who has a battalion; so as not to bring conflict between any of them, I asked the question, who will be President? Just within that time Prince Browne sent for Col. Victor Stewart, and at the same time Mr. Edwin Harmon drove in the yard and the conversation changed before he entered. So it was postponed until we met on various dates. In the course of that time there was no time for us to meet because Minister Browne was due to go away. From then one or two persons met, discussed on the same issue, waiting for his return. And while he was away, I met Col. Victor Stewart at B.T.C., who asked me to buy him a drink, which I did. There the same issue came about. At the same time the President was going to the Masonic Temple, where we decided again to go and seize him there. While discussing, Lt. David Q. Nymech said that we should move to his house instead of B.T.C. When we got there he gave Col. Stewart $10.00 to buy liquor for us. At the same time Col. Stewart asked me since Prince is out of the country who will be? And I replied him, being that you are the senior man you could be, at the same time get in contact with him. He said, I

think you are about right but I trust two officers, I would like to know their whereabouts. Then I said, except you check. Right there he ordered Lt. Peter Solo to come in town and check for Maj. Pearson and Capt. Dugler. When the jeep returned they were only able to find Capt. Dugler and Lt. Henry Dugler, they came with the jeep. Upon their arrival Col. Stewart called Capt. Dugler on the floor; when I wanted to join them he told me to fall out. In fact I jumped in his jeep and came to change my clothes into uniform, Lt. Charles Jones and myself. We came with the jeep, changed our clothes, reported to him. He said, O.K., I am going in town and I will send the jeep back. Immediately after he left, Lt. Jones, Lt. Solo and myself took a cab and came in town. The mere reason why we left, the man who wanted to be the leader said that he only trusted two officers, even though he had been working with every one of us. He knew what every one could do. The next morning he met me at B.T.C. He said, Major you saw my jeep last night? I said, no, as soon as you left I left myself. He said, O.K., if you see Capt. Dugler he should turn my jeep over to my driver, Willie Varfley."

Just at this point, we would like to remark in passing that in spite of this damaging and incriminating testimony against Col. Victor Stewart, an officer in uniform and still in service, it was never denied during the trial, even though Col. Stewart later testified as a rebuting witness. But let us continue with Maj. Freeman's testimony.

This witness testified that in the night of January 17, 1973, at about eight o'clock, Col. Saydee came to see him in his room where he was playing cards with some officers. In their private talk, the Colonel is alleged to have told him that this was their chance, and that he had sent orders out to the brigade to detail one full rifle pla-

toon to serve as guard security. The witness related that after this talk with Col. Saydee, he went to Assistant Minister Browne's home where he informed the Minister of what had been said and the Minister agreed with the suggestion. Minister Browne is then alleged to have told him to "go and call Col. Saydee." The Minister is also alleged to have said to Freeman: "I think this will be a better chance, because as was decided before to seize everybody at the E. J. Roye Building will bring a whole lot of trouble." Freeman then went to Col. Saydee's house but he was not at home, for he was waiting for him at the Ministry of Defense. The next morning, Thursday, Freeman testified, he went back to Schiefflin military base. Friday he stopped at Minister Browne's home and the Minister referred to a conversation he had had with Col. John Howard, who said he was interested in the plot. The Minister then said that he had told Col. Howard to meet him at his house.

Earlier the same Friday, Freeman testified, he had informed Col. John Howard of the plan to overthrow the Government, and pursuaded Col. Howard to join the plot. He said Col. Howard wanted to meet the leader behind the plan. When Freeman told Howard that a Minister was behind the plan, Howard wanted to know who the Minister was. When told the Minister was Prince N. A. Browne, Howard is alleged to have replied: "That will be a nice idea, I want to meet him myself." Thus it was agreed that he should go to Minister Browne's house the next day. Maj. Freeman then informed Minister Browne of his talk with Col. Howard, and of Howard's interest in the plot and his desire to meet the Minister the next day. To this, Freeman said, the Minister agreed. However, the next day they did not meet, and so it was not until early Sunday morning that Freeman and Howard went to Minister Browne's home for discussion of the plans. But before they could begin their talk, Albert Juste showed up and the discussion had to be put

off. After thirty minutes of waiting they decided to leave, and Freeman, Howard, and the Minister walked to the vehicle which had brought them, when they briefly discussed their mission to the Minister's home. Col. Howard then promised to come back in the afternoon.

In the afternoon Freeman and Col. Saydee went back to the Minister's home, where they saw Col. Howard's pickup parked in front of the house, but the Minister's car was not there. The guard informed them that the Minister had just left. Freeman and Saydee returned to town and were stopped on the Capitol bypass by a C.I.D. officer by the name of Jackson Gorman, who spoke to Col. Saydee about some conversation they had had. The colonel told him that they were then seeing about it. Before he could say any more Freeman interrupted and wanted to know what he had told Gorman, and Saydee's reply was "he (Gorman) is our country boy." Freeman alleged he then protested against his even telling his wife about the plans. It can be seen that by now the C.I.D. had information about the plans and Freeman's warning to Saydee had apparently come too late.

They later met Col. Howard and drove with him to his house. The guard brought three chairs, they sat down, and Col. Howard told him that Minister Browne had just given him the whole plan. Still being dissatisfied as to who should lead after the assassination, Freeman said Col. Howard told them that Browne had decided to call in Mr. Grigsby, and he again protested against it, but gave in when his seniors insisted. Arrangements were made to block the two roads leading into Robertsfield, where they had planned the assassination should take place on Monday, January 22, 1973, when the President and officials of Government would be there inspecting the British Concorde plane.

About this time Maj. Freeman began to have misgivings, so while riding with Sgt. Gbili, Freeman said he told Gbili that plans were complete for overthrowing the

Government by assassinating the President and his brother Frank E. Tolbert, and seizing the other brother, Stephen A. Tolbert, to have him brought to trial to account for money he had collected, because the citizens are dying. He said he told the soldier that he wanted his advice because he knew him to be brave. Freeman said the soldier then told him that he should not follow the others. Freeman testified that the sergeant also told him that the soldiers were not trained to do this, and that if Freeman persisted in this plot, he would get into trouble. Freeman testified that about this time Col. Howard had reported the plans to the Government. On the same Monday, January 22, 1973, when the plot was to have been executed at Robertsfield, Maj. Freeman was arrested and detained.

Freeman testified that he remained in jail from that time until March 13, and heard nothing from his friends, so when he was questioned during an investigation he told the whole story. After he had told his story, a message was sent to him by Sgt. Nonyee to the effect that if he should be asked about the plot, he should not confess anything, nor disclose the names of anybody. Freeman claims he sent them word that it was too late, he had already told everything. This in effect was Maj. Freeman's testimony.

During argument before us, it was contended by appellants' counsel that because Jimmy Freeman was a self-confessed accomplice in the alleged criminal conspiracy, his testimony should be taken with great caution. In *Horace* v. *Republic,* 16 LLR 341 (1958) the Supreme Court said that the unsupported testimony of an alleged accomplice is not sufficient for corroboration of the testimony of another alleged accomplice to the same crime. At page 381, the Supreme Court quoted part of the lower court's charge to the jury.

> "These two witnesses who were once defendants are self-confessed members of the plot to overthrow the

Government. Their testimony must be taken cautiously and might not be of as high of grade as those of the witnesses for the state—since they are confessed criminals and accomplices. But their said testimony has been corroborated by other witnesses or has itself corroborated the testimony of other witnesses."

We find the same situation in respect to Jimmy Freeman's testimony in this case. He confessed in this testimony that he was one of the original plotters and, indeed, one of the prime movers in the plot. Although his testimony is of admitted low grade, yet it is evidence acceptable in the determination of the case. But even more than this, his testimony was corroborated in many respects by other witnesses as we shall see, exactly as in the case just referred to.

A co-conspirator is an accomplice and, although uncorroborated, is always a competent witness. Other authority supports the position taken.

> "Admissibility of accomplice testimony. a. For the State. Subject to the qualification hereinafter enumerated, the general rule is that an accomplice is competent to testify as a witness for the prosecution.
>
> "Promise of immunity. The fact that an accomplice accepts a lighter sentence for his testimony or has been promised mitigation of punishment or a full pardon does not affect his competency as a witness, although such facts may be considered by the jury in determining his credibility.
>
> "The reception of an accomplice as a witness for the prosecution under promise of immunity is not in the discretion of the public prosecutor, but is to be determined by the court in its discretion." 12 CYC. 449, 450.

In the circumstances, we hold that Jimmy Freeman's testimony in this case has to be accepted as competent evidence, and must have been given by the jury the credibility it deserves.

The State's second witness was Col. John Howard, also a National Guard Officer. Col. Howard admitted that there was a plan to overthrow the Government by force, and he also admitted having taken part in the plans to overthrow the Government. He stated that his participation was for the purpose of finding out who were involved in the plot, and to ascertain the full details of the plans. He testified that certain Government officials, including the Minister of Defense, knew of the role he was playing; that he received instructions from the said Minister, and that he reported to the Minister on whatever transpired.

Col. Howard testified that on January 19, 1973, Maj. Jimmy Freeman went to his home and asked to see him. At this meeting he was informed by the major that there was an underground movement in the army to overthrow the Government of Liberia in the process of which the President, the President pro tempore of the Senate, and other Government officials would be assassinated. Col. Howard testified also that Maj. Freeman told him that a Minister was behind the plan. He said that he informed the major that he was behind the plan one hundred per cent, and he asked the major to come to his office the next day, Saturday, January 20, 1973.

That night Col. Howard told his wife what had happened between him and Maj. Freeman. He testified that his wife advised him to report the plot to the authorities the next day. Hence, Saturday morning, January 20, 1973, he reported to the Minister of Defense, who instructed him to go along with the plan, find out all he could about it and who was behind it, and report to him. The meeting scheduled between Freeman and himself did not take place, because the major did not appear as agreed.

However, he and the major met that evening, at which time Maj. Freeman informed him that Prince Browne was the Minister behind the plot. He and Freeman then

decided to go to Prince Browne's house the next day, Sunday, January 21, 1973. They met at Browne's house as planned, but they did not have time to discuss the plans because Mr. Albert Juste came in and they joined in the general conversation. After a while he and Freeman decided to leave, and Prince Browne escorted them to the vehicle, at which time, Howard testified, Prince Browne said to him: "Well, John, I think Maj. Freeman has given you the whole rundown of our operation." Before leaving Browne, he promised to return in the afternoon for further discussion of the plan.

Howard testified that he returned that Sunday afternoon and he and Minister Browne drove in the Minister's car as far as E.L.W.A. on the Robertsfield Road. During the drive, according to Howard, Browne said to him: "Now, John, our plan is to assassinate the President, Frank Tolbert and Stephen Tolbert." Howard claims to have replied: "That is very good, I agree with you because everything is sky-high." Browne is alleged to have continued: "The Army has been neglected for a long time, this is the only chance we got to take over the Government, so you boys in the Army can live." Howard replied: "I agree with you." Browne then explained, according to Howard's testimony, that when they had succeeded in overthrowing the Government, they would call Harrison Grigsby and turn it over to him, and ask him to form his own Government; but that "we, the top Guards in the Army, will dictate to Grigsby what positions we want." Browne is also alleged to have said he would be the Minister of Defense, and he assured Howard of better salaries and better living conditions for the Army.

The Minister then instructed Howard to contact Col. Victor Stewart, the commander in charge of all arms and ammunition at the A.F.L. Depot at Camp Schiefflin, to also take over the arsenal along with Capt. Douglas of

the L.N.G. Brigade. Col. Howard testified that he proceeded to Col. Victor Stewart's home and informed him of what Minister Browne had said but that Col. Stewart denied being involved in any plan to overthrow the Government.

Howard testified that after leaving Minister Browne, he met Col. Saydee and Maj. Freeman, and he invited them to his house where they had a further discussion on the plan. At this meeting, according to Howard, Maj. Freeman asked who was going to be the President, and Howard informed him that Minister Browne had said Senator Harrison Grigsby. Maj. Freeman objected, saying, why take the Government from one civilian only to turn it over to another civilian? However, Freeman was persuaded to give in. Maj. Freeman then asked that certain persons, including Lt. Charles Julu and Lt. Matthew Gaye be transferred to join him for the operation.

At this point, according to Howard, he reported to Gen. Kesselly and Gen. Johnson, the Army Chief of Staff. Later on in the day, he said, he proceeded to Camp Schiefflin to see Maj. Freeman. They met and discussed the plan, with Lt. Albert Wallace present, for the blocking of the Robertsfield Highway and the Du River bridge leading to Firestone and other communities. Maj. Freeman then explained that when the President and his guests entered the Terminal at Roberts International Airport, Freeman or Lt. Wallace would kill the President, and put the Commanding General and the Army Chief of Staff under arrest. Howard testified that he then went back to Minister Browne's home where they had further discussions, after which he reported to Defense Minister Allen H. Williams and Director General of Security Services Nathaniel Baker.

The following day, Monday, Lt. Charles Julu went to Col. Howard's office with a note from Col. William Saydee, according to Howard's testimony, saying,

"Howard: I am herewith sending you Lt. Charles Julu to join Maj. Freeman at Camp Schiefflin in keeping with our understanding yesterday."

Howard testified that he gave Lt. Julu money to pay his way back to Schiefflin. All of this, he said, was revealed to the authorities, and led to the arrest of Maj. Freeman and the defendants.

There are many points in the testimony of this witness which corroborate the testimony of Maj. Freeman, the revealment of the plot to him by Jimmy Freeman; meeting Prince Browne on Sunday, January 21, 1973, and the interruption of the meeting by Albert Juste; the meeting between Howard, Maj. Freeman and Col. Saydee at Howard's home; Freeman's objection to Senator Grigsby as a suitable person to take over the Executive branch after the assassination; the meeting of Howard, Freeman, and Lt. Albert Wallace. These and many other points corroborate the testimony of Freeman. Freeman testified that Sunday afternoon, January 21, 1973, when he went back to Browne's house where he and Howard were scheduled to meet, he saw Howard's pick-up was in front of the house, but Browne's car was not there, and he was told by the guard that the Minister was out. Howard has testified that he and Minister Browne had at that time been driving in the latter's car, as far as E.L.W.A. on the Robertsfield Road. This is a very important point, as will be seen later in the testimony of the driver who drove Col. Howard to Minister Browne's home that Sunday afternoon.

The testimony of this witness has been challenged by the appellants on the ground that he is a confessed co-conspirator with Maj. Freeman, who is also a self-confessed accomplice. They say that Col. Howard baited Maj. Freeman with deceitful design, and by Machiavellian methods led the Major to believe that he was sincere in his pretended participation in the plot. They claim that this sly behavior of Col. Howard made

him an informer, and an undercover agent of the Minister of Defense, whose report to the Minister instigated the case against them. They argued that in addition to this, Col. Howard has been known as a notorious schemer, who has in the past falsely involved other officers in criminal prosecutions. Therefore, his testimony should be taken with caution, and should not be allowed to corroborate the testimony of other witnesses.

Legal writers agree that detectives and paid informers may participate in a crime for the purpose of uncovering crimes and criminals, for by so doing they protect society. The testimony of such witnesses has been admitted as competent evidence in the trial of criminal cases.

> "Since criminal intent is essential to render one an accomplice, it follows that a feigned accomplice is not within the rule that the uncorroborated testimony of any accomplice will not support a conviction. Thus, a detective who, for the purpose of discovering crime, ostensibly aids in its commission or in a conspiracy to commit it, or a "spotter" or paid informer, or the purchaser of liquor unlawfully sold for the purpose of detecting the seller, or one buying a lottery ticket for the purpose of detecting and punishing the vendor where the sale is prohibited, or one who, not knowing of a larceny until after it has been committed, purchases the stolen goods under the direction of an officer with money furnished by the latter, with a view to detect the thief is not an accomplice whose testimony must be corroborated. Of course, evidence coming from such contaminated sources should be closely scrutinized by the jury; but if they are satisfied of its truth, they may base a conviction upon it.
>
> "One who as a detective associates with criminals solely for the purpose of discovering and making known their crimes, and who acts throughout with this purpose and without any criminal intent, is not an accomplice, and it is immaterial that he encouraged

or aids in the commission of the crime." 12 CYC. 447.

"Feigned accomplices, such as those who become parties in accordance with a scheme to detect crime, require no corroboration. Since the rule requiring corroboration goes to the effect of the witness's testimony and not to its admissibility, the fact of the commission of the crime may be established by testimony of an accomplice." 1 UNDERHILL, *Criminal Evidence* (5th ed.), § 182.

In the circumstance, not only do we find Col. Howard's testimony to be competent evidence, but also evidence acceptable to corroborate the testimony of Maj. Freeman.

The State's third witness was Mr. Edwin Harmon, who testified to having gone to Assistant Minister Prince N. A. Browne's home on a certain day, and to meeting defendants Saydee and Kpadeh. This was all of his testimony.

The next witness for the prosecution was Pvt. Massaquoi, a driver in the Army. He responded to a question put to him.

"One Sunday Maj. Freeman and Col. Howard came to B.T.C.; they asked for me and I came. Col. Howard asked me to carry him somewhere, so when we got to the gate I asked him how far we were going. He told me we were going to the old road; he told me that we were going to Minister Browne's house. When we reached there he said that this was the place. I stopped the car and they got down. So I went and turned the car around and I came and parked it. When they came back to the car they said, 'Massaquoi, let's go.' We got to Col. Howard's house; he told me to go and park the car. I told him that I would take the car to B.T.C., so I parked it before the Brigade Office. I washed my clothes; in the afternoon I was informed that Col. Howard was looking for me and that I should report to the office. He told me that we were going to the same place that we had

been in the morning, so when we got there (Browne's) he got down, and Secretary (Browne) got in his car, so I went and turned the car around and parked in the camp. On our way we met Col. Saydee in his car, so I stopped the car. Col. Saydee's car was parked behind my car. Howard came down from my car and he went to Col. Saydee's car; when he came back he said, 'Massaquoi, let us go.' Col. Howard said, 'Carry me to my house.' I carried Col. Howard to his house; he said, 'Massaquoi you can go now and see about your clothes.' "

According to this testimony, Massaquoi did not get to see who else besides Saydee was in Saydee's car, because he does not seem to have left his vehicle, and Saydee's car was parked behind his. But both Freeman and Howard testified to the same incident, when Maj. Freeman was said to be riding with Saydee in the latter's car and the two cars were driven to Howard's house. This testimony is important because, besides corroborating Freeman and Howard with respect to Howard having been stopped by Saydee, and later driving to Howard's house, it also corroborates Col. Howard's testimony concerning having gone back to Minister Browne's house for a second time that Sunday afternoon. This was denied in Browne's testimony, but we shall come to this later.

The next witness for the State was Amos P. Nyones. He testified to the effect that after Maj. Freeman's detention, Col. Saydee asked him to go to Freeman's detention cell and warn him not to reveal anything he knew. And that should he be interrogated he was to ask who had complained against him. If Col. Howard was named as the complainant, he was to demand that Howard prove his allegation. Saydee is supposed to have sent this witness to Freeman's cell twice with this message. It should be remembered that Freeman had testified to a similar incident, when he sent back word that their warning had come too late, since he had already revealed everything.

The State's sixth witness was Joseph Coker. He testified that he was at Col. Howard's house when Howard, Saydee, and Freeman arrived that Sunday afternoon referred to before, and that he was ordered by Howard to bring chairs. He brought three chairs for them and he then left. This witness's testimony confirms testimony of both Howard and Freeman with reference to the meeting at Howard's house that Sunday afternoon held by Freeman, Saydee, and Howard. Both of them had testified to this man's being there when they arrived and bringing chairs for them.

The State's seventh witness was Johnson T. Gbarma. He testified that on the night of January 18, 1973, he and Col. Saydee were drinking beer together in a small bar owned by Esther Saye, located on the Police Headquarters Road, at around 11:00 or 11:30. He testified that Saydee mentioned that he had been informed by a reliable source that a number of Army personnel would be retrenched, and in the long run this would result in something big. While driving home that night, he asked Col. Saydee what he had meant by that remark. The colonel said that he was feeling the drinks but that he would stop at Gbarma's house sometime to let him know. Gbarma says he replied that it was impossible for the colonel to stop by his house since the colonel did not know where he lived.

Gbarma testified that Saturday morning, January 20, 1973, on his way to Waterfront, he saw Col. Saydee and gave him a lift, pointing out the house where he lived, but the colonel did not get out. On Sunday, January 21, he again saw Col. Saydee, driving with a man who was later identified as Maj. Freeman. He stopped them and asked Saydee why he had not stopped at his house to tell him the rest of the story. Maj. Freeman immediately wanted to know what Saydee had told him, because Freeman knew him to be a detective. Saydee replied that this man was his tribal man. Freeman replied that, re-

gardless, Freeman did not want Gbarma to be brought into their confidence. It should be recalled that Freeman had testified to the same thing, and said that on that occasion he had told Saydee not to reveal the matter to his wife, let alone his tribal man.

The eighth witness for the prosecution was Sgt. Flomo Gbili. He testified that the first time he met Prince Browne was in court. He recalled that when President Tubman died he saw Col. Saydee, Col. Kpadeh, and Maj. Freeman together. The three of them were driving in a car, and he had asked for a ride. On January 21, 1973, after returning from taking down the flag, he testified that they were told a platoon would go to Robertsfield the next morning. Maj. Freeman told the soldiers that he wanted only strong men, because when he told them to move, he wanted them to move. He said they would leave in the morning at three o'clock. He then dismissed the men. Gbili testified that he was then asked to join Freeman in his jeep, and that the major drove. On their way Freeman said to him, "Sergeant, I want to tell you something, but I know you are brave to answer me good. . . . Tomorrow the President is going to Robertsfield. . . . His two brothers will be there with him . . . and plenty of our big, big people who are working here will be there because the President will be there." Freeman is supposed to have also told Sgt. Gbili that after the President had inspected the plane, he and his brothers and all the big people were to go to the hotel. Freeman said that then they would divide the soldiers into two groups, and rush the hotel and open fire and kill anybody there.

Gbili testified that he then told Maj. Freeman that he could not do it. He said he asked Major Freeman what they had done that he wanted to kill them; the major is alleged to have replied: "The citizens of the Country are suffering, they are not satisfied." Gbili testified that he asked Freeman: "You are a Major in the Army, and you are not satisfied?"

Gbili then advised Maj. Freeman: "As your sergeant, if you put your hand in this thing you will get into trouble, so I advise you, if you have your hand inside this thing take it out." The latter portion of this testimony, with reference to the sergeant advising Maj. Freeman to take his hand out or he would get in trouble, corroborates Freeman's testimony.

The State's next witness was Lt. Albert Wallace. His first reaction to questions was that he did not know anything. Apparently he must have changed his stance since he had been interviewed by the prosecution, for they requested and were granted permission to treat him as a hostile witness.

"Q. Albert, what time of the day on the 21st of January, 1973, did Col. Barclay detail you to carry the contingent to Robertsfield?

"A. Around about 7:00 Sunday morning.

"Q. When was the next time you saw Col. Barclay after he had detailed you on this special assignment?

"A. I saw him that Sunday afternoon.

"Q. Do you recall seeing Maj. Freeman at Camp Schiefflin that afternoon while you were playing cards in the home of Capt. Massaquoi?

"A. That afternoon I saw Maj. Freeman and Col. Howard at Capt. Massaquoi's place.

"Q. And do you recall Maj. Freeman inviting you to his quarters after you were finished playing cards, and if so, please say whether or not you responded to his call?

"A. When they called me, he and Col. Howard were going to his quarters and I went there.

"Q. Did Maj. Freeman tell you what he called you for?

"A. No, Maj. Freeman did not tell me what he called me for.

"Q. Did you lead the detail to Robertsfield round

about midnight, January 21, 1973, to guard the Concorde plane in keeping with your assignment given you by Col. Barclay?

"A. Yes.

"Q. While in the quarters of Maj. Freeman, did he discuss with you anything that he wanted you to do in connection with a plot to overthrow the Government and assassinate the President.

"A. No, he did not tell me.

"Q. Did he, while you were in his quarters, say anything to you about their plan to overthrow the Government by force and to assassinate the President of Liberia?

"A. Yes, he said something about it.

"Q. What did he say?

"A. He, Maj. Freeman, told Col. Howard in my presence that he, Maj. Freeman, and a group had planned to shoot the President. While he was saying this to Col. Howard I became afraid and bent my head down. He named a place where the President was to give a speech, so when he got through saying this to Col. Howard, he, Maj. Freeman, asked me: Why are you so quiet, and you cannot talk? Then I said, you are talking about shooting the President, is that what I must put my mouth in? I said, nobody brave to put his mouth in such a talk. Then Col. Howard asked me, he said: What do you mean by that? Then I told him that I am too small; then, too, I am a raw country boy. So I told him that my hands are not there. He did not ask me any more questions again, then I went outside."

The State rested its case with this witness, and as can be seen this testimony corroborated both Maj. Freeman and Col. Howard on this issue.

After the State had rested its case, the burden of dis-

proving that the defendants assembled with criminal intent, or that the meeting of the accused was for some purpose other than to commit the crime charged, was upon the defendants at the trial. Because conspiracy to overthrow constituted authority, or for that matter to commit any other crime, will not be plotted without the strictest secrecy and with proper care against discovery, the law allows that conviction might be obtained by circumstantial evidence if that evidence excludes every other reasonable hypothesis than that of the defendants' guilt.

> "Although the prosecution may not be able to prove conspiracy by direct evidence, such as an express agreement, it has the burden of establishing positive facts from which the crime may be inferred. Mere suspicions, speculation, relationship, or association and companionship do not establish a conspiracy. But association for an illegal purpose may establish a conspiracy. The evidence must show that the accused participated in the conspiracy with knowledge of the illegal agreement or common design. Once a conspiracy is established, . . . evidence of one's participation therein is all that is required to connect him with the conspiracy.
>
> "The proof must establish the conspiracy beyond a reasonable doubt, and if the evidence is circumstantial it must exclude every other reasonable hypothesis than that of guilt. Since intent is an element of the crime, a conspirator must have had knowledge of the unlawfulness of the agreed act or object. But the intent need not be shown to be fraudulent or evil, and where a prima facie case of conspiracy has been established the accused has the burden of rebutting a presumption of knowledge of the law. Similarly, if a conspirator is once shown to have participated, he has the burden of proving his withdrawal from the enterprise." 3 UNDERHILL, *Criminal Evidence* (5th ed.), § 856.

We turn to the evidence of the defense, led by the de-

fendants testifying in their own behalf. The first to take the stand was Prince Browne. He testified that on March 25, 1973, he was summoned to a meeting at the office of the Director of National Security, and while at this meeting he was dismissed from office as Assistant Minister for Coast Guard Affairs, taken into custody, and detained. He testified that he was informed that a plot by Army officers and some civilians to kill the President and other officials and to overthrow the Government had been uncovered, and that his name was associated with the plot. He testified that the accusation against him was not true, and that at no time had he met with anyone for such a purpose. He claimed that he left Liberia for Geneva on November 4, 1972, and returned on November 22.

He testified that he recalled that on Saturday, November 25, 1972, he went to his office to do some work preparatory to leaving the country on December 3. He recalled having been accosted by some Army officers upon leaving, and one of them asked him, how was the Saturday? He said that he told them that he had no money on him, but that they should accompany him home for a drink. Deputy Minister of Defense Alfred Curtis came along at that time, and the group split into two, one going with Minister Curtis and the other with him.

Those accompanying him were Maj. Gray Allison, Maj. Jimmy Freeman, Col. Moses Kpadeh, and Maj. Dunn. They were later joined by Mr. Edwin Harmon, Col. Sharpe, Maj. Tunning, and Col. Victor Stewart. The latter, he testified, was his friend and neighbor. They remained at his house drinking and playing taped music until around 5:30 that afternoon. He stated positively that Col. Saydee was not there. According to him, after that weekend he did not see Maj. Freeman again until Sunday morning, January 21, 1973, when Maj. Freeman and Col. John Howard called at his home.

He testified that he had gone to America on December 2, 1972, and returned on January 12, 1973. On Sun-

day, January 21, 1973, according to his testimony, Col. Howard and Maj. Freeman visited him at his home, when Col. Howard told him that they had something to discuss with him. But before they could begin the discussion Mr. Albert Juste came in, and Howard and Freeman decided to leave and promised to come back later. According to Browne, however, neither of them returned that day. He admitted that he did escort them to their vehicle outside in the yard, but he denied that he had any discussion with them.

Browne testified that after his return from the United States January 12, 1973, he was sick at home and had to go to the hospital on January 22 for treatment. He said the hospital records would show this. He pointed out at length that both Freeman and Howard had misrepresented the facts in the stories they told; he called Col. Howard a notorious and pathological liar. He admitted that he did send Maj. Freeman $20.00 during the time of his detention, as Freeman had testified, but he said that he had done so out of sympathy for him as a fraternity brother.

Browne denied that he had attended any meetings between November 1972 and January 21, 1973, to discuss any plans for the overthrow of the Government. He said that he attended no meetings, either at the Ministry of Defense, Todee Military Academy, Camp Schiefflin, nor were any meetings held in his home. He stated that on January 9, 1973, he was in London, and the allegation in the indictment with reference to this date had to be untrue. It is unfortunate that no effort seems to have been made to prove that the defendant was out of the country on January 9, as alleged. Browne made a statement in concluding his testimony.

> "Everything that I am charged with in that indictment is false. If the Government had indeed and in fact uncovered a plot to overthrow this Government, they should have grabbed the right persons and not permit

them to run loose in town while they have us locked in stockade. If they need any help in that light I would suggest that they watch John Howard and Freeman very closely, because that story that John Howard told here, that he, as a full colonel in the Army, was approached on the 13th of December by a man who is known for approaching senior officers to overthrow this Government, as was clearly brought out here by the testimony of First Sergeant Gbili, this same man went to him and told him that there was an underground movement in the Army to overthrow this Government, and he did nothing about it, and told no one about it. Maybe the Government should look into that. Your Honor, that is all I have to say."

During Browne's cross-examination, certain questions were put to him.

"Q. You have flatly denied any knowledge of (or) association with any plan or plot to overthrow the Government of Liberia, and assassinate President William R. Tolbert; then will you kindly explain for the benefit of this court and jury what were you doing with the following arms and ammunition in your home: Thompson submachine gun, caliber .45, M1 bearing serial no. 133681, with 60 rounds of cartridges for that gun, and U.S. carbine, caliber .30, bearing serial no. 967767, with 50 rounds cartridges?

"A. As Assistant Minister of Defense, besides being entitled to arms and ammunition, I make periodic inspections throughout the country where we have lighthouses. I applied officially to the Ministry of Defense before one of my inspection trips early in 1972, and signed official receipts for the arms and ammunition just referred to. The carbine was issued to me upon instruction of the Chief of Staff by Col. Sloans who is in charge of the arsenal, and I signed the receipt

for it there. The Thompson submachine gun was issued to me from the Coast Guard Base and I also signed receipt for it.

"Q. Is it not a fact that you, Mr. Prince Browne, ordered the arms to be issued to you at the time when you claimed to have been acting Minister of Defense while Allen Williams was at his farm in Nimba County. You never made request to Allen Williams for such arms?

"A. I have never acted for the Minister of Defense, neither have I claimed to anyone at any time that I was acting for the Minister of Defense, I therefore challenge this prosecution to produce that person who said that I told them that I was acting, and hence requested the arms and ammunition.

"Q. To whom in the Ministry of Defense did you make the application for the arms?

"A. I discussed the matter with Minister Williams who referred me to the Chief of Staff as I have already placed on record, the Chief of Staff directed Col. Sloans to give me an M2 carbine, which I signed for. I have already stated that the Thompson submachine gun was signed for from the Coast Guard Base. This was done some time around March or April 1972. I see nowhere in the indictment where I was charged with having arms and ammunition in my possession for the purpose of carrying out the plot; furthermore, anyone who wants to carry out a plot, in my opinion, would be stupid to sign official receipts.

"Q. What use did you have for a submachine gun in the inspection of lighthouses?"

The last question was objected to by the defendants' lawyers, and the court sustained the objection.

The next defendant to testify was William Saydee.

He denied that he had ever been at any meeting conspiring with Prince Browne, Moses Kpadeh, or any person, to overthrow the constituted Government of Liberia. He then proceeded to tell he well knew Col. Howard to be involved in the cases of other National Guard officers who were dismissed from the Army. He mentioned the case of Col. D. Y. Thompson and Col. Albert T. White. After discussing a few more cases of Army officers he claimed were implicated by Col. Howard, he proceeded to expose what he claimed he knew of the past record of Maj. Freeman. Since these matters do not seem relevant to this case, we will omit the details.

He said that he was sent for to testify at an investigation, conducted in Director Baker's office. He was told that it had been discovered that certain persons, including Army officers, were involved in a plot to overthrow the Government, and that his name was associated with the plot. He told them that he was not a part of any plot, and that he had not been approached by anyone to take part in any plot. He denied the stories told by Maj. Freeman and Col. Howard, in which his name had been used.

Col. Saydee admitted that as Adjutant General it was his duty to publish all orders from Army Headquarters, including those which detailed the special platoon to Roberts International Airport on January 21, yet he could not recall having seen this order. Col. Saydee also testified that he only got to know about the arrival of the Concorde plane through the newspapers and radio broadcasts, even though a platoon from Army Headquarters had been detailed to protect the plane at Robertsfield. Asked on cross-examination if he himself had gone to Robertsfield on the occasion of the Concorde's arrival, he denied having gone there. When questioned concerning officers he met and drank with at Camp Schiefflin on his return from Robertsfield, he claimed that he had forgotten about the occasion, but admitted that he did meet them at Schiefflin,

but denied that he had then gone any further than the Military Base at Schiefflin.

Col. Saydee was asked to name the Commanding Officer of the Todee and Schiefflin Military Bases. He said that he did not know their names, since he had been detained for two months. He was then asked to say who had commanded these battalions just before his arrest and detention. His answer was: "I told you that as Adjutant General . . . I had no direct dealing with subordinate units as battalions and not even regiments." He was then asked: "Is it because your co-conspirator, Lt. Col. Kpadeh, commanded the Second Battalion, is why you refuse to disclose it, because you are aware that a striking battalion would be used to overthrow the Government?" Objection. Still further pressed on this point, Col. Saydee answered: "If you want to know whether Col. Kpadeh commanded the battalion at any time, you are fortunate that you have him as a defendant." One would think that the Adjutant General would know who commanded what company or battalion in such a small area as the Monrovia, Schiefflin, Todee Area.

Before we leave this witness, we would like to refer to a certain matter brought to the court's attention by counsel for the defendants at this point. They informed the Court that two of their witnesses, two Army officers, Julu and Gaye, who had been served with subpoenas to testify for the defense, had been detained and were being held in custody. They feared that their witnesses were being intimidated by the detention. It appears by the record that prior to service of process on these two officers, they had been detained in barracks. Hence, subpoenas were served upon them in detention. The judge ruled that the defendants would not be prejudiced thereby.

> "The Court: The two referred to above, unlike the other witnesses, were subpoenaed for the defendants in confinement, to come before the court and testify in the instant case. Accordingly, the court granted the

application and had the two persons taken from custody for the purpose of being qualified to testify in said matter. The two witnesses appeared in court, were qualified, and sequestered. Now that they have not yet testified, and having been qualified to testify in this court, defense is seeking protection over their persons, saying that they will be intimidated and influenced. The court does not see its way clear to order the release of these witnesses from custody; for, if their detention is illegal there is a remedy of the court, which would receive . . . judicial attention and provide the desired cure. Moreover, the court wishes to assure both the prosecution and the defense that its fullest protection will be given to each and every witness without prejudice to either side."

We are in complete agreement with the lower court's position, and we state as our opinion that this decision could not have prejudiced either side.

Moses Kpadeh was the next defendant to testify in his own behalf. He testified that on March 26, 1973, he was called to the office of the Director of National Security, who there informed him that a plot to assassinate the President and other officials, and to overthrow the Government, had been uncovered, and charged that he had attended meetings at various places where this plot had been planned. He denied knowing anything about the plot, and he also denied that he had ever attended any meetings for this purpose with Prince Browne, William Saydee, or anybody else, and he challenged anyone to prove that he had attended any such meetings. That was the extent of the relevant portion of his testimony.

The next witness who testified was Mrs. Marie Browne, wife of Prince Browne. She testified that she knew nothing about any meetings. She remembered the gathering of Army officers on November 25 at her home when her husband entertained them. She also recalled that on January 21, 1973, Col. John Howard and Maj. Jimmy Free-

man came to see her husband, and that she left them together; later Mr. Albert Juste came in and they all left about 30 minutes thereafter. She was positive on cross-examination that she did not know of any meetings between her husband, William Saydee, Moses Kpadeh, or any other persons at any place or at any time.

The next defense witness was Director Nathaniel Baker, of the National Security Service. He testified that during the investigation held in his office before the arrest of the defendants no records had been kept of the summary questioning.

James Tunning testified next for the defense. He was asked to produce documents in connection with Maj. Freeman's alleged implication in some plot uncovered in 1971, immediately after President Tubman's death. The next witness was Col. Samuel Herron, and he also testified concerning Maj. Jimmy Freeman's activities in 1971. We do not consider their testimony relevant to the case and, therefore, pass over them.

Allen Williams, Minister of Defense, was the next witness to testify for the defendants. He said that he did not know of the meetings held at his Ministry, Todee, or Schiefflin Bases. He recalled that in the morning of January 20, 1973, Col. John Howard had called to see him, and informed him that the evening before Maj. Jimmy Freeman had told him privately that certain Army officers, including Freeman himself, and a certain Minister, planned to overthrow the Government of Liberia; that Freeman had been sent to ask Howard to join them. Howard told Minister Williams that the matter had rested heavily on his mind throughout the night, and that in the morning he had told his wife about it, and she had suggested that he report it.

Minister Williams testified that he then instructed Col. Howard to return to his office to await the arrival of Maj. Freeman, and that Howard was to indicate to Freeman his willingness to join the plot. Thereafter, he was to

report back to Minister Williams. The Minister testified that he immediately informed Nathaniel Baker, the Director of National Security, of what Howard had told him. The next day, January 21, 1973, Howard got in touch with the Minister and Director Baker and told them that Assistant Minister Prince Browne was the Minister heading the plot, and that Howard and Freeman were due to meet Browne that day. By this time Howard had already informed Freeman of his willingness to go along with the plot. The Minister stated that since the plot was to be executed on Monday, January 22, 1973, at Robertsfield, and since he was not certain of the amount of control over or involvement of Major Freeman, he directed the Chief of Staff to have Freeman placed under protective custody, and this was done.

It should be observed at this point that the story of the Minister of Defense, who was called by and testified for the defendants, completely corroborates the testimony of Col. John Howard on this particular point. The Minister's answer to a question put to this witness on cross-examination, with reference to the statement made by Prince Browne to the effect that as Assistant Minister of Defense he had requested, and Minister Allen Williams had ordered, arms and ammunition issued to him.

> "This is not correct, I did not order the issuance of the submachine gun (nor) the carbine referred to by Minister Browne. When information reached me that a machine gun had been found in Mr. Browne's home, I immediately called the Chief of Staff and inquired of him how did Mr. Browne come in possession of the machine gun referred to. He told me he had no knowledge. I then instructed him to institute an investigation and submit his report. The next day he brought into my office Col. Sloans, who is the Commander of the Arsenal. Col. Sloans informed us that at one time when inventory was being taken of the stock in the arsenal . . . Col. Stewart took away the

machine gun and gave it to Minister Browne. There was no receipt on file at the arsenal. Only a notation indicating that Col. Stewart had taken away the rifle with ammunition. On the return of Col. Stewart from the United States, he was called into my office and questioned about the arms and ammunition that were found in Minister Browne's home, and that I had been informed that he gave Mr. Browne the arms and ammunition. Col. Stewart admitted and exhibited to me a receipt signed by Minister Browne to him for the rifle and ammunition. I asked him upon whose authority he did it; he told me that Minister Browne had asked him to let him have it and upon that he had accommodated him.

"I queried the irregularity, in that arms and ammunition are only procured from the Arsenal with the approval of the Minister of Defense or his Deputy in the absence of the Minister. Col. Stewart apologized and told me that it would not happen again. The same applies to the rifle which was taken from the Coast Guard Base."

One wonders the purpose for calling this witness for the defense. It would have seemed more appropriate if the prosecution had called him. This testimony of Prince N. A. Browne's own witness shows that Browne had fabricated the story he told, with respect to the Minister of Defense and the Chief of Staff having ordered the machine gun and ammunition to be issued to him. What could be his reason for manufacturing a story of this kind?

The Army Chief of Staff was also called by the defendants and he testified that he had no knowledge of any meetings of the defendants in the Ministry of Defense, Todee Military Camp, or Schiefflin Military Base.

Matthew Gaye was the next witness for the defense. He testified that he did not know anything about the defendants' conspiring to assassinate the President and over-

throw the Government of Liberia by force. He said he was instructed by his Commanding Officer to report to Director Baker's office on March 26, 1973. When he got to Baker's office he saw the Minister of Defense, the Minister of Justice, Director Baker, and the Chief of Staff. He was asked about his knowledge of the plot, and he said he knew nothing about it. On May 19, he was again arrested by Col. Howard, and told to report to the Minister of Justice, but instead he was taken to the home of Senator Lawrence A. Morgan. There he saw the persons he had met at Director Baker's office; the same questions were asked him and he gave the same answers, he knew nothing about any plot. He stated that references to him in Col. Howard's testimony were false and untrue. He said that on January 22, 1973, Col. Howard had asked him to say that Col. Saydee had detailed him to go to Robertsfield but that this was untrue.

The next defense witness was Lt. Charles D. Julu. He said that he knew nothing about any plot. He just knew that on January 22, Col. Howard called him and asked him to lie by saying that Col. Saydee had given him a certain letter to deliver to Howard. He said that he told Howard he did not want to be involved in the case. He testified that later Minister Simpson of the Ministry of Justice ordered Col. Howard to confine him, and he was detained in close confinement for twenty-one days. He also testified that during these twenty-one days in confinement, he was treated brutally by Col. Howard.

Col. Sharpe and Maj. Gray Allison were also called for the defense, but they claimed not to know anything about any plot. Neither of them testified to having been present at Prince Browne's house on November 25, 1972, for a drink, as Browne had testified. Questions put to these witnesses on this point were objected to, and the judge sustained the objections.

George Saydee, Col. Saydee's father, was called and he testified that he knew nothing about the matter, because

when he came from Grand Gedeh, his home, the three defendants had already been arrested and were in jail. He told a story, however, to the effect that Maj. Freeman admitted to him that he had lied about the defendants, and that he had been told to lie by Col. John Howard. He claimed that Freeman then gave him a dollar, but that he gave the dollar back to him. Quito Gbowea, Eric Boway, Peter George, John Gbowea, Peter D. Sanie, and Sergeant Jimmie Cooper were also called as witnesses for the defense. None of them knew anything about the plot, or gave any testimony which could support the stories told on either side. On the contrary, they all talked about a dollar Maj. Freeman is supposed to have given to Col. Saydee's father. Some of these witnesses testified that not only did Freeman give a dollar to Oldman Saydee, but on the same occasion gave twenty-five cents to two others. It is also significant that George Saydee and the six other witnesses named hereinabove who testified after him, and Major Freeman, are all of the Krahn Tribe from Grand Gedeh County. In fact, Oldman Saydee called them all his children. But we have not been able to see what effect Freeman's generosity in distributing money to his own tribesmen on that occasion could possibly have on the case. The issue of whether or not it was true that Maj. Freeman had told Oldman Saydee that Col. Howard made him lie was entirely for the jury to believe or disbelieve. They heard the testimony; they observed the witnesses on the stand; and they were the sole judges of the facts. With these witnesses the defense rested its case.

Col. Victor Stewart then took the stand as a rebutting witness for the State. He testified to having gone to Prince Browne's house on November 25, 1972, when other Army officers were having a good time. He also testified to having gone with Browne to the Mansion when President Tubman died in 1971; a fact which had no bearing on the case being tried. The State then rested its side of the case.

The foregoing constituted the evidence on both sides which went to the jury, and upon which they deliberated, thereafter returning a verdict against the accused.

The testimony in this case has established that there was a plot; that the accused, and Freeman, were involved in it; that Col. John Howard was invited by one of the plotters to join, and upon orders from the Minister of Defense he did join the plot. There is no doubt that had Freeman not been detained by the Minister of Defense on January 22, 1973, and had the President gone to Robertsfield as scheduled, the plot would have been effectuated. Besides the denials by the accused of any knowledge of the plot, or of having been involved in it, there is practically no relevant evidence on the defense side. Some of the witnesses called by the defendants in fact, especially Allen Williams, gave incriminating evidence against the defendants and in favor of the prosecution.

It is our considered opinion that the safety of the State was imperiled by this plot because the plot was a threat to the continued existance of orderly Government. Had the President been killed, the Executive branch of our Government would have been eliminated. How then would the constancy of the Chief Executive's duties have been preserved? Who would have received ambassadors and foreign representatives accredited to our Government? Who could have commissioned officials of the Government, take care that the laws passed by the Legislature were faithfully executed, enforced the judgments of the courts, and performed the many other constitutional duties imposed upon the presidential office, until the Vice President could take his oath of office? The fate of orderly Government hung in the balance until the plot was discovered and plans for its execution foiled.

And now we come to the objections to questions by both sides, and the court's ruling on these objections, to which exceptions were taken, which have been made the subject

of numerous counts in the bill of exceptions. There are more than a hundred exceptions by the appellants as can be seen by their brief. There are also thirty-three pages containing various grounds upon which the appellee disagreed with the judge's rulings. We have reviewed all of these objections, and we have studied the rulings of the judge which occasioned them. We do not think that the instances in which he made erroneous rulings justify reversal of the judgment in this case.

Just at this point, I would like to comment on the role of the military in our system of government. Although Prince Browne was at the time of his arrest serving as Assistant Minister of Defense for Coast Guard Affairs, a civilian position, it has been shown that he is also an active lieutenant colonel in the Militia. All three of the defendants in this case were Army officers, and as such owed loyalty to the President as Commander-in-Chief.

It was the wish of the founding fathers that the Government which they established in 1847 be always controlled by civil authority, and so they wrote into the Constitution: "the military power shall always be held in exact subordination to the civil authority, and be governed by it." Art. I, Section 12th. The reason therefor is also stated in the section of the Constitution cited. "In time of peace, armies are dangerous to liberty. . . ."

We do not know of any previous case brought before our courts in which Army officers have been charged with the attempted overthrow of constituted authority. Thus, for 126 years the wishes of the drafters of the Constitution have been scrupulously respected by the Army. Our greatest accomplishment as an independent State in Africa, and, incidentally, the basis for the respect in which the world holds us, is the fact that for over one hundred years we have been able to uninterruptedly maintain orderly government. It is, therefore, unfortunate that this charge should have had to be made against these three

officers, for no matter how this case is decided, the fact still remains that the pages of our judicial history have now been blurred by this reported attempt.

The powers that be are ordained of God. Romans 13:1. And as Liberians we have been taught that those in authority should govern us, because there is no power except it be given of God. This has preserved the autonomy of our Country for 126 years, a period of time in which we have enjoyed peace and tranquillity within our borders, something many countries did not enjoy during that time and are not enjoying today. Irrespective of who heads the Government, it is the Army officer's first duty to be loyal to him and to the Government of the Country of which he is a citizen. It is his duty to protect that Government in office against external attacks upon it, as well as internal plots against it. As evidence of this duty, he takes a solemn oath to defend, with his life if necessary, the Commander-in-Chief, who is head of the State. He is sworn to also protect the Government of Liberia. That oath which we have set forth is a solemn commitment from which he may not be excused for any reasons whatsoever.

> "I do solemnly swear on my honor that I will be loyal to the President of Liberia and shall with my life uphold and defend the interest of the State in all circumstances when ordered to do so by the President of the Republic of Liberia directly or indirectly through my superior officers. I also swear to give unquestioned obedience to orders issued to me in the course of my duty, by the officer placed over me."

Our colleague, Mr. Justice Horace, has not agreed with our decision in this case, because he feels that the conspiracy, committed by the accused, conceding their guilt, did not amount to a capital crime and, therefore, the punishment should be imprisonment for a term of years. We hold that where a plot to take the life of the Chief of

State can be proved, within the definition of the statute under which the indictment was drawn and the accused were charged and tried, the crime is a capital offense. In the circumstances, it is our opinion the punishment imposed by the judge in the trial court is proper and it was within his discretion to have chosen either the death sentence or life imprisonment.

The power exercised by courts to determine matters to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court, has been defined in BOUVIER'S LAW DICTIONARY as discretion. It is our opinion that the appellate court should not interfere with a judgment of the circuit court in such cases where there does not appear to be any abuse of discretion, and where the trial is properly conducted, the verdict clear, and the sentence is within the limits of statutory provision.

> "Where sentence imposed is within discretion of trial court. While the appellate court will not, as a general rule, interfere with the discretion of the trial court in imposing a sentence within the statutory limits, where it is manifest from the evidence that the sentence imposed is excessive or visits too severe a punishment, the appellate court may, in the exercise of its statutory power to correct errors in the judgment appealed from, reduce or modify the sentence. Pursuant to this power, a death sentence rendered in a homicide case may be reduced to life imprisonment where special reasons exist for the exercise of such power. Many other particular illustrations of the exercise by the appellate court of its power to reduce a sentence which is disproportionate or excessive, considering the facts and cirumstances of the commission of the particular crime in question, are to be found in the reported cases. Some reviewing courts, however,

have held that they have no jurisdiction to correct a sentence on the ground of excessiveness if it is within the limits prescribed by law, and it is not the result of partiality, prejudice, oppression, or corrupt motive. And some courts take the position that where the trial court in the exercise of its discretion has passed a sentence not in excess of the maximum prescribed by law, a reduction therefor is not within the power of the appellate court." 3 AM. JUR., *Appeal and Error,* § 1182.

One of the constitutional safeguards guaranteed to persons criminally charged and convicted before our courts, is that excessive punishment shall not be inflicted upon them. Art. I, Section 10th. This provision of our Constitution differs from the American, which forbids "cruel and unusual punishments." U.S. Const., Amend. VIII. However, the question to be resolved herein is what is excessive punishment? It is our opinion that punishment over and above what the law prescribes is excessive; contrariwise, any punishment imposed not over and above what the law prescribes for a crime, is not excessive.

In the circumstances where there is no reversible error in the trial below and the verdict is clear, the judgment should be allowed to stand, thereby affording the President the opportunity to exercise his constitutional right of pardon, reprieve, or commutation of the sentence. It is our opinion that in such circumstances, where the trial is regular, the verdict clear, and the sentence imposed is within the statutory limits prescribed, the Court would be exercising Executive powers were it to reduce a sentence in a criminal case, in violation of Art. I, Section 14th, of the Constitution.

In view of what we have said of the facts which we have recited and analyzed, of the law which we have cited and from which we have quoted to support the position taken, and because we are of the opinion that the

trial was regular and the verdict was clear, the judgment of the trial court should not be disturbed. It is, therefore, affirmed.

Affirmed.

MR. JUSTICE HORACE dissenting.

There are quite a few irregularities shown in the record of the trial of this case in the court below that could form a basis of dissent, some of which have been referred to in the majority opinion rendered by our distinguished colleague, the Chief Justice. Since, however, we are all agreed that the evidence does tend to show that there was a conspiracy, or an agreement, or conniving among the appellants and others to do an unlawful act or several unlawful acts, we are confining ourselves in this dissent to our disagreement with our colleagues of the majority on the degree of punishment which should be inflicted for the offense committed.

A careful and impartial scrutiny of the evidence presented by the prosecution reasonably establishes the fact that the appellants met, either two sometimes, or three at other times, and even more than three at still other times, when discussions were held and plans formulated for the assassination of three brothers, the President, the President pro tempore of the Senate, and the Finance Minister. Although there were some conflicts in the testimony of the prosecution witnesses, yet, in our opinion, the basic fact that some sort of plan was afoot to do mischief was established and not legally controverted by the defense. The record of the trial bears patent testimony to this fact to any impartial observer. The appellants' counsel argued before this Court that the meetings referred to both in the indictment and the testimony of some of the prosecution witnesses, were mere convivial gatherings among friends and brother officers of the Liberian National Guard, with no evil intent and no con-

spiring or confederating for any unlawful purpose. It should be noted, however, whatever might have been the reasons, when witnesses who were supposed to have been at these convivial gatherings were called upon to testify to this effect on behalf of appellants, they professed no knowledge of any meetings with appellants or others. But even worse, when the Minister of Defense, Allen Williams, was called to the witness stand for the defense, instead of testifying on behalf of the appellants he testified to some damaging facts against appellants.

Because of my honest conviction that a conspiracy of sorts existed, I agree with the verdict of conviction for conspiracy against the State and its official head, but I categorically disagree with the judgment and sentence because, in my opinion, they run afoul of both the Constitution and the applicable statutes.

To begin, two sections govern the crime of conspiracy in our Penal Law. They will be considered individually.

> "1. Any two or more persons who conspire together:
>
> "(a) To commit a crime; or
>
> "(b) To falsely or maliciously cause another to be arrested or indicted for a crime; or
>
> "(c) To injure the person or property of another; or
>
> "(d) To do any act that will tend to the perversion or obstruction of justice or the due administration of law, are guilty of conspiracy.
>
> "2. If the agreement is an agreement to commit a felony, such persons are punishable by imprisonment for not more than seven years. In any other case, such persons are punishable by a fine of not more than five hundred dollars or by imprisonment for not more than three years." 1956 Code 27:9.

It is the form of conspiracy that is contemplated by the common law. The very act of meeting, conspiring, agreeing, and confederating to do an unlawful act or to do a lawful act in an unlawful manner, is the essence of

the offense. In other words, the overt act of the offense is conspiring or agreeing to do something unlawful.

"Conspiracy at common law is a combination between two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means." 15 C.J.S., *Conspiracy,* § 335(1).

"The agreement need not be formal or express, it is sufficient if there is a meeting of the minds, or a tacit agreement. If there is concert of design there need not be participation in every detail of its execution, or knowledge of the scope of the conspiracy. Previous acquaintance is not essential, nor need each conspirator take part in every act." *Id.,* § 40.

"At common law a conspiracy is complete without the doing of an overt act in execution thereof. At common law no overt act is necessary to constitute a criminal conspiracy, *and this rule obtains unless changed or limited by statute* (emphasis ours). The only significance of acts done in furtherance of the object of a conspiracy is as evidence of the alleged combination, which alone constitutes the offense." *Id.,* § 43.

"The crime of conspiracy is well known to the common law, being dependent upon clear principles and having characteristics and ingredients which separate it from all other crimes. Nevertheless, the comprehensiveness of the offense has made it difficult to frame an exact definition. The broad definition or description, however, which is widely accepted is that conspiracy is a combination of two or more persons to accomplish by concerted action some criminal or unlawful act or to accomplish by criminal or unlawful means some act not in itself criminal or unlawful. Substantially the same idea is expressed by cases defining conspiracy as an agreement, confederation, or combination of two or more persons to do an unlawful

act or to accomplish a lawful act or legal end by unlawful means, to do something wrongful either as a means or an end, or to effect an illegal purpose either by legal or illegal means or to effect a legal purpose by illegal means. Conspiracy has also been defined as an unlawful confederation or combination of two or more persons to do an unlawful act or accomplish an unlawful purpose." 11 AM. JUR., *Conspiracy*, § 3.

My reason for quoting from legal authorities on the common law of conspiracy is to show how section 9 of our Penal Law accords with the common law and thereby underscore the point of how our law punishes this offense.

This prosecution, however, was brought under section 53 of the Penal Law.

"Conspiracy against the State or its official Head.

"1. Any two or more persons who conspire together to destroy the life or to injure the person, property, or reputation of the President or of any diplomatic representative of a foreign government are guilty of conspiracy against the State.

"2. If the agreement is an agreement to commit a felony, each such person is punishable by imprisonment for not more than seven years. In any other case, each such person is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than three years; provided, however, that where death or serious bodily injury results, or where the safety of the nation is seriously imperiled, each such person is punishable by death or by imprisonment for life.

"3. An attempt to destroy the life, or to injure the person, property, or reputation of the President or of any diplomatic representative of a foreign government is punishable in the same manner as if the crime attempted had been committed."

It is necessary to note one important point here. It is possible to conspire against the State or its official head

without the offense being necessarily a capital one. We observe that paragraph 1 of section 9 of the Penal Law relating to conspiracy, is almost identical to the first part of paragraph 2 of section 53 of the Penal Law, relating to conspiracy against the State or its official head. Although both of these sections of the Penal Law have been quoted in full, for the sake of emphasis let me again quote the relevant portions of each section.

> "If the agreement is an agreement to commit a felony, such persons are punishable by imprisonment for not more than seven years. In any other case, such persons are punishable by a fine of not more than five hundred dollars or by imprisonment for not more than three years." § 9(2).
>
> "If the agreement is an agreement to commit a felonly, each such person is punishable by imprisonment for not more than seven years. In any other case, each such person is punishable by a fine of not more than five hundred dollars or by imprisonment for not more than three years; provided, however, that where death or serious bodily injury results, or where the safety of the nation is seriously imperiled, each such person is punishable by death or by imprisonment for life." § 53(2).

Paragraph 3 of the latter section provides that an attempt to do any of the acts enumerated in this section shall be punishable in the same manner as if the crime attempted had been committed.

So we repeat, that under the language of the first part of paragraph 2 of section 53, which is almost an exact duplication of paragraph 2 of section 9, which applies to conspiracies generally, it is possible to commit the offense of conspiracy against the State or its official head without committing a capital offense.

To my mind the law is clear and unambiguous. For the offense of conspiracy against the State or its official head to be charged a capital offense under section 53,

conditions under the statute must be present: (1) that serious bodily injury resulted, or (2) that death resulted, or (3) that the safety of the nation was thereby seriously imperiled, or (4) that an attempt was made to destroy the life of the President or of a diplomatic representative of a foreign government. Unless these conditions are present the offense is not a capital crime, and to our mind each of these conditions presupposes an overt act.

In the argument before this Court, appellee's counsel emphasized that a conspiracy needs no overt act for the commission of the offense and that the very combination, confederation, and agreement are in themselves overt acts of conspiracy. In support of their contention they quoted the sections already quoted above, and legal authority, which we have set forth.

> "The criminal offense of conspiracy is complete at common law as soon as the confederacy or combination is formed. The legal character of the offense depends neither upon the object which is intended to follow it nor upon the act which does follow it; it is the same where the object of the conspiracy is accomplished or abandoned. It may be followed by one overt act or a series of them. *But in the absence of statutory modification of the common law rule* [emphasis supplied], the offense is complete without any subsequent overt act. The reason for this rule is that the confederacy of several persons to effect any injurious object creates such a new and additional power to cause injury that it requires criminal restraint, although no such restraint would be necessary were the same thing proposed, or even attempted to be done, by any person singly. Some courts, in discussing the nature of the crime of conspiracy, have held that the law in this instance assumes to punish a mere unexecuted intention to commit the illegal act designed and that in this respect it differs from the general rule of the common law. This is not correct. It is not

> the bare intention that the law punishes, but the act of conspiring, which is made a substantive offense by the nature of the object intended to be affected. In many jurisdictions the common law rule that no overt act is necessary is modified by statutes requiring that to constitute the crime of conspiracy there must be both an agreement and an overt act to effect the object of the agreement. This is true of the crime of conspiracy as defined by the statutory law of the United States. The injection of this element of an overt act does not, under some statutes, apply in all cases. Assuming that no overt act is necessary to constitute the crime of conspiracy, it seems clear that the fact that one entering into a conspiracy subsequently withdraws from it and takes no part in the commission of the crime designed does not prevent his prosecution for the conspiracy." 11 AM. JUR., *Conspiracy,* § 6.

Ordinarily this is true and is borne out by Section 9 quoted. But how does this argument square with section 53 of the Penal Law? Even the common law advanced by appellee above, makes a vital distinction.

> "The legal character of the offense depends neither upon the object which is intended to follow nor upon the act which does follow it; it is the same whether the object of the conspiracy is accomplished or abandoned. It may be followed by one overt act or a series of them. *But in the absence of statutory modification of the common law rule, the offense is complete without any subsequent overt act."* (Emphasis ours.)

It says that the offense of conspiracy is complete without any subsequent overt act, except where there is statutory modification of the common law rule on the point. In my view, the essential language is, "But in the absence of statutory modification of the common law rule, the offense is complete without any subsequent overt act."

It seems to me abundantly clear that we have on our statute books a section on conspiracy that conforms in all respects to the common law in respect to conspiracy. We also have another section placing a conspiracy in a special category, that is to say, conspiracy against the State or its official head. It is nothing less than a statutory modification of the common law, as well as a category of our statute law on conspiracy.

But more than this, how can bodily injury or death be inflicted without some overt act? Such an idea is inconceivable, to say the least. Or how could an attempt be made to destroy the life or injure the person or property of anyone without some overt act? Or how could the safety of the nation be seriously imperiled without some overt action being taken on the part of somebody? The very assertion of any such proposition borders on the ridiculous.

In order to get at the kernel of the nature of the offense allegedly committed by the appellants, it is necessary to take a close look at the indictment, already quoted in the majority opinion, and see what is the offense charged, how it is charged, and then compare the charge with the evidence.

The indictment, in substance, charges that (1) appellants owed allegiance and fidelity to the President, Government, and Republic of Liberia, and in disregard of this allegiance and fidelity unlawfully and traitorously met at the places named in the indictment and planned, conspired, contrived, combined, and confederated with other persons to assassinate the President of Liberia, the President pro tempore of the Senate, and the Finance Minister of the Republic of Liberia, and seize power, take control by force and violence, and overthrow the legally constituted Government of the Republic of Liberia; (2) appellants in disregard of their pledges of allegiance, and as traitors against the Government of Li-

beria and in furtherance of their felonious plan to overthrow the constituted Government of Liberia, discussed with and importuned Col. John Howard to join them in their plan aforesaid and their acts were averted only by the revelation of their *plan* by security officers of the State.

Now let us examine the averments in the indictment and the evidence adduced at the trial and see if a capital offense was committed.

In the first place, there is no averment in the indictment that serious bodily injury was inflicted upon anyone or that death ensued from the conspiracy against the State. Neither have I been able to discover anywhere in the evidence presented at the trial that anyone was seriously injured or anyone died. By the process of elimination we can cancel out the commission of a capital offense resulting from serious bodily injury or death. That point is clear.

We are now left with two other elements of the section governing conspiracy against the State or its official head that would constitute the crime a capital offense: seriously imperiling the safety of the nation and attempt. Let me take up the point of attempt. In this connection there is a relevant section in our Penal Law.

> "1. An act done with the intent to commit a crime and tending but failing to effect its accomplishment is an attempt to commit the crime. . . .
>
> "4. An attempt to commit treason, criminal libel, sedition, or conspiracy against the State or its official Head, is punishable in the same manner as if the crime attempted had been committed.
>
> "5. An indictment alleging an attempt must aver the particular acts constituting the attempt." 1956 Code 27:10.

In this respect, although our statute seems very clear, it may not be amiss to quote legal authority on the point.

"An attempt to commit a crime has been defined as an act done with intent to commit a crime beyond mere preparation but falling short of its actual commission. An *overt act done* (emphasis ours) with intent to commit the crime, and which, except for the interference of some cause preventing the carrying out of the intent would have resulted in the commission of the crime. . . .

" 'Attempt' with respect to a crime has been held more comprehensive than 'intent' in that intent is a quality of mind and implies a purpose only, while an attempt implies an effort to carry that purpose into execution." 22 C.J.S., *Criminal Law,* § 73a, b.

"In order to constitute an attempt, it is essential that the defendant, with the intent of committing the particular crime, do some overt act adapted to, approximating, and which in the ordinary and likely course of things will result in, the commission thereof. Therefore, the act must reach far enough toward the accomplishment of the desired result to amount to the commencement of consummation. It must not be merely preparatory. In other words, while it need not be the last proximate act to the consummation of the offense attempted to be perpetrated, it must approach sufficiently near to it to stand either as the first or some subsequent step in a direct movement toward the commission of the offense after the preparations are made." 14 AM. JUR., *Criminal Law,* § 68.

"An overt act essential to an attempt to commit a crime is one done to carry out the intention, and it must be such as would naturally effect that result, unless prevented by some extraneous cause. The overt act necessary to constitute an attempt to commit crime must go beyond mere preparation, and commission of the crime must be at least apparently possible to the reasonable apprehension of the accused.

> "An act, to constitute a criminal attempt, must be one immediately and directly tending to the execution of the principal crime and committed by the prisoner under such circumstances that he has the power of carrying his intention into execution." *Id.*, § 68.

In addition, this Court has in no uncertain terms stated what constitutes an attempt to commit a crime. It held that 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. *Massaquoi* v. *Republic*, 8 LLR 204 (1944).

At pages 221–222 of that case, the Court used language which is very pertinent to the issue.

> "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."

A careful study of the indictment fails to show any averment of an attempt. Nor does the record of the trial, by the testimony of the prosecution witnesses, reveal any overt act attempting to effectuate the object of the conspiracy against the State or its official head which is one of the categories that would have made the crime a capital offense.

I now come to the last category which would constitute the offense charged a capital one. It is seriously imperiling the safety of the nation. This is a delicate point and here again a careful examination of the indictment and the evidence in the case must be made. Nowhere in the indictment already quoted is a specific averment that the conspiracy of appellants and others seriously imperiled the safety of the nation. And what makes the situation even more difficult is the fact that there is no definition

or explanation in the statute as to what acts would be considered seriously imperiling the safety of the nation.

Our Criminal Procedure Law specifies what an indictment must contain.

> "1. An indictment shall be in writing and shall:
>
> "(a) Specify the name of the court in which the action is triable and the names of the parties;
>
> "(b) Contain in each count a statement that the defendant has committed a crime *therein specified by the number of the title and section of the statute alleged to have been violated* (emphasis ours), and described by name or by stating so much of the definition of the crime in terms of the statutory definition as is sufficient to give the defendant and the court notice of the violation charged;
>
> "(c) Contain in each count a plain, concise and definite statement of the facts essential to give the defendant *fair notice of the offense charged in that count* (emphasis ours), including a statement, if possible, of the time and place of the commission of the offense, and of the person, if any, against whom, and the thing, if any, in respect to which, the offense was committed." Rev. Code 2:14.3.

My concern is particularly with paragraph 1 (b) which provides that the crime must be specified by the number of the title and section of the statute alleged to have been violated and described by name or by stating so much of the definition of the crime in terms of the statutory definition as is sufficient to give the defendant and the court below notice of the violation charged.

It is my view that since the statute does not define what constitutes seriously imperiling the safety of the nation, the indictment should at least have stated the number of the title and section of the statute alleged to have been violated. This may seem a rather technical point, but let us keep it in mind in view of what will be said later in this dissent on the point.

In their argument before this Court, appellee's counsel contended that the averment in the indictment that appellants and others conspired, combined, connived, and confederated to assassinate the President of Liberia and others and thereby seize power by force and violence and overthrow the constituted authority of the Government of Liberia, not only implies but states that the safety of the State was seriously imperiled. I might have been inclined at first blush to accept such a proposition, but my examination of other sections of our Penal Law clearly indicates that the averment above referred to and the descriptive words of the offense in the indictment in this case, can be applied to other offenses. For example, the section on sedition provides, *inter alia,* that one is guilty of sedition if he "Convenes or promotes the convening of any meeting, public or private, the object of which is to defy, subvert or overthrow the constituted authority of the government." 1956 Code 27:52(1) (d) (e). Section 50(1) (d) of the Penal Law provides that one is guilty of treason who "Acts treacherously against, or commits any breach of allegiance to, the Government," or, 50(1) (e), "Commits any act, overt or otherwise, tending to overthrow the authority of the Government."

Now let us look at the indictment in this case. It states among other things that the appellants and others met at several places on several dates and conspired to assassinate the President of Liberia and his two brothers and to seize power by force and violence and to overthrow the constituted authority of the Government of Liberia. The conspiratorial aspect of this averment aside, if we consider only the meetings and their purpose, clearly the crime contemplated by that averment is sedition. This is true even when we take into consideration the assassination part of the plot because the planned assassination was simply a prelude to the overthrow of the constituted authority of the Government of Liberia.

Further, the indictment states that appellants owed allegiance to the President and Government of the Republic of Liberia, but disregarding that allegiance did "concertedly, unlawfully, wickedly, maliciously and *traitorously*" meet at various places and on various dates named in the indictment and planned with others to assassinate the President of Liberia, the President pro tempore of the Liberian Senate, and the Finance Minister of the Republic of Liberia, "seize power, take control by force and violence and to overthrow the legally constituted Government of the Republic of Liberia." Again, the conspiratorial aspects of these averments aside, I cannot but conclude that the said allegations relate to the statute governing treason and not to the section on conspiracy against the State or its official head.

I have been unable to equate the averments in the indictment with the offense charged, especially since there is no showing either expressly or by implication how the safety of the State was imperiled by the conspiracy of the appellants. Nor do I feel that this neglect to show how the safety of the State was seriously imperiled in the indictment was cured by the conclusion, after the recital of conditions relating to other offenses, that "then and thereby the crime of conspiracy against the State defendants did do and commit."

In *United States* v. *Hess,* 124 US 483, 486–488 (1888), the Court spoke of the specificity needed in an indictment.

> "In an indictment, all material facts and circumstances *embraced* (emphasis ours) in the definition of the offense must be stated or the indictment will be defective. . . . The language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and the circumstances as will inform the accused of the *specific offense* (emphasis ours) coming under the general description with which he is charged.

> Such particulars are matters of substance and not of form and their omission is not aided or cured by the verdict."

To the same effect, *Pettibone* v. *United States*, 148 US 197 (1893):

> "In an indictment all the material facts and circumstances *embraced in the definition* (emphasis ours) of the offense must be stated or the indictment will be defective; any *essential element of the crime cannot be supplied by implication.* (Emphasis ours.)

Among the requisites of an indictment an important one is that the offense be properly charged.

> "This is done by stating the substantial circumstances necessary to show the nature of the crime, and next, the formal allegations and terms of art required by law. An omission of matter of substance in an indictment is not aided or cured by verdict. As to the substantial circumstances, the whole of the facts of the case necessary to make it appear judicially to the court that the indictors have gone upon sufficient premises should be set forth; but there should be no unnecessary matter, nor anything which on its face makes the indictment repugnant, inconsistent or absurd. . . . It is a clear principle that the language of an indictment must be construed by the rules of pleading and not by the common interpretation of ordinary language; for nothing indeed differs more widely in construction than the same matters when reviewed by the rules of pleading and when construed by the language of ordinary life.
>
> "There are certain terms of art used, so appropriated by the law to express the precise idea which it entertains of an offense, that no other terms however synonymous they may seem, are capable of filling the same office, such as for example traitorously in treason; feloniously in felon; burglariously in burglary;

maim in mayhem." BOUVIER'S LAW DICTIONARY, *Indictment.*

Admittedly the modern trend is not to pay strict attention to the old forms and art words as religiously as was done yesteryear, but the necessity for making certain pertinent and obligatory averments in distinct and precise form in an indictment still stands.

> "The constitutional right of the accused to be informed of the nature and cause of the accusation against him requires that every material fact and essential element of the offense be charged with precision and certainty in the indictment or information. He has a substantive right to be informed by the indictment or information in simple, understandable language of the crime he is charged with and acts constituting the crime, in sufficient detail to enable him to prepare his defense and to be protected in the event of double jeopardy. It has been said that this constitutional right is based upon the presumption of innocence and that it requires such definiteness and certainty in the charge of an indictment or information as will enable a presumptively innocent man to prepare for trial. Where there is a manifest and substantial repugnancy in a material charge of a count, the count cannot be sustained." 27 AM. JUR., *Indictments and Information,* § 57.

I have quoted from our statute, and copiously from legal authority, on indictments, and I have done so to emphasize the point that nowhere in the indictment is it alleged that by any act of appellants the safety of the nation was seriously imperiled, which would have made the offense, if supported by the evidence, a capital one under Section 53 of our Penal Law.

But aside from the point that the indictment contains allegations which constitute crimes other than the one with which appellants are charged, I have carefully gone

over the evidence presented at the trial and nowhere have I been able to find any evidence of an overt act by appellants, or anyone else, that tended to seriously imperil the safety of the nation. As stated before, appellee's counsel argued that no overt act other than conspiring, conniving, confederating, planning, and agreeing to commit the acts stated in the indictment needed to be proved at the trial. With this view I find myself unable to agree. As I have already stated, and it is here repeated for emphasis, the repetition of the language of part of section 9 of the Penal Law in section 53 of that title clearly indicates that the offense of conspiracy against the State or its official head need not be a capital offense. This being so, and section 53 being a modification of both our statute on conspiracy and the common law on conspiracy, just as clearly indicates that an overt act is necessary to make the aforesaid offense a capital one. Not only does the evidence show no overt act that tended to seriously imperil the safety of the State, but the indictment charging the offense is replete with averments definitely relating to other offenses.

In the face of the law and circumstances prevailing I cannot agree with the proposition that merely planning to do an act constitutes an overt act. To my mind it takes more than mere talk and plans to constitute the crime of conspiracy against the State or its official head a capital offense.

It cannot be denied that a conspiracy to assassinate the President and other high ranking officials of Government, as well as to violently overthrow constituted authority, is a very serious matter and shows such depravity of mind by those engaged in such a conspiracy to warrant the severest punishment which the law provides. But the punishment must be in keeping with the law and not repugnant to statute and the prohibition against excessive punishment in the Constitution.

The idea has been advanced, not in this case particu-

larly, that bad or oppressive laws should not be the concern of the Judiciary, that the responsibility in this regard rests squarely on the Legislature. It is true that the Legislature passes our laws, but under our checks and balances system of democratic government the Judiciary has its responsibility in respect to the laws as well. I would like to mention here two points which strike me as important in considering this matter.

The first is that most times when laws are made which have political ramifications, they do not reflect the calm and dispassionate atmosphere which should prevail during the passage of any law of great import. I think this fact is borne out in *Massaquoi* v. *Republic,* 8 LLR 204, 214 (1944), where the Court pointed out the scope of an act passed March 2, 1936.

> "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: . . ."

Here was a situation where the Legislature enacted a law fixing the procedure to be followed as well as the penalty for an act under investigation in the Department of Justice. This was highly unusual.

The second point is that the Judiciary, and especially the Supreme Court, has never hesitated to condemn unconstitutional or otherwise improper laws whenever they have come before it. In *In re the Constitutionality of the Act of January 20, 1914,* 2 LLR 157 (1914), when the Legislature passed an act authorizing the President to set up a committee to formulate rules to govern the practice of the circuit courts, this Court declared said act void *ab initio* because it was repugnant to the Constitution. When the Executive branch attempted to restrict the Judiciary in its functions in what was then known as

the hinterland by creating a sort of dual administration, one for the littoral and one for the hinterland, this Court declared that an act of the Legislature limiting the powers of the courts in any part of the Republic was repugnant to the Constitution and void *ab initio*. *Karmo* v. *Morris*, 2 LLR 317 (1919). When Juah Weeks Wolo appealed to this Court in an action of alimony because the trial court had refused jurisdiction on the ground that her husband had obtained a Legislative divorce against her, this Court declared that Mrs. Wolo had been deprived of "due process" and that while the Legislature could state the grounds for divorce it was not within its competence to grant a divorce, that being the function of the Judiciary. *Wolo* v. *Wolo*, 5 LLR 423 (1937).

These are only a few instances to show that this Court has never hesitated to assert its proper role in dealing with laws which come before it for review.

My distinguished colleagues of the majority have advanced the proposition that "an agreement to destroy the life or to injure the person of the President is punishable by death or life imprisonment." Admittedly any agreement to destroy the life or harm the President is a nefarious undertaking and cannot be too severely condemned, but I have been unable to find a legal support expressly or impliedly in confirmation of the proposition put forward by my distinguished colleagues.

From what has been stated I hope I have made my position clear: that I agree to uphold the verdict in this case, but disagree with the sentence of death by hanging. In other words, I do not agree that the offense committed by the appellants is a capital offense. The law and the facts are against such a conclusion. In my view the maximum penalty under the law is imprisonment for seven years.

My conviction is the more buttressed by the position of this Court in *Republic* v. *Weafuah*, 16 LLR 122

(1964), when it held that the proper exercise of judicial discretion in trials should, in fairness to the rights of the accused and society, be exemplified by acts of the court, the impartiality of which might be readily admitted by both sides. Only by such acts can justice be seen to have been done to both sides. A criminal court has a duty to society to punish the commission of crime and thereby discourage and prevent it, and an equal duty to an accused to see that he gets a fair and impartial trial and that his punishment, upon conviction, is in harmony with the spirit and intent of the law of the land.

Because of my considered opinion in this respect I had hoped that we could have modified the judgment in this case to conform to the law, rather than confirming it. I think we have adequate precedents, in my view.

As far back as 1899, when the issue of excessive fines and imprisonment was raised before this Court, it was held that a judgment inflicting excessive fines and punishment is repugnant to the provisions of the Constitution.

> "This court, in calmly and maturely weighing all of the circumstances surrounding this case and the nature and magnitude of the offense charged, is firmly of the opinion that while it was legal and undoubtedly within the purview of the court below to fine and imprison the defendants, now plaintiffs in error, as the penalty for the offense committed by them, yet this court is of the opinion that the sentence pronounced in the case by the court below is excessive with respect to both the fine and the term of imprisonment. Therefore, in order that substantial justice may be had in the premises, this court will proceed to give the sentence which, in its opinion, the court below ought to have given." *Flowers* v. *Republic,* 1 LLR 334, 338 (1899).

The sentence was modified to conform to the law. That was this Court's position in 1899.

In *Scotland* v. *Republic,* 3 LLR 252 (1931), when this

Court felt that the fine imposed by the trial court was excessive and therefore unconstitutional, the judgment was reversed and the appellant discharged.

In *Ammons* v. *Republic,* 12 LLR 360 (1956) a judgment of murder was modified and the sentence reduced to manslaughter.

In *Caranda* v. *Porte,* 13 LLR 57 (1957), this Court held that excessive bail was unconstitutional and, therefore, reversed the judgment and remanded the case.

For the reasons hereinabove stated and my understanding of the law, I have refrained from affixing my signature to the judgment in this case; hence, this dissenting opinion.