JESSIE THOMAS, et al., Informants, *v.* LAWRENCE A. MORGAN, Minister of Justice, JOSEPH WILLIAMSON, Assistant Minister of Justice, and RICHARD B. TOE, Justice of the Peace, Respondents.

BILL OF INFORMATION.

Argued March 17, 1976. Decided April 23, 1976.

1. The Minister of Justice and other law enforcement officers are subject to court process unless they are effecting a political decision decreed by the President.
2. The rights of citizens cannot be sported away by officials fallaciously claiming immunity under political acts effected for the Executive Branch.
3. The Legislature never intended that persons arrested without warrants under the Emergency Powers Act should not be served with process as soon after arrest as is conveniently possible.
4. The President does not exceed his constitutional powers when, pursuant to authorization conferred by act of the Legislature, he suspends the writ of habeas corpus to deal with a national emergency.
5. It is within the discretion of the President under his executive powers to determine whether the circumstances amount to an emergency justifying suspension of the writ of habeas corpus, and his determination that such an emergency exists is not subject to judicial review.
6. Civilians detained for crimes should not be confined to military barracks when ordinary detention facilities are readily available.

On June 4, 1975, informants were arrested for grand larceny, which larceny occurred before July 14, 1975, the date of the proclamation by the President of the Emergency Powers Act authorized by the Legislature, which suspended rights of those accused of certain crimes, including fraud against financial institutions. When the Justice of the Peace refused to approve a bail bond, Mr. Justice Wardsworth ordered a writ of mandamus served upon the Justice of the Peace to release informants under an approved bond. Apparently he never complied, and the informants were still in military barracks until the time of the instant hearing—even though the President

had constituted Special Commissions to try cases arising under the Act. The respondents claimed informants were subsequently arrested, but the record denied it.

A bill of information was sought by the defendants, in which they charged the respondents with contempt of the Supreme Court.

The Court held that the crime charged to informants was not within the Emergency Powers Act since it arose before its proclamation. Therefore, and especially in view of the extreme length of time involved, the respondents were *adjudged in contempt* and the informants ordered *released* on the bail bond previously approved, to await trial by court for the grand larceny of which they were accused.

Wade Appleton and *O. Natty B. Davies* for informants. *Solicitor General Barnes* and *Assistant Minister of Justice Joseph Williamson* for respondents.

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

"Every person criminally charged, shall have a right to be seasonably furnished with copy of the charge." That is a command contained in Article I, Section 7th, of the Constitution. There are several statutes, some going back to the earliest days of the Republic, which authorize arrest without warrant for persons criminally charged; but to comply with the requirement of the Constitution quoted above, such arrested persons must be subsequently served with process or warrant as soon as is conveniently possible. Thus a statute authorizing arrest without warrant does not violate this constitutional provision, provided that such arrest is followed by issuance and service of process within a reasonable time after the arrest.

A warrant of arrest performs two basic functions, each of which is necessary to the liberty of the citizen. It noti-

fies the accused of the charge against him, and thereby makes it possible for him to defend himself and it also informs him of the forum before which he is to appear to defend himself. To deprive anyone arrested of these essentials is to deprive him of his liberty without due process.

In the exercise of its constitutional powers, the Legislature passed a statute in February of 1975, granting to the Chief Executive emergency powers to enable him to take certain steps for the protection of the State, should necessity arise. Among the steps he was authorized to take under provisions of that statute, were the following: (a) to suspend the writ of habeas corpus for a period of one year; (b) to arrest without warrant and detain without bail any person or persons found dealing in drugs or engaged in counterfeiting, or who had committed bank fraud; and (c) to set up a Special Commission to try such offenses summarily.

In implementation of that statute, the President on July 14, 1975, issued a Proclamation:

"A Proclamation by the President

"Control of counterfeit currency, narcotic and dangerous drugs and bank frauds and forgeries:

"Whereas, the safety and security of the State is threatened by a surging wave of crimes involving, inter alia, the introduction into the Country of a large number of U.S. counterfeit currency notes designed to undermine and devalue the American dollar; and

"Whereas, it has been observed that the use and local cultivation of *Cannabis sativa* otherwise known as marijuana and other types and forms of imported narcotics and dangerous drugs, are widespread throughout the Country; and whereas, the unlawful and promiscuous use of such dangerous drugs contributes in a large measure to the increase of the crime rate both in the rural and urban areas; and whereas, it has been discovered that a group of hardened criminals within our borders consistently and continuously perpetrate frauds and

forgeries on financial institutions and other business houses within the Country, designed to adversely affect the national economy: Now therefore, I, William R. Tolbert, Jr., President of the Republic of Liberia, by virtue of the powers in me vested by Act of Legislature entitled 'An Act to Restore the Emergency Powers Granted the President of Liberia,' published by authority May 17, 1973, and restored February 10, 1975, do hereby proclaim:

"1. That effective as of the date of this proclamation the writ of habeas corpus is suspended for a period of 12 calendar months insofar as it relates to and affects persons accused of directly or indirectly dealing in counterfeit currency, or coins, narcotic or dangerous drugs of whatever kind, and fraud or forgeries perpetrated on banks and other business houses within the Republic.

"2. That the Minister of Justice and all law enforcement officers are hereby ordered to arrest and carry out search and seizure without warrant and detain without benefit of bail all persons found directly or indirectly dealing in counterfeit currency or coins, narcotic and other dangerous drugs of whatever kind, and persons accused of bank frauds and/or forgeries.

"3. A Special Commission composed of Counsellor D. W. B. Morris, Chairman, the Minister of Finance, the Governor of the National Bank of Liberia, Counsellor Edward R. Moore and Counsellor MacDonald M. Perry, is hereby constituted and given full power and authority to summarily try all persons accused of and arrested for dealing in counterfeit, bank frauds and forgeries.

"4. Another Special Commission composed of Counsellor D. W. B. Morris, Chairman, the Minister of Health and Social Welfare, the Minister of Labor, Youth and Sports, Counsellor Edward R. Moore and Counsellor MacDonald M. Perry, is hereby consti-

tuted and given full power and authority to summarily try all persons accused of and arrested for the cultivation of *Cannabis sativa* or marijuana, unlawfully possessing, buying or selling narcotics and other dangerous drugs.

"5. These Commissions herein constituted are authorized and empowered to issue subpoenas, take depositions and summarily try and dispose of each case as expeditiously as possible; their decisions shall be final, subject only to approval by the President of Liberia.

"Given under my hand and Seal of the Republic of Liberia at the City of Monrovia, this fourteenth day of July in the year of our Lord one thousand nine hundred and seventy-five and of the Independence of the Republic the one hundred and twenty-eighth.

"[Sgd.] WILLIAM R. TOLBERT, JR.,
President of Liberia."

But before the proclamation was issued, on June 4, 1975, Justice of the Peace Richard B. Toe issued a warrant for the arrest of Jessie Thomas and Sampson Ogunbiyi on the charge of grand larceny. The writ served and returned has been made profert in these proceedings, and is in the record.

Growing out of the refusal of Justice of the Peace Richard B. Toe to approve a criminal bond in the case of grand larceny then pending before him, the petitioners herein applied for mandamus in the chambers of Mr. Justice S. Raymond Horace on June 23, 1975. The alternative writ was ordered issued upon the respondent Justice of the Peace, who filed returns on June 30, 1975. His one count denying the charges made against him in the petition is set forth.

"Respondent says that Jessie Thomas and Sampson Ogunbiyi, the petitioners, secured their release from detention by the filing of a criminal appearance bond,

duly approved by Judge Thorpe, Resident Circuit Judge presiding in Criminal Courtroom 'B,' as can be seen from a copy of petitioners' exhibit 'A' made part of the petition. Respondent says that he did not rearrest, nor did he take any further action in the case after the petitioners had been released by Judge Thorpe."

This was on June 30, 1975, before the President's proclamation suspending the writ of habeas corpus.

Notwithstanding this denial by the Justice of the Peace of rearrest, when the petition in mandamus was heard by Mr. Justice Wardsworth, he entered the following ruling on August 6, 1975:

"This matter having been disposed of by Judge Thorpe as described, and before the issuance and publication of the proclamation of President Tolbert instituting and setting up Special Commissions to handle and dispose of certain crimes therein designated, it is my holding that this crime does not fall within the category of the crimes listed in the proclamation; and even if included, laws are not retroactive; this matter having been disposed of, or rather the criminal appearance bond having been approved by Judge Thorpe on June 6, 1975, at least about one calendar month and eight days prior to the issuance and publication of the President's said proclamation, the bond approved of . . . by Judge Thorpe is hereby sustained, and Judge Thorpe is hereby commanded to enforce his said release of the petitioners herein to abide further proceedings."

Was it true that Justice of the Peace Richard B. Toe had released the petitioners on June 30, as he stated in his returns to the petition for mandamus? If he had released them in June upon the order of Judge Thorpe, Mr. Justice Wardsworth would not have had the need to command Judge Thorpe to release them in August. Is it possible then that Justice of the Peace Richard B. Toe had filed a false return to the petition for mandamus?

Or had he deliberately retaken the petitioners into custody after he had filed his returns? In either one of these two cases, his conduct was deceitful and, therefore, disrespectful to the Supreme Court, especially since he had not issued another writ.

What happened in the intervening period between Mr. Justice Wardsworth's ruling on August 6, 1975, and January 13, 1976, when petitioners filed their information, is discussed later in this opinion. But on January 13, 1976, the petitioners in mandamus filed an information in the chambers of Mr. Justice Henries, in which they reported that although Mr. Justice Wardsworth had ruled that they should be released from custody on the criminal bond which had been approved by Judge Thorpe in June 1975, they were still being held in detention by the respondents for grand larceny, in spite of their valid bond for a bailable offense.

The respondents filed returns signed only by Assistant Minister of Justice Joseph Williamson, and this is important as will be seen later. We would like to observe however, that according to existing statute, the Solicitor General is the official representative of the State, in all matters pending before the Supreme Court. His duties under the Executive Law are to "prepare and file briefs in all cases before the Supreme Court to which the Republic of Liberia is a party; provided that the Attorney General [Minister of Justice] may himself conduct any case if in his opinion the interests of the Government require him to do so." 1956 Code 13:152(2).

Certainly this was a case in which the Government had an interest because the crime of grand larceny was involved. Yet, neither the Solicitor General nor the Minister of Justice signed the returns, or attended the hearing in the chambers of Mr. Justice Wardsworth; nor did they appear before Mr. Justice Henries who succeeded Mr. Justice Wardsworth in chambers.

In their returns respondents contended that petitioners

were released as ordered by the writ of mandamus, but that they subsequently had been arrested for fraud and forgeries committed against banks and came, therefore, within the Presidential Proclamation, for the said crimes were subsequent thereto.

Thus the matter stood before Mr. Justice Henries in chambers. When the case was called by him, because he felt that the issues involved were too far-reaching to be resolved by a single Justice, he ordered the case sent forward for hearing by the bench *en banc*.

On March 17 last past, the Supreme Court began the hearing of the case, and at its call the Solicitor General appeared with Assistant Minister Williamson, one of the co-respondents; the Solicitor General by leave of Court then inserted the following in the record:

> "That it was and is not the intention of the respondents to say that the Court does not have the power or authority to review such a case which now appears before Your Honors for review. The Constitution of this Country does provide a tripartite system of Government; that is to say: the Legislature, the Judiciary and the Executive, each to serve as a check and balance on the other. It was and is the intention of respondents in this case that reference has been made to a case dealing with political consideration of cases that were presented before the Supreme Court, with particular reference to the Marbury versus Madison case dealing with the same question. Therefore, respondents pray Your Honors that count four of the returns should be so modified so as not to give authority or jurisdiction to review this matter, but that it can do so, taking into consideration all of the constitutional issues that might have been raised by the parties."

The Court granted time for the respondents to amend their returns as they had requested. The amended returns were signed by the Minister of Justice, the Assistant Minister, and the Justice of the Peace.

Although the returns were withdrawn and amended by completely eliminating count 4, yet the fear expressed by that count, and the threat to the liberties of citizens which is posed, were not allayed nor removed by the amended version filed subsequently. We cannot perceive how any law enforcement officer could think that anyone, except the President himself, could be "not subject to court process" in Liberia.

If we should concede that the Minister of Justice and other law enforcement officers are not subject to court process, what would happen to the liberties of the citizens should these officers decide to use their self-assumed immunities to satisfy personal vendettas? Can we safely assume that there would not be those ambitious and unscrupulous persons who might want to use such immunities for their own plans? And what would happen to the rights of those citizens and parties who might feel entitled to redress against the acts of these law enforcement officers? Considering what has already happened, it seems the law enforcement officers who had had anything to do with this case had used the Emergency Powers Act to ride roughshod over the rights of the parties herein and their sureties, as will be seen later.

We have not been able to understand how *Wiles* v. *Simpson,* 8 LLR 365, 370, 371 (1944) is relevant to the respondents' position in this case. In that case, Mr. James Wiles had petitioned for mandamus to compel the Secretary of State to issue to him a passport, which he claimed had been denied him. The Court granted the petition, quoting in its opinion from *Marbury* v. *Madison,* 1 Cranch 137, 45, 2 L.Ed. 60 (1803):

> "By the Constitution of the United States, the President is vested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to

appoint certain officers, who act by his authority and in conformity with his orders.

"In such cases, their acts are his acts, and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the Act of Congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that Act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examined by the courts.

"But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of these acts, he is so far the officer of the law; is amenable to the law for his conduct; *and cannot at his discretion sport away the vested rights of others.*

"The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." [Emphasis added.]

After having said this the Court ordered the passport issued, which was the plain duty of the Secretary of State,

imposed upon him by law. We have not been able to understand, as we have said, how this opinion of the Supreme Court supports the position taken by the respondents in denying these informants and their sureties their legal rights.

On this point of presidential immunity sought to be assumed by the Minister of Justice and the other law enforcement officers, we would like to refer to the position taken by Attorney General Grimes, who, in 1930 while occupying the same office now held by the Minister of Justice, said, quoting from Watson, *The Constitution of the United States,* Vol. 2, 1023 (1919):

> " 'The immunity of the President is because of his official position. He is a great and necessary part of our Government. The legislative branch is 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 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. . . .' 1 OPINIONS OF THE ATTORNEY GENERAL, 421 (1922–1927)."

This quotation is also relied upon in *Wiles* v. *Simpson, supra.* There is a sharp difference in views on the same

question of constitutional law between Mr. Grimes in 1930 and the present Minister of Justice in 1976.

How can the Minister of Justice, and other law enforcement officers who had anything to do with this case, explain having detained these two informants on a charge of grand larceny for more than six months from October last year without benefit of bail? And how can they explain refusing to obey the ruling of Mr. Justice Wardsworth, who in August of last year ordered the accused released on bond, to stand trial for grand larceny later.

They have contended in their returns that the informants had been subsequently arrested for frauds and forgeries; yet they have not made profert of any warrant to show that this is true. That, and the release issued to the prison authorities, would be the only evidence to show that what they say is true.

On this score they contend that they have a right under the Emergency Powers Act to arrest without warrant; that is indeed a right given in that Act. But I am afraid they have abused this and other provisions of the Act for purposes of their own. There are other statutes on the matter which give others the same right to arrest without 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." Rev. Code 2:10.11(2).

Thus, it can be seen that arrest without warrant is not peculiar to the Emergency Powers Act; this is an old provision of the criminal statutes which obtains under certain conditions. We hold that the Legislature never intended that persons arrested without warrant under the

Emergency Powers Act should not be served with process as soon after arrest as is conveniently possible.

There has been a great deal of controversy over the passage of the Act, as well as over the setting up of the Special Commissions authorized by the Act. Some have contended that the Commissions are unconstitutional; there have been those who have been outspoken in their denunciation of the Commissions; and there have been those who have preferred to stay silent and hold their personal opinions. Some have said that the President was not authorized to suspend the writ of habeas corpus, since only the Legislature is by the Constitution empowered to do so. These views and many more have been going the rounds, and perhaps the position taken by the law enforcement officers in this case was intended to test these views.

It has not been convincingly contended, however, that the Legislature did not have the constitutional authority to enact the statute; certainly none can successfully challenge the Legislature's constitutional authority on this point. The Constitution is very clear on this point that "the privilege and benefit of the writ of habeas corpus shall be enjoyed in this Republic, in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most *urgent and pressing occasions* [emphasis supplied] and for a limited time, not exceeding twelve months." Article I, Section 20th.

Therefore, to justify suspension of the writ of habeas corpus, there must be in every case, the most *urgent and pressing occasion;* and the suspension must be for only twelve months. But where a most *urgent and pressing occasion* arose during the recess of the Legislature, how would the writ be suspended to enable the President to deal with the emergency? Certainly the Legislature would have to be in session to be able to suspend. So it seems reasonable for them to have authorized the President to

suspend the writ during their recess, for the benefit and safety of the State, should a most *urgent and pressing occasion arise.* The safety of the State is the highest and most important law, the Constitution notwithstanding.

It is reported by Edward S. Corwin in his book THE CONSTITUTION AND WHAT IT STANDS FOR TODAY, 77, that President Abraham Lincoln of the United States suspended the writ of habeas corpus without authority of Congress, and was later shown to be justified in doing so. We quote the text.

> "Early in the Civil War, President Lincoln, without authorization by Congress, temporarily suspended the privilege of the writ for the line of transit for troops en route to Washington, thereby giving rise to the famous case *Ex parte Merryman,* in which Chief Justice Taney, after vainly attempting to serve the writ, filed an opinion denouncing the President's course as violative of the Constitution. . . . Subsequently Congress authorized the President to suspend the writ 'whenever in his judgment, the public safety may require it.' "

In this case the Legislature did authorize suspension before the President's proclamation. There are other such cases in American constitutional law, but in every case the rationale for suspension of the writ of habeas corpus has been to enable the President to act for the safety of the State.

In this case, widespread circulation of spurious American currency gave rise to fears that our national economy was threatened in a manner never before experienced in our history.

The danger of the situation was emphasized by the fact that the United States Government has permitted our use of their printed currency, which has a value on par with our money, which they permitted also. If we are unable to protect this United States currency which

we have been permitted to use, might not that permission be withdrawn?

In the circumstances the President acted under the powers granted him by the Emergency Powers Act, and suspended the writ of habeas corpus for twelve months to deal with this emergency; after suspension of the writ, he set up a Commission to handle the emergency. So by proclamation he took this step for the safety of the State, and in addition to having the Commission handle counterfeiting, he also extended its jurisdiction to include bank frauds and forgeries, and dealings in drugs.

It was within the discretion of the President under his executive powers to determine whether or not the circumstances amounted to an emergency, to warrant suspension of the writ and the setting up of the Commissions.

> "The growth of the doctrine that an Executive Proclamation of the existence of an emergency was not subject to judicial review was checked in *Sterling* v. *Constantin*. There the Governor of Texas proclaimed martial law over several oil producing counties of the State, declaring that insurrection and riot beyond civil control existed there, due to wasteful production of oil by some of the operators in defiance of State conservation law and to violent public feeling thereby excited. After shutting down all of the wells by military force, he permitted the State Commission that administers the conservation law to fix the limit of production, and production was resumed accordingly; but when some of the operators, the plaintiffs in this case, objected to the limit as infringing their property rights under the Fourteenth Amendment, obtained a restraining order in a suit against the commission in the federal court, he took military control of all of the wells and restricted production further. The Court held that the facts of the situation showed no exigency and that the interference was properly enjoined. By virtue of his

duty to 'cause the laws to be faithfully executed,' the Executive is appropriately vested with the discretion to determine whether an exigency requiring military aid for that purpose has arisen. His decision to that effect is conclusive.

"That construction, this Court has said, in speaking of the power constitutionally conferred by Congress upon the President . . . necessarily results from the nature of the power itself, and from the manifest object contemplated. The power is to be exercised upon sudden emergencies, upon great occasions of State, and under circumstances which may be vital to the existence of the Union." Dowling and Edwards, AMERICAN CONSTITUTIONAL LAW, 50.

Thus it can be seen that the President's discretion, to determine when an emergency exists with respect to his duty to protect the safety of the State, cannot usually be questioned. How much more his power extends when he has been authorized by the Legislature to use such emergency powers at his discretion?

In preserving the safety of the State in an emergency, he is clothed with full authority by any law given by the Legislature to set up agencies empowered to hear and summarily determine matters vital to the safety of the State. As we have said hereinbefore, his discretion under such circumstances cannot be questioned, the controlling underlying rationale being to preserve the safety of the State.

The respondents' returns state that the subsequent arrest of the informants after Justice Wardsworth's ruling was for alleged frauds and forgeries perpetrated upon banks and other business houses, and this arrest was for the safety of the State. Besides the fact that there is nothing in the record to show that the bill of information is not true when it asserts that the prisoners have been detained continuously since Justice Wardsworth's order to release them on the bond approved by Judge Thorpe, there is no

indication of any release of the informants after Justice Wardsworth's ruling, as seems to be implied by counts 1, 2, and 4 of the returns.

Certainly, if it were true that a release had been issued, it would have been made profert with the returns to support the position taken therein. In this Court are we to take the unsupported denial of the respondents, as against the strong presumption of continuous incarceration after Justice Wardsworth's ruling in August 1975, when the parties are still detained, and claim to have been so detained since August last year? There is no other writ in the record save the larceny writ issued in June last year. So even if we want to agree that the informants might have been rearrested in October and November for frauds and forgeries, shouldn't the Ministry of Justice have seen the necessity to issue some precepts against informants since October last year, and profert it with their returns? It could not have been the intention of the lawmakers when they passed the Emergency Power Statute that persons would be apprehended without issuance of a writ for such long periods, in this case six months, and held without bail for bailable offenses, larceny in this case. That could not have been the intention of the President either, when he implemented the statute by his proclamation of July 1975. He who alleges the existence of the fact must prove it; so if it were true that these prisoners had been released and rearrested since Justice Wardsworth's orders in August last year, there should have been some evidence of it in the record.

We must conclude, therefore, that Justice Wardsworth's orders given on August 6 last year, to the effect that the petitioners in mandamus, who are informants here, should be released on the bond approved by Judge Thorpe, to stand trial later, were not obeyed by the respondents, and this disobedience is contemptuous.

During the hearing before us, the respondents contended that since August last year, when Mr. Justice

Wardsworth had ordered the informants released on the said bond, the informants had committed other crimes, frauds, and forgeries against banks and other business houses. They say that it was because of the commission of these subsequent crimes, that they had been rearrested and detained under the Emergency Powers Act and the President's Proclamation of July 1975. In other words, the larceny case was no longer the cause for informants' continued detention. On the surface, this contention seems very plausible, but let us look at count 1 of the bill of information which reads:

> "The respondents having changed their tactics in order to meet their ends, with utter disregard to the ruling of the Justice, rearrested the informants and moved to justify the sureties on the criminal appearance bond. Arbitrarily they arrested the sureties on the bond and committed them to the common jail, on the ground that the owners of the properties on the bond names were forged. Hence, they were arrested by the Ministry of Justice without order of the court as made and provided by statute."

This count of the information was not denied in the respondent's returns, nor was it denied in the amended returns, nor was it denied in argument before us. On the contrary, the respondents contended in explanation of this violation of the law that the sureties had been imprisoned because they had forged the names of the property owners shown on the bond for grand larceny. They made no effort to explain how they, as counsel for the plaintiff in a criminal case, could move for justification of sureties and also determine that the signatures on the bond were forged, without going before a court of competent jurisdiction, as the law requires.

> "*Motion to justify:* Within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. The surety

shall be present upon the hearing of such motion to be examined under oath. If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond." Rev. Code 1:63, 6(1).

No effort was made to comply with this provision of the statute. Who was the proper authority to determine that the sureties' names on the bond had been forged? Certainly the law could not have intended that the respondents would be lawyers for one of the parties, and judges also. Perhaps this is what the informants meant by a change of tactics in their bill of information.

But be this as it may, and we are assuming that it might be true that the signatures of the property owners had indeed been forged as the respondents say, in such circumstances, why weren't the precepts issued by a court against them for fraud and forgery made profert with their returns? This would have cleared up a lot of doubt as to respondents' proper judicial behavior.

Continuing to detain the informants after imprisonment of their sureties, could mean that the bond under which they were allegedly released was void. But only a court of competent jurisdiction could have decided this; and the Ministry of Justice is not a court, and could not perform the functions of a court. Constitution of Liberia, Article I, Section 14th.

From any angle that the matter is viewed, we find that the respondents deliberately violated the laws of the Country, intentionally depriving the informants and their sureties of their liberties without due process; and that they misinterpreted the Emergency Powers Act, to make it serve as an umbrella, under which to ride roughshod over the rights of parties.

We also find that all of this illegal exercise was undertaken to justify disobedience of the ruling of Mr. Justice Wardsworth, who had ordered that the defendants in the grand larceny matter should be released from prison on a bond approved by Judge Thorpe, in order that they might

stand trial when the case was ready for hearing. The Ministry of Justice is fully conversant with the Emergency Powers Act, and knows that the Special Commission set up under that Act has no jurisdiction over grand larceny, the crime for which the informants were arrested by Justice of the Peace Richard B. Toe in June of last year. There is nothing in the record to show to the contrary, and only the record of the court below can govern our decisions here.

Another issue raised in the bill of information, and not denied nor traversed in the returns, is the matter of the detention of the informants in a military barracks. This Court said in April 1918, in a case of habeas corpus growing out of detention by Lieutenant James Gibson of the Frontier Force, of several petitioners in Puduke Barracks in Maryland County, that "the detention of any part of the civil population unconnected with the Frontier Force at the barracks or camp of said Force is flagrantly unlawful and repugnant to good government and the letter and spirit of our Constitution." *Sio,* et al. v. *Gibson,* 2 LLR 287–288 (1917). There is a common jail in Monrovia, and it was improper to have detained in any other place of incarceration civilians accused of crime.

However, in this case we hold that whether the detention was in the barracks or in any other place which deprived the informants of their liberty unlawfully, the result was the same. Grand larceny is bailable as we have said hereinabove, and it makes no difference that the detention of the prisoners in spite of a valid bond, was in military barracks. The detention, in view of the circumstances, would have been no less grievous had it been in the common jail.

In view of the circumstances stated hereinabove, we find the respondents guilty of contempt of the Supreme Court, and to purge themselves, they are required to pay fines of $100 each into the Bureau of Revenues. If the informants committed any offenses cognizable before the

Special Commission, precepts to this effect should have been issued and served long before now, in keeping with the spirit and intent of the Emergency Powers Act. Therefore, they are to be released from further custody on the strength of the bond approved by Judge Thorpe, to await their trial for grand larceny.

The fines will be paid by the respondents and revenue receipts exhibited within forty-eight hours, pending which their functions as lawyers and Justice of the Peace are hereby suspended. And it is so ordered.

Respondents adjudged in contempt.