

TOBAH alias WINNEBAH et al., Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

RE-ARGUED FEBRUARY 17, 1911. DECIDED FEBRUARY 24, 1911.

Toliver, C. J., Wood and McCants-Stewart, JJ.

1. The admissibility of evidence is with the court; the credibility with the jury.
2. Art. 1, sec. 7 of the Constitution simply requires the examination of witnesses in the presence of the accused and has no reference to the number required to sustain a verdict of conviction.

Mr. Chief Justice Toliver delivered the opinion of the court :

Murder—Appeal from Judgment. The appellants in the above cause were arraigned upon an indictment before the Court of Quarter Sessions and Common Pleas for Montserrado County at its September term, A. D. 1910, as principals in the second degree for aiding and abetting in the murder of Kwawah on the 24th day of July, A. D. 1910; to which they plead "not guilty." The counsel for appellants filed a motion for severance in the case, which the court below overruled. In view of all the circumstances this court holds that the court did not err in overruling said motion. The principal in the murder of Mr. Kwawah was one Bonaparte, who has met his doom by receiving just punishment for his crime committed. The records show that the murder was committed in a boat ; that the appellants were all present in said boat and put forth no efforts to prevent the perpetration of the crime, but on the contrary aided and abetted in its execution. The statute law of this Republic as well as the common law is very clear on the subject, and leaves no doubt whatever for an unbiased mind to arrive at a conclusion.

The records clearly show that the prisoners were actually present aiding and abetting in the commission of the crime.

The admissibility of evidence in a crime is left with the court; the credibility and effect with the jury. The contention of counsel for appellants in reference to that clause in the Constitution, art. 1, sec. 7, in reference to confrontation this court says that confrontation is a privilege that the organic law of the land gives every person criminally charged and such persons undergoing a trial.

The examination of witnesses must be done in the presence of the accused; hence

there was no error in the verdict of the jury and the judgment of the court. Therefore, this court adjudges that the judgment of the lower court be affirmed, and the clerk of this court is commanded to issue a mandate to the court below as to this judgment.

T. W. Haynes, for appellant. *C. D. B. King, Attorney General*, for appellee.