ROBERT C. TUBMAN, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued November 21, 25, 26, 1974. Decided December 13, 1974.

1. The qualification of an expert witness should be established by the side offering his testimony prior to the giving of such testimony by him.
2. In all trials, but especially criminal trials, the trial judge should so conduct the trial in the presence of the jury that no bias or prejudice can be imputed to him.
3. For a person to be found guilty of uttering a forged instrument, he must have offered to pass, or make current, or publish such forged instrument, knowing it to be forged, declared such instrument was genuine, intending by so doing to defraud.

Appellant was to acquire ten acres of land, after the Superintendent of Grand Bassa County had agreed to the sale at 50 cents per acre, the price for farm land. However, when the deed was presented by appellant for attestation by the Superintendent, he was informed that the price for land in cities and townships had been ordered fixed by the President at $30.00 per lot and, therefore, the receipt from the Bureau of Internal Revenues for $5.00 was, of course, inadequate. Appellant was also told that the deed would have to recite as grantee the name of the company for whom appellant, a lawyer, was apparently acting as agent. Subsequently a new deed was delivered by appellant's secretary to the Superintendent for attestation, with a receipt from the Bureau of Internal Revenues for $1,500.00. It was later discovered that a receipt from the Bureau for $15.00 had been altered to read $1,500.00. The appellant was thereafter indicted for the crime of uttering a forged instrument. He was tried, convicted as charged by a jury and appealed from the judgment entered against him.

The Supreme Court thoroughly examined the trial

record and on the basis of such exhaustive study declared that the crime of forgery was committed by someone, but that there was not a scintilla of evidence to warrant the conviction of appellant. Therefore, the Supreme Court *reversed* the judgment and ordered the appellant *discharged* without day.

C. Abayomi Cassell, O. Natty B. Davis for appellant and appellant, *pro se. Solicitor General Roland Barnes* and *Assistant Solicitor General Jesse Banks, Jr.* for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court.

Sometime in 1971, Counsellor Robert C. Tubman, the appellant, approached the Superintendent of Grand Bassa County, Lawrence A. Morgan, requesting he be allowed to purchase ten acres of land in Harlandsville, Lower Buchanan, Grand Bassa, to be used for the establishment of a flour mill company known as the National Milling Company of Liberia. The Superintendent of the County readily agreed to the proposition, as he felt the establishment of such a company would be beneficial to the County. Counsellor Tubman, thinking the land to be farm land, paid into the Revenue Office of Grand Bassa County the amount of $5.00, the purchase price of ten acres of land at fifty cents an acre. When the deed to the property was presented to the Superintendent for attestation, Counsellor Tubman was told that the President required all land in the cities and townships to be sold at $30.00 per lot and since one acre in Grand Bassa County contained five lots, the amount to be paid was $1,500.00. Appellant, through his secretary, Charles Borley, supposedly paid the amount. It came out later that the revenue receipt which was presented to appellant by his secretary was forged.

When the forgery was discovered, appellant was indicted for uttering a forged instrument, on August 29, 1972. The case came up for trial on November 20, 1972, at the November 1972 Term of the Circuit Court for the Second Judicial Circuit, Grand Bassa County. A verdict of guilty was returned against appellant on November 25, 1972, by the trial jury. A motion for a new trial was made and denied and the trial court rendered final judgment against appellant on December 8, 1972, affirming the verdict of the jury and sentencing him to imprisonment for three months in the common jail. It is from this final judgment of the court below that this case is before us for review on a twenty-count bill of exceptions.

Because we consider the evidence adduced at the trial of great importance, we have decided to summarize the testimony of the witnesses during the trial before dealing with the bill of exceptions.

The first witness for the prosecution was Lawrence A. Morgan, Superintendent of Grand Bassa County. He testified that sometime in 1971 he was approached by appellant who wished to purchase ten acres of land in Harlandsville, Lower Buchanan, Grand Bassa County, for the purpose of establishing a flour mill. Mr. Morgan welcomed the idea but when the deed with a revenue receipt for $5.00 was presented to him, he informed appellant that, for one thing, he felt that for so much land in the heart of Buchanan, the deed should be prepared in the name of the company and not in appellant's name; and, secondly, he would have to pay for the land at $30.00 per lot and that there were five lots to the acre. The transaction was regularized by communications between the newly appointed acting Land Commissioner and Superintendent Morgan. The new deed for the land was later presented to Mr. Morgan with a receipt for $1,500.00. He noted that the receipt was mutilated, that is, there had been an addition of the word "hundred" and some of the figures had been altered. He

became concerned about the apparent irregularity but because appellant Robert C. Tubman was involved and because of the confidence he reposed in his integrity, knowing him as a colleague at the bar, he informed his agent, a clerk from appellant's office, who had been sent to collect the deed that he should tell his employer he would appreciate a certificate from the Bureau of Revenues in Monrovia to the effect that its office had made the alterations. He said further, and I quote him because of the importance of that part of his testimony, which we shall deal with later:

> "Anyone looking at the face of this receipt, will observe for himself the discrepancy to which I have referred. Again, Mr. Robert C. Tubman presented me the deed with the same receipt and other documents and asked me if I would have the President sign the deed since I had an appointment and I was going to see him. Again acting in good faith and reposing confidence in Mr. Tubman, I took the deed to the President and asked him to sign it."

He further testified that the President ordered publication of notice of the deed because of the acreage and locality involved, and that later he learned that appellant presented the deed to the President for his signature. He also identified the revenue receipts for $5.00 and $1,500.00, respectively, as well as copies of correspondence exchanged between him and the Land Commissioner for Grand Bassa County.

The second witness for the prosecution was Martha Dillon, who was employed as a filing clerk in the Bureau of Revenues at Buchanan. She testified to having issued the revenue receipt for $5.00 which had been paid by appellant in the first instance for ten acres of farm land and identified her signature on said receipt.

The third witness for the prosecution was Grace Harris, who was employed as Assistant Collector of Internal Revenues, Grand Bassa County, for whom the second

witness, Martha Dillon, was deputizing at the time the $5.00 revenue receipt was issued. She identified the signature of Martha Dillon on said receipt.

The fourth prosecution witness was Isaac Mason, Land Commissioner of Grand Bassa County, who testified to having received a letter from the Superintendent of Grand Bassa County concerning the land which appellant was in the process of purchasing and that after conferring with the surveyor who surveyed the land, he wrote appellant to pay $1,500.00 for the said land. He identified the correspondence between him and Superintendent Morgan touching this matter.

Prosecution's fifth witness was J. Rudolph Johnson, at the time Commissioner of Internal Revenues. His testimony revealed that the Finance Ministry had received a letter from the President of Liberia to the effect that appellant had overpaid the Government $305.00 for land purchased for his clients. When the President's letter was received, a check was made and it was discovered that instead of appellant having paid $1,500.00, the files of the Bureau of Internal Revenues showed that only $15.00 had been paid. A report of this fact was made to the President as a result of which, apparently, this case was commenced against appellant by the Ministry of Justice. This witness also testified that later on appellant was permitted to purchase the land for his clients and after deducting the amount of $15.00 already paid, the difference was paid and a revenue receipt for $1,447.50 was issued to appellant. This was after he had been indicted for uttering a forged instrument. One interesting point brought out in this witness's testimony was that the receipt for $1,500.00 that had been presented with the deed for the President's signature and a copy of the $15.00 receipt in the files of the Bureau of Internal Revenues bore the same number, which indicated that the $15.00 receipt had been altered to show on its face $1;500.00. He identified copies of correspondence be-

tween the President and the Finance Ministry and between him and appellant.

The sixth prosecution witness was Edwin Williams, Deputy Minister of Finance, who testified to having received a directive from the President to refund to appellant an apparent overpayment for some land purchased, but that when a check was made it was discovered that no refund was due appellant, and the President was duly informed of the circumstances. He identified copies of correspondence between the President and the Finance Ministry.

Prosecution's seventh witness was Malissa Goll, a cashier at the Bureau of Internal Revenues at Monrovia, who identified the revenue receipt for $15.00 as the amount actually paid instead of $1,500.00 shown on the face of a receipt bearing the same number.

The eighth witness for the prosecution was Samuel Berry, who was called as an expert witness over the strong protest of the defense, to testify to the fact that the $1,500.00 receipt had actually been altered. He claimed to be a document analyst and testified to the obvious fact that the figure "15" on the receipt had been changed to $1,500.00. He spoke of having made a careful analysis even though the document had only been handed him that morning just before he testified.

Prosecution's ninth witness was H. Boima Fahnbulleh, Assistant Minister of State for Presidential Affairs at the Executive Mansion. He testified to being responsible for processing deeds for the President's signature and that appellant had taken the deed for the land being purchased in Harlandsville for the President's signature with only a $5.00 receipt. He testified that he told appellant of the President's decision that all public lands in municipalities and townships should be purchased at $30.00 per lot and appellant promised to abide by the decision and would pay an additional amount of $1,170.00 for the 9.75 acres of land shown on the face of the deed,

and later appellant brought to him two receipts, one for $5.00 and the other for $1,500.00, with the deed. He had the necessary publication made. He also testified to having been called by the President on a day when appellant was with the President, and was told to bring the deed in question, which he did. He further testified that the President upon examining the deed discovered an overpayment for the land and instructed him to prepare a letter to the Ministry of Finance for the President's signature, directing a refund to appellant for the overpayment made by him, which he also did.

There is a variance between this last witness's testimony and that of Superintendent Morgan. The latter testified to the fact that appellant presented him the deed with the $1,500.00 mutilated receipt and other related documents which he gave to the President in person, and in his presence the President instructed his Executive Secretary, Mrs. Isabel Karnga, to have the necessary publication made before he signed it, which meant that she should channel the matter to Assistant Minister Fahnbulleh who handled such things. Yet, Fahnbulleh says when the deed was presented to him by appellant it had only a $5.00 receipt attached and that the $1,500.00 receipt was not brought in by appellant until he had informed him about the President's decision on the purchase price of land in municipalities and townships. Since this issue was not raised by appellant's counsel we simply mention it in passing.

The tenth witness for the prosecution was Superintendent Lawrence A. Morgan, who was recalled against objections by the defense to identify some written evidence.

The last witness for the prosecution was Rudolph C. Greaves, Manager of the National Milling Company, who had been served with a summons *duces tecum* to produce the account book and other relevant documents in connection with the acquisition of a 9.75 acre tract of land for his company. He testified that he had no doc-

ument relative to the purchase of 9.75 acres of land and the only account book he had related to laborers and construction work.

After having its written evidence, all but two of which were objected to by the defense, admitted into evidence, prosecution rested its case.

Now let us take a look at the evidence of the defense in the court below.

The first witness for the defense was Moses D. James, a Government surveyer for Grand Bassa County. He testified to the preliminary efforts and negotiations of appellant to procure ten acres of land to establish a flour milling plant during the Superintendency of Charles H. Williams, and how he was ordered by Superintendent Lawrence A. Morgan, who succeeded Superintendent Williams, to survey ten acres of land for appellant's company. He did so and made out a deed for the land for the purchase price of $5.00, thinking that the land was being purchased as farm land. He was afterwards informed by the Superintendent that he should make out a new deed in the name of the National Milling Company of Liberia in care of Robert C. Tubman and the purchase price should be $1,500.00, at $30.00 per lot for fifty lots. This he did and the deed was picked up by the Superintendent's Office Manager, Mr. J. Tarweh Freeman. When he asked for the revenue receipt he was told that all papers would be filed in the Superintendent's office. Later on, a young man by the name of Patrick Borley came from Monrovia and paid him $175.00, the balance of his fee for surveying the land.

The second witness for the defense was Charles W. Borley, secretary at Mr. Tubman's law firm, of which appellant is a partner. He testified that he was given the amount of $1,800.00 to proceed to Bassa and finalize the procurement of 9.75 acres of land for the National Milling Company and take care of other incidental expenses. Upon his arrival at Buchanan, Grand Bassa

County, he made every effort to get in touch with the Superintendent, but the Superintendent was inaccessible. After his efforts to reach the Superintendent proved fruitless, the secretary to the Superintendent, Mr. Joseph Tarweh Freeman, told him that he had been instructed to write a covering letter to the President relative to the land but before this could be done, he was to turn over the purchase price of the land to him to be deposited into the revenue. He gave the amount of $1,500.00 to Freeman, who gave him a receipt for it. He also testified that Freeman told him that the Superintendent had given instructions that he, the surveyor, and the Land Commissioner should go to the site to verify that it was public land. After inspection of the site the following day he was given an official flag receipt by Freeman for $1,500.00, which he delivered to his chief, the appellant, in Monrovia. Sometime later he was told by appellant to go to the Ministry of Finance to get copies of the receipt, one for the Superintendent of Grand Bassa County, one for the Land Commissioner of said County, and one for the office files. On his way to the Ministry of Finance he met the Superintendent's secretary, J. Tarweh Freeman, who informed him that the Superintendent wanted the receipt changed to bear the name of the National Milling Company of Liberia in care of Robert C. Tubman. After going to the Tubman law firm's office, Freeman left and later returned with a revenue flag receipt as he indicated the Superintendent wanted it to be. This was the sum of his general testimony. Upon being asked further questions on direct examination in order to elicit facts he had omitted to mention in his statement in chief he became so vacillating that appellant, taken by surprise, had to request the court to have him treated as a hostile witness, which was granted. Thereafter he was rigorously questioned, and although he insisted that he gave Freeman, the Superintendent's secretary, the $1,500.00 for the purchase of the land he had to admit

that his information was not passed on to appellant by him. The important point about this witness's testimony is that he admitted receiving the amount for the purchase of the land together with an additional amount for other expenses in connection therewith, from the appellant. He did not testify to what the Superintendent had said about sending a message to appellant concerning getting a certificate from the Bureau of Internal Revenues to the effect that the alterations he observed on the receipt had been actually made by said Bureau.

The third witness for the defense was the appellant himself. He testified to having drawn a check for $1,800.00 on the Chase Manhattan Bank on February 22, 1972, which he gave to his secretary, Mr. Charles Borley, to cash and to proceed to Bassa with his car for payment of the land, as well as to pay the balance due the surveyor, and other incidental expenses. He then told the court that after two days Mr. Borley and the driver of his car returned from Bassa and presented him with a revenue receipt for $1,500.00, in his name because the deed had been made out in his name. When a few weeks later he approached Superintendent Morgan at his office in Monrovia for a covering letter to the President concerning the deed, he was informed that the matter had been discussed with the President and it was the President's view that the deed should be in the name of the flour mill company. He thereupon gave Mr. Borley the receipt that had been issued in his name to return to the Finance Ministry to be changed in keeping with the President's suggestion. Because of the importance of this point, taking into consideration Borley's testimony on this score, we quote hereunder appellant's testimony on the point.

> "On March 14, of this year, I handed the revenue receipt of February 23, 1972, which carried the caption Robert C. Tubman, value $1,500.00, to my secretary, Charles Borley, and asked him to take it back to the

Revenue Office and have it changed for another receipt which should carry the caption National Milling Company, in care of Robert C. Tubman. He took the receipt and later returned another receipt to me also valued $1,500.00."

He related how he had met Superintendent Morgan at the Executive Mansion and asked him to attest to the deed and present it to the President with all supporting relevant documents, which he did. The deed was returned to him by the President's secretary because it did not carry the Superintendent's seal. After the deed was sealed he took the deed to Assistant Minister Fahnbulleh. The deed remained with the Assistant Minister until appellant returned from a business trip abroad. Upon his return he went to Mr. Fahnbulleh to inquire about the deed and he was told that the President had directed all public land in townships and other urban areas be sold at $30.00 per lot, or $120.00 per acre. He told the Assistant Minister he had conformed to the law, and this fact was verified when the file containing the deed was brought to him for scrutiny.

He also stated that he had occasion to see the President on August 11, 1972, on other matters and while there he reminded the President about the deed. The President immediately called for Assistant Minister Fahnbulleh and asked him to bring the deed. On examining it the President noted appellant had overpaid for the land by $305.00, because at $120.00 an acre, ten acres amounted to $1,200.00, instead of $1,500.00. He corrected the amount and initialed it and appellant also initialed the change. He then instructed Minister Fahnbulleh to write the Treasury to refund $305.00 to appellant, which amount included the $5.00 he had originally paid when it was thought the land was farm land. After a few days he checked with Mr. Fahnbulleh and finding out that the letter for the refund had not yet been signed, he requested that the deed and other related docu-

ments be given to him and the refund could come later. They were given to him. He thought the matter was closed.

However, on August 22, 1972, at 7:30 P.M. while relaxing at home, he was told by his son that two men wanted to see him. When he came out of his bedroom in his shorts and singlet he met two men in his living room, and was told that they were CID officers and that he was wanted by the Minister of Justice at Police Headquarters. He asked that he be permitted to dress and then accompany them, but they wanted him to go just as he was, in shorts and singlet. He told them that one of them could go with him to his room and stay while he was dressing. They agreed and after dressing he made a telephone call to his law office and hold his secretary to inform his brother, Counsellor Winston Tubman, and his cousin, Counsellor William V. S. Tubman, Jr., of what was happening. When he asked the officers whether they had a writ of arrest they exhibited a folded sheet of paper and said that it was their authority. Instead of being taken to Police Headquarters he was taken directly to jail in a police squad car with sirens blaring. At headquarters he was stripped, searched, relieved of his personal possessions and thrust into a cell along with several hundred prisoners. At eleven o'clock the next morning his brother and cousin went to the jail compound with a bond approved by Circuit Judge John A. Dennis. The Superintendent of the prison then called the Minister of Justice, Clarence L. Simpson, Jr., after which the counsellors were told that appellant could not be released because the bond had been approved by a judge other than the one who had committed him. Magistrate Brooks was contacted and another bond obtained, after which appellant was released. On August 29, 1972, when the case of forgery against appellant was called in the Magistrate Court, the City Solicitor asked for a week's postponement because, he stated, the

State was still compiling its evidence. After objections to the request, the Magistrate postponed the case until the following day. When the case was called the next day, appellant's counsellors, C. Abayomi Cassell, William V. S. Tubman, Jr., and Hall Badio being present, the State entered a nolle prosequi. The following day appellant was presented with an indictment for uttering a forged instrument, emanating from the Circuit Court for the Second Judicial Circuit, Grand Bassa County, and was again taken into custory and driven to Bassa in a police squad car. He and his counsel arranged for a cash bond and he was released. He then went on to tell how he had been entrusted with the responsibility of organizing and developing the project of his clients, the flour mill company, involving an investment of nearly one and one-half million dollars over a two-year span. His secretary, Mr. Charles Borley, had been working for him for over three years, and had been entrusted with amounts exceeding $1,500.00. In fact, he had been routinely entrusted with receiving retainer fees in the law offices and depositing them, and when appellant had occasion to be out of the country his secretary handled the office's petty cash. He, therefore, had complete confidence in Borley, so that when Borley presented the revenue receipt dated February 23, 1972, and the subsequent replacement receipt, he accepted them as genuine. He stated that there could be no reason to believe that he knew the receipts were forged. The same receipt had been seen and accepted by Assistant Minister Fahnbulleh, and, although Superintendent Lawrence A. Morgan had testified that he had observed discrepancies on the receipt, he (Robert Tubman) had never been informed of this fact. He deprecated the suggestion that he had attempted to mislead the President when he presented the deed and receipt to him. He had such high regard for the President that he would never contemplate deceiving him or attempt to mislead him. He further

stated that in September 1972, after he was indicted, Counsellor Winston Tubman had a meeting with the President in Geneva, Switzerland, and that thereafter the President wrote a letter to Counsellor William V. S. Tubman, Jr., requesting that appellant pay for the land, and he (Robert Tubman) immediately complied. This brought the testimony relating to the receipt for the purchase of the land to a close. He also identified several written instruments which were offered by the defense.

The testimony of the appellant, which was not controverted, is of interest in many respects. We shall comment on a few aspects later on in this opinion.

The fourth defense witness was J. Tarweh Freeman, chief Clerk and Office Manager of the Office of the Superintendent of Grand Bassa County. Freeman testified that one day Charles Borley went to his office with a letter for Superintendent Morgan from Counsellor Robert C. Tubman and asked Freeman's assistance in getting to see the Superintendent as quickly as possible. Freeman complied with the request, and Borley saw the Superintendent. Subsequently, Freeman was told by Borley that the letter from Tubman was in connection with a percel of land Tubman was trying to purchase in Buchanan. A few days later Borley returned to Buchanan to see the Superintendent again and left after he had talked with the Superintendent. About a week thereafter Freeman received instructions by telephone from Superintendent Morgan, who was in Monrovia, that Freeman should have Government surveyor Moses D. James change the deed that had been prepared in the name of Counsellor Robert C. Tubman to the name of the National Milling Company of Liberia, in care of Robert C. Tubman. Freeman immediately contacted the surveyor and the deed was changed. He remembered that appellant also called him on the telephone and asked him to expedite the preparation of the deed. When Freeman received the deed from the surveyor he gave Josiah

Logan, a messenger in the office, $5.00 of his own money to deliver the deed to Counsellor Tubman and was told that Counsellor Tubman gave the messenger $5.00 to pay his way back. A few weeks later when Freeman was in Monrovia, he went to the Tubman law firm and while talking with Borley appellant came out of his office and he (Freeman) was introduced to him. When appellant was leaving, he instructed Borley to give him $10.00 and thanked him for his assistance with the deed. When asked to identify several items of written evidence, among which was a receipt allegedly given to Borley by him for $1,500.00, Freeman vehemently denied ever issuing such a receipt. When shown one of the documents he was asked to identify, a memo written by Borley as to how he had expended the $1,800.00 given him by appellant, Freeman also denied ever receiving the $20.00 listed in said memo as having been paid to him.

The fifth and last witness for the defense was Thomas Friday, the chauffeur of appellant. Friday testified that he was present when appellant gave Mr. Borley some money and that he was told to take Borley to Bassa. Borley told Friday that the amount he had been given by appellant was $1,800.00 in connection with some business pertaining to land. They slept in Bassa, and the next day Borley told him that he had concluded the business for which he was sent down to Bassa by Mr. Tubman.

After obtaining the admission of certain written instruments into evidence defense rested its case.

As stated before, this case is before us on a twenty-count bill of exceptions. Although the appellant has raised some important issues deriving from the trial of the case in the court below, these points are in the main directed toward objections made by the appellant to questions asked by the State and the admission of documentary evidence offered by the State in support of its case. The points raised, therefore, cover the rules of evidence that are to be observed in the conduct of trials, and so we feel

that rather than addressing ourselves to each point raised in the appellant's bill of exceptions, we should deal specifically with the counts that are necessary to the proper determination of the case. They are counts 7, 13, 18, 19, and 20 which we quote hereunder:

"7. Because when on the direct examination of plaintiff's witness, Samuel Berry, a so-called document analyst, defendant objected on the ground that it was the duty of the plaintiff to establish the qualifications and academic attainment of the witness. . . .

"13. Because during the 10th day's session of the trial of the case, the defense made submission to the court that it had observed the presence within the court and outside thereof of certain security officers of the plaintiff, two of whom defendant asserted were even then present in the court and had taken seats immediately in front of the trial jury, and that they and others were constantly present in and around the court even after closing hours; the defendant feared that such actions had a tendency to put fear into and intimidate the trial jury; and that besides that, one of them had the temerity to follow around the court house one of defendant's counsel, Counsellor Samuel W. Payne, who had to inquire of said officer what he was after. . . . The court merely conducted a casual investigation of the defendant's submission, cautioned the Sheriff of his responsibility for the care of the jury and did nothing more. Defendant submits that these acts of plaintiff's representatives were prejudicial to his interests and here records his exceptions.

"18. Because during the 12th day's session, after argument, the jury was charged by the court and retired to its room of deliberation and upon its return it delivered a verdict of guilty against the defendant to which defendant excepted and gave notice that he would file a motion for a new trial. . . .

"19. Because during the 17th day's session the defendant filed an amended motion for a new trial, and after a hearing the court denied the motion, to which defendant excepted.

"20. And also because immediately thereafter, defendant having waived the right to file a motion in arrest of judgment, the court passed final judgment on the defendant, adjudging him guilty of the crime charged and sentencing him to three months imprisonment in the common jail of the County of Grand Bassa. Defendant excepted to said judgment and prayed for an appeal to the Supreme Court of Liberia at its March 1973 Term."

Resorting to the record with respect to count seven of the bill of exceptions, we find the testimony of the prosecution's expert relevant.

"Q. By prosecution: The Republic of Liberia has charged Robert C. Tubman, Counsellor-at-law, with uttering a forged instrument. The prosecution has brought you as its expert witness to testify to said document alleged to have been altered and uttered. I hand you this document, look at it and say what it is or what appears on it.

"Objections by defense: ground: The qualifications . . . of the witness to be called as an expert have not been established. The question is without the *res gestae,* in that by the use of the word "altered" the examiner suggests a different crime than that charged, as 'uttering' is different from 'altering'.

"The Court: When an expert witness is brought to testify in a case, a foundation must be made as to his qualifications to testify to facts, be it documentary or otherwise which has been or is being introduced . . . in order that the witness may express his opinion thereon. The witness has stated that he is employed by the Liberian Government as a document analyst

and we wonder if the witness was not qualified academically, would he be employed in such a position? It is the view of the court that the witness having stated his field of employment, that his qualifications have been established. According to the definition of the crime with which the defendant is charged, said definition reads: inter alia: any person who offers to pass or to make current any forged instrument knowing it to be forged, and who asserts directly or indirectly by words, action or by any means whatsoever, that such document is good and genuine is guilty of the crime of uttering a forged instrument. The court says that in order to utter a forged instrument, it must be established that same was forged or altered to be genuine. In view of the foregoing, the objection is overruled."

Let us examine the law on the issue of what constitutes an expert witness, and what is expert evidence.

"*Expert Evidence:* Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject." BLACK'S LAW DICTIONARY, Third Edition (1957).

"An expert is a person who possesses the knowledge required to draw correct inferences from evidence that relates to a matter that is not within the realm of common knowledge.

"Legal authorities have charged that the procedure for qualifying an expert has degenerated into a mere formality in many courts with the result that unqualified witnesses are often permitted to testify as experts. It would seem that tightening of procedure for qualification by requiring a written statement containing the background of the witness to be presented to the judge for consideration prior to trial would do much

to eliminate this evil." FISCH, *Evidence* (1959), § 425.

This Court has set the guideline for admitting expert testimony in a trial. Although the case relates specifically to medical evidence, the principle of what is required for one to be an expert witness is clearly set up in a case long ago decided by this Court.

> "The questions which present themselves to the mind of the court in considering this evidence are: First, Was the witness such a person as the law would presume to be possessed of sufficient knowledge of the science of medicine to enable him to make a correct and scientific examination of the deceased, and to arrive at a just conclusion as to the cause of death? Second, Was proof of his qualifications made out at the trial? Third, Could his evidence be received as that of a medical expert in the absence of such proof?" *Dunn* v. *Republic,* 1 LLR 401, 403 (1903).
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> "It was insisted by the attorney for the prosecution in the court below, that the witness having for a long time practiced medicine and having also served the State in a military expedition, as physician, this was evidence of his general character as a medical man. We cannot argee with this contention. The fact that witness had practiced as a medical man for a considerable time does not, in the opinion of this court, establish the fact of his qualification as a physician, to enable him to depose to matters of medical science. It is not *prima facie* evidence of his qualification as such." *Id.,* 404.

It is our opinion that the qualification of the witness, as an expert in the field he was called upon to testify to, should have been established. It was not enough to say that because he was employed by the Liberian government in a field that he is an expert. Though it is perhaps improbable, it is not impossible for charlatans to

be employed by the government. We feel that the trial judge erred when he ruled as he did on the qualification of the expert witness produced by the prosecution. The issue is not that the witness was not qualified as an expert. However, his qualification should have been established before he was permitted to testify. Moreover, it seems rather strange that the document upon which the witness was to give expert testimony was only handed to him a little while before he was called to the witness stand. Further, why the need for an expert witness when prosecution witness Superintendent Lawrence A. Morgan had testified that "anyone looking at the face of this receipt will observe the discrepancy to which I have referred." Count seven of the bill of exceptions is, therefore, sustained.

In count thirteen of the bill of exceptions, appellant complains of the trial court's failure to investigate the submission he made with respect to the activities of security officers in and about the court house during the trial. An examination of the trial record on the point does show that such a submission was made to the court and that reference was made to two of the security officers sitting immediately in front of the trial jury at the time the submission was being made. Surprisingly, in calling on the sheriff for some expression on the matter he made no mention of the statement that two security officers of the State were sitting in front of the jury, nor did he make any comment on this point after the sheriff's efforts to explain that he was not aware of there being any security officers in and about the court room during the trial. We feel strongly that the trial judge should have more thoroughly investigated the submission of the defense, especially with respect to the two security men allegedly sitting right in front of the jury when the submission was being made. His failure to do so was grossly prejudicial to the defense. It is no wonder the verdict was what it was. We have always held that in all trials,

but especially criminal trials, judges should so conduct the trial in the presence of the jury that bias or prejudice cannot be imputed to them, for a jury is greatly influenced by the expressions of a court.

> "The jury is an essential instrumentality—an appendage—of the court, the body ordained to pass upon guilt or innocence. Exercise of calm and informed judgment by its members is essential to proper enforcement of law. The most exemplary resent having their footsteps dogged by private detectives. All know that men who accept such employment commonly lack fine scruples, often wilfully misrepresent innocent conduct and manufacture charges. The mere suspicion that he, his family and friends are being subjected to surveillance by such persons is enough to destroy the equilibrium of the average juror and render impossible the exercise of calm judgment upon patient consideration. If those fit for juries understand that they may be freely subjected to treatment like that here disclosed, they will either shun the burdens of the service or perform it with disquiet and disgust. Trial by capable juries, in important cases, probably would become an impossibility. . . . We can discover no reason for emasculating the power of courts to protect themselves against this odious thing." *Sinclair* v. *United States,* 279 U.S. 749, 765 (1929).

Count thirteen of the bill of exceptions is sustained.

We come now to counts eighteen, nineteen, and twenty of the bill of exceptions which, because of their interrelation, we will consider together. Count eighteen deals with appellant's exceptions to the verdict of the jury against him and his notice that he would file a motion for a new trial. Count nineteen relates to the amended motion for a new trial, which was denied by the trial court, and excepted to by appellant. A motion for a new trial was filed by appellant and resisted by appellee,

whereupon appellant filed an amended motion for a new trial, which was also resisted by appellee. We deem it necessary for the purpose of this opinion to quote the ruling of the trial judge.

"After the empanelled jury had brought in its verdict of guilt against the defendant, the defendant filed a motion for a new trial and later made application to court to amend same; the application was granted. The amended motion for a new trial was filed to which prosecution filed a resistance. In their resistance to defendant's amended motion for a new trial, prosecution prayed for the denial of a motion on grounds set forth below.

"1. That count one of the amended motion is merely based on an assumption not established, in that the jury was polled and they all answered in open court; further, that during the empanelling of said jury counsel for defendant sat supinely and did not exercise the right to enquire as to whether each and every juror could read and write.

"2. That defendant did not withdraw the original motion filed before filing the amended motion.

"3. That an amended motion can only be made prior to the assignment of the hearing of the pleading.

"4. That counts two, three and four of the amended motion are sham pleas because the verdict was not contrary to the weight of evidence or provisions of law or contrary to the instructions of the judge. Defendant in his motion for a new trial prayed that it should be granted on the following grounds.

"a. Because the verdict of the jury was on its face manifestly defective and invalid in that the hand writing and signatures appearing thereon are that of one and the same person, which is contrary to law.

"b. Because the said verdict was contrary to the evidence adduced at the trial and several excerpts

were made from the testimony of prosecution witnesses in support of said count.

"c. Because the verdict was contrary to the provisions in such cases made and provided. That is to say, the specific provision of the crime charged in that the law requires that the person who offers to pass or to make current or to publish any forged instrument knowing it to be forged is guilty of the crime charged, and also anyone who declares or asserts directly or indirectly by word, action, or by any means whatsoever that such instrument is good and genuine with intent in so doing to defraud, is guilty of the crime charged.

"d. And also that said verdict was contrary to the instruction of the court, specifically that the court instructed the said jury that the defendant must be in knowledge of the instrument being a forged one and thereafter utters, that is to say, presents it to another as good and genuine, as to deceive or defraud the other, before he can be convicted of uttering a forged instrument.

"The court says that while counts one and three of the plaintiff's resistance may be legally tenable, it is an accepted principle of law in criminal trials that mere legal technicalities should not tend to deprive the defendant of a fair trial. The two counts are therefore overruled. As to count two of said resistance, which attacks count one of the amended motion for a new trial, the court says that same is sustained because when the jury brought in the verdict which was read, the said jury was polled and they each and every one said that it was their unanimous verdict; further it was never established that any juror should be disqualified because of his or her illiteracy; and still further that there is no law, as far as it lies in this court's knowledge, that an empanelled jury is pro-

hibited from selecting one of them as a clerk. As to count four of prosecution's resistance, the court says that it is sustained for the following reasons.

"a. In that, what is alleged in count two of defendant's motion for a new trial as insufficient proof to enable the jury to have brought in a verdict of guilt, was never, as the record will reveal, proven to the contrary; that based on the preponderance of the testimony of the several witnesses, the jury as judges of the facts decided on the credibility of said testimony.

"b. That legally, knowledge can be described or considered imputed. That is, when the means of knowledge exists, is known and accessible to a party capable of communicating positive information. Many acts may be perfectly innocent when a party performing them is not aware of certain circumstances attending them. For example, a man may pass a counterfeit note quite guiltlessly if he did not know it was so; in such a case, it is the knowledge which makes the crime. Such knowledge is made a crime by the statutes of many lands, also ours. . . .

"In view of the foregoing, the motion for a new trial is denied. It is so ordered."

While we cannot say we understand what Judge Jeremiah Z. Reeves meant by subparagraph b of his ruling, one thing is crystal clear, and that is, that taking all the circumstances of the case into consideration, especially the evidence adduced, a new trial should have been awarded.

From the facts of this case as stated above, and particularly as summarized in count two of the amended motion of a new trial, it is necessary to determine whether or not in accordance with our statutory provisions governing the crime "uttering a forged instrument," as set forth in our Penal Law, 1956 Code 27:304, the appellant in his behavior and actions has evidenced the chief elements of this crime, namely: that a person must offer to pass or

make current or to publish any forged instrument knowing it to be forged and has declared or asserted directly or indirectly by any means whatsoever that such instrument is good and genuine, with intent in so doing to defraud by inducing others to accept such forged instrument as good and genuine.

We have seen from the evidence adduced at the trial that the main receipt involved in this case, which is the receipt for $1,500.00 dated March 14, 1972, is the receipt which was presented to Superintendent Morgan and finally to the President of Liberia as the purchase price of the land in question. Superintendent Morgan observed that this receipt had been mutilated and the numbers changed. Appellant claimed, and this fact was corroborated by Charles Borley and Thomas Friday, that the money was given to his secretary, Charles Borley, to make payment for the land and that it was the said secretary who presented the receipt to him; that he had full trust and confidence in his secretary owing to his long service and the fact that this man had in the past been entrusted with sums of money in excess of the amount involved. The question arises, however, in view of the fact that the alteration or mutilation on the face of the said revenue receipt was so obvious, why appellant did not observe it. In this connection two factors must be taken into consideration; firstly, that appellant, as was proved at the trial, did in fact give his secretary the money to pay for the land, and secondly, that this apparent mutilation was overlooked by several other persons who handled the receipt.

Appellee's counsel during argument stressed the point that because the mutilation was so obvious, it must be concluded that appellant knew the receipt to be forged when he presented it with the deed to the President. When asked by the bench whether there was anything in the trial record to show that appellant did in fact know of the forgery, since prior knowledge of the forgery is

the gravamen in a case of uttering a forged instrument, they could not point to any such knowledge in the record except to refer to Superintendent Morgan's testimony at the trial.

We find ourselves unable to agree with appellee's argument, because subsequent to Superintendent Morgan observing the mutilation of the receipt he and appellant met several times, even to the extent of the Superintendent receiving the deed from appellant to present to the President, and there is no showing that the Superintendent at any time informed appellant of his observations regarding the receipt, although he did note his reservation to appellant's agent, Charles W. Borley, and also to his chief clerk and office manager, J. Tarweh Freeman. In fact, when on the stand testifying in his own behalf, appellant stated positively that Superintendent Morgan never told him about the alteration which he had observed on the receipt, and this statement was not controverted. Nor did Superintendent Morgan in his testimony state that he had told appellant about the alteration.

It is true that legal authorities agree that it is not essential that an accused must have been implicated in the forgery before he can be adjudged guilty of uttering a forged instrument, but the elements constituting the crime must be present to warrant conviction.

We have painstakingly searched through the record in this case and have been unable to find the necessary elements of the crime necessary to convict, namely, prior knowledge that the instrument was forged and intent to defraud.

> "To constitute this offense it is essential that the person uttering the forged instrument have actual knowledge of its falsity. It is not sufficient to constitute the offense that the instrument was forged and that accused had passed it; or that he had reasonable cause to believe it was forged, or that he could have ascertained that the check was forged if he had made reasonable inquiry.

"To constitute the offense it is essential that there be an intent to defraud, but there need not be an intent to defraud any particular person." 37 C.J.S., *Forgery,* § 37c, d.

Having been conclusively proved at the trial that appellant gave his secretary the money to pay for the land being purchased, could it be reasonably presumbed that he had prior knowledge of the forgery or that he intended to defraud? We think not.

Common law authorities support this position:

"Uttering a forged instrument is offering as genuine an instrument known to be false with intent to defraud. . . . This knowledge may come by two means, either of his own knowledge, or by the relation of another. One is not guilty of uttering a forged deed if he had no actual knowledge, information or belief that it was false. The fact that the genuine deed was recorded was spurious. In a trial for uttering a forged instrument it is reversible error to charge the jury that they may convict if they find the defendant uttered the instrument having reasonable ground to believe that it was forged. . . .

"The three factors requisite to constitute uttering a forged instrument are: (1) It must be uttered or published as true or genuine, (2) It must be known by the party uttering or publishing it to be false, forged or counterfeit; (3) It must be with intent to prejudice, damage, or defraud another person.

"Where knowledge is required it is not sufficient to show that defendant was negligent in not knowing. The question is not what a prudent man, exercising ordinary care, would have known or believed under the circumstances, but what defendant in fact did know or believe. If circumstances suggested the possibility to him and he wilfully avoided inquiry for fear of what he would learn, he is held to have had 'knowledge' of what would have been disclosed. If they did not convey any such suggestion to him, and

he acted in utmost good faith, he did so without 'knowledge' no matter how dumb he may have been.

"One is not guilty of uttering a forged instrument with knowledge of the forgery if he had no doubt of its genuineness, even if he was quite negligent in not discovering its falsity."

From the citations and the facts of the case as recounted in this opinion, it should be obvious that the requisite factors constituting the offense are patently absent in the instant case. Counts eighteen, nineteen, and twenty of the bill of exceptions are sustained.

There are other interesting matters brought out in the testimony of the appellant, such as being arrested at night without a warrant and being taken straight to jail where he spent the night on a charge for which a nolle prosequi had to be entered. But these matters do not go to the merits of the case, and we related this particular one to once more place on record emphatically that we deprecate such acts because they deprive one of the "due process" rights guaranteed by the Constitution and laws of this Country.

The facts that were brought out in this case clearly reveal that the crime of forgery was committed by someone, but there is not a scintilla of evidence to warrant the conviction of appellant of the offense charged or to justify the humiliations and indignities he had to undergo.

In view of what has been hereinabove stated, we conclude that appellant is in no wise guilty of the crime of "uttering a forged instrument," in that the prosecution has woefully failed to establish a prima facie case against him and it is, therefore, our holding that the judgment of the court below should be and is hereby reversed and the appellant discharged without day from further answering the charge brought against him. The Clerk of this Court is hereby directed to send a mandate to the court below to the effect of this decision. It is so ordered.

Reversed: appellant discharged without day.