WILLIAM A. BRYANT, SAMUEL D. COLEMAN, D. CARMO CARANDA, CHARLES B. REEVES, KOLLIE TAMBA, PRESLEY COLEMAN, CHARLES T. O. KING, Principals, and J. BANIKER JACKSON, Accessory after the Fact, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued April 6, 7, 8, 12, 13, 14, 15, and December 20, 21, 1937. Decided December 31, 1937.

1. Conspiracy to commit murder is an infamous crime.
2. Courts should never declare a statute unconstitutional unless its invalidity is in their judgment beyond a reasonable doubt.
3. The constitutional right to trial by a jury of the vicinity for defendants criminally charged in certain grades of criminal cases has been held to mean by a jury of the county in which the offense is alleged to have been committed.
4. There is a conflict of opinion on the right of a defendant in a criminal case above the grade of misdemeanor to waive the constitutional right to trial by jury.
5. The statute granting the right to a defendant indicted for an offense above the grade of misdemeanor to change the venue to any court in any county of the Republic of the vicinity is not in conflict with the constitutional guaranty of the right of trial by a jury of the vicinity.
6. A motion for continuance is addressed to the *sound,* not the *arbitrary,* discretion of the trial judge.
7. Hence, if it can be shown that defendant was only furnished with a copy of the indictment at noon day on Saturday, it is error to overrule a motion for continuance and proceed with the trial on the following Monday, even though there had been a preliminary investigation before a justice of the peace.
8. A motion for continuance in order to prepare a defense made at the term when a party is indicted is ordinarily more entitled to favorable consideration than if made at a subsequent term.
9. When several defendants are jointly indicted, a motion for severance should be granted as of right if, upon the face of the indictment, there is no causal connection between those praying a severance and the others.
10. In computing time, if the time to be computed is less than seven days, Sundays are to be excluded, but if more than seven days, Sundays are to be included in the complaint.
11. Although the Act of 1912 provided that no jury should be empanelled after the twenty-first day of the term, that of 1925 now still in force provides that no jury session of court shall continue for a period longer than twenty-one days.
12. A jury trial is therefore illegal if it continues until admittedly thirty-nine

days after the trial term begins, and also illegal if begun on the twenty-second day of the term.

13. Whenever defendants are jointly indicted and jointly tried, each has a right to the full number of peremptory challenges allowed by law, although the prosecution is limited to the total number for each party.

Appellants were convicted of the crime of conspiracy in the Circuit Court of the First Judicial Circuit, Montserrado County and sentenced to imprisonment. On appeal to this Court, *judgment reversed and a new trial awarded.*

C. B. Reeves and *S. David Coleman* for appellants. *The Attorney General* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

The hearing and decision of this cause in this Court is by appeal upon a bill of exceptions by the appellants, defendants in the Circuit Court of the First Judicial Circuit, Montserrado County, who were indicted by the grand jury for the county before named at its February term, 1936, charging them with the commission of the crime conspiracy under the Criminal Code of the Republic of Liberia of 1914; and against them final judgment was rendered on the 25th day of March, 1936, adjudging them guilty of the conspiracy alleged in the indictment, and sentencing them each to five calendar years' imprisonment, with the exception of J. B. Jackson, accessory after the fact, one of the defendants now appellants, who was sentenced by said final judgment to two calendar years' imprisonment.

The penalties of said judgment, the trial judge adjudged, shall refer to each individual respectively, and shall be with hard labor.

There were fourteen defendants charged as principals, three of whom were charged as accessories before the fact, and one charged as accessory after the fact.

The record sent forward from the trial court up here

to us shows, that defendants William A. Bryant, Samuel D. Coleman, Charles T. O. King, M. Ellen Bloemeyer, Charles B. Reeves, Kollie Tamba, Presley Coleman, defendants, principals, and J. B. Jackson, accessory after the fact, were convicted of the crime for which they had been indicted, and that they, with the exception of M. Ellen Bloemeyer, took exceptions to the several rulings, opinions and final judgment of the trial judge entered against them, and appealed to this Court for a review of the cause.

At the April term of court, 1937, the records of this Court reveal the fact that when the cause was called for hearing here, His Honor the Chief Justice called attention to the charge preferred against defendants, being that he was one of the parties whom defendants are alleged to have conspired to kill, and stated that if either party so desired he would not participate in the hearing and decision of the cause; whereupon both parties expressed no scruples against his participating in the decision of the case, and filed written statements as hereunder recited:

"STATEMENT OF COUNSEL IN ANSWER TO QUERY PROPOUNDED BY CHIEF JUSTICE.

"Following the query propounded by His Honour the Chief Justice in respect to his disqualification in consequence of the mention of his name which appears on page six (6) of appellants' brief in connection with other persons, officials, laid in the indictment upon which appellants were tried, appellants having been required to confer on this point, have held said conference and do hereby confirm the expressions already made before this Honourable Court yesterday by their counsel, that they have implicit confidence in the integrity of His Honour the Chief Justice and the other members of the present Bench and their high regard for law and justice; that they

formulate no objection to His Honour the Chief Justice's participation in said cause; and appellants further desire to point out that the mention of the Chief Justice's name referred to is only by way of recital, being done in consonance with count one (1) of the Indictment, where the names of the Officials mentioned in said brief appear.

"Respectfully submitted,
[Sgd.] CHARLES B. REEVES
" S. DAVID COLEMAN
Counsels for themselves and appellants.

"Dated at Monrovia,
this 7th day of April
A.D. 1937."

"RESISTANCE TO DISQUALIFICATION OF CHIEF JUSTICE TO PARTICIPATE IN THE REVIEW AND DECISION OF ABOVE ACTION

"Appellee submits that His Honour the Chief Justice is not disqualified from participating in the review and decision of the above action, because,

1. He is not an interested party either directly or indirectly;
2. He has not been recused by any party to this action;

wherefore the issue raised by the Chief Justice himself as to whether any party to this action would object to his participation in the hearing and determination of this case should be rejected by the Bench as the mere inclusion of the Chief Justice in the history of appellants' brief without any allegation does not amount to recusation.

"The Republic of Liberia, appellee
by its Counsel,
[Sgd.] MONROE PHELPS,
Attorney General."

While the cause was being heard here, His Honor the Chief Justice queried the Honorable the Attorney General of counsel for appellee as to whether co-appellant William A. Bryant still survived, to which query the learned counsel replied that he had no official information of his demise.

The bill of exceptions filed by appellants against the trial had in the court below contains ninety-eight exceptions or counts, many of which are very interesting and far-reaching in the light of learning some of the unsettled principles of law and procedure of which the legal profession of this country carry conflicting opinions; and for which we were feeling gratified for the opportunity to so decide as to make it clear and certain for practitioners what the interpretation of the law by this Court is in reference to these legal principles and procedure so long needed. But while the appellants' counsel was opening the arguments from their brief filed and had reached only the sixth count thereof, our hopes in this respect were thwarted, and we found ourselves compelled to confine the arguments to the issues raised in the first five counts of the bill of exceptions, as they alleged such gross irregularities during the initial stage of the trial previous to issue being joined by the plea of defendants that we thought best to first dispose of them.

The Honorable the Attorney General for the Republic of Liberia, appellee, was at this stage of the hearing of the appeal requested to answer by way of traversal the said five exceptions or counts of the bill of exceptions of appellants. After starting the arguments on behalf of appellee, he expressed a feeling of illness, when this Court expressed a willingness to postpone his argument to some future time when he may have recovered from his illness; but he declined the offer and said that he felt physically strong enough to conclude the argument as designated by the Court and proceeded to conclude

his arguments. This done, the appellants waived closing arguments.

We have now to take recourse to the bill of exceptions and pass upon the first five counts of the same.

The first in serial order is the first count laid in the bill of exceptions, and is written therein as follows:

> "Because when on the said 2nd day of March A.D. 1936, Your Honour ordered called for trial the case; Republic of Liberia, plaintiff, versus William A. Bryant, et al., defendants, Crime: Conspiracy, defendants William A. Bryant, C. B. Reeves and S. D. Coleman gave notice that they had filed motions for change of venue (vide motions). Your Honour in denying said motions ruled as follows, to wit: Acts of Legislature 1902–3, page 32, with reference to change of venue in criminal cases being contrary to the 7th section of the Bill of Rights of the Constitution of Liberia, where it appears that a Statutory provision is in conflict with constitutional provision, when such a conflict is brought to the attention of a court of justice, the right claimed under such an illegal statute should be denied. 'The court says that in its opinion the Act above referred to is unconstitutional. See Constitution of Liberia, Art. I, Section 7, the Change of Venue thus prayed for is therefore denied. And it is so ordered,' to which ruling the aforesaid defendants except. Vide p. 1 of records, March 2, 1936."

The appellee insisted that the Act of the Legislature approved January 19th, 1903, and entitled "Joint Resolution making it lawful for any person or persons indicted for any offences above the crime of Misdemeanor to change venue to any County within the Republic of Liberia" was unconstitutional because it is in derogation of the seventh section of Article I of the Constitution of the Republic of Liberia.

His Honor the trial judge sustained this objection of

appellee to the granting of a change of venue to those of appellants who applied for same, and held that the act of the Legislature above cited would deprive those appellants who had applied for a change of venue of a trial by a jury of the vicinity which the Constitution guarantees to defendants in all criminal cases of a certain degree, and therefore declared the said act of the Legislature unconstitutional and denied the application for a change of venue.

Now, let us see if the contention of the Republic of Liberia, appellee, and the ruling of His Honor Judge David declaring the act unconstitutional can be upheld by the Constitution and by exponents of constitutional law.

The seventh section of article first of the Constitution reads as follows:

> "No person shall be held to answer for a capital or infamous crime, except in cases of impeachment, cases arising in the army and navy, and petty offences, unless upon presentment by a grand jury; and every person criminally charged, shall have a right to be seasonably furnished with a copy of the charge, to be confronted with witnesses against him,—to have compulsory process for obtaining witnesses in his favor, and to have a *speedy, public and impartial trial by a jury of the vicinity.** He shall not be compelled to furnish or give evidence against himself; and no person shall for the same offence be twice put in jeopardy of life or limb."

From the text and context of this section of the Constitution, it is conclusively obvious that the trial of defendants in criminal causes by a jury of the vicinity, is a right granted and guaranteed to all defendants who may be criminally charged with capital or infamous crimes, except in cases of impeachment and cases arising in the Army or Navy. Our premises being correct we proceed

* Italics added by the Court.

to demonstrate thus: Is the crime an infamous one under the Criminal Code of 1914 upon which the prosecution is predicated? We say it is, for conspiracy is defined by the said Criminal Code as follows:

> "If two or more persons shall conspire together to commit a crime; or to falsely or maliciously cause another to be arrested or indicted for a crime; or to injure the person or property of another; or to do any act that will tend to the perversion or obstruction of justice or the due administration of law, they shall be deemed guilty of a felony; otherwise it shall be deemed a misdemeanour. The punishment shall be imprisonment for a term not exceeding seven years, in case of a felony or a fine of not more than three years, in case of a misdemeanour."

Appellants being charged with conspiracy to commit murder, the penalty provided by the Criminal Code in such a case makes it an infamous crime. Then the right of trial by jury of the vicinity was appellants', they being defendants below in this cause.

A further question comes in legal order, the right to trial by a jury of the vicinity being a constitutional right granted to defendants in the class of criminal cases mentioned before: is an application for a change of venue a violation of the provision of the Constitution above cited, when made by the defendants themselves, to whom the right is granted and the benefit guaranteed by the Constitution, when such change of venue is authorized and provided for under certain conditions enumerated and set out in the act of the Legislature?

In developing a reply on this question, we should here state that while it is an axiomatic principle of the American system of constitutional law which has been incorporated into the body of our law that the courts have inherent authority to determine whether statutes enacted by the Legislature transcend the limits imposed by the Constitution and to determine whether such laws are not

constitutional, courts in exercising this authority should give the most careful considerations to questions involving the interpretation and application of the Constitution, and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance, and they should never declare a statute void unless its invalidity is, in their judgment, beyond a reasonable doubt; and it has been held that to justify a court in pronouncing a legislative act unconstitutional the case must be so clear as to be free from doubt, and the conflict of the statute with the Constitution must be irreconcilable, because it is a decent respect to the wisdom, the integrity, and the patriotism of the legislative body by which all law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt. Therefore in no doubtful case will the judiciary pronounce a legislative act to be contrary to the Constitution. "To doubt the constitutionality of a law is to resolve the doubt in favor of its validity." 6 R.C.L. 75–76, § 73. Now, let us seek the legal reply to our question last propounded.

The right of defendants criminally charged, in certain grades of criminal cases, to trial by a jury of the vicinity, has been held to mean by a jury of the county in which the offense is alleged to have been committed. To apply for a change of venue to the nearest county because of existing local prejudices, whereby a defendant believes or fears he will not be able to obtain justice in the county where the indictment was founded, would obviously be a waiver of the constitutional right to be tried by a jury of the vicinity, although not a waiver of the right to trial by a jury of the vicinity of the nearest county whither the venue is sought to be taken. If such waiver is permissible by law, there is no violation of the seventh section of article first of the Constitution; conversely if such waiver is not permissible by law, then there is a violation of the Constitution in this respect. In 27 *Ruling Case*

Law, a standard legal work of America, dealing with the subjects of "Rights and privileges subject to waiver," it is very clearly set out that:

> "The doctrine of waiver, from its nature, is applicable, generally speaking, to all rights or privileges to which a person is legally entitled, whether secured by contract, conferred by statute, or guaranteed by the constitution, provided such rights or privileges rest in the individual, and are intended for his sole benefit. A right or privilege given by statute may be waived or surrendered, in whole or in part, by the party to whom or for whose benefit it is given, if he does not thereby destroy the rights and benefits conferred upon or flowing to another in or from said statute or other legal or equitable source. Even when a statute in so many words declares a transaction void for want of certain forms, the party for whose protection the requirement is made often may waive it, void being held to mean only voidable at the party's choice. A waiver is not, however, allowed to be operative where it would infringe upon the rights of others, or would be against public policy or morals. Where the object of a law is the good of the public as well as of the individual, such protection to the state cannot, at will, be waived by any individual, an integral part thereof. The fact that the individual is willing to waive his protection cannot avail. The public good is entitled to protection and consideration; and if, in order to effectuate that object, there must be enforced protection to the individual, such individual must submit to such enforced protection for the public good." 27 R.C.L. 906, § 3.

The same writer on the subject, "By whom Waiver may be Made," gives the following:

> "The power to waive rights or privileges may be exercised by the person for whose benefit they were intended, if he be of full age and sui juris, or by any

one authorized by him, or by any one whom the law empowers to act in his behalf. . . ." *Id.*, at § 4.

The decisions of the courts of the United States of America in reference to the waiver of trial by jury in a criminal case above the grade of misdemeanor are conflicting. In some jurisdictions it is held that such right of waiver exists generally in criminal cases, while in other cases such power of waiver is denied. Other cases merely hold that the number of jurors cannot be waived in trials for felonies, or that it may be in trials for misdemeanors; while in others it has been expressly held that the number may be waived even in trials for felonies, except capital cases. These, of course, refer to cases where the plea of defendant is "not guilty." 35 C.J. 200–2.

As reason for this conflict, the same eminent legal authority lays down the following:

"In support of the view that a waiver should not be allowed it has been said that the constitution contemplates a jury of twelve men and that a waiver would allow the parties to create a new tribunal unknown to the law, which would be a dangerous practice and contrary to public policy. . . . Furthermore, it has been said that the principle, if recognized, would permit a waiver of any number or all of the jury. . . . In other cases it is expressly denied that such a procedure is contrary to public policy. . . . The argument that any number of jurors might be waived is answered by the statement that the whole matter is under the control of the court, who would protect against any abuse in this regard. . . . 'If it be true that numerically those preponderate in which the right of waiver has for one reason or other been denied, it is very confidently believed that those affirming it have the better of the argument, are more in accord with rational modern views of legal procedure, conform alike to ordinary notions and to the highest practical standards

of right and fairness, and fall in readily with the common sense way in which the law of this state deals with questions not backed by actual and substantial as opposed to abstract and technical merit.' Com. v. Beard, 48 Pa. Super. 319, 326," Footnote 86.

The correctness of our conclusions that there are conflicting judicial opinions on the question of the right of a defendant in a criminal case above the grade of misdemeanor to waive the constitutional right to trial by jury is borne out and upheld by R.C.L. in its treatise on Constitutional Law, in the 6th volume at page 93, in section 93. And these learned authors further declare that the waiver can only be made when allowed by statute. 16 R.C.L. 219, § 36.

But for the case in point, there is no request for a waiver of trial by jury, but an application for a change of venue to the nearest county, under the authority of the act of the Legislature approved January 19, 1903 (Laws of 1902–03, p. 32), which appellee contended is in violation of the Constitution, article first, section seven.

We incorporate the said act into this opinion for the purpose of taking it together with the relevant portions of the Constitution, with which it is said to be in violation, and for the purpose of deciding if they are irreconcilable and conflicting:

"Joint Resolution making it lawful for any person or persons indicted for any offences above the crime of Misdemeanor to change venue to any County within the Republic of Liberia.

"Whereas it is highly essential that in order to secure fair and impartial trials of all cases that may affect the life, liberty and rights of the citizens of the Republic; and that they ought not be compelled to go to trial before any Court in such important cases wherein they feel that on account of local prejudice, they will not receive a just verdict,

"Therefore, it is enacted by the Senate and House

of Representatives of the Republic of Liberia in Legislature assembled:

"Sec. 1: That from and immediately after the passage of this Joint Resolution, it shall be lawful for any person, or persons indicted by the Grand Jury for offences above the crime of Misdemeanor to change the venue to any Court in any County of the Republic of Liberia, having competent jurisdiction. Provided the change is made to the nearest County.

"Sec. 2: It is further resolved that the venue changed shall be governed upon this principle. The individual indicted shall appear before the Court in which he stands indicted and make an oath showing that on account of existing local prejudices, he or she believes or fears that they will not be able to obtain justice. The venue changed, shall be to the nearest county.

"Any law to the contrary notwithstanding.

Approved Jany. 19, 1903."

The Constitution grants defendants the right, in a criminal case of the grade of the one now on appeal, to trial by a jury of the vicinity; the act of the Legislature just last recited grants them the right to apply to the court in which they stand indicted for a crime above the grade of a misdemeanor, and apply for a change of venue to the nearest county if they believe or fear that because of existing local prejudice they will not be able to obtain justice, which word "justice" as used in said act corresponds to and is equivalent to a fair and impartial trial by a jury of the vicinity, so that the interpretation of the act in this regard is that if a defendant fears that because of existing local prejudice in the court in which he stands indicted he cannot have a fair and impartial trial by a jury of the vicinity, he may appear before the court and make oath to that effect and obtain a change of venue to the nearest county.

The seventh section of the first article of the Constitu-

tion does not only grant to defendants charged with felonies and capital crimes the right of trial by a jury of the vicinity, but they are entitled to a fair and impartial trial, and if such a trial cannot be had by a jury of the vicinity, the greatest object and guarantee of the Constitution to defendants criminally charged fails. It was the intention of the lawmakers in framing this act to secure to defendants the greatest right guaranteed to them of a fair and impartial trial by a jury of the nearest vicinity in cases where defendants believe and fear that because of local prejudice they cannot have same by a jury of the vicinity wherein they stand indicted.

Summing up on this point, the question arises again, had the Legislature the right to pass such an act into law and is it in derogation of the Constitution? We are of the opinion that there is no conflict between the Constitution and the act of the Legislature of 1903 allowing change of venue in criminal cases. The ruling of the trial judge is therefore in our opinion erroneous as the said act is in perfect harmony with the Constitution. The said change of venue should have been granted upon defendants taking the oath required by the act as they offered to do.

Next in order, as raised by the bill of exceptions of appellants against the trial had in the court below, is the overruling by the trial judge of the motion for continuance filed by certain of the defendants.

It appears from the records that on the 27th, 28th, and 29th days of February, 1936, defendants were severally and respectively arrested by a writ of arrest issued against them upon an indictment found by the grand jury for Montserrado County. After the application of defendants William A. Bryant, C. B. Reeves and S. D. Coleman for change of venue had been denied, they, the said named defendants in conjunction with defendant Harriet George filed respectively motions for continuance of the cause to the May term of court, 1936, alleging as

grounds for such continuance that they had not had time to prepare their defense, since they had been only arrested from the 27th day of February, 1936 to the 29th day of the same month and that to proceed to trial on the 2nd day of March would work grave injustice to them.

There were several other reasons assigned by defendants as grounds for the continuance of the cause, which we do not consider material.

The prosecution resisting the motion for continuance of those defendants who filed them offered the following reasons why they should not be granted:

> "1. That the motions were made for the mere purpose of delaying the trial and to baffle justice, in that defendants had had twenty days within which to prepare their defence; they having been arrested and held to bail by Justice of the Peace F. James Bull since the 11th day of February A.D. 1936, sixteen days before the indictment was filed; and this was notice that they should prepare their defence.
>
> "2. That the court having postponed the hearing of the cause from the 29th day of February A.D. 1936 to the 2nd day of March A.D. 1936 for the purpose of furnishing each defendant with a copy of the indictment, which order was obeyed and they each furnished with copies of the indictment at 12 noon on the 29th day of February A.D. 1936, counts 2 of the motions are of no effect."

These are the points of resistance to the counts of the motion raising the question of insufficient time to prepare a defense.

His Honor the trial judge in ruling on the said motions held that a motion for continuance is an application addressed to the sound discretion of the court for the purpose of postponing the hearing of a cause based on some legal reasons as set forth in the application of either the prosecution or the defendants, and that the grounds set out in the motion for continuance not being

so cogent and since it appeared to the court that the said motion was made for the sole purpose of baffling the trial, and since justice should move like a fire brigade, the motion for continuance was therefore denied and the cause ordered to be heard on its merits.

The first point of resistance of appellee that defendants had been arrested for twenty days before the indictment was found and that they therefore had notice that they should prepare their defense, presents very poor reasoning and is illegal, for how can a defendant prepare a defense when he has not been furnished with a copy of the charge against him, and when under the Justice of the Peace Code, the preliminary investigation held by a justice of the peace previous to arrest may be done in the absence of the defendant by the justice of the peace examining the complaint and his witnesses?

"CRIMINAL PROCEDURE BEFORE JUSTICE OF THE PEACE:

"Whenever complaint shall be made to any Justice that a criminal offence has been committed, it shall be the duty of such Justice to examine the complaint, and any witnesses he may produce, on oath; and if it shall appear from such examination that any criminal offence has been committed, the Justice shall issue a proper warrant for the arrest for the person accused of having committed the offence, and it is especially provided, that whenever application shall be made to a Justice for a writ in a case of Infraction of the Peace, he shall satisfy himself that the complaint is sufficiently founded to warrant the sustaining of the charge upon the trial; and in all cases of Infraction of the Peace, where the complaint fails to sustain the charge upon the trial, the Republic shall not be liable for costs, but the same may, in the discretion of the Justice, be charged against the complainant." J. P. Code § 650.

The second resistance of the appellee to the said mo-

tion for continuance is grounded on the fact that a postponement of the cause had been granted from the 29th of February, 1936, to the 2nd of March, 1936, in order that the defendants might each be furnished with a copy of the indictment against them, and that this was done at noon of the same day, and hence there should be no further continuance.

Consulting an alamanac we find that the 29th day of February of the year 1936 fell on a Saturday, so that defendants received copies of the indictment against them on Saturday noon, according to appellee's counsel's own statement in their resistance. The following day was Sunday, *dies non,* which was the first day of March. On March 2, defendants were to be tried, and upon their filing therein motions for continuance for time to prepare a defense appellee objected and contended that they had had sufficient time.

His Honor the trial judge in ruling on the question held that a motion for continuance is addressed to the sound discretion of the court, and cited the case *Dyson* v. *Republic* reported in 1 L.L.R. 481 (1906).

We are in agreement with His Honor that a motion for continuance is addressed to the sound discretion of the court; but that discretion must be *sound* and not *arbitrary* and if he abuses his discretion, it is subject to review by the appellate court.

This position of ours is upheld by 16 C.J. 450, section 821:

> "A party charged with a crime has no natural or inalienable right to a continuance, and in the absence of a statute is not entitled to the same as a mere matter of right or of law. At common law such applications were addressed to the sound discretion of the court, and its decision thereon could not be assigned as error; and while now the practice acts in perhaps all American jurisdictions authorize the review of

> such decisions by the appellate tribunals, the rule is well established that the trial court still acts within its own discretion in granting or in refusing an application for a continuance in a criminal case, whether it is on behalf of the accused or of the state; and its ruling will not be disturbed in the absence of a clear abuse of discretion. Especially is this true when the showing is based upon equitable and not upon statutory grounds, or where it appears that the real purpose of the continuance is to secure delay. Even a first application for a continuance is not a matter of right, but is addressed to the sound discretion of the trial judge."

Again in his ruling on this motion His Honor the trial judge further held that the motion was made merely for the purpose of baffling trial, and since justice should move like a fire brigade, the motion was denied.

We fail to see from the circumstances attending the case how the judge reached such a conclusion when defendants had only been arrested and furnished with copies of the indictment on the 29th day of February, 1936, and when required to submit to trial on the 2nd day of March of the same year, they moved the court for the purpose of preparing their defense.

We do not hesitate to say that there was a palpable abuse of the discretion anticipated by the law and more so is this clearly evidenced by the remarks of the judge, that "since justice should move like a fire brigade" the motion is denied and the cause ordered to be heard on its merits.

We agree that a conspiracy to kill the President, the Chief Justice, the Attorney General and other officers of state is a crime carrying a very deep dye of turpitude and showing a very depraved and vicious state of mind; but like all other crimes there are certain rights, rules, benefits and procedures both constitutional and statutory that must be kept inviolate and allowed to every one

charged with crime, for were it otherwise, justice would tend to flagrantly miscarry, and mere allegations might be taken as proof.

Even the fire brigade, unto which His Honor likened justice, which does indeed move with great speed, and invariably has the right of way when necessity calls it into action, is operated by certain definite rules and regulations that must control the action of the fire brigade when in service. The office of the fire brigade is to save and protect life and property from destruction by fire, and not to destroy life and property merely to extinguish fire by ruthlessly speeding along without reference to everything else. And hence, although the constitutional guarantee of the administration of speedy justice would necessitate justice being frequently administered with despatch, yet, even in such cases, justice must not be allowed to ride roughshod over the rights and privileges of parties.

The prosecution in their resistance to the motion for continuance and His Honor the Judge in his ruling thereon seem to have overlooked the fact that a motion for continuance filed at the first term of court at which a defendant is indicted, stands on a different footing from a motion filed in other circumstances. 16 C.J. 452 under the title "Application at first term after arrest or indictment" reads:

> "Although it is well settled that an application for continuance made at the first term of court after defendant's arrest or indictment is addressed to the discretion of the trial judge, it has nevertheless been held that motions for a continuance made at such time stand upon a different footing from a motion made at a subsequent term, and as to such motions the discretion of the court should be exercised liberally to the end that defendant may have a reasonable opportunity to prepare for trial and that every facility

may be afforded for presenting his defense as fully as if the case were tried at a subsequent term."

The said motion for continuance should therefore in our opinion have been granted and the judge erred in denying same.

The next objection to the trial in order as raised is the exception taken to the court's ruling on the motions for severance filed by J. B. Jackson, accessory after the fact, Presley Coleman, Charles T. O. King, Kollie Tamba, William A. Bryant, Charles B. Reeves, Harriet George and S. David Coleman, principals-defendants.

In said motion for severance defendants laid as reasons for such severance the following:

"Because defendants say that count 3 of said indictment charged one M. Ellen Bloemeyer and James E. Johnson as separate principals and defendants without making any reference to them or in anywise connecting them with the commission of said act complained of in said count. To be tried with said defendants would have a tendency of prejudicing their interest and thereby work injustice to them."

The trial court in ruling on said motions said, "This being a conspiracy case in which the defendants are charged jointly, the motions set out no justifiable cause why they should be separated and tried thus: The motions are therefore denied."

After carefully inspecting the indictment found against defendants and the motions filed praying for severance, in the record we find causal connection between M. Ellen Bloemeyer and the other defendants charged in said indictment, for the said indictment charges the said M. Ellen Bloemeyer that she:

"Did conspire, confederate and combine and agree together with, and in furtherance of said conspiracy did conspire, confederate, counsel and procure J. E. Johnson the other principal and defendant as aforesaid,

wickedly, unlawfully and maliciously to purchase a certain dangerous and deadly weapon known to the Grand Jurors as an Automatic pistol #32 made of wood, iron and steel, and laden with steel bullets and gunpowder; and electric dynamite cap and fuse, wickedly, unlawfully and maliciously to shoot into and to cause an explosion of the French and English Consulates of the French and English Governments within the City of Monrovia, in the county and Republic aforesaid."

The charge made against the other defendants, except J. B. Jackson, is that they:

"Pierpond J. Fitzsimmons, William D. Hines and Royal S. Corwin, Accessories before the fact and three of said defendants then and there being and at the time as aforesaid residents in the city of Monrovia in the County and Republic aforesaid, did wickedly, unlawfully and maliciously conspire, confederate and combine and agree together and in furtherance of said conspiracy did conspire, combine, confederate, counsel and procure William A. Bryant, Samuel D. Coleman, Charles D. B. King, D. Carmo Caranda, Charles B. Reeves, Harriet George, Edmore Delaney, Albert Ceaser, Samuel Snyder, Presley Coleman, Kollie Tamba, Charles T. O. King twelve of the said principals and defendants as aforesaid, and did wickedly and maliciously finance and furnish the said twelve other principals and defendants with six thousand dollars ($6,000.00) and a motor car, wickedly, unlawfully and maliciously to kill Edwin Barclay, President of the Republic of Liberia, Louis A. Grimes, Chief Justice of Liberia; with the felonious intent in so doing to pervert, obstruct and overthrow the administration of the law and the constituted authority of the Republic of Liberia."

And the charge against defendant J. B. Jackson, accessory after the fact, is as follows:

"That J. Baniker Jackson, accessory after the fact, and one of said defendants, then and there being at the time and after the commission of the felony in the city of Monrovia, County and Republic aforesaid, did wickedly, unlawfully and maliciously harbour, conceal and inform the offenders of the doings of the Government of Liberia during the investigation held after the commission of the felony charged against the offenders; with intent in so doing that they may avoid or escape arrest, trial, conviction and punishment."

There was no causal connection between all of the defendants charged in different counts of the indictment to have conspired to perfect the same end or commit the same crime in the same way, some being charged with conspiracy to blow up the French and British Legations; others to kill the President, Chief Justice, and other officials of Government; and the accessory after the fact J. B. Jackson to harbor and conceal and inform the offenders of the doings of the Government after the commission of the felony, with intent in so doing to enable them to avoid or escape arrest, trial, conviction and punishment.

In the absence of such a causal connection, it was error to have tried the defendants together when they had applied for severance on this ground. But the Republic of Liberia, appellee, through the Honorable Attorney General contended at this bar and in the court below that there could be no severance of trial granted in a case of conspiracy, and this contention the trial judge upheld. We cannot support this position, as severance will lie in a case where there is want of causal connection between the part which different defendants are charged with having taken in the commissioning of a crime.

Mr. Wharton has laid down in his *Criminal Pleading and Practice* (9th ed.) that:

"In conspiracy and riot, though it was once thought

otherwise, it is now held the defendant may claim separate trials. And when the case is tried jointly, the court must direct the jury that they are not to permit one defendant to be prejudiced by the other's defence." § 311.

In view of the very pertinent weight of legal authorities herein quoted, bearing hard against the ruling of the trial judge on this point, we must decide that it was error to have overruled defendants' motions for severance; and although this too is a motion which is addressed to the sound discretion of the court, it was abused by the judge and becomes therefore the proper subject of review.

The fourth exception taken to the trial below by defendants, now appellants, is that His Honor the Judge over their objections empanelled a jury and proceeded to try the case after the twenty-first day of the term had passed, which was contrary to the statute in such case provided.

The prosecution resisting the question of jurisdiction raised by appellants, submitted that "this session of court was legally convened on the 10th day of February 1936; computing therefrom until to-day this court has only been in session twenty-one running days; the prosecution submits that under the statute approved January 14, 1925 reading 'no jury session shall continue for a period longer than twenty-one days' means that the jury session shall be held for twenty-one legal days, *dies non* excluded."

His Honor the Judge sustained the objections and proceeded to empanel a jury and to try the cause.

In considering this exception, the resistance of the prosecution and the ruling of the judge, we must first ascertain what the statute is on the empanelling of juries during a term; secondly, what is the rule or law controlling computation of time.

The act of the Legislature approved January 14, 1925 (L. 1924–25, ch. VI), entitled "An Act Repealing that

Section of the Judiciary Act Prescribing that the Grand Jury Must in any Event Remain in Session for One Week," provides in section 1:

> "That from and immediately after the passage of this Act the aforesaid section 3 of the Act passed and approved October 22nd 1914 be so amended as to read 'that the grand jury shall remain in session as long as there is business pending before them, provided however that no Jury session shall continue for a period longer than (21) twenty-one days.'"

Now the act declares that no jury session shall *continue for a longer period than twenty-one days;* the February term of court convened on the tenth day of February, 1936, and the judge commenced the trial of this cause on the second day of March of the same year and the said trial continued until the 20th day of March, 1936, on which day the jury brought down a verdict in said cause; which, according to the manner of computation adopted by the prosecution, would run the February term of court up to thirty-nine days instead of twenty-one days.

The prosecution and trial judge must have had in mind the act of the Legislature of 1912 relating to the judiciary, which provides that "no jury shall be empanelled after the 21st day of the term"; but this act was repealed by the above recited act; and now, under the act of the Legislature of 1925, no jury session shall continue for a period longer than twenty-one days.

But we have to disagree with the contention of the prosecution that in computing time, Sundays or *dies non* should be excluded in all cases. It is the rule set down by standard law writers that in computing time, if the time to be computed be less than seven days or a week, Sundays are to be excluded, but if more than seven days, then Sundays are to be included in the computation. The time allowed for each jury session being twenty-one days, which is more than seven days, Sundays should be

included, and in that case, the trial was commenced and the jury empanelled on the twenty-second day of the term. B.L.D., "Time."

The said jury having been empanelled without term time, and the trial having also been continued without term time, the judge erred in overruling the objections of appellants to the empanelling of a jury and proceeding to trial by jury after the twenty-first day of the term. See opinion of this Court given December 22, 1936 in the case, *Republic* v. *Harmon,* 5 L.L.R. 300.

The last exception we are now considering that was urged against the trial by the appellants in their bill of exceptions is that they claimed the right each to four peremptory challenges of jurors which was objected to by the prosecution, who claimed that they, being jointly tried, should have only the four peremptory challenges allowed defendants by statute. This objection the judge sustained.

As our statute is silent on the question of peremptory challenges of jurors in cases where joint defendants are being tried in criminal cases, we must now rely on the common law of America and England to settle this question.

Where two or more defendants are jointly indicted and are being jointly tried, each defendant stands in his own stead and is entitled to the peremptory challenges allowed by the law under our statute. The number of peremptory challenges are four to plaintiff and four to defendant; but when there are joint defendants on trial each is entitled to the peremptory challenges of four jurors; but the prosecution in such case has only the right to the peremptory challenge of four jurors.

In 16 *Ruling Case Law* 250, § 68, we have it given us as follows:

> "It is a general rule that when two or more persons are put on trial jointly for crime, they are each entitled to the full number of peremptory challenges

allowed by law; and it is also a rule that where two or more persons are so indicted and tried, the state is entitled to no more peremptory challenges than when the trial is against one alone. A waiver of defendant's full right in this respect cannot be implied from the mere fact that he, or any of his co-defendants, failed to require a separate trial."

This seems to be the rule in English practice also, for Mr. Archbold in his *Criminal Pleading and Practice,* writing on the same subject, says:

"Where there is a joint trial, under a joint indictment, each defendant may challenge the whole number of jurors to which he would be entitled if tried separately."

The objections of the prosecution therefore to each of the defendants having the privilege of peremptorily challenging four jurors was untenable and the judge's ruling sustaining said objections, erroneous as each defendant being jointly tried was entitled to challenge four jurors in a criminal case. The trial of this cause in the court below up to the point which we have reached, being attended with such gross irregularities and flagrant disregard of the law governing trials, we are of opinion that the judgment of the court below is illegal and should be reversed and a new trial awarded to be conducted according to correct principles of law; and it is so ordered.

Reversed.