FRANCIS LEWIS, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF GRAND LARCENY.

Decided January 22, 1937.

1. It is reversible error for the prosecution in a criminal case to resort to the accused's bad character as a basis of inference to his guilt; the reason being that such evidence is too likely to move the jury to condemnation irrespective of his actual guilt of the offense charged. But the accused himself may always invoke his good character as tending to disprove his commission of the offense, no matter what the grade of the offense, and no matter how strong the evidence against him.
2. If the accused has offered his good character, the prosecution may in reply introduce his bad character; not so much by way of exception to the rule above mentioned as in order to prevent the accused from imposing upon the tribunal false evidence of good character.
3. A juridical conviction connotes (1) that the offense must be correctly charged in a valid indictment; (2) that only legal evidence should be placed before the jury which is asked to convict; and (3) that the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt.
4. Where illegal evidence of defendant's bad character was wrongly given by a witness for the prosecution and admitted by the judge to go to the jury over the objections of the accused, the judgment of conviction will be reversed and a new trial awarded.

On appeal from a conviction for grand larceny, *judgment reversed and case remanded* for new trial.

L. G. Freeman for appellant. *R. F. D. Smallwood,* County Attorney for Montserrado County, by appointment appeared for appellee.

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

On the 30th of October, 1936, Francis Lewis, appellant, was convicted of the charge of grand larceny upon evidence, the cogency of which can hardly be disputed even by appellant himself. For it was shown that appellant had been for about five years living in the home

of Mr. and Mrs. Daniel Johnson, who had generously supported him whilst he attended one of the schools in Monrovia, and by virtue of such long residence in the home he had become, to all intents and purposes, a member of the family and had access to every part of the house. As he reached his maturity, and obtained employment during his spare hours, he began making exceedingly meagre contributions towards the common family mess, or to use the words of Mrs. Daniel (Malinda) Johnson, "at times he would have a shilling to put in for food, and at other times a two shilling piece, but that was very seldom. But, of these late days he had no money. In September (1935) he gave me three shillings."

Henry D. Hoff, the private prosecutor, was a nephew of the said Malinda Johnson, and had apparently been taken into the home by her husband and her who were to him *in loco parentis*. There were also in the home a Pauline Ricks and a Kate Johnson, the former apparently an adult, the latter apparently a minor, but whose position in the home, so far as the record goes, was not defined.

In a room nominally assigned to Miss Ricks which was more often than not left open, and into which every member of the house was privileged to enter at any time Henry Hoff kept his two trunks and two valises, in one of which was kept such money as he was custodian of consisting, at the time of the theft, of the proceeds from the encashment of five cheques at $20.83 each, equal to $104.15, the property of one C. A. Lincoln, $13.40 belonging to the choir of the Providence Baptist Church, and $14.40 belonging to himself.

On the 29th of October, 1935, Kate Johnson suddenly entered the aforesaid room of Miss Ricks and discovered that appellant had taken down one of the valises of Henry Hoff, and had opened one of his trunks, but when he saw her he stood up against the trunk. Regarding his con-

duct and attitude as suspicious she reported the incident to Miss Ricks who, in due course, informed Mrs. Johnson, the head of the house.

Miss Pauline Ricks, in the interval, had herself taken the said appellant by surprise while ransacking a trunk of the private prosecutor, and in his confusion at the discovery he had taken up a cooler surrounded by drinking glasses in the next room, and put the cooler to his mouth to drink, too frightened to realize that drinking glasses were all around the said cooler.

Mrs. Johnson, corroborating the testimony of Kate Johnson and Pauline Ricks, the gist of which has been hereinbefore given, testified further that on the 30th day of October she informed her nephew of the suspicious actions of appellant, and warned him to remove any money he might have in any of those trunks. Later in the same day, the 30th, the said Mrs. Johnson desiring to exchange some florins for single shillings, saw three bags of money in the trunk of the said Henry Hoff when he went to effect the exchange, and again warned him to remove the money therefrom as she was convinced that the appellant had suspected that money was in one of them and was trying to locate it.

In her presence Hoff removed the money to the bottom trunk, and put the remaining trunk and two valises thereon, hoping thereby to obtain a greater measure of security. But, alas! on the morning of the 31st, the appellant, pretending he had received an urgent call to go to Grand Bassa, left the home in such indecent haste as to intensify the suspicion of Mrs. Johnson. Queried, he said to Mrs. Johnson that he had engaged some persons to accompany him overland, but, not having seen any of those persons with him, she obviously doubted his veracity.

When her nephew, the private prosecutor, came in at the luncheon hour, she insisted that he should see if his money had not been tampered with; but alas! the latch of

the trunk had been broken and every cent was gone together with an automatic revolver he had had in said trunk; and so was appellant!

An appeal to the police followed, when it was discovered by them that he had not left for Bassa overland as he had informed Mrs. Johnson, but that he was safely ensconced in a sail boat tied up at the wharf, awaiting a favorable wind to depart for Grand Bassa. The police arrested him and seized his belongings save one new trunk which he, to throw them off the scent, had stated belonged to a female passenger who had not then joined the boat. It was subsequently discovered that the trunk was really his; but the boat having by that time sailed, the police sent overland to Bassa, seized the trunk and had it brought back to Monrovia, and opened in his presence. All the discoveries made on the opening of said trunk, and otherwise now put together, it was found that the missing revolver was hidden away in the trunk of his that had been seized in the boat and examined in his presence, and that on the 31st of October appellant had made valuable purchases, including a bicycle, and had retired a bill of exchange on the bank which enabled him to obtain a parcel of goods that had been lying in the customs awaiting his payment of the draft and customs duties since the previous August.

This is a brief statement of the salient links in the chain of circumstantial evidence upon which appellant was convicted and sentenced for grand larceny.

Counsellor L. G. Freeman, apparently not seriously contending that the testimony thus given was sufficient to convict, as indeed he could not conscientiously do, has nevertheless come up hither on appeal urging that the judgment should be reversed, and a new trial awarded, because of a very serious blunder he alleges that the trial judge committed in allowing evidence of defendant's bad character to go to the jury over his objections when appellant had made no effort to prove good character.

That is the only point worthy of attention urged by appellant during the review of the case here, and hence the only point to which we must now direct our attention.

According to the record before us, when the general statement of Henry D. Hoff, the private prosecutor, on direct examination had been concluded, defendant requested the trial court to "expunge from the record the first and second divisions of the witness's testimony with reference to a transaction of £1 : 17 : 0 during July and August, 1935, and a fountain pen during the month of September, 1935, which are not charged in the indictment and which transaction transpired before the 29th of October, 1936; therefore they have no bearing on the indictment."

The prosecution replied: "That the court cannot legally expunge any oral testimony given by the witness on the stand in this case as same must go to the jury who are the sole judges of the credibility and effect of the witness's statement." And His Honor Judge David denied the request of appellant upon the authority he cited of the *Revised Statutes of Liberia,* volume 1, page 476, section 378, and of *Yancy and Delaney* v. *Republic,* 4 L.L.R. 3, 1 Lib. New Ann. Ser. 3, to which defendant excepted.

It was most unfortunate for the success of the prosecution which had, as above indicated, seemed to have made out a very strong *prima facie* case that His Honor the Judge committed such a serious legal error. For, it appears, that he did not address himself to the consideration of the objection made by Mr. Freeman with sufficient perspicacity to be able to discriminate between an objection based upon *credibility* as was the objection in the above cited case of *Yancy and Delaney* v. *Republic,* and to *admissibility* as was the essence of the objection made by Mr. Freeman in the case now under review.

It is a fundamental principle of law that:

> "The prosecution in a criminal case is not allowed to resort to the accused's bad character as a basis of

inference to his guilt; the reason being that such evidence is too likely to move the jury to condemnation irrespective of his actual guilt of the offence charged. But the accused himself may always invoke his good character as tending to disprove his commission of the offence, no matter what the grade of the offence, and no matter how strong the evidence against him. Moreover, if the accused has offered his good character, the prosecution may in reply introduce his bad character; not so much by way of exception to the rule above mentioned as in order to prevent the accused from imposing upon the tribunal by false evidence of good character." 1 Greenleaf, Evidence, § 14b (1), (16th ed., 1899); 1 Wharton, Criminal Evidence, § 330; 12 Cyc. 413, par. b; 25 Cyc. 107, par. c; 10 R.C.L. 951, § 121.

Greenleaf, discussing the doctrine of collateral inconvenience as a sub-heading to the general principles of the relevancy of circumstantial evidence, states three reasons for the exclusion of evidence of the kind to which exception was taken in this case. The first is that of "undue prejudice" with respect to which he says: "that the fact while relevant, may excite passion or receive exaggerated importance in such a way as may lead the jury to decide upon some other ground rather than the evidence; *this reason finds its chief application in excluding character-evidence* * under certain conditions. . . ." His second reason is because of "unfair surprise." This is obvious since indeed an indictment must charge the defendant with the commission of a specific crime in language which is clear, specific, certain and definite, or it is demurrable. In order to be prepared to effectively answer such a charge if he can, our Constitution provides that he must be "seasonably furnished with a copy of the charge"; and to the defense of that charge his attention is thenceforward directed. To make allegations against

* Italics added by the Court.

him of other delinquencies, not included in the indictment, "would find the opponent without any means of anticipating and meeting it by disproof or explanation, and would thus make it possible to impose fictitious evidence upon the jury." Greenleaf's third reason for exclusion is because of the tendency to confuse the issues as by the necessity that might thus arise of bringing before the tribunal rebutting testimony on questions of minor probative value, the new witnesses necessary for such purpose, the attempt to impeach such witnesses and the like, much time might be spent, the jury confused, and the main issue obscured. 1 Greenleaf, Evidence § 14s (16th ed., 1899).

One of the most important adjudicated cases we have been able to find on this subject is that of *People* v. *Molineux,* 168 N.Y. 264, reported in 62 *L.R.A.* 193 *et seq.,* a case of murder in which there were two each concurring and dissenting opinions respectively. On page 238 of said book, Werner, J., delivering the opinion of the court, said *inter alia:*

> "Two antagonistic methods for the judicial investigation of crime and the conduct of criminal trials have existed for many years. One of these methods favors this kind of evidence in order that the tribunal which is engaged in the trial of the accused may have the benefit of the light to be derived from a record of his whole past life, his tendencies, his nature, his associates, his practices, and in fine all the facts which go to make up the life of a human being. This is the method which is pursued in Firance (*sic*), and it is claimed that entire justice is more apt to be done where such a course is pursued than where it is omitted. The common law of England, however, has adopted another, and, so far as the party accused is concerned, a much more merciful, doctrine. By that law the criminal is to be presumed innocent until his guilt is made to appear beyond a reasonable doubt to a jury of

12 men. In order to prove his guilt it is not permitted to show his former character or to prove his guilt of other crimes, merely for the purpose of raising a presumption that he who would commit them would be more apt to commit the crime in question."

That which adds still greater importance to the case just cited is the copious notes collected by the editor from adjudicated cases, and classified as to the nature of the crime, covering from page 194 to page 357 of the volume.

We shall now take a few quotations from the said notes on the crime larceny, which was the crime with which accused was specifically charged. In *State* v. *Daubert,* the court after reversing the case for other reasons, said:

"As this case will be remanded for another trial, or further proceedings, we deem it only necessary to glance at one or two remaining points. The court erred, palpably, in admitting testimony of different acts of larceny, when they were entirely disconnected with the offense charged in the indictment, and had no real tendency to prove the same. Upon the trial of an indictment for larceny, evidence of the commission of a separate and distinct larceny from that charged is inadmissible. . . . But where the evidence offered directly tends to prove the particular crime charged, it is to be received, although it may also tend to prove the commission of another separate and distinct offense." *State* v. *Daubert,* 42 Mo. 242.

"Upon the trial of an indictment for the larceny of a shilling, after it was proved that a constable had taken the prisoner into custody, and had found upon him a marked shilling which had been put into the till of the prosecutor, it was proved that the prisoner, upon inquiry if he had about him any more of the prosecutor's money, produced some half crowns, and, the witness being about to testify as to a statement made by the prisoner, the receipt of the statement was objected to as it related to a different felony. The

counsel for the prosecution thereupon claimed that it was a statement accompanying an act done by the prisoner while in custody on charge of the offense for which he was indicted; that it was part of the whole transaction, and could not be severed from that which preceded and followed it; and that, if nothing more, it was evidence to show the prisoner's access to the prosecutor's till. The prisoner's counsel stated that, if the half crowns were stolen, the taking of them was a distinct felony; and if they were not stolen, the statement could be of no value. The court said: 'I think this evidence is inadmissible. I shall reject the statement.'" *Reg.* v. *Butler,* 2 Cox C. C. 132, 2 Car. & K. 221.

"Where several felonies are parts of the same transaction, evidence of all is admissible on the trial of an indictment for any of them. This rule, however, does not apply to a case where a charge of larceny alleged to have been committed on one day is attempted to be established by proof of another larceny committed on a different day, although from the same party and under the same employment." *Snapp* v. *Com.,* 82 Ky. 173.

"Upon a trial for stealing a horse it is improper for the district attorney to ask a witness in regard to a certain mule claimed to have been stolen, as the testimony in regard thereto, even if the defendant was connected with the taking of the mule, was not pertinent or relevant to the case." *Tijerina* v. *State,* 74 S. W. 913 (Tex. Crim. App.).

Mr. Smallwood, arguing here the case for appellee, when his attention was directed to the irregularity of which Mr. Freeman had complained, made two submissions against the objections of appellant which we must now briefly examine. His first was: that the character evidence was not put upon record in answer to any specific question put by the counsel for the prosecution, but in the

course of the "general statement" of the witness himself. As our learned colleague Mr. Justice Russell immediately pointed out to him during the argument however, it was during the testimony in chief given by the witness in behalf of the prosecution that said testimony was given as part of the prosecution's evidence. To endorse the view advanced by Mr. Smallwood that a witness who is permitted, contrary to Rule XX of the rules of the Circuit Court to make a "general statement," may be allowed to introduce irrelevant or other illegal evidence unchecked because "it was a part of his general statement," would be, in our opinion, tantamount to relieving the Judge of passing upon the admissibility of the testimony elicited by a "general statement."

For, as this Court quoted with approval in the case *Gartargar* v. *Republic,* 4 L.L.R. 70, 1 Lib. New Ann. Ser. 81, " 'It is the duty of a presiding judge in all cases, civil or criminal, to give strict attention to the evidence.' " One reason therefor is that it is the duty of the judge, upon whom the ultimate responsibility for the administration of justice rests, to test all the evidence offered by his scientific legal knowledge and experience in order to ascertain its admissibility; in other words, his brain is the legal sieve into which all the evidence must first be placed for sifting all the testimony or other evidence offered so that only that which is admissible may be permitted to be passed on to the jury. Then, and not till then, when the judge's duty of deciding upon its admissibility shall have been performed, does his power to judge of the credibility of the evidence pass from him to the jury who are the sole judges of the credibility of all *oral* testimony. Statutes of Liberia (Old Blue Book) ch. VII, p. 47, §§ 9–12.

Mr. Smallwood's next submission was an ingenious attempt to show that from the questions propounded to the several witnesses by members of the jury that the character evidence had made no impression on their minds.

On that point this Court says that the mind of a man is so subtle, it is difficult for one person to judge what effect a statement made in the hearing of another may have in his reaching a given conclusion. Moreover, all the authorities hereinbefore cited agree that the admission of character evidence against an accused person who has not attempted to put in his good character is reversible error.

We have most reluctantly decided to reverse the judgment in this case. But we are committed to the well established principle that the object of a trial is to secure above all *juridical* conviction. See *Yancy* v. *Republic*, 4 L.L.R. 268, 2 Lib. New Ann. Ser. 105. A juridical conviction connotes (1) That the offense must be correctly charged in a valid indictment; (2) That only legal evidence should be placed before the jury which is asked to convict; and (3) That the evidence thus sifted should satisfactorily establish the guilt of the accused beyond a reasonable doubt.

In the case at bar, illegal evidence of defendant's bad character wrongly deposed by a witness for the prosecution having been by the judge permitted to go to the jury over the objections of appellant to which ruling he duly excepted, it is our opinion, that the judgment of the court below should be reversed, and the case remanded for a new trial, and that said new trial should be given precedence on the docket so soon as the witnesses shall have been again collected to testify; and it is hereby so ordered.

Reversed.