MATILDA A. RICHARDS, Appellant, *v.* EDWIN U. McGILL and M. EVA McGILL-HILTON, Executor and Executrix of the Estate of the late CORINNA A. McGILL, Appellees.

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

Argued November 29, 30, 1937. Decided December 10, 1937.

1. Trial judges should follow strictly both in the spirit as well as in the letter all opinions given by this Court, as one of the most potent means of unifying the practice.
2. Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge.
3. A judge should not wait until he shall have been recused before refusing to sit in a given case if conscious that his connection with a party or previous connection with a cause may affect his impartiality.
4. For, even though the parties may not object to his presiding over the cause, the State cannot endure the potential scandal and reproach which may result therefrom.

In an action of ejectment brought in the Circuit Court of the First Judicial Circuit, judgment was rendered for the defendant. Upon appeal to this Court by the plaintiff in that action, *judgment reversed.*

C. Abayomi Karnga and *Anthony Barclay* for appellant. *P. Gbe Wolo* for appellees.

MR. JUSTICE DOSSEN delivered the opinion of the Court.

This case comes up to this Court from the Circuit Court for the First Judicial Circuit, Montserrado County, Republic of Liberia, upon a bill of exceptions under the statute relating to appeals.

The record shows that at the May term of the said court, Law Division, 1934, one Matilda A. Richards, plaintiff, instituted and filed an action of ejectment against

Edwin U. McGill and M. Eva McGill Hilton, for a piece of property which she complains that she was possessed of. The complaint reads as follows, to wit:

> "Matilda A. Richards, plaintiff in the above entitled cause, complains of Edwin U. McGill and M. Eva McGill Hilton, executor and executrix of the estate of the late Corinna A. McGill of Monrovia, defendants, that she the plaintiff was possessed of a certain parcel of land, of the following description to wit: two (2) acres of land block number seventy-two (72) South Beach, and facing Newport Street in the City of Monrovia owned in fee by J. J. Roberts, former President of Liberia, who devised said land to his nephew John H. Roberts, and father of the plaintiff, by the first and tenth clauses of his last will and testament, copy of which is hereto annexed and marked exhibit 'A,' and that the said John H. Roberts, the father of the plaintiff in turn devised same to plaintiff in this suit by the sixth clause of his will, a copy of which is also herewith annexed together with a copy of the plot of said land and marked exhibits 'A,' and 'B'; and form part of this complaint.
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> "And that the said defendants unlawfully detain the said lands, block number seventy-two (72) from her the plaintiff."

Pleadings having been rested at the August term of the aforesaid court, before His Honor E. Himie Shannon, presiding by assignment in chambers, the issues of law were disposed of, and the case ordered transferred to the trial docket to be heard upon the facts. Accordingly, at the November term of the aforesaid court, 1936, the resident Judge sitting in chambers, a jury was duly empanelled, which after hearing evidence *pro et con,* returned a verdict in favor of defendants, upon which the trial judge rendered a final judgment.

Plaintiff being dissatisfied with the several rulings, opinions, decisions and final judgment of the court be-

low, appealed to this Judicature of last resort for review.

At the call of the case in this Court, whilst the records were being read, it was observed on the second day that some altercation had arisen between the late Associate Justice Dixon, one of the witnesses on part of the defendants, and the presiding judge as follows:

> *"Question:* Please tell the court and jury whether you acted as counsel for the late Mrs. Corinna McGill in any matter of dispute or law suit between her and Mrs. Richards (Matilda) in connection with lot No. 72, City of Monrovia, South Beach. Objection —Ground: Assuming a fact not proved. Overruled, to which plaintiff excepts.
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> *"Answer:* Yes, I remember before Mrs. McGill died that Mrs. Richards instituted an action of ejectment against Mrs. McGill, Miss J. E. Johnson and another person whose name I have forgotten. I was retained by Mrs. McGill and Miss Johnson. The case was tried by the present Justice Russell, then Circuit Judge, and the action was dismissed on the law issues. The present Judge Brownell was the lawyer for Mrs. Richards. Since he is sitting on this case if he would try it, under the circumstances I don't know what effect his judgment will have in the premises. I don't know anything about the facts of the land and its existence on either side."
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> "Here an altercation ensued between the Judge and the witness bearing on that statement as to his having been counsel for Mrs. Richards and as to what would be the effect of the court's judgment. The court made it clear that he had expressed to Counsellor Karnga many a time that he had been counsel for Mrs. Richards in years previous and he did not want to try the case, but upon his insistence and the impression made upon the court that counsels for defence joined in the application for the assignment the court made the as-

signment. Further, at the call of the case no one of the parties had recused the judge and asked him to disqualify himself; hence the court felt that such an imputation on his impartiality to preside over the case merely on its merits and facts before the jury was a slur on the court which it took exceptions to. The witness not recalling said statement at once but continuing to argue with the court, the court took graver exceptions more so because of his standing in the community and the judiciary and thereupon felt that it would proceed no further with the trial of the case but disband the jury and award a new trial. The witness was thereupon excused from the stand.

"Several members of the bar as *amici curiae* or friends of court expressed themselves on the matter —some endorsing the view of the court and others feeling that that did not affect the trial and that the court could continue the trial until verdict.

"The court at this stage said it appreciated the expressions of the members of the bar over this unhappy situation and assured them that those expressions lifted a burden off its heart in no little degree. That rather than arbitrarily subject both parties to costs by disbanding the jury he would leave the record open to both sides to say what they would have to say further in the premises and then the court would rise until 2:30 so as to advise itself.

"Counsellor Wolo for and on behalf of the defendants said defendants through their counsel record that they are willing to have the judge hear the trial upon the facts and merits; and that as to any previous connection of the judge with the case heretofore, defendants waive any objection to his sitting over the subject-matter of this action.

"Plaintiff's counsel says that she concurs in what the defence has put on record and says that His Honour

the Judge now presiding should sit on said case and have it determined in the circuit court."

At this stage of the case in the Supreme Court, the Court decided to suspend its further hearing of the records and to reserve its opinion on the facts thus brought out. (See minutes of this Court of November 30, 1937.)

We desire to reiterate what was said in the opinion of this Court handed down on the 22nd day of January, 1937, in the case *Barnes* v. *Republic,* 5 L.L.R. 395, 4 New Ann. Ser., involving an offense against the Election Law by destroying a ballot box, the relevant portion of which reads thus:

> "Trial judges should pay strict attention to the opinions given by this Court from time to time, and endeavor to understand and follow them both in the spirit as well as in the letter.
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> "For, that is one of the most potent means of stabilizing and unifying the practice, and this Court will therefore view with grave concern any willful attempt on the part of a trial judge to ignore or evade the principles we lay down for their guidance from time to time."

In the case *Ware* v. *Republic,* decided by this Court on the 13th December, 1935, 5 L.L.R. 50, 3 New Ann. Ser., Mr. Justice Grigsby, speaking for this Court said:

> " 'Every litigant, including the state in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and therefore if the judge before whom a cause is to be tried is prejudiced or otherwise disqualified, he may be challenged, and if the challenge is sustained the cause may be moved to another court or tried before another judge. . . .' "

Further—

> " 'Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should

refuse to hear the cause by an entry on the docket that he does not sit in the case. This indeed is the usual practice, and the judge's decision in such cases that he is incompetent through interest is not reversible except for manifest error. . . .

"'. . . It is of great importance that the courts should be free from reproach or the suspicion of unfairness. The party may be interested only that his particular suit should be justly determined; but the state, the community is concerned not only for that, but that the judiciary shall enjoy an elevated rank in the estimation of mankind.

" 'The party who desired it might be permitted to take the hazard of a biased decision, if he alone were to suffer for his folly—but the state cannot endure the scandal and reproach which would be visited upon its judiciary in consequence. Although the party consent, he will invariably murmur if he do not gain his cause; and the very man who induced the judge to act when he should have forborne, will be the first to arraign his decision as biased and unjust. . . .' "

We may here remark parenthetically that this is exactly what has happened in this case, now appealed to us for review. Said opinion continues:

" 'We conclude, that the presiding judge being interested, was absolutely incapacitated to take cognizance of, or sit in the case. The consent of parties could not remove his incapacity, or restore his competency against the prohibitions of the law; which was designed not merely for the protection of the party to the suit, but for the general interests of justice. And, consequently, the judgment rendered by him was nullity, and left the case remaining undisposed of, as completely as if the judge had not been present at the court. . . .' "

This principle was reiterated by Mr. Justice Russell, speaking for us all in the case *Howard, Ketter, and Dim-*

merson v. *Dennis,* 5 L.L.R. 375, a suit for specific performance, decided by this Court on January 22, 1937.

The records in this case show that the trial judge was of counsel for the defendant before he was elevated to the bench and that being a fact, his attention was called to same by witness on the part of the defendants, who cautioned him of the impropriety of sitting on the case in which he had previously been the counsel for one of the parties. The altercation growing to such an extent as to elicit expressions from several members of the bar, the trial judge should have at once desisted and followed the opinion of this Court handed down and quoted *supra,* and continued the cause to the next, or some other, term of the court and not have proceeded further in the case. But because of his persistency in the trial and for the foregoing reasons, we cannot but again express surprise that a judge of the intelligence of His Honor Judge Brownell should have persisted and presided over the trial of the case in which, in all essential features, he had been the retained counsel of one of the parties before his elevation to the bench, and, in the face of his patent disqualification to try same, his neglect to recuse himself and thereby observe and follow previous opinions handed down by this Court in three cases of a similar nature. It is therefore the opinion of this Court that the judgment rendered in this cause should be reversed, and the case remanded to the court of original jurisdiction to be tried by any judge except His Honor Judge Nete-Sie Brownell. Costs to abide final determination of the case. And it is hereby so ordered.

Reversed.