ALBERT DONDO WARE, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued December 4, 1935. Decided December 13, 1935.

1. The judge of a court is not merely appointed to an office, but he is also elevated to a dignity.
2. As such he is dedicated and consecrated to the adjudication of the rights of litigants, and hence must avoid any course of conduct which would cause his impartiality to be questioned.
3. Judicial officers cannot be partisans; nor should they attend public meetings where questions may be discussed which may afterwards come before them.
4. Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge; hence, a judge who is prejudiced or otherwise disqualified may be successfully challenged.
5. It is of great importance that the courts should be free from reproach, or the suspicion of unfairness, as the judiciary should enjoy an elevated rank in the estimation of mankind.
6. Hence, even though the parties may be disposed to waive any objection to a disqualified judge's deciding a cause, the interests of the public will not permit such an objection to be waived.
7. The Constitution of Liberia guarantees to every person accused "compulsory process for obtaining witnesses in his favour"; and unless any person so offered as a witness is exempted from testifying, it is error for the trial court to conclude a case without allowing accused the exercise of such Constitutional right.

This is an appeal from a conviction of embezzlement in the Circuit Court of the Fifth Judicial Circuit, Grand Cape Mount County. *Judgment reversed,* and *case remanded* for a new trial.

A. B. Ricks and *P. Gbe Wolo* for appellant. *The Attorney General* and *Richard F. D. Smallwood* for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case originated in the Circuit Court of the Fifth Judicial Circuit, Grand Cape Mount County, His Honor

Isaac A. David, resident Judge presiding by assignment. The facts which the records disclosed are as follows:

> During the November term, 1934 of the said court, the grand jurors for the aforesaid county returned an indictment against the said defendant, now appellant, charging him with embezzlement, in which said indictment it is substantially alleged that the defendant, while serving in the capacity of District Commissioner for the Tawor District, County and Republic aforesaid, did embezzle the sum of two thousand seven hundred seventy-eight dollars and fifty-eight cents. After a trial and conviction the defendant filed a bill of exceptions, and thereby brought the case up to this Court for review.

When the case was called for trial in this Court we found, upon reading the first count in the bill of exceptions, that appellant complained that he had not had a fair and impartial trial because of the overruling of sundry points in his motion for continuance. Referring thereto we find that count three in said motion reads as follows:

> "And also because it will tend to injustice to the dedefendant for this cause to be tried before His Honour Isaac A. David, the assigned Judge of the present session of court, in that, the Judge aforesaid was a member of the council in the investigation conducted by Mr. Adorkor, Official in Charge of the Bureau of Internal Revenue of this Republic, as well as the Superintendent's Council upon whose instrumentality, influence, investigation and recommendation to the Honourable G. L. Dennis, Secretary of the Treasury of Liberia, he was influenced to remove the defendant from office as District Commissioner of the Tawor District out of which this cause of prosecution grew, and who in the aforesaid K. J. Adorkor's investigation openly expressed his opinion on the subject matter of this cause against defendant and for the judge

aforesaid to preside over this cause and give rulings therein for or against the defendant whether such ruling of His Honour aforesaid be in keeping with law or not will in the human mind of the defendant be considered prejudicial."

Attorney L. Garwo Freeman prosecuting for the Republic in resisting this count of said motion said *inter alia:*

"That it is a misstatement of fact, in that, His Honour I. A. David of Grand Cape Mount County did not attend the alleged investigation conducted by K. J. Adorkor in his official capacity as Judge, but simply as one of the leading citizens of the county. That the remarks said to have been made by the said Honourable I. A. David at the time, did not prejudice either side, it being an *ex parte* investigation of defendant's failure and refusal to attend said investigation which was not a trial at all. And this the plaintiff is ready to prove."

This Court upon reading the observations made on said motion by the said Attorney L. Garwo Freeman who as aforesaid represented the prosecution in the court below, reached the conclusion that it was unnecessary to proceed further with the records or to hear any argument whatever upon the facts thus adduced which show conclusively to our minds that appellant could not have had a fair and impartial trial when the Judge presiding had allowed himself to be disqualified and prejudiced by attending the executive investigation held by the Honorable the Superintendent and his Council.

The contention interposed by L. Garwo Freeman, in opposition to the motion of continuance, that His Honor the Judge was not present in his capacity as a judge, but simply as a leading citizen, was ridiculous and absurd. Both he and His Honor the Judge seem to have forgotten that when a person is appointed as a judge, such appointment is not merely an appointment to an office, but

also an elevation to the dignity which he cannot don or discard at will. He is thenceforth dedicated and consecrated to the adjudication of the rights of litigants and must therefore avoid any action or course of conduct that would tend to raise any suspicion as to his impartiality to hear any cause that might be brought before him.

According to the expressions of standard law writers:

"Judicial officers should abstain from participating in public meetings in which questions are discussed which may afterwards come before them for decision, because a judge should not be a partisan. Whenever he becomes a partisan, his usefulness on the bench is greatly impaired, if not entirely destroyed." 15 R.C.L. 532, § 18.

"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. . . . As the judge is not supposed to know anything of the cases to be tried until the trial is commenced, unless by accident, it may often happen that he knows nothing of any cause of disqualification. It is therefore the right and duty of the party who desires to object to or recuse a judge, as he has a right to do, to make his objection by a petition to the court, setting forth the facts on which he relies. The facts being unquestioned, the judge may cause the entry to be made that he does not sit. If the facts alleged are not admitted by the judge, or are denied by the adverse party, it is the duty of the party objecting to lay before the judge the proof of their truth for his determination. . . . If the judge recused is the sole judge present at the term, he may make all such orders as are merely formal, or as are necessary for the continuance of the cause to a

future term at which a qualified judge may be present." *Id.* at pp. 539–40, § 27.

"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." 11 Ency. of Pl. and Prac. 781–82, § III (1).

". . . 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. . . . *Oakley* v. *Aspinwall,* 3 N.Y. 547, 552 (1850), cited in 11 Ency. of Pl. and Prac. 784, note 3.

"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 undis-

posed of, as completely as if the judge had not been present at the court." *Chambers* v. *Hodges,* 23 Tex. 104, 112 (1859), cited in 11 Ency. of Pl. and Prac. 784, note 3.

That the said judge attended such an investigation was in itself sufficient to disqualify him to preside at the trial; and when in addition it was brought out that he had actually been one of those upon whose influence and recommendation appellant had been put upon trial, it is our opinion that to permit such a conviction to stand would be a travesty of justice.

Another important point raised in count two of the said motion for continuance was that the Honorable Gabriel L. Dennis, Secretary of the Treasury of Liberia, J. C. Johns, and Robert Gray were important witnesses needed by the defense whose testimony he was not allowed to procure.

The Court will remark in passing that inasmuch as the Constitution of Liberia guarantees "compulsory process for obtaining witnesses" in favor of the persons accused, it would seem that whenever the testimony of a witness is procurable, and such witness is neither exempted by any immunity nor disqualified, it is error for the trial court to proceed to the trial of the cause without giving the accused an opportunity of procuring such witnesses provided he shall have exercised due diligence so to do.

As it appears from the records that immediately upon the filing of the indictment the trial judge ordered appellant incarcerated, denied him bail, and proceeded next day to hear and dispose of the said case, he has not had that fair and impartial trial guaranteed him by the Constitution and laws of this Republic. We are, therefore, of the opinion that the judgment of the court below should be reversed, and the case remanded for a new trial, same to have precedence on the docket at the next (February) term, 1936, of said court; and it is so ordered.

Reversed.