P. GBE WOLO and F. JAMES BULL, Petitioners, *v.* REPUBLIC OF LIBERIA, Respondent.

APPLICATION FOR ALLOWANCE OF FEE TO COUNSEL.

Argued April 11, 1934. Decided May 4, 1934.

1. If, upon application, a court permits a poor person to be defended *in forma pauperis* and agrees on the compensation, there is thereby formed a contract binding upon the Republic.
2. Without such application and the court's agreement thereto, no such contract exists.
3. According to a custom in vogue in the courts of this Republic from time immemorial, a poor and indigent person charged with a capital offense is permitted to have counsel payable out of public funds while the cause is pending in the trial court.

The petitioners request the approval of the payment from the public treasury of their fee for handling the appeal to the Supreme Court for a person convicted of murder. *Application denied.*

P. Gbe Wolo for petitioners. *The Solicitor General* for respondent.

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

After the above entitled cause had been heard and determined in this Court, and remanded to the court below for a new trial,* P. Gbe Wolo, Esquire, for himself and his colleague, F. James Bull,† presented on the 12th day of February, 1934, a petition asking that the Court would consider the case as having been brought up to this Tribunal by appellant as a person *in forma pauperis,* and that that being so prayed that we would approve a bill in their behalf against the public treasury for the sum of fifty dollars.

* *Gartargar* v. *Republic,* p. 70, *supra.*
† See *In re Ricks,* p. 58, *supra.*

The Justice presiding in chambers ordered the application placed upon the docket in order that there might be a hearing before the Court at this term. The hearing was accordingly had, at which counsel for petitioners contended "that they had rendered services, which fact is true according to the records. 2) That appellant (defendant below) had been allowed to defend *in forma pauperis* and that, that having been done in the court below, it follows as a logical conclusion that we should have allowed it here, because when the government once undertakes the defense of a poor person it is bound by the more correct procedure to continue such defense until the final determination of the prosecution, as otherwise 'a noble duty so undertaken might fail to secure the benefits anticipated.' "

The Solicitor General of the Republic filed a brief in opposition to the petition. He therein contended: (1) That before a suit can be brought *in forma pauperis* there must be a previous application to the court, and leave granted to sue in that status. (2) That the state is not liable for compensation of counsel appointed by the court to defend a poor person charged with a crime; but if an attorney is appointed to render such service it should be rendered gratis. (3) That if the court employs a counsel to defend a poor person, the obligation should rest upon the Republic while the case is pending in the court of first instance and should not extend to the court of appeals. (4) That the government is not in a position to pay counsel fifty dollars for defending a poor person in the trial court and an additional sum of fifty dollars for continuing his defense in the appellate court, as is practically demanded in the application now before us.

This Court is of the opinion that if a party applies to the court to be defended as a poor person and the court consents, there is thereby created a contractual relationship between the court as representative of one of the three co-ordinate branches of government, and the lawyer

employed to the extent of the compensation agreed upon, which is binding upon the Republic. In the case at bar this appears to have been done in the court below, and the obligation then incurred appears to have been fully met; but no previous application was made to this Court for any such permission, nor could the trial court make any arrangement of that kind by which this Court would feel itself bound. This Court is of the opinion, therefore, that it has incurred no responsibility to pay for the defense of the appellant in question, as no application was made to this Court for that purpose *before* the hearing.

But a still more important question arises; namely, suppose we had, would there have been any law to justify our making the government liable to meet said expense? We have not been able to find any, and the counsel on both sides admitted, during the argument, that there was no provision of law to support the contention of the petitioner.

Counsellor Arthur Barclay, however, who has practiced law before the courts of this Republic for more than fifty years, was asked to make a statement during the hearing of the application, the essence of which is as follows:

> "That when he first entered the Bar he met the practice in vogue of allowing an attorney fifty dollars out of the public funds to defend a poor and indigent person charged with a capital offence while the cause was pending in the trial court, but that he had never heard of such an allowance being made in the appellate court."

No one has been able to cite any rule, precedent, or statute differing in any respect from the custom testified to by Counsellor Arthur Barclay.

Undoubtedly there exists the need for a statute on the subject, and the Bar Association, recently revived, may give its attention to the matter and promote legislation

that will reflect the will of our Legislature; but until then this Court will interpret the custom in the light in which it has been testified to before us, and adhere to the role of allowing a sum not to exceed fifty dollars to be given to an attorney who defends a poor and indigent person before the *trial court;* but we are not prepared to give our sanction to any innovations not based upon any law in vogue, either common or statutory.

It is our opinion therefore that the application for the additional fifty dollars for services rendered by counsel in this Court is not well founded, and should be denied; and it is so ordered.

Application denied.