ALLEN N. YANCY, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF OBTAINING MONEY UNDER FALSE PRETENSES.

Argued January 8–10, 1935. Decided February 1, 1935.

1. In criminal cases a picture of all the surrounding circumstances should by the evidence be put before the jury.
2. A court can never be the agent, or the instrument, of any government; nor can it align itself on the side of the prosecution in any case.
3. The proper duty of the court is to defend the rights of the oppressed against the oppressor, the rights of the weak against the strong.
4. The object of evidence is to secure a legal conviction.
5. Hence no evidence should be admitted in a criminal case which does not bear on the question whether the defendant did a particular act specifically charged.
6. Nor should any evidence be received which is a second handed rendering of testimony not produced but producible.
7. Where the evidence adduced tends to prove a violent offense, while the indictment had charged one of a secretive nature, the judgment will be reversed, and the permission given to obtain a new indictment.

On argument on merits of appeal from conviction for obtaining money under false pretenses, *judgment reversed* and *case remanded for new trial,* with instructions to seek new indictment for different crime.

William V. S. Tubman and *D. C. Caranda* for appellant. *The Attorney General* for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

The Court is now about to render the second opinion, during this term of court, upon this one case. For, when the case was first called on the 3rd day of December, 1934, the appellant then moved this Court to dismiss the case upon the grounds that it should not have been commenced by an indictment in the Circuit Court of the Fourth Judicial Circuit, as had been the case because, as he then contended, the offense of obtaining money un-

der false pretenses was what is known as a "petit offence" and therefore cognizable before a court of the justice of the peace. On the 21st of December, 1934, there were filed both a majority * and a minority † opinion and judgment, which denied the motion, and decided that the case should be heard on its merits after our Christmas recess.

Accordingly, the hearing of the case upon its merits was commenced on the 8th day of January, 1935, and the following points were then brought to the attention of the Court.

On the seventeenth day of November, 1934, when the case was called for hearing in the court below, the defendant had submitted a motion to quash the indictment on the grounds that the judicial branch of government had no jurisdiction over him, an executive officer, for any offense committed by him as Vice President of the Republic of Liberia. After the arguments were heard *pro et con,* the trial judge denied the motion, to which ruling the appellant excepted, but at this bar withdrew said motion from our consideration.

The defendant was then arraigned and pled not guilty; whereupon a jury was impanelled to try the issue joined between him, the appellant, and the Republic of Liberia, appellee. The appellee proceeded to introduce witnesses to prove the charge as set out in the aforesaid indictment by the following named witnesses who testified in its behalf, namely: Gofa Suduway, Gray Nyati, Too Chambeoh and S. K. J. Nyepan. Gofa Suduway, having been qualified, testified as follows:

> "That after the return of the appellant, Mr. Yancy, from Monrovia, he called the people of his section of the country down to Wedabo beach and told them that Mr. King, then President of Liberia, said we should give sixty boys to go to Fernando Poo; Paramount Chief Jack Jaracca and Paramount Chief

* See *supra,* p. 205. † See *supra,* p. 217.

Jury of Picininicess were present. He then caught our Paramount Chief Bloh in the Council of Chiefs held at Picininicess and said to him: 'you refused to send sixty boys to go to Fernando Poo,' and thereupon imprisoned him. After this he caught Juploh, Bloh's Clerk, and imprisoned him also. Two weeks later, Captain Phillips arrived at our section from Gborh. Then our Chieftains called me and said 'Suduway, you are our Speaker, Mr. Yancy has already carried away our Paramount Chief and his Clerk, and now Captain Phillips is here catching the Chieftains; follow them and find out what is the trouble.' We then proceeded to Harper, and on our arrival there, I went at once to the Superintendent, Mr. Brooks, and to my surprise, the next day they put our Chiefs who were caught by Captain Phillips into a truck and carried them somewhere towards the bush. I followed them, and on our arrival we only met Mr. Yancy in the place, who then lined up these men and said to our Paramount Chief Bloh: 'Did you go to President King and report me? Is he any relative of yours? Or is he your country man? Do you know what he said to me? Now I told you to give me sixty boys to go to Fernando Poo and you have refused to do so; suppose I ship you all to Fernando Poo by Dutch steamer now in harbour, who will ask me any questions? Or if I order these Frontier Force soldiers to carry you all to the barracks at Barroboh and instruct them to shoot you all down on the way, when the question comes up I will simply say that you were sick and died. But all these I will not do: any way, where you are now standing, pay a fine of two hundred pounds sterling.' Then our Paramount Chief Bloh said to Mr. Yancy: 'I am now a prisoner in custody, hence there is no possibility of getting this money.' He then said to Bloh: 'You can select a man from among these Chieftains to go for this money.'

Bloh then sent one Chief by the name of Chambeoh and me, and Mr. Yancy took us in his car and carried us to Harper. On arriving there, at his house, he gave Chambeoh two empty cash bags and said to him: 'Carry them to your people and they must fill them with cash.' Chambeoh then proceeded to our home while I remained with our Paramount Chief and the other Chieftains.

"When Chambeoh returned, I was at Harper. He and one Gray Nyati brought the two bags of money. When they brought this money they said to me: 'Speaker, here is the money.' We then took the two hundred pounds to Mr. Yancy's house and I delivered them to him and he counted the money and said to us: 'It is correct. On tomorrow I will bring the prisoners down.' Next morning Mr. Yancy and I got into his car and went for the Chiefs who were in prison and brought them down to Harper. Mr. Yancy then said to us: 'The two hundred pounds is correct; but what about the messengers' fee, whom I sent to arrest you?' We then replied that we saw no messengers. He then said: 'I mean the launch which brought you down; the expense is seventy-two pounds and ten shillings sterling; and you have to pay this amount.' We said 'All right. We agree to pay it, but we have been here for a long time; so give us a chance to go home and then pay this amount.' He said, 'All right: you can go.' On our arrival home we sent one Too Gbloh and Too Dowhen with this amount."

After witness Gofa Suduway had been duly discharged, witness Gray Nyati was qualified and testified as follows:

"I know something about this case; but it would be proper for Chambeoh whom they sent for the money to testify. When we got this money, we put it into two bags. Then they called me and told me to go

with Chambeoh as this money was too heavy for one man to carry. And I carried one bag and he carried the other. On reaching Harper, I saw Gofa Suduway at the waterside and he told me to follow him. We then went to Mr. Yancy's house and we were carried into a room facing the veranda as you enter the house, and there Mr. Yancy and Gofa Suduway began to count the money. I then asked Mr. Yancy and said: 'Master, where are all those Chieftains you brought down from our section? I want to see them, because my father is among them.' He told me to come the following morning, at which time he took me in his car. On our arrival where he kept our Chiefs, I saw my father and the other chieftains."

After witness Gray Nyati was discharged, witness Too Chambeoh was qualified and deposed as follows:

"I was at home and Mr. Yancy ordered Captain Phillips with a squad of soldiers to go for us. When we arrived in Harper they took us to Mr. Yancy's home. We were about two hundred men in number. On the next day he put us into his truck and carried us up, and he followed later on. We were carried to a big house where we met our Paramount Chief Bloh, and his clerk. They came with our Speaker Suduway. The Speaker was not imprisoned but I was. Mr. Yancy then said to Bloh, the Paramount Chief: 'I got you now. What the President and I talk you do not know. As I have you now you are a prisoner, and before I release you, you will have to pay a fine of two hundred pounds sterling.' Then Bloh said to him: 'You have me in jail; how could I arrange to pay this amount?' He then said to Bloh, 'Send a man from these prisoners: and send for the money.' Then Bloh called me and said: 'Go home for this money,' and I agreed. Then Mr. Yancy put Suduway and myself into his car and brought us to

Harper. Yancy then gave two empty bags and gave me a permit for me alone to cross. Next morning I crossed and slept at Po River and arrived home next day. Our people came to see me and asked where was Bloh. I told them he was still in prison and that Mr. Yancy gave me these two bags for us to fill them with money and send them to him before he can release Bloh and the other Chief. They at once started a collection from men, women and children, and the two bags were at once filled. Then they said to me, 'If you were not an old man, we would like for you to go with this money to Harper today. Here are the two hundred pounds so you could go in the morning.' In the morning, one Gray Nyati assisted me to bring this money to Harper. On our arrival there we met our Speaker Suduway at the waterside and after crossing we proceeded to Mr. Yancy's place. On our arrival there, I said to him: 'Here is the money you sent me for in order that you may let our people go.' Suduway then took the money which was two hundred pounds and gave it to Mr. Yancy, and they both counted it in the room and found it correct. Mr. Yancy, Superintendent Brooks, Suduway and I got into Mr. Yancy's car and went where our Chiefs were to bring them down. On our arrival, Mr. Yancy told Bloh: 'You are free today. I have received my money.' We then started for Harper, after Bloh and the other Chiefs had been discharged, and we arrived at midnight. The next morning Mr. Yancy asked Bloh: 'What about the people whom I sent to call you and others by the launch? You are to bear their expenses which is (sic) seventy-two pounds ten shillings, for they are government officials. I took them from their work and sent them there, so you have to pay that money.' We agreed and went home and on our arrival we col-

lected the seventy-two pounds and ten shillings and sent it by Too Dumeh and Too Gblorh. This is what I know."

From the testimony of the witnesses for the prosecution which, in our opinion, the appellant did not succeed in breaking down either by rebuttal or by stronger testimony of witnesses on his side to establish his innocence in keeping with his plea of "not guilty," we feel no hesitancy in saying, that the prosecution has made out a very strong *prima facie* case against the defendant, sufficient to warrant his conviction for some crime; because from the testimony of these witnesses, we have had sufficient evidence shed upon the occurrence to warrant the affirmation of a judgment of conviction against him.

But while enunciating this fact, yet we cannot do justice to ourselves and our consciences without making mention of the illegal and arbitrary position taken by His Honor Stephen H. Dickerson, the trial judge now out of commission, during the course of the cross-examination of some of the witnesses by the defendant's counsel, by disallowing nearly all of the questions put to them, which questions, in our opinion, were pertinent and relevant to the issue. It was from the answers of these questions that more light might have been thrown on the different material points involved in these questions.

It is an undeniable fact, that all examinations of witnesses in all cases are directly under the control of the trial judge; yet it is obligatory on him to avoid abusing this judicial power entrusted to him.

We have to repeat the doctrine laid down in some of the criminal works of other countries as well as established in some of our decisions that in criminal cases more latitude should be given to the contending parties during the course of direct and cross-examination of all witnesses, in order that, "a picture of all the surrounding circumstances should by the evidence be put before the jury."

The trial judge seems however to have been oblivious to the fact, that the right of an impartial trial is secured to all persons who are criminally charged, in accordance with the provision of the Constitution of Liberia, article I, section 7.

The attention of the learned Attorney General was directed to (1) the undue restriction by the trial judge of appellant's right to cross-examine the witnesses adduced against him; and (2) the fact that, although the evidence adduced tended in our minds to prove that appellant had by force and violence obtained the money, the subject of the prosecution, from Paramount Chief Bloh and his people, yet it did not appear to us that upon such facts the conviction could legally stand since the indictment charged the appellant with obtaining money under false pretenses which charge implies secretiveness, stealth and fraud rather than open force and violence. At this stage the learned Attorney General mounted as it were upon a pair of stilts and in a very supercilious manner announced to the Court that he represented two million people, and therefore insisted that the conviction should stand. He was immediately checked, and rebuked in this course by Mr. Chief Justice Grimes who directed him to read and expound, for the benefit of the Court, the following citation from Wharton's *Criminal Evidence,* vol. I, § 1:

> "In civil suits both parties are subjects of the State, with equal rights in the eye of the law. For the one or the other a verdict must be found, and this verdict must be on a preponderance of proof, however slight, no matter how long a jury may hesitate, no matter how evenly the scales may for a time hang. The parties, viewing them in the aggregate, enter the contest with advantages about equal, and are entitled to equal privileges. On the other hand, in a criminal prosecution, the State is arrayed against the subject; it enters the contest with a prior inculpatory finding of a

> grand jury in its hands; with unlimited command of means; with counsel usually of authority and capacity, who are regarded as public officers, and therefore as speaking semi-judicially, and with an attitude of tranquil majesty, often in striking contrast to that of a defendant engaged in a perturbed and distracting struggle for liberty if not for life. These inequalities of position the law strives to meet by the rule that there is to be no conviction when there is a reasonable doubt of guilt."

What the Attorney General may have had in mind in adopting the attitude mentioned has not yet however been made clear to us; but this Court will not lose the opportunity his attitude afforded of making clear the following principles:

A court can never be the agent, or the instrument, of any government; nor can it properly align itself on the side of the prosecution in any case. The proper duty of the court is to defend the rights of the oppressed against the oppressor, the rights of the weak against the strong, be the strong president, emperor, king, prince, potentate, or magnate; and hence, whenever there is a matter in litigation in which it appears that one side is weak and the other strong, the court must lean, if at all, on the side of the weak until it shall have satisfied itself that every privilege given by the law to the humblest litigant at its bar shall have been allowed him; and if, thereafter, it appears that judgment should be given against him the court will be able so to decide without any qualms of conscience. This incident also enables us to recall here for the benefit of the judges of our courts, and the members of our bars, a certain episode from Prussian history universally conceded to be one of the most brilliant on the pages of the judicial history of the world.

> "Near Potsdam in Prussia, there lived a miller in the reign of Frederick the Great, whose mill interfered with a view from the windows of the Emperor's

> Palace at Sans Souci. Annoyed by the obstruction the King sent for the miller and inquired the price for which he could purchase the mill. The miller said that he would not sell it at any price. In a moment of irritation, the King gave orders to pull down the mill. The miller said: 'The King may do this, but there are laws in Prussia.' He immediately commenced legal proceedings against the King and the court ordered Frederick to rebuild the mill, and to pay the miller heavy damages for trespass. The King was mortified, but he was big enough, great enough, manly enough, to say, 'I am glad to find that just laws and upright judges exist in my kingdom.'"

We are therefore of the opinion that this act of the trial judge in strangling all of the pertinent questions of the defendant's counsel by disallowing them to be answered is unwarranted by law, arbitrary and illegal.

Our trial courts, while exerting due diligence in their efforts to bring out all evidence from witnesses which may be pertinent and relevant to the issues that are before them for trial, so as to warrant a legal conviction, should exercise more patience and avoid creating an impression of undue haste to the extent of depriving an accused person of any legal right guaranteed to him by the laws of the land.

Hence this Supreme Court cannot be expected to affirm a judgment of conviction against any person charged, unless the evidence adduced is sufficient to satisfy our minds and consciences that the accused is correctly charged, and the evidence satisfactorily proves him guilty of the offense as charged.

For the object of evidence is juridical conviction.

As pointed out by Wharton:

> "For the purposes of public justice, it is essential to maintain with rigor the distinction between juridical (*veritas juridica, forensis*) and moral truth. I may have, for instance, as a juror, a moral conviction of

the guilt of a defendant on trial. He may have confessed his guilt to me; or I may have learned, from persons not called as witnesses, facts inconsistent with his innocence. This, however, is not to be permitted to have the slightest effect on my juridical reasoning; for, to punish even a guilty man without juridical certainty of his guilt would be recognizing a principle fatal to public justice. The defendant is a bad man, it may be argued, and it is better for the community that he should be put in prison; or he belongs to a political or religious party which it is important to suppress; or we have private information convincing us of his guilt; or he has acted so fraudulently or oppressively in cases not in proof that it may be inferred that he acted fraudulently or oppressively in those under investigation; and hence he should be convicted. If such considerations are to be received to affect the judgment of court or jury, there would be no case tried in which some prejudice, popular or personal, on the part of the adjudicating tribunal, would not be made the basis of a verdict. If so, not only would innocent men be convicted in consequence of prejudices extrajudicially invoked against them, but guilty men would escape in consequence of prejudices extrajudicially invoked in their favor. The only safe course, therefore, is to found the verdict exclusively on evidence duly received, and on inferences logically to be drawn from such evidence. The issue in this way is made dependent upon the best proof that can be obtained, and the defandant is able to meet the evidence adduced against him, to overcome it, if he can, by counter testimony, and to have notice of, and refute if he can, the inferences drawn from the case of the prosecution. The distinction before us is illustrated in criminal prosecutions by the exclusion from the jury box of all persons who have formed such an opinion on the case as will

interfere with their coming to an unbiased conclusion on the proofs admitted on the trial, and by the direction of the court to the jurors to be influenced by no considerations not sustained by such proofs. And a still more complete exhibition of the principle is to be found in the great exclusionary tests adopted in this respect by all jurisprudences. No evidence is to be admitted, in a criminal issue, which does not bear on the question whether the defendant did a particular act specifically charged against him. And no evidence is to be received which is a secondhand rendering of testimony not produced, though producible, by which a higher degree of certainty could be secured." Wharton, Criminal Evidence, 10, § 4.

The evidence adduced having tended to prove defendant guilty of a violent offense, upon an indictment charging him with a secretive offense, we cannot but reverse the judgment of the court below, and remand the case for a new trial.

But inasmuch as it appears to our minds that appellant has committed a criminal offense for which he should be properly tried, and, if convicted, receive the appropriate punishment; and as it is upon his application that the verdict and judgment against him have now been reversed; it is the opinion of this Court that a new indictment correctly charging appellant with the offense shown by the evidence to have been committed, should be preferred in accordance with the principle set in the case *Ball* v. *U.S.*, 140 U.S. 118, 35 L. Ed. 337 (1891), and 163 U.S. 664, 41 L. Ed. 300 (1896), which authority Counsellor Tubman was kind enough at our request to read and expound at this bar; and it is so ordered.

Judgment reversed.