VARNA BOKAI, KARMO GBEAR and GBANJA SEKU, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued March 19, 1959. Decided April 24, 1959.

1. A person who aids or abets an assault and battery by encouraging or inciting the criminal act with words, gestures, or other means, may be held liable equally with the party who commits the act itself.
2. Where a bill of exceptions fails to indicate the grounds of exceptions to rulings by the trial court upon admissibility of testimony, an appellate court may decline to review such rulings.

On appeal from a judgment of conviction upon a verdict of guilty of the crime of assault and battery with intent to do grievous bodily harm, *judgment affirmed.*

T. Gyibli Collins for appellants. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.*

During the regular session of the May, 1957, term of the Circuit Court of the Fourth Judicial Circuit, Grand Cape Mount County, an indictment was found against Varna Bokai, Karmo Gbear, Folley and Gbanja Seku, defendants, for the crime of assault and battery with intent to do grievous bodily harm. The said indictment alleges that the aforesaid defendants wilfully, unlawfully and feloniously did make an assault upon one Sengbe Mana whilst in the town of Gohnzolu Gonga of the Gola Konch Section of the Gawula District in Grand Cape Mount County, and did injure him, the said Sengbe

* Mr. Justice Pierre was absent because of illness and took no part in this case.

Mana, by defendant Varna Bokai with force and violence grabbing his belt and trousers around the waist and knocking him with force on the forehead with his fist; and by defendant Karmo Gbear and defendant Folley pulling him, the aforesaid Sengbe Mana, from the piazza of the house where he was, and beating him on the face with their hands, and defendant Gbanja Seku did also knock him forcibly in the right eye with his fist, and as a result, said eye did gather bruise blood, and Sengbe Mana did fall on the ground, and whilst there the said Gbanja Seku did hold him tightly by the waist, and at which time the defendant, Varna Bokai did sit on his chest and knock him on the face forcibly with his fist whilst defendant Folley, holding him by the right leg, did drag him on the ground; and, as a result, his left knee did cut and bleed, etc., etc.

The case was called for hearing at the aforesaid May, 1957 term, of the court, but defendant Folley, not having been arrested, his co-defendants filed a motion for severance through counsel. The motion not being resisted by the prosecution the same was granted. The rest of the defendants were arraigned and pleaded not guilty to the indictment; and their trial began on May 21, 1957.

The records before us certify that a verdict of guilty was brought in by the petty jury against the defendants, who thereafter filed a motion for new trial on the grounds that the said verdict was manifestly against the evidence adduced at the trial, in that there was no corroboration of the testimony of the witnesses who deposed for the prosecution, and also that the medical certificate admitted into evidence at the trial was hearsay and consequently inadmissible. The motion was heard and denied; and the case has taken its course before this Court upon a bill of exceptions containing eleven counts.

Because of the peculiar manner in which the several counts are laid in the said bill of exceptions, that is to say, the mere stating of objections made to questions put to witnesses without the least effort to include any legal

ground on which the said objections were based, we feel it expedient to quote the said counts as they are laid:

"1. Because Your Honor sustained an objection to a question put to witness Sengbe Mana, the private prosecutor, to wit: 'I presume that your refusal to obey the Chief's call, he sent the first and second times to call you, and your resisting the said calls, a fight ensued, not so?' To which appellants except.

"2. Because Your Honor sustained objection to a question put to Dr. S. W. Wenzel on the cross, to wit: 'So, by the answer just given, the facts stated in the history of the case were told to you by the private prosecutor, not so?' To which appellants except.

"3. Because Your Honor sustained objections to a question put to Dr. S. W. Wenzel on the cross, to wit: 'Does this written signature of yours correspond to that typewritten name in the document?' To which appellants except.

"4. Because Your Honor overruled objections to the admission of the purported medical certificate and admitted same into evidence. To which appellants except.

"5. Because Your Honor overruled objections to a question put to Defendant Varna Bokai, one of defendants in the case, to wit: 'Were you the only one the Chief ordered to carry the private prosecutor by force when he refused his call?' To which appellants except.

"6. Because Your Honor overruled objections to question put to witness Bende Simma on the cross, to wit: 'Please also say for the benefit of the court and jury at what time did you notice Gbanja Seku on the scene of the incident, before the fighting ensued or while the fighting was going on?' To which appellants except.

"7. Because Your Honor overruled objections to a

question put to witness Jene Kengbeor on the cross, to wit: 'What relationship do you bear if any to any of the defendants in this case?' To which appellants except.

"8. Because Your Honor overruled the objections interposed to a question put to witness Karmo Gbear on the cross, to wit: 'I suggest that you saw a cut on the knee of the private prosecutor, am I correct?' To which appellants except.

"9. Because on May 20, 1957, the empanelled jury brought in a verdict of Guilty against the said defendants-appellants, to which verdict appellants except.

"10. Because Your Honor, on June 17, 1957, overruled the motion for new trial, to which appellants except.

"11. Because on June 17, 1957, Your Honor proceeded to render final judgment in the above-entitled cause, fining each of the appellants the sum of $75, making the aggregate total of $225, to which said final judgment appellants except and pray an appeal to the Honorable Supreme Court of Liberia, at its October, 1957, term."

This case was argued before us on March 19, 1959. Appellants' counsel centered his argument mainly on the following three points which were couched in his brief substantially as follows:

1. That the verdict of the petty jury rendered in the case, on which judgment was rendered by the lower court, was manifestly contrary to the weight of evidence as to an aggravated assault.
2. That no proof of any circumstance of aggravated assault was made out at the trial.
3. That the expert testimony adduced at the trial was chiefly based on hearsay evidence, and was inadmissible.

Before passing on to the bill of exceptions, we shall re-

view the several points of argument advanced by the counsel for the appellants. It would seem that counsel misapplied the law, and maybe he did so unintentionally when he argued that for the crime of assault and battery with intent to do grievous bodily harm to be established, the element of an aggravated assault must be proven. In the Criminal Code of 1914, under which our indictments are drawn, the crime of assault and battery with intent to do grievous bodily harm is defined as follows:

> "A person who with intent to injure wilfully and wrongfully inflicts grievous bodily harm upon another, with or without a weapon, or wilfully and wrongfully assaults another with a weapon or other instrument likely to cause grievous bodily harm, is guilty of a misdemeanor. . . ." Crim. Code, § 46.

On the other hand, according to common law authorities, an aggravated assault is not a necessary element to be proven in the establishment of the statutory crime of assault and battery with intent to do grievous bodily harm. The actual aggravated intention to inflict physical injury might not be apparent, but may be implied by an unlawful and wrongful act of the defendant. We quote the following:

> "Where the act is both unlawful and wrongful, and well calculated to inflict serious personal injury, the law will imply malice and an unlawful intention, and override any actual intention existing in the mind of the aggressor." 4 AM. JUR. 130 *Assault and Battery* § 6.

With respect to the medical certificate tendered by Dr. Wenzel, and his oral testimony which defendants contend was hearsay evidence, these show that, the certificate on its face certifies that the private prosecutor was examined by the said medical doctor, and thereafter was treated for the wounds he sustained; and it is our opinion, therefore, that the same is complete because it both shows a finding of the condition of the private prosecutor at the time of his ex-

amination, and a diagnosis of the wounds then apparent on his body. Such a document may not be regarded in law as anything less than evidence of the first grade. Dr. Wenzel, in his oral testimony, identified the said medical certificate as the genuine one given to the private prosecutor after he performed his examination, and also identified his signature thereto; so there could be no ambiguity thereon to warrant declaring the same to be hearsay evidence.

We would agree, however, that, in good reason, it could be concluded that the history laid in the certificate by Dr. Wenzel may not be taken as anything less than the information communicated to him by the private prosecutor of the incident as it happened, but since that could only be accepted as surplusage, it necessarily could have no negative effect on the findings and diagnosis of the case, as is also shown on the face of the said certificate; and especially so when there is no set form, according to our law, to which medical doctors are required to conform in such case after the examination of any patient.

This Court interposed certain questions to counsel representing appellants. He was asked whether, after careful study of the records in the case and the law controlling, he would still maintain that the crime of assault and battery with intent to do grievous bodily harm had not been committed and proven against the defendants, now appellants. He replied that he did not share that view completely, but he felt that all of the parties were not proven culpable in the same degree of the offense charged, since some of the defendants should have been convicted in the court below for a lower grade of the crime, and the records do not show that all of the defendants inflicted physical injury in the same degree. To the layman, such an argument might seem meritorious, but let us see how well it can be accepted under the law. The applicable principles have been authoritatively summarized as follows:

"Liability for an assault or assault and battery is not

> necessarily restricted to the actual participants; any person who is present, encouraging or inciting an assault and battery by words, gestures, looks or signs, or who by any means approves the same, is in law deemed to be an aider and abetter and liable as a principal. Such a person assumes the consequences of the act to its full extent, as much as the party who does the deed." 4 AM. JUR. 127 *Assault and Battery* § 4.

Now, according to the records in the case, all of the appellants were engaged at the same time when the crime charged was committed. Witness Jenneh Finda went to the stand and testified to the effect that, when she arrived on the scene, all of the defendants were beating the private prosecutor. This statement conclusively corroborates the testimony of the private prosecutor in so far as it goes to show that all of the defendants, now appellants, were present and associated in the commission of the crime. Therefore we have not been able to satisfy ourselves that, all of the appellants who went on trial should not have been convicted for the same grade of the offense.

Having fully dealt with the grounds of argument, we shall now proceed to review the counts laid in the bill of exceptions. Count "4" thereof, has already been considered in this opinion. Counts "1," "2" and "3" seem to present no reviewable issue because they do not tend to disprove the charge on which the appellants, defendants below, were held answerable; and according to law, it was not error on part of the trial Judge to sustain objections thereto, if such objections were well taken.

Counts "5," "6," "7" and "8" being taken to objections made to questions put to witnesses in the case and overruled by the court, we are of the opinion that the court correctly denied the said objections, since the bill of exceptions shows no legal ground upon which the said objections were based; and, besides that, they were taken to questions which went to test the competency and veracity of the witnesses; and the credibility and effect of the an-

swers thereto rested exclusively with the trial jury. These therefore, are also unmeritorious.

Count "10" presents an exception taken to the denial of the motion for new trial. To this exception, this Court says that, the ground of said motion not being legally founded, it was within the province of the trial Judge to have denied the same; and therefore this Count is also dismissed.

In concluding this opinion, we regard it of interest to mention that, after careful examination of all of the records before us, and due consideration of the arguments *pro et con* made before this bar, we are of the firm opinion that the judgment of the Court below should not be disturbed, and therefore the same is affirmed. And it is so ordered.

Judgment affirmed.