

JOE FARROW, Appellant, vs. **M. T. DECORSEY**, Appellee.

LRSC 2; 1 LLR 243

[January Term, A. D. 1893.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Certiorari.

Writ of habeas corpus—Constitutional law.

Legislative enactments cannot repeal or annul constitutional provisions. Justices of the Supreme Court and other courts of law of this State have an inherent right to issue writs of habeas corpus; the constitutional power of the Supreme Court or any of its justices in matters of habeas corpus cannot be annulled by Legislative enactment. The hearing of the cause of imprisonment or other restraint of one's personal liberty upon a habeas corpus by a justice of the Supreme Court, is in the exercise of appellate jurisdiction and in consonance with the judicial powers conferred by the Constitution; a statute denying this right can have no binding effect, because of its conflict with the provisions of the Constitution on this point.

This is a case in which, upon the application of Joe Farrow, in a matter of habeas corpus before the Court of Monthly and Probate Sessions, Montserrado County, a writ of certiorari was issued and served upon Hon. John F. Dennis, Judge of the Monthly and Probate Sessions for the County of Montserrado, removing said case to this court. The writ of habeas corpus issued by Judge Dennis, answering its office, sought to remove from imprisonment two boys, in order that the judge might inquire into the lawfulness of their confinement.

The writ of habeas corpus is a high privilege writ, and was so understood by the framers of the Constitution, the denial of which must soon endanger personal liberty, so sacred to the people of this Republic ; the refusal of this high writ would soon become the parent of despotism and leave the people's liberty to the caprice of those vested with authority ; and too soon the deformed head of Anarchy would rise up, and with great political upheavals, shake our beloved Republic to its very foundation. We premise that one of the great timbers employed by the venerable fathers in constructing the framework of our political fabric, is supported by a buttress of liberty to be found in the 20th section of the Constitution of Liberia, which speaks the following language: "All persons shall beailable by sufficient security unless for capital offences where the proof is evident or presumption

great, and the privilege and the benefit of the writ of habeas corpus shall be enjoyed in this Republic in the most free, easy, cheap, expeditious and ample manner, and shall not be suspended by the Legislature except upon the most urgent and pressing occasion, and for a limited time not exceeding twelve months." (Vide Const. Liberia, p. 10, sec. 20.)

The Legislature of the State has the undoubted right to repeal or suspend its laws, but not Constitutional provisions except in manner provided in the Constitution, because all laws should be in harmonious keeping with the spirit and intention of the Constitution. Neither have they the right to restrain judges in the exercise of Constitutional rights. The issue of a writ of habeas corpus is an inherent right of the judges of the Supreme Court and other courts of law of this State, agreeable to the genius of the Constitution of the Republic of Liberia, and its issue and hearing is in the exercise of appellate as well as original jurisdiction.

The question whether the individual shall be imprisoned is always distinct from the question whether he shall be convicted or acquitted of the charge on which he is to be tried, and these questions may be decided in different courts. The decision that the individual shall be imprisoned must always precede the application for the writ of habeas corpus. The statute recognizes three distinct courts of this Republic: first, the Monthly and Probate Court; second, the Courts of Quarter Sessions and Common Pleas; and third, the Supreme Court; all of which courts consist of a judge or judges, a clerk and a seal; the clerk to record their doings and the seal to render the same authentic. This court need not therefore say that all of these courts are in their organization constituted Courts of Record, and clothed with distinct and concurrent jurisdiction. The inferior courts of this Republic are vested with both appellate and original jurisdiction, to destroy which is to destroy the very purpose for which said courts were constituted. The Supreme Court, says the Constitution, shall exercise original jurisdiction in cases affecting Ambassadors or other public ministers and counsels and those cases in which a County is a part. In all other cases it shall exercise appellate jurisdiction.

From the foregoing, it is clear to the mind of this court that judges, in hearing the cause of imprisonment of an individual committed to jail or otherwise restrained of his liberty, act solely in the exercise of the appellate jurisdiction conferred by the Constitution; and those of the Supreme Court especially. Therefore, any act of the Legislature which tends to withhold from any of the courts of this Republic or any judge thereof the exercise of his inherent right, is in conflict with the fundamental and paramount law of the State and is therefore of no binding effect. This court further says a writ of certiorari is a writ of relief, authorized by law, and is controlled in its application by the same. This writ removes the

proceedings of a court of inferior jurisdiction to one of superior, and is employed when their proceedings are not in harmony with laws and justice; but it should not be prayed for until the final judgment or determination of the court in which a case is tried. It is clear to the mind of the court, and it must be to the minds of all parties concerned, that to remove a case for review before the final judgment of the court in which it had been entered, is premature. It is needless to enlarge upon a point so fully established by settled principles of law and known by the learned counsels engaged in this suit. It is the final judgment of a court that puts an end to the dispute between litigant parties, and so long as the main question which it was one of the objects of a suit to determine remains undetermined, a certiorari would not lie. In this case the removal was during the examination of witnesses, hence against law and the practice of courts.

\The case is therefore remanded to be tried over in the Court of Monthly and Probate Sessions, Montserrado County, where it was pending, and the clerk of this court is hereby commanded, under the rules, to issue the proper mandate to the said court to the effect of this ruling.