

**MERIDIEN BIAO BANK LIBERIA LIMITED (MBBIL), by and thru its President and Chief Executive Officer or other authorized representative, Petitioner, v. HIS HONOUR JOSEPH W. ANDREWS, Assigned Circuit Court Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, the Sheriff, Bailiffs and all those acting under the Authority of the Presiding Judge, First Respondents, THE NATIONAL BANK OF LIBERIA, by and thru its Governor, CHARLES BRIGHT, Second Respondent, and THE EPISCOPAL CHURCH OF LIBERIA, by and thru its Diocesan Board of Trustees, by its Chairman, MR. C. GYUDE BRYANT, Third Respondent.**

**Meridien Bank v Andrews et al [2000] LRSC 12; 40 LLR 111 (2000) (21 July 2000)**

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: May 31, 2000. Decided: July 21, 2000.

1. A Justice in Chambers may, in the exercise of his discretion in a remedial process, issue the writ as prayed for by the petitioner, or issue the writ on such terms and conditions as he may determine, or refuse to issue the writ, or cite the parties to a conference.
2. The Associations Law expressly provides that in the determination of the legal status of corporations which are organized for banking purposes, the Banking Law shall prevail over any conflicting provisions of the Liberian Business Corporation Act.
3. After entering into possession of a financial institution, and subsequent to the court appointing an officer, the National Bank of Liberia shall be vested with the full and exclusive power of management and control of the financial institution, including the power to initiate, defend and conduct, in the name of the seized bank, any actions or proceedings to which the financial institution may be a party, pending the final adjudication of proceedings to lift the seizure.
4. Pending the lifting by the circuit court of the seizure of a financial institution, the seizure order shall be conclusive, final and binding.
5. The National Bank of Liberia has the full and exclusive power under the Financial Institution Act to act on behalf of a seized financial institution, including receiving proceeds for and on behalf of the seized financial institution.
6. Service of process made on the National Bank of Liberia for and on behalf of a seized financial institution over which the National Bank has the power of control and management constitutes valid service on the seized financial institution.
7. Summary proceedings to recover possession of real property is the proper proceeding to bring to oust a person from property when the lease has terminated or where the lease agreement provides for such eviction upon the default by the lessee to fulfil certain conditions stipulated by the lease.
8. There are two kinds of notices: Actual and constructive. Notice in law is regarded as actual when the person sought to be affected by it knows of the actual existence of the fact. Constructive notice is one which is presumed because of the fact that a person has knowledge of certain facts which should impact on him, or lead to knowledge of the ultimate fact.
9. There is no title to real property involved under a lease agreement where the agreement has terminated by its own terms or by operation of law.
10. Where ordinarily the non-payment of rent is not a ground for summary eviction, yet where the parties to a lease agreement provide therein that the lessee shall have

peaceable and quiet enjoyment of the premises free of eviction or interference by the lessor if the lessee pays the rent and punctually performs the terms and conditions thereunder, a failure to pay the rent or perform the terms of the agreement vests in the lessor the right to have the lessee evicted from the demised premises.

11. The lessee of demised premises is subject to eviction for failure to pay the rental where the lease agreement states that payment of the rental is a precondition to enjoying peaceable possession of the demised property.
12. The jurisdiction of the courts cannot be ousted by a private agreement of the parties to a contract.
13. The Financial Institution Act forbids a writ of execution being levied against the assets of a seized financial institution.
14. Ordinarily the landlord may not re-enter demised premises for breach of the covenant unless the covenant is valid and enforceable, and there is a stipulation that the breach shall work a forfeiture or termination of the tenant's interest or confer on the landlord the right of re-entry.
15. Prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in a case over which it has no jurisdiction or where it acts beyond its jurisdiction or attempts to proceed by rules different from those which ought to be observed at all times.
16. Prohibition will not lie where the trial judge has acquired jurisdiction over the subject matter and parties, and properly entertained the action.

The petitioner sought prohibition from the Supreme Court to restrain the co-respondent trial judge from carrying out a writ of execution intended to evict the petitioner from a certain demised premises which petitioner had leased from Co-respondent Episcopal Church of Liberia. The co-respondent church had instituted summary proceedings to recover possession of real property against the petitioner and had obtained judgment in its favor, based upon which a writ of possession had been issued and served and the property turned over to it. Prior to the institution of the summary proceedings, the petitioner, a financial institution, had been seized by the National Bank of Liberia and its operation and assets subjected to the management and control of the National Bank. The service of the writ of summons was made on the National Bank, for and on behalf of the petitioner.

In the petition, the petitioner contended that the National Bank was without the authority to receive precepts in its behalf; that summary proceedings to recover real property was the wrong form of action since petitioner had a valid lease agreement with the co-respondent church and which agreement vested title to the premises in petitioner; and that the non-payment of rent was not ground for eviction of a tenant holding a valid lease agreement.

The Justice in Chambers ordered issuance of the alternative writ but subsequently denied the issuance of the peremptory writ after hearing the matter on the merits. On appeal to the full bench, the Supreme Court rejected the several contentions of the petitioner. With regard to the petitioner's contention that the Justice in chambers had erred initially in ordering that the action remain in status quo rather than status quo ante, the Court held that the contention was without merits, noting that the Justice in Chambers had the discretionary latitude to order the issuance of the writ as prayed for, to order the issuance of the writ on such terms and conditions as he deemed appropriate, to refuse to issue the writ, or to cite the parties to a conference.

The Court also held, counter to the arguments raised by the petitioner, that by virtue of the seizure provision of the Financial Institution Act, the National Bank of Liberia was vested with the authority to manage and control the operations and assets of the petitioner, a seized bank, and that under the said authority the National Bank had the legal right to receive summons for and on behalf of the petitioner, as well as prosecute claims for and defend claims brought against the petitioner. The service of the summons, the Court said, was therefore valid and binding on the petitioner.

On the issue of whether the summary proceeding was the appropriate form of action, the Court held that it was. The Court noted that the lease agreement upon which the petitioner relied for asserting that summary proceedings was the wrong form of action had already expired under its terms which provided that the agreement would be deemed as having expired if the petitioner ceased its operations in Liberia. The Court observed that the petitioner has ceased operating in Liberia several years prior to the institution of the action, and that by the said act of the petitioner the agreement had expired and the petitioner no longer had title to the premises. Consequently, the Court said, the petitioner was holding the property without any clear right or title, and hence summary proceeding to recover real property was the proper action to bring to evict the petitioner from the premises.

The Court rejected the petitioner's contention that the co-respondent church had not been given notice of petitioner ceasing operations in Liberia, noting that the church had received constructive notice, as opposed to actual notice, by publications in the local papers of the ceasing of petitioner's operations and by announcements made by the National Bank that it had seized the petitioner bank, growing out of the ceasing of operations by petitioner.

The Court also disagreed with petitioner's contention that its failure to pay the rent for the demised premises was not a ground for the eviction of petitioner. The Court held that although it is the general rule that the failure to pay rent does not constitute a basis for evicting a tenant from leased premises, yet, where the lease agreement predicates the peaceful enjoyment of the premises by the tenant and non-interference or eviction by the lessor on the payment of rent, a failure to pay the rent vests in the lessor the right to evict the tenant from the premises. The Court noted that the agreement had provided for such eventuality and that the petitioner had failed to pay the rent. Hence, the co-respondent church had the legal right to evict the petitioner from the demised premises.

Finally, the Court held that the petitioner had failed to show that the trial court had no jurisdiction over the case or that it had proceeded by rules other than those which should be observed at all times, the conditions necessary for issuance of the writ of prohibition. Accordingly, the Court affirmed the ruling of the justice in chambers and ordered the enforcement of the trial court's judgment.

Benedict F. Sannoh of Sannoh & Associates appeared for the petitioner. N. Oswald Tweh of the Pierre, Tweh & Associates Law Firm appeared for the first & third respondents. Isaac E. Wonasue appeared for the second respondent.

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

These prohibition proceedings are before us on appeal from the ruling of our distinguished colleague, Mr. Justice Jangaba presiding in Chambers during the March, A. D. 1999 Term of this Honourable Court, denying petitioner's petition for the writ of prohibition, as well as the motion to strike and the motion to modify.

These proceedings grew out of the final judgment of His Honour Joseph W. Andrews, assigned circuit judge for the Sixth Judicial Circuit Court, Montserrado County, in an action of summary proceedings to recover possession of real property brought by the Episcopal Church of Liberia. The records in this case show that the trial judge granted the Co-respondent Church complete legal possession of the premises, subject of the proceedings before the said court. A writ of possession was issued on the 3rd day of March, A. D. 1999, served, and returned served. The sheriff returns to the writ of possession show that although the 3rd Respondent, the Episcopal Church of Liberia, was placed in complete legal possession of the subject property on March 11, 1999, the two (2) vaults on the banking floor were not touched, primarily because they were locked and could not be opened.

The Meridien Bank, under seizure by the National Bank of Liberia at the time, filed a petition for a writ of prohibition before Mr. Justice Jangaba, presiding in the Chambers of this Honourable Court. The petition, amended on March 29, 1999, contained the prayer that this Court restrains the trial court from further acting on and enforcing of the writ of possession.

The respondents, National Bank of Liberia and the Episcopal Church of Liberia filed returns respectively to the petition. Thereafter, the petitioner also filed a motion to modify the alternative writ and a second motion to strike a portion of the third respondent's returns. Subsequently, the respondents filed resistance respectively to the petitioner's motion to modify the alternative writ and the motion to strike a portion of the third respondent's returns.

When the case was called for hearing, the amended petition, the returns, the motion, the resistance and other pleadings were consolidated at the request of the respondents. The pleadings were therefore heard together to avoid unnecessary costs and delay since they involved common issues of law and facts.

On the 29th day of June, A. D. 1999, Mr. Justice Jangaba denied the petitioner's petition for a writ of prohibition, the motion to modify the alternative writ, and the motion to strike portion of the third respondent's returns. The petitioner excepted to the ruling and appealed to this Court en banc for a review and final determination.

The records in this case and the arguments of both parties before this Court present four cardinal issues for the consideration of the Court and the determination of the case. They are:

1. Whether or not prohibition will lie under the peculiar facts and circumstances stated in the case.
2. Whether or not summary proceedings to recover possession of real property was the proper action brought by the Episcopal Church against the petitioners to recover its property.
3. Whether or not the trial court acquired jurisdiction over the seized bank, by and thru the National Bank of Liberia and;

4. Whether or not it was within the discretion of the Chambers Justice to determine the terms of the alternative writ of prohibition.

We shall decide these issues in the reverse order. As to the issue of whether or not it is within the discretion of the chambers Justice to determine the terms of the alternative writ of prohibition, this Court observes from the records in this case that the petitioner filed a motion to modify the alternative writ, contending basically that the Chambers Justice should have included a stay order in the alternative writ of prohibition. The respondents, in their respective resistance, contended that it was within the discretion of the Chambers Justice to determine the terms of the alternative writ of prohibition as warranted by the particular facts and circumstances in the case. The Chambers Justice, in his ruling denying petitioner's motion to modify the alternative writ, held that upon the filing of the petition for the issuance of the alternative writ of prohibition, a Justice in Chambers may in a valid exercise of his discretion do any of the following, depending upon the particular facts and circumstances:

- a) Issue the writ as prayed for in the petition;
- b) issue the writ on such terms and conditions as he in his discretion may determine, including orders that the matter remain at status quo, or that the matter be returned to status quo ante;
- c) Refuse to issue the writ; or
- d) Cite the parties to a conference.”

We are in full agreement with the ruling of the Chambers Justice denying petitioner's motion to modify the alternative writ, in that it was a valid exercise of his discretion in chambers when he elected to have the matter remain in status quo since the writ of possession was issued, served and returned served, and the Church was completely placed in possession of the property. Thus, the facts and circumstances in this case did not warrant the Chambers Justice returning the matter to status quo ante. The Chambers Justice also correctly declined to entertain petitioner's motion to strike a portion of the Third Respondent's returns due to factual issues raised therein, which cannot be decided without taking evidence.

As to the issue of whether or not the trial court acquired jurisdiction over the seized bank, by and thru the National Bank of Liberia, petitioner's counsel contended that the service of the precepts in the summary proceedings to recover real property on the National Bank of Liberia on its behalf was erroneous because, irrespective of the fact that it is a seized financial institution, it continued to remain a corporate entity, and that the National Bank of Liberia lacked the authority to act for the petitioner pending the final determination of the proceedings to lift the seizure order.

The respondents counter argued that the legal status of the corporation which was also a seized financial institution, was not governed by the Liberian Business Corporation Act, but rather solely and exclusively by the provision of the Financial Institutions Act. The Chambers Justice in his ruling conceded that petitioner is a corporate entity organized under the Associations Law of Liberia, but held that “section 1.3(2) of the Associations Law expressly and specifically provides that in the determination of the legal status of corporations which are organized for banking purposes . . . the banking law . . . shall prevail over the conflicting provisions of the Business Corporation Act.” We are also in full agreement with the ruling of

the Chambers Justice on this issue, which we hereunder quote verbatim for the benefit of this opinion.

"Section 49 of the Act provides, inter alia: After entering into possession of a financial institution, the National Bank, and subsequent to appointment by the court, the officer shall be vested with full and exclusive power of management, control of that financial institution, including the power to . . . initiate and defend and conduct in its name, any action or proceedings to which the financial institution may be a party.

The above quoted provision of the Financial Institution Act authorizes and empowers the National Bank of Liberia to enter into possession of a financial institution being seized, to exercise full and exclusive power of management and control of such financial institution, and to institute and defend and conduct in its name any action or proceedings to which the financial institution may be a party. However, the National Bank cannot exercise such full and exclusive power of management control of a seized financial institution where the court appoints an officer to exercise such full and exclusive power of management control of said financial institution.

This Court therefore disagrees with the assertion of the full and exclusive power of management control of petitioner bank under seizure or to defend a cause or proceeding to which petitioner is a party pending the hearing and final adjudication of the proceedings to lift the seizure order or suspension of petitioner's license. To do so would defeat the very purposes for which the National Bank was originally authorized and empowered by the Legislature under section 44 of the Act. We hold that pending the lifting of the seizure order by the circuit court, the seizure order is conclusive, final and binding.

It is further the holding of this Court that the National Bank of Liberia had the full and exclusive power under the provisions of section 4.9 of the Financial Institutions Act to act on behalf of petitioner in the proceedings in the court below, and service of precepts on the seized bank by and through the National Bank of Liberia, pursuant to section 44 of the Financial Institutions Act constitutes a valid service on the petitioner. The trial court therefore did acquire jurisdiction over the seized bank, by and through the National Bank of Liberia. Thus, the petitioner bank had its day in court."

The third issue for the determination of this case is whether summary proceedings to recover possession of real property was the proper action brought by the Episcopal Church against the petitioner to recover its property. This Court observes from the records in this case that the First Episcopal Church and the petitioner bank entered into and executed a lease agreement as lessor and lessee on the 28th day of October, A. D. 1988 for the period of fifteen (15) years certain, commencing from January 1, 1988 up to and including December 31, 2002, with the right of renewal for twenty (20) years, on the same terms, covenants, and conditions of the lease. The lease agreement provides terms, covenants and conditions which are binding upon the parties in this litigation. This Court will therefore decide the issue upon the provisions of the lease agreement executed by the parties in this case without any duress or coercion having been brought upon them.

The petitioner strongly argued before this Court that the Episcopal Church of Liberia is barred from resorting to legal action by virtue of the arbitration clause in the lease agreement, and that the action to recover possession of real property is a wrong form of action brought by the Church against the petitioner to recover its property since title was an issue by virtue

of the lease agreement. The Church, on the other hand, contended vehemently that the lease agreement between the parties was terminated by petitioner's cessation of its banking activities in Liberia over the period of two years and by the non-payment of rental for the period of ten years by the petitioner bank. The Chambers Justice ruled that the trial judge properly entertained the action of summary proceedings to recover possession of real property on the ground that the said lease agreement by its provision was terminated.

We are in agreement with the ruling of the Chambers Justice and hereunder quote word for word said ruling on this issue and incorporates the same as an integral part of the opinion of this Court.

"A recourse to section twelve of the lease agreement executed between the Episcopal Church, as lessor, and the petitioner, as lessee, shows that it provides for automatic termination of the agreement . . . in the event of cessation of lessee's business in Monrovia." The lessee was required to give the lessor 360 days notice upon the happening of this event. It is important to emphasize that although the lessee had officially and legally ceased to operate as a banking institution since the date of the formal seizure on January 27, 1997, a period of more than two years prior to the filing of the summary proceedings by the Episcopal Church, the petitioner deliberately failed and refused to give the notice of its cessation of business, as required under section 12 of the agreement.

In the mind of this Court, the failure and refusal of the petitioner to give its lessor the required notice in keeping with section 12 of the agreement is irrelevant and immaterial. As a matter of law, the agreement was terminated as of January 28, 1998, 361 days after the issuance and service of the notice of seizure by the National Bank of Liberia. This Court says that clearly no issue of title was involved since the self executing provision of section 12 had terminated the agreement based upon the petitioner's cessation of business.

The question that comes to the mind of this Court is, did the Church have notice that the petitioner had ceased its banking activities in Monrovia due to its liquidity problem and subsequent seizure by the National Bank of Liberia for more than a year? The answer to this question is in the affirmative. It is contended by the respondents that the petitioner closed its door to its customers because of liquidity problem prior to its seizure on January 27, 1997 by the National Bank of Liberia, which notice of seizure was published in a newspaper in Monrovia. A recourse to the records in this case reveals that the interim report of examination of the bank in 1995 discovered a severe shortage of liquidity of the petitioner bank since 1993. It is observed on page 6 thereof that there are two options open to the management of the National Bank of Liberia. They are: 1. Seizure/Liquidation and 2. Resuscitation/Reorganization".

This interim report of the petitioner is evidence of the assertion of the respondents that the petitioner bank ceased its banking activities due to liquidity problem prior to its seizure on January 27, 1997 by the National Bank of Liberia, which fact is not denied by the petitioner. Thus, the co-respondent Church had notice that the petitioner had ceased its banking activities.

A notice, 'in its full legal sense, is a term which embraces a knowledge of circumstances that ought to induce suspicion or belief or put a prudent person on inquiry, as well as direct information of the fact'. (emphasis ours). 66 C. J. S., Notice, § 3, page 635. The publication in a newspaper of the seizure order of the petitioner by the National Bank of Liberia was a

direct information to the Church of the fact that said financial institution had ceased its banking functions. The lease agreement was terminated upon the publication of the seizure order despite the failure of petitioner to notify the Church, the lessor, for reason that it had actual notice that indeed the Bank had ceased its operation over two years since the seizure. It is held that 'generally a notice is regarded in law as actual when the person sought to be affected by it knows of the existence of the fact . . .' 66 C. J. S., Notice, § 3, page 635: Actual Notice.

This brings us to the issue of constructive notice which is defined as "a fiction by which, for the presumption of sound policy or purpose, the legal rights and interests of the parties are treated as though they have actual notice or knowledge". 66 C. J. S., Notice, § 6, page 639-640. A constructive notice is one which is also "presumed because of the facts that a person has knowledge of certain facts which should impart to him, or lead to, knowledge of the ultimate fact". Ibid., Notice, § 6. page 640.

The Church had notice of the existence of the fact about the petitioner's cessation of business upon publication of the seizure order. Hence, the legal rights and interest of the lessor and the lessee can be treated as though the lessee did give its lessor notice of the cessation of banking activities in Monrovia due to its seizure by the National Bank of Liberia.

It therefore follows that there is no title in dispute subsequent to the termination of the lease agreement as stated hereinabove that would warrant a cancellation proceeding of said lease by the lessor. Thus, summary proceedings to recover possession of real property is the proper remedy wherein title is not in dispute, as in the instant case.

The Court also takes judicial notice of section 17 of the agreement of lease which provides for petitioner's eviction upon failure of the petitioner to pay the agreed annual rental. A specific allegation made by the Episcopal Church in the summary proceedings was the failure of the petitioner to pay the rent. The petitioner contends that non-payment of rent is not ground for summary eviction, which principle this Court recognizes. However, the parties to the lease agreement mutually agreed in section 17 thereof that the lessee shall have peaceable and quiet enjoyment of the premises free from any eviction or interference by lessor if the lessee pays the rent provided therein, and otherwise fully and punctually performs the terms and conditions imposed on lessee. A specific allegation by the Episcopal Church in the summary proceedings was the failure of petitioner to pay rental for a period of almost ten (10) consecutive years. The records in this case are devoid of any evidence that the petitioner herein paid its annual rental under the terms and conditions of the lease. The word "if", as used in the lease means that the peaceable and quiet enjoyment of the leased premises by the petitioner is conditional upon the payment of its rental to the lessor. It was incumbent upon the petitioner to perform fully and punctually the terms and conditions of the lease imposed on it by paying its annual rental, failing which, the lessor, Co-respondent Church herein, has every right under the lease to evict the petitioner bank from the premises through a court of competent jurisdiction as mutually agreed upon by the contracting parties to the lease. The lessee is therefore subject to an eviction for its failure to pay its annual rental as a precondition to enjoying a peaceable and quiet possession of the subject property. The Court must adhere to the sanctity of the contract of the parties herein. The issue of arbitration is therefore untenable as the jurisdiction of the trial court is not ousted by a private agreement, as in the instant case. *Grant v. Foreign Mission Board of the National Baptist Convention*, [\[1949\] LRSC 20](#); [10 LLR 209](#), Syl. 2, text at 218 (1949).



Since the remedy agreed upon by the parties in section 17 of the lease agreement was eviction of petitioner from the subject property upon failure to pay the annual rental, this possession of real property was not the wrong form of action. Therefore, this Court holds that the trial court properly entertained the action of summary proceedings".

The petitioner also argued that the National Bank of Liberia disposed of its leasehold, which is an asset representing the right of the lessee to use the leased property. The respondents, on the other hand, contended that there was no leasehold between the petitioner and the Church after the termination of the lease agreement. A leasehold is defined by law writers as "an estate in real property held by lessee/tenant under a lease .... The asset representing the right of the lessee to use the leased property". BLACK'S LAW DICTIONARY 889, (6th ed. 1990). This Court is mindful of the provision of the Financial Institutions Act which forbids writs of execution being levied against the assets of a seized financial institution. However, this Court observes that the asset or leasehold which the petitioner contended that the National Bank terminated pending the final determination of the seizure proceedings, was already terminated by sections 12 and 17 of the lease agreement prior to the institution of action of summary proceedings to recover possession of real property by the Episcopal Church of Liberia, the third respondent herein.

This Court therefore perceives no parity of legal reasoning that the National Bank unlawfully disposed of petitioner's leasehold right when said leasehold had been terminated by virtue of its own provision. The National Bank also did not transfer any asset of petitioner under the facts and circumstances in this case, with the intent to effect a preference as argued by counsel for petitioner. Hence, the act of the National Bank of Liberia is not violative of the Financial Institutions Act and therefore constitutional.

It is a universal principle of law that "ordinarily the landlord may not re-enter for breach of covenant unless the covenant is valid and enforceable, and there is a stipulation that the breach shall work a forfeiture or termination of the tenant's interest or confer on the landlord the right of re-entry". 52 C.J.S., Landlord & Tenant, § 718, pp. 581-582, on Breach of Covenant or Condition.

Section 12 of the lease agreement clearly provides that said lease shall be terminated if the petitioner bank ceases its banking activities in Monrovia for any reason whatsoever, upon the giving of 360 days notice to the lessor by the lessee. A recourse to petitioner's count 17 of its amended petition reveals among other things, that the petitioner bank was looted during the April 6, 1996 crisis in Monrovia, and that as a consequence thereof, it was forced to close its doors long before the seizure. This indeed was an admission that the petitioner ceased its banking activity in Monrovia long before it was seized by the National Bank of Liberia. A notice of seizure of the petitioner by the National Bank of Liberia was published in a reputable newspaper in Monrovia, stating that the petitioner bank has been seized due to the collapse of the Meridien International Bank Limited and Meridien BIAO Bank, S.A., evidenced by the absence of a complete visible management team and the continuous closure of the doors of the petitioner herein. By the publication of the seizure order, the Church was given actual, as well as constructive, notice of petitioner's banking activity being ceased in Monrovia, and that the petitioner had also been seized by the National Bank of Liberia, thereby terminating the lease agreement pursuant to section 12 of said lease. The parties to this litigation also stipulated in section 17 of the lease agreement that the lessee, petitioner herein, shall be granted peaceable and quiet enjoyment of the premises free from any eviction or interference by lessor if lessee pays the rent provided therein, and otherwise fully and

punctually performs the terms and conditions imposed on lessee. This provision of the lease agreement clearly subjected the lessee to eviction if it did not pay the rent to lessor for the premises, and did not perform fully and punctually the terms and conditions imposed on the petitioner. Thus, there was no lease agreement between the parties upon breach of the terms and conditions of the lease agreement by the lessee that would warrant cancellation proceedings. It therefore follows that there was no title in issue after termination of the lease agreement upon its own provisions, for which the trial judge could have refused jurisdiction in the summary proceeding to recover possession of real property. This Court recognizes the principle of law that non-payment of rent is not a remedy for summary ejectment. We are also mindful of the sanctity of the valid and enforceable contract between the parties in this case. A landlord may re-enter a demised premises for non-payment of rent by a lessee under an express provision in the lease. 52 C. J. S., Landlord and Tenant, § 718(b), page 582.

The final issue for our determination is whether or not prohibition will lie under the peculiar facts and circumstances in this case. The answer to this question is in the negative. This Court has held in a long line of cases that prohibition is the proper remedial process to restrain an inferior court or administrative tribunal from taking action in a case over which it does not have jurisdiction, or where it acts beyond its jurisdiction, or attempts to proceed by rules different from those which ought to be observed at all times. *Parker v. Worrell*, [\[1925\] LRSC 9; 2 LLR 525](#) (1924); *Boye v. Nelson*, [\[1978\] LRSC 33; 27 LLR 174](#) (1978). In the case at bar, the trial judge acquired jurisdiction over the seized defendant bank, and further properly entertained the summary proceedings to recover possession of real property. The issue of the two vaults is subject to section 9 of the lease agreement which provides, among other things, that installations such as vaults shall, upon completion, become the property of the lessor without payment therefor by lessor; provided, however, that the lessee, at its sole cost and expense, removes all such alterations, installations or additions, and vaults, upon termination of the lease agreement, and restores the demise premises to the condition it was in at the beginning of the terms thereof upon notice by the lessor requiring such removal. Prohibition cannot therefore lie in the instant case.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers Justice denying the petition for the writ of prohibition is hereby confirmed. The alternative writ is ordered quashed and the preemptory writ is denied. The final judgment of the trial court is confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are ruled against the petitioner. And it is hereby so ordered.

Petition denied.