

H. D. MENSAH *et al.*, Petitioners, v. **G. C. N. TECQUAH**, Associate Magistrate
for the City of Monrovia, **B. G. McCABE**, Police Magistrate, and **JACOB**
CUMMINGS, Respondents.

APPLICATION FOR WRIT OF PROHIBITION.

Argued October 26, 27, 1954. Decided December 10, 1954.

Prohibition will lie, although a court has jurisdiction, where the court exceeds or abuses its jurisdiction.

Petitioners, lessees of land in Monrovia, alleged that respondents had procured and issued a summary judgment of eviction without a showing of adequate grounds therefor. On appeal from denial of application for writ of prohibition in Chambers to this Court, *en banc*, writ granted.

A. B. Ricks for petitioners. *Jacob Cummings* for respondents.

MR. JUSTICE SHANNON delivered the opinion of the Court.

One Joseph E. Nelson, a near relative of the petitioners, entered into a lease agreement with Jacob Cummings, one of the respondents, for a parcel of land situated in the City of Monrovia, for a period of twenty calendar years as from August, 1949 at the rate of one hundred dollars per annum, payable in quarterly installments. According to the terms of the lease, the said Joseph E. Nelson was to erect a building on said land in conformity to specifications shown in said lease agreement. During the tenure of said lease it was provided : "that the said Lessee shall have the right to sublet or assign this lease without the consent of the Lessor, but the Lessor shall be informed." This agreement was duly entered into probate and registered according to law.

Subsequently, that is to say on August 21, 1951, the said Joseph E. Nelson, lessor, having an occasion to go to the Gold Coast on an urgent call, issued a document giving notice that he was assigning the leasehold to one Ewur Sam Baiden, who was to pay the rentals as they became due to the lessor. There is no evidence that the lessor was not advised or informed of this assignment ; but, on the other hand, there is a strong presumption of this in that there is a copy of a receipt in the record showing that the assignee had paid the rent to the lessor up to December 31, 1953. Despite this, and without any showing that said lease agreement had been cancelled,

the lessor, one of the respondents aforesaid, sought to eject the assignee together with other sub-tenants by means of an action of summary ejectment and even before the period for which the assignee claims that he holds a receipt for rent paid.

According to the petition a snap judgment of eviction was entered in the absence of petitioners, who were the defendants in said summary ejectment action, and without ever giving them notice to appear and have their day in court. At this stage prohibition proceedings were instituted to prohibit the eviction, same having been filed before the Justice presiding in Chambers, who denied same with following notation :

"Because of what I consider the unmeritorious character of nature of the petition I refuse to order the alternate writ of prohibition prayed for issued. The Magistrate is hereby authorized and ordered to proceed with the case pending before him as though no inhibition had been placed against his hearing and to conclude the matter, as, to issue this writ prayed for would be lending aid to the party applying for same in baffling justice."

To this ruling and order of the Justice presiding in Chambers, petitioners excepted and prayed an appeal to the full Bench.

After hearing petitioners' counsel and, of course, respondent Jacob Cummings, who appeared and filed a brief, we find ourselves certainly not in agreement with our colleague in denying the petition as unmeritorious. It is our opinion that said petition is pregnant with grounds which merited the granting of the alternative writ of prohibition prayed for, among which grounds we mention : (a) the existence of a lease agreement under which petitioners enjoyed the leasehold ; (b) the assignment of the lease to Ewur Sam Baiden; and (c) the regular, prompt and full payment of the covenanted lease money up to and including December 31, 1953, a date subsequent to the institution of the action of summary ejectment before Magistrate G. C. N. Tecquah, notwithstanding the last payment was made through the selfsame Magistrate Tecquah, who issued the following receipt:

"Received from Mrs. Mensah of Old Crew Town the sum of \$75.00 (seventy-five dollars) being ground rent from 1st. April 1953 to December 1953.

"For Mr. Jacob Cummings

G. C. N. TECQUAH.

"19/11/53."

What is peculiarly inexplicable, and will certainly remain so, because no opportunity was offered or afforded for the hearing of the petition, is why Magistrate Tecquah, who had acted as representing Jacob Cummings, and who issued a receipt for "ground rent," consented to be Judge in an action of summary ejection when he should have known that the period for which he had issued a receipt for rent had not expired and the defendants below, now petitioners, could not have then been in default. The situation becomes the more difficult and embarrassing when the said Magistrate is charged with having decided the case in the absence of the petitioners (defendants before him), without giving them an opportunity to have their day in court. Had he done this he would have been reminded that the defendants were not in default in meeting their obligations on the lease agreement, since the receipt, *supra*, shows it was through the said magistrate that the last rent was paid.

Because of the foregoing facts, added to the final determination of the action of summary ejection and the issuance of a writ of possession, we are of the opinion that the writ of prohibition prayed for should have been granted so that the merits of said prohibition could be heard and determined. The ruling of the justice presiding in Chambers is therefore reversed. Under the circumstances we would be left with no alternative but to grant the issuance of the alternative writ prayed for so, as to enable the respondents to file their returns showing cause why said writ should not be granted. But, considering all the facts in connection therewith, we are further of the opinion that it would simply expend unnecessary energy, time and money, especially so when the brief of respondent, Jacob Cummings, does not at all deny the truthfulness of the facts stated in the petition, but rather simply submits that (1) he has not been served with a copy of the petition; and (2) that prohibition will not lie when a court is exercising competent jurisdiction in any judicial trial. Respondents submit that Magistrate Tecquah had jurisdiction over the person as well as the subject-matter and cause in said summary ejection proceeding, and that the writ as prayed for would be legally wanting in the present case and should therefore be denied and the proceeding dismissed with costs against the petitioners.

It is true that, generally, prohibition will not lie where a court has jurisdiction. There is no gainsaying that Magistrate Tecquah has jurisdiction to try and determine cases in summary ejection. But where it appears that there is an excess or abuse of that jurisdiction, or where the court attempts to proceed by a rule different from those which ought to be observed at all times, prohibition does lie. *Parker v. Worrell*, 2 L.L.R. 52; (1925). In such cases, it does not only prohibit the doing of the unlawful act, but goes to the extent of undoing what has already been done. See 22 R.C.L. 8 *Prohibition*

§ 7.

In this case, Magistrate Tecquah acted irregularly by attempting to proceed by a rule different from those which ought to be observed at all times. In the first place, he should not have been willing to act as Judge in a matter wherein he had acted as agent or representative for one of the parties. In the second place, he should not have gone into the case in the absence of the defendants or without first having given them notice to appear to have their day in court. His conduct, therefore, in acting as Judge in the matter despite the above-stated facts, and in entering and disposing of same to the extent of issuing a writ of possession, are denounced ; and we are undoing the unlawful acts complained of and directing the said Magistrate Tecquah to cancel, vacate and void all of the proceedings had in the summary ejectment case before him, including the writ of possession, to such an extent as if no such actions had ever been taken; but, this of course without prejudice to any rights of respondent Jacob Cummings in and to said property wherein he considers himself unduly wronged or taken advantage of.

The compulsory writ prayed for in respect of these proceedings is hereby granted and ordered issued against the respondents; costs against said respondents and it is so ordered.

Writ granted.