ELLEN G. COOPER, Executrix of the Last Will and Testament of the Late JAMES F. COOPER, **MARTHA COOPER SHERMAN**, by and through her Husband, ARTHUR SHERNIAN, and **EMMA COOPER**, Trustees of Vuehla Rubber Plantations and of Trust Funds of the Estate of the late JAMES F. COOPER, Petitioners, v. **AUGUSTUS W. COOPER**, an Heir of the Late JAMES F. COOPER, Respondent.

APPLICATION FOR AN ORDER TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY, TO MODIFY AN INJUNCTION PENDING APPEAL.

Argued October 25, 1956. Decided February 22, 1957.

The Constitution does not empower the Supreme Court to order a lower court to modify an injunction pending an appeal therefrom to the Supreme Court.

Respondent appealed to this Court from a decree of the court below dissolving an injunction restraining petitioners and others from stated activities in connection with certain rubber plantations and trust funds of a decedent estate. Pending determination of the appeal, petitioners applied to this Court for an order to the court below to resume jurisdiction and modify the injunction. The *application* was *denied.*

D. B. Cooper, Momolu S. Cooper and *Kolb' S. Tarnba* for petitioners. *A. B. Ricks* for respondent.

MR. JUSTICE PIERRE delivered the opinion of the Court.

Augustus W. Cooper, a son, and one of the surviving heirs of the late James F. Cooper, brought an action of injunction to restrain the defendants named in the action out of which these proceedings have arisen, and all persons acting directly or indirectly under the said defendants, from performing any of the following acts :

1. Operating the Vuehla Rubber Plantation or selling the yields of the said plantation to any of the defendants named as parties to the suit.

2. Buying rubber produced from the said plantation.

3. Paying out any funds belonging to the Estate of the late James F. Cooper which

might be deposited or held to the credit of the said estate by banks or paying out any money which might be in a trust fund of the said estate, to any person whomsoever.

4. Paying any money which might have been due, or which might become due hereafter as rents for property owned by the late James F. Cooper and now forming a part of the said estate.

5. Exercising any functions, or performing any acts, in connection with the Estate of the late James F. Cooper, or trust funds of the said estate.

After the writ containing the foregoing prohibitive orders had been served and returned, the defendants filed a verified answer, and, in further exercise of their rights, filed a motion to dissolve the injunction. This motion to dissolve was heard, and the judge handed down a decree in favor of the movants. To this final decree Augustus W. Cooper, plaintiff below, took exceptions and announced an appeal to this Court. The appeal was completed ; and hearing and final determination thereof now await docketing of the case upon receipt of the certified records from the court below.

Whilst the several acts necessary for the completion of an appeal were being taken care of by the appellant, and before this Court could pass upon the issues, the defendants in the action of injunction now on appeal petitioned the Supreme Court to allow them to do the undermentioned things whilst the appeal in the injunction action is pending and before it is determined. The prayer of the said petition reads word for word as follows :

"Wherefore your humble petitioners pray that an order from your Chambers be issued, directed to the respondent herein, to appear and show cause, if any he has, why an order to the court below should not be issued commanding the judge thereof to resume jurisdiction over the cause to the end of :

"1. Permitting Ellen G. Cooper, Martha Cooper-Sherman and Emma Cooper, trustees, and the manager of the Vuehla Rubber Plantation, to resume the operation of said Vuehla Rubber Plantation.

"2. Authorizing the manager of the Firestone Plantations Company to buy and pay out any amounts due for the sale of rubber from said Vuehla Rubber Plantation, before, and since the institution of the injunction suit, and during the pending of the appeal before the Supreme Court.

"3. Permitting the said petitioners to pay out of the proceeds of the sale of rubber from the said Vuehla Rubber Plantation the normal operational expenses monthly, and to hold in escrow in a reliable bank the net proceeds until final determination by the Supreme Court of the appeal taken by respondent Augustus W. Cooper; and to grant unto petitioners such other and further relief as unto the Court might appear just, equitable and to the best interest of the Estate of the late James F. Cooper."

The respondent filed a resistance advancing reasons why the petition should not be granted. Although we would have liked to pass upon all the issues raised by the resistance, it is our opinion that the jurisdictional issue raised in Count "r" thereof obviates our having to pass upon the other counts, no matter how important the questions raised therein, or how burning the issues growing out of them. We therefore quote Count "1" of the resistance as follows :

"1. Because respondent says that this Honorable Supreme Court of the Republic of Liberia has original jurisdiction only in cases involving counties of the Republic, or ambassadors, public ministers, consuls, etc. In all other cases the Supreme Court of the Republic of Liberia has only appellate jurisdiction. In the case at bar the application for relief grows out of injunction proceedings in which Augustus W. Cooper was plaintiff. The case was heard in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, sitting in its Equity Division during the September, 1956, term, when the action of injunction was decided against the said Augustus W. Cooper, who prayed an appeal, which was granted him under the law by the Court."

As we have said before, the question of whether there is legal sufficiency to warrant granting the petition, or whether there is merit in the contentions raised therein, would seem to have been answered in Count "1" of the resistance. In deciding jurisdictional questions courts are required to remain within boundaries which they cannot exceed. Regardless of the righteousness of the cause, or whether we are minded to give consideration thereto, we are without jurisdictional authority to pass upon it. In other words, we cannot exceed the jurisdictional limits defined as follows in the Constitution of Liberia :

"The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those to which a county shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Legislature shall from time to time make." Const., Art. IV, sec. 2.

On the question of jurisdiction we quote the following:

"No mere agreement of the parties, or waiver of objection, can confer jurisdiction upon an appellate court where it has none over the subject-matter of the suit, where the amount in controversy is not sufficient to confer jurisdiction, where there has been no final adjudication of the case in the court below, where there has been no formal appeal from the judgment of the court below, or where the time limited by law within which the appeal must be taken and perfected has expired.

"Nor, on the other hand, can the consent or agreement of the parties oust a court of its appellate jurisdiction, or limit the principle of decision by excluding certain legal considerations which may be pertinent to the issue." 2 CYC. 536-37 *Appeal and Error.*

To quote yet another passage from the same text :

"Jurisdiction is conferred by the Constitution or statutes of a state and courts can only exercise such as is derived therefrom. Where it is limited as to the amount, if the amount in controversy is not within such limits, no jurisdiction is conferred and none can be exercised. And where jurisdiction is expressly conferred by the Constitution a statute merely declaratory thereof confers of itself no jurisdiction." 11 CYC. 783 *Courts.*

The Supreme Court of Liberia cannot assume jurisdiction denied by the Constitution without infringing the most sacred rights of the people who, in their sovereign capacity, have limited the sphere within which we exercise authority. The constitutional limitation upon the exercise of jurisdiction by the Supreme Court is not discretionary. On the contrary, it is definite and mandatory, to the extent that not even may legislation be properly enacted which would be in conflict with the provision of the Constitution fixing the limited jurisdiction of this Court.

Whilst it is true that, in some jurisdictions, the Supreme Court has issued staying orders pending appeals in actions of injunction, in every such case this authority was conferred either by the basic law or by some statute of the particular State. Not only is it true that we have no statute giving our Supreme Court such authority, but the Constitution has in very definite terms limited and confined the jurisdiction of our highest Court to appellate matters, or those which affect ambassadors, public ministers, consuls or counties ; and only in such other instances, or under such regulations, as the Legislature might from time to time designate by enactment. Up to now there is no enactment which gives the Supreme Court of Liberia more

jurisdiction than conferred in article IV, section 2 of the Constitution.

Courts can only exercise authority over causes which have been properly brought within their jurisdiction. The Supreme Court of Liberia is no exception to this rule, and cannot assume jurisdiction which is not conferred by law. Only after all of the prerequisites necessary for completing an appeal have been performed does this Court get jurisdiction over matters on appeal. *Morris v. Republic,* 4 L.L.R. 125 (1934).

In the action of injunction out of which the instant proceedings have arisen, final judgment was rendered by the trial judge and appeal granted on August 3o, 1956. The notice of appeal which placed the parties and the case under the Supreme Court's jurisdiction was not served until October 20, 1956, whereas the petition for relief which is now being determined was filed in the Supreme Court September 24, 1956, quite twenty-six days before service of the notice of appeal completed the appellant's appeal in injunction.

According to the minutes the arguments for and against the petition for relief were heard before this bar on October 25 and 29, 1956, whereas the certified records in the action of injunction did not reach the Supreme Court until December 5, 1956. We are of the opinion that, even if we had been clothed with jurisdiction over the petition, the case on appeal is too far out of our reach to enable us to act.

After quoting another authority on this question we shall reiterate once again what this Supreme Court has held ever and anon in respect to the exercise of its constitutional jurisdiction over causes :

"The extent of appellate jurisdiction is controlled by the Constitution and statutes creating the court whose jurisdiction is in question, and these must be consulted on the question. Sometimes that jurisdiction is directly limited by the Constitution to a review of questions of law only." 2 AM. JUR. 851 *Appeal and Error §* 12.

In a case in which a petitioner prayed this Court to restore to him sundry pieces of property, Mr. Justice Dixon, speaking for the Court said :

"This Supreme Court can only exercise original jurisdiction in cases affecting ambassadors, public ministers and consuls, and those to which a county is a party. Its jurisdiction in all other cases is appellate." *Ex parte Williams,* 4 L.L.R. 189 (1934).

And in another case this Court held : "This Court should pass upon such issues as are

appealed to us for review." *Nathan v. West &* Co., *Ltd.,* 4 L.L.R. 192 (1934)

In view of the foregoing, and because of the importance we have attached to the jurisdictional question raised in the resistance, we have passed upon it alone. We find that there is no necessity to consider the other issues. It is our opinion that the petition should be and the same is hereby denied with costs against petitioners.
Petition denied.

MR. JUSTICE SHANNON, with whom MR. JUSTICE HARRIS concurs, dissenting.

For the purpose of this dissent I deem it necessary to state initially that I am not in disagreement with either the principles or the citations of law relied upon by my colleagues. It is elementary that this Court is, by force of the provisions of our Constitution, narrowly restricted in the exercise of original jurisdiction, its jurisdiction being mainly appellate.

The late James F. Cooper of this City died, leaving an estate of which his widow, Ellen G. Cooper, is sole executrix, as well as certain trusts of which sundry persons, including the said Ellen G. Cooper, are trustees. It appears that Augustus W. Cooper, an heir and legatee of the said estate, asserted a claim against the estate which claim was adjudged in his favor. Because of the apparent unwillingness of the said trustees to satisfy this claim, Augustus W. Cooper instituted an action of injunction against them and sundry other persons named in said writ to restrain them from acts in connection with the operation of the Vuehla Rubber Plantation and the administration of the Estate of the late James F. Cooper, including trust funds established therewith.

The defendants in the injunction suit, some of whom are petitioners in the instant proceedings, appeared and filed an answer to the complaint of Augustus W. Cooper, and followed same by a motion for the dissolution of said injunction ; and, upon hearing, same was sustained and the dissolution of the injunction was decreed "without prejudice to the final decision of the case." To this decree the said Augustus W. Cooper, then plaintiff, excepted and prayed an appeal to this Court which was granted. At the time of the filing of these proceedings before us the appeal was in process of perfection.

It is at this stage that the petitioners in these proceedings filed their petition "for relief pending appeal." It is my opinion, and in this I am not in agreement with the

majority of my colleagues, that the granting of the petition would be neither an exercise of original jurisdiction nor an appellate review, but rather the granting of a petition to direct the court below to do a certain act which, because of the final decree previously entered from which there is an appeal, the court below might otherwise consider unwarranted. The crucial inequity in the matter is shown in the submission made with respect to the granting of an injunction restraining the operation of the Vuehla Rubber Plantation (an organization of much magnitude) upon a bare and mere bond of one hundred dollars. Although this inequity was pointed alit by the defendants in the injunction case, both in their answer and in their motion to dissolve, nothing was said about it in the decree.

To say the least it is not only inequitable but iniquitous to restrain an organization of the magnitude of the Vuehla Rubber Plantation in their operation on a mere indemnity bond of one hundred dollars. Since the law provides for granting of relief pending appeal it is my opinion that the petition should have been granted, especially since the prayer in Count "3" thereof requested that, upon the granting of said petition, and upon resumption of the operation of said plantation, after meeting the monthly operational expenses of the farm, the petitioners be ordered to hold the net proceeds in escrow until final determination of the appeal by the Supreme Court.

We quote the following:

"Even in the case of appeals from orders or decrees granting, refusing, dissolving, or refusing to dissolve preliminary injunctions, the lower or appellate court may have the power, in order to preserve the status quo pending the appeal, or to prevent irreparable injury or multiplicity of suits, to issue a supersedeas or stay or to suspend, modify, grant or continue an injunction. Thus the appellate court or a Justice thereof usually has the power, either inherent or conferred by constitution or statute, to issue such suspensions or restraining orders as may be necessary to prevent enforcement of the judgment, to protect or enforce its jurisdiction, or to preserve the status quo pending the appeal; but it will not exercise such power if adequate relief can be had by application or otherwise in the lower court, nor will a stay of an injunction pending appeal be granted at the risk of destroying rights belonging to complainants if the judgment should be sustained or where such action does not appear to be necessary to prevent irreparable injury or a miscarriage of justice." 3 C.J. 1281-82 *Appeal and Error* § 128.

Again:

"If the right is doubtful and the continuance of the injunction will cause defendant much greater damage than its dissolution will cause complainant, or if whatever damage complainant will suffer may be amply compensated in money, it is proper to dissolve the injunction on the giving of a proper indemnity bond by defendant, and this is especially true if any public interest will suffer by continuing the injunction in force pending the litigation." 43 C.J.S. 970 *Injunctions* § 231.

"The court has inherent power in its discretion temporarily to suspend an injunction when the exigencies of the case require it, but the question may be affected by special statutory regulation. Ordinarily, where the injunction will cause defendant great loss, it may be temporarily suspended on terms that will properly protect complainant, and the suspension of an injunction may be authorized by reason of a change in conditions subsequent to the allowance of the injunction." 43 C.J.S. 977 *Injunctions* § 239.

From the foregoing it is apparent that, under circumstances warranting it, and in accordance with the principles summarized above, an injunction may properly be suspended by this Court, especially where, as in the instant case, irreparable injury could inure from failure to do so; and the more so since any possible damages the complainants might sustain would be amply compensated.

The careless and ruthless granting and perpetuating of an injunction under a paltry indemnity bond of one hundred dollars should not be encouraged, but rather denounced and deprecated. In this case the Vuehla Rubber Plantation, which is allegedly yielding an average of $12,000 per month from rubber proceeds, is restrained from carrying on its operations at the instance of Augustus W. Cooper, respondent herein, upon the issuance and execution of an indemnity bond in the sum of one hundred dollars.

It is my opinion, therefore, that the petition should have been granted and the lower court directed to suspend the injunction pending appeal. Of course, in the circumstances, the petitioners should be required to execute a bond sufficient to indemnify the complainant for any loss or injury which he might suffer by reason of such suspension. To do this would, in my opinion, not be exercising original jurisdiction, but rather simply directing the lower court to resume jurisdiction over the matter to the end of granting the relief prayed for. My colleague, Mr. Justice Harris, having read this dissent, is in substantial agreement with me ; hence both of us are refraining from attaching our signatures to the judgment herein.