

W. A. BRYANT, Appellant, v. **J. R. MOORE**, Appellee.

RE-SUBMITTED FEBRUARY 17, 1911. DECIDED FEBRUARY 24, 1911.

Toliver, C. J., Wood and McCants-Stewart, JJ.

1. A court of superior jurisdiction has the power to review an appeal in proceedings for contempt.
2. In order to sustain a judgment holding a party guilty of contempt for disobeying a writ of injunction the record must show that the same was disobeyed.

Mr. Chief Justice Toliver delivered the opinion of the court:

Contempt—Appeal from Judgment. This is a matter of contempt said to have been offered the judge of the Court of Common Pleas and Quarter Sessions for Grand Bassa County, at its December term, A. D. 1909. Robertetta M. Duncan, formerly Robertetta M. Page, L. H. Duncan and Lucinda Green, formerly Lucinda Pare, petitioned the court below for the issuing of a writ of injunction. The court in the exercise of its discretion ordered the issuing of same against William A. Bryant, Jane Bryant, and William J. McBorough. The complaint set forth that the parties named intended to exercise the right of ownership over lots Nos. 29, 30, and 31, situated in the lower ward of the City of Buchanan by receiving rent for the same from one David Attia, who had the same under lease from Mildred A. Summerville, deceased, executed in the year A. D. 1894.

There appears to have been no appearance or answer filed by the defendants in the lower court, William J. McBorough being out of the bailiwick of the sheriff. The defendants not being in court, the attorney for plaintiffs filed a petition to the court requesting the court to cause the defendants to obey the orders of the court by coming into court and answering the plaintiff's complaint, whereupon the court ordered the issuing of a writ of arrest against one of the defendants, William A. Bryant, who was arrested and brought into court; and the court requested him, Bryant, to show cause why he should not be held in contempt for not appearing or answering the complaint. Defendant Bryant informed the court that he could not appear as there were joint defendants who had been summoned. Upon this information the court said that Mr. Bryant was held in gross contempt, and ordered the sheriff to keep Mr. Bryant confined in prison until the third week of the court. These are the most material points in connection with the cause. While it is within the purview of the court to determine matters of contempt, the proceedings for which

are regarded as a distinct and independent suit, the conclusion of which is discretionary, yet the law in order to prevent tyranny and put down arbitrary power permits courts of superior jurisdiction to review causes of contempt. There appears a misconception on the part of the plaintiffs and the judge below as to the manner of proceedings. Truly the statute laws of this country permit the court to arrest a party who disobeys an injunction, but the records from the court below do not show that the injunction was disobeyed.

We will make this observation; suppose (A) claimed ownership of a house, and (B) intended to pull down said house, but before he could carry his design into effect, (A) obtains the issuing of a writ of injunction which is served on (B). After the service of said writ if (B) persist in pulling down the house in utter disregard of the order of the court, then in that case the court might with propriety order the arrest of (B) for disobeying the injunction. Hence the court below erred in ordering the arrest and imprisonment of Mr. Bryant one of the defendants who did not appear and assign reasons.

The court therefore adjudges that the appellee be ruled to pay all costs, and the clerk of this court is commanded to serve a mandate on the judge below as to this judgment.

P. J. L. Brumskine, for appellant. *J. R. Moore* in person.