FAZZAH BROS. by JOSEPH and RICHARD FAZZAH, Petitioners, v. **HIS HONOR BENJAMIN T. COLLINS**, Justice of the Peace for Montserrado County, and **CENTRAL INDUSTRIES, Ltd.**, Respondents.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE SHANNON.

Argued March 27, 28, 1950. Decided March 31, 1950.

1. A writ of prohibition not only prevents whatever remains to be done by the court against which the writ is directed, but gives complete relief by undoing what has been done.

2. A writ of prohibition is a proper remedy against a court before which foreclosure proceedings are commenced in disregard of a pending suit to enjoin such proceedings, since no other procedure can afford adequate relief.

3. The Chattel Mortgage Act of 1936 is unconstitutional because it does not provide the mortgagor an opportunity to be heard and defend in a foreclosure proceeding.

4. Provisions in the Bill of Rights primarily for the protection of citizens inure also to the benefit of aliens here by permission of the government.

Petitioners filed an action for injunction in the Equity division of the Civil Law Court for the Sixth Judicial Circuit to enjoin respondent corporation from commencing proceedings against petitioner to foreclose a chattel mortgage. Respondent nevertheless applied for foreclosure to respondent Smallwood, justice of the peace. Petitioner then instituted a prohibition proceeding before Mr. Justice Shannon who granted the writ. On appeal to this Court *en banc,* issuance of writ sustained and *ruling affirmed.*

D. B. Cooper and *Edwin A. Morgan* for petitioner. *R. F. D. Smallwood* for respondents.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

In the interest of both contending parties this advance opinion is written and handed down.

This is a proceeding which grew out of a series of cases and has come before us on appeal from the chambers of Mr. Justice Shannon by the counsel for Central Indus-

tries, Ltd., respondents herein.

To fully understand and comprehend this case it is necessary to state the background.

It appears that in the year 1948 one of the Fazzah brothers went to New York in the United States of America, and whilst there came in contact with the respondent corporation and effected an arrangement for the supply of goods to Fazzah Brothers at Monrovia, a Syrian firm doing business in Liberia, upon certain understandings or agreements. Fazzah Brothers after some time, for reasons not disclosed in the records, defaulted in the arrangement, and it was necessary for one Leo Laskeff to be sent out to Monrovia by Central Industries, Ltd., the respondent corporation, as attorney-in-fact with authority to collect the outstanding debt. Upon his arrival in Monrovia he decided to enter suit against Fazzah Brothers for the recovery of the debt in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, by summary proceedings, which resulted in a judgment in favor of respondent. The Fazzahs, being dissatisfied with the judgment, took exceptions and prayed an appeal to this Court for a review.

For some unexplained reason the appeal was not prosecuted, and respondent, although it had obtained judgment in its favor, did not pray for an execution for enforcement of the judgment. Instead, a compromise was suggested by one of the parties and accepted by the other and was entered into under an agreement executed on May 11, 1949. Among the clauses in the agreement was one wherein petitioner herein, Fazzah Brothers, agreed to execute a chattel mortgage on all of its property in Liberia, including, but not limited to, Fazzah's accounts receivable, merchandise, and leasehold, as security for the payment of the instalments which we shall mention hereafter. (See paragraph 3 of the agreement.) But actually, as appears on inspection of the chattel mortgage executed, there is a difference between the agreement and the chattel mortgage as to what was actually mortgaged. In the chattel mortgage, Fazzah Brothers sold and assigned to the mortgagee all its property in Liberia including, but not limited to, Fazzah's accounts receivable which are in excess of $50,000.00; merchandise and goods in the store and warehouse of Fazzah Brothers which are in excess of $40,000.00 etc. (We shall quote the relevant paragraph of the chattel mortgage later in this opinion.) This mortgage was executed as security for the payment of certain promissory notes simultaneously issued in the sums of $7,500 to be paid on September 11, 1949, together with interest thereon, and $7,500 per month thereafter to be paid on the eleventh day of each succeeding month until the entire principal and interest should be paid. The Fazzahs further obligated themselves to pay on the signing of the agreement the sum of $10,000 in Monrovia, and £1,000

sterling by draft drawn on Barclay's Bank at Freetown, Sierra Leone. Subsequently, as disclosed by certain exhibits marked "A," "B," "C," "D," and "E," filed by respondent with its returns in these proceedings, it appears that petitioners filed an action for injunction in the Equity Division of the Civil Law Court for the Sixth Judicial Circuit, to enjoin respondent corporation from entering foreclosure proceedings, basing same primarily upon the assertion that due to a rush in the negotiations and preparation of the papers effecting the compromise, a mistake of several thousand dollars had been made in the computation of interest against them, or, to quote from the complaint :

"[B]ut that due to a rush in the negotiations, defendants mistakenly charged plaintiffs with interest on the said $58,000.00 from the 11th day of November, A.D. 1948 up to and including the 11th day of May, A.D. 1949, in the sum of $4,230.00, when as a matter of fact interest on said sum had been paid up to April 1, A.D. 1949, yielding and accruing therefor in the sum of $290.00."

Respondent answered by setting up that H. Lafayette Harmon, counsel for Central Industries, Ltd., is not the attorney-in-fact, and does not hold any authority or power to represent said corporation, except in the capacity of an attorney-at-law. Hence he was not the proper person upon whom the writ of injunction should have been served. Therefore, for want of the necessary legal party defendant, the issuance of the writ should be denied. Respondent also contended that a mistake made in the overcharge of interest on the principal sum is not ground for the issuance of an injunction.

Before the injunction case could be heard and the injunction dissolved, and notwithstanding the allegation that there was no attorney-in-fact set out in count 1 of its "Returns to Notice" to show cause why the injunction should not be granted, and in utter disregard of the injunction filed, of which it had notice, counsel for respondent prepared and filed an application before Benjamin T. Collins, a justice of the peace, for foreclosure of the chattel mortgage, the subject-matter of these proceedings, under the Chattel Mortgage Act of 1936. Respondent was unmindful of and ignored the several opinions rendered by this Court from time to time to the effect that to render a person amenable to an injunction, it is neither necessary that he be a party to the suit in which the injunction was issued, nor be actually served with a copy of it, as long as he appears to have had actual notice. In re *Moore,* 2 L.L.R. 97 (1913) ; In re *Cassell, 10* L.L.R. 17 (1948). This act on the part of respondent's counsel has brought about, and is responsible for, these proceedings in prohibition filed in the chambers of Mr. Justice Shannon, who on January 3, 1950, after hearing arguments, handed down a comprehensive opinion granting the writ. To this opinion

respondent took exceptions and prayed an appeal to this Court *en banc.*

The opinion of our distinguished colleague reads as follows :

"The Central Industries Limited commenced proceedings against Fazzah Brothers in a foreclosure of a Chattel Mortgage under the provisions of the Chattel Mortgage Act of 1936 and before His Honour, Benjamin T. Collins, a Justice of the Peace for Montserrado County. Based upon a statement of fact submitted, supported by an affidavit by R. F. D. Smallwood of Counsel to the said Central Industries Limited, the said B. T. Collins, Justice of the Peace, issued an order dated on the 17th day of December, A.D. 1949, directed to Joe Gio, a Constable for said Montserrado County, commanding him to attach sundry personal properties enumerated in said order and to make his Returns as to the manner of the service of said order.

"It is in contest of the legality and propriety of the application for, and issuance of, the ORDER as also its service that this Petition for a Writ of Prohibition has been made. The Petition after a recital of sundry acts of the said Central Industries Limited, the Justice of the Peace, B. T. Collins, and the ministerial officer in the service of the Order which Petitioners considered illegal and prejudicial to their rights and interest, also submitted that the Chattel Mortgage Act of 1936, upon which the said Central Industries Limited based the prosecution of their claim against Petitioners is, in some of its parts, unconstitutional, in that it makes no provision for, nor did the said Justice of the Peace allow said Petitioners, their day in court.

"Upon issuance of an order to the said Justice of the Peace, B. T. Collins and Central Industries Limited, as Respondents, to appear on the 29th day of December A.D. 1949 before this Court to show cause why the Writ of Prohibition as applied for should not be granted and ordered issued, said Respondents appeared on said day and filed their Returns embodying fourteen counts succinctly showing: a) that a Writ of Prohibition would not lie in this case because what was sought to be prevented or prohibited had already been done; b) that the said Justice of the Peace has special jurisdiction to handle such matters as arise out of Chattel Mortgages and hence prohibition would not lie against a Court in the exercise of functions properly within its jurisdiction; c) that Petitioners having, prior to the commencement of the proceedings of Prohibition instituted an action of Injunction embracing the same parties and the identical subject-matter, ought not under the law, to be permitted to resort to other Courts or source of litigation; d) that under the circumstance stated in 'c,' *supra,* there is evidence that the Petitioner has another suitable and adequate remedy and hence a Writ of Prohibition would not lie; e that under the provisions of

the Chattel Mortgage Act of 1936, Respondents had done all that was required of them without transcending the directions contained in said Act, and hence prohibition would not lie ; the only thing left to be done being the taking of the inventory of personal properties attached, which failure is attributable to the acts of the Petitioners in commencing these prohibition proceedings; f) that the Act (Chattel Mortgage) is not an infringement of the personal liberties of the Petitioners nor have they been unduly prejudiced ; and g) that Petitioners, having enjoyed benefits from and under this Chattel Mortgage, should not be permitted to attack or to raise any issue against same, having benefited thereby.

"In the disposition of the case it appears to us necessary only to pass upon the salient points involved in `a,"c,"d,"f,' and `g.' No special comment will be made on 'b' and `e' because the facts submitted therein are apparent on record . . . , the legal points therein involved being left for decision collaterally with the law issues raised.

"As to the point that a Writ of Prohibition would not lie because what was sought to be prevented or prohibited had already been done and that in such cases Prohibition would not lie, we do not hesitate to say that this would have strong support in law if other attending circumstances did not loom up, and this from the Respondents' own Returns wherein it submits in count 8 thereof that the taking of the inventory as required by law and the giving of receipt had not been done. There is a provision of law in Prohibition that :

" 'Where prohibition would be ineffectual it will usually be disallowed, as where the act sought to be prevented is already done, or where, if the act were performed, it would be void and could not affect the rights of the party. This is certainly true to the extent that where the proceeding in the lower court has ended, and the court has nothing further to do in pursuance or in completion of its order, or where it has dismissed the proceeding, prohibition is not an effectual remedy. *But, where anything remains to be done by the court, prohibition not only prevents what remains to be done, but gives complete relief by undoing what has been done.* . . 22 R.C.L. page 8, paragraph 7. [(1918) (Emphasis added.)]

So that where it is apparent, as has been admitted by the respondents, that the taking of inventory and the issuing of receipt still remained to be done, prohibition would lie to prevent the doing of these, also to undo what has been done if the procedure and the method adopted is declared illegal and unwarranted.

"An interesting issue is raised in count three of the respondents' Returns in

submitting that because of the pendency of an action of Injunction before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, involving the same subject-matter of Chattel Mortgage and carrying the same parties, and in which the Petitioners in these proceedings seek to enjoin the Central Industries Limited, one of the respondents, from the foreclosure of the said Chattel Mortgage, Prohibition would not lie and therefore the petition should be dismissed. This issue as raised is interesting because even though the petitioners did not bring it up, the respondents saw fit to do so and the purpose for it seems vague; for if it is true, as it appears, that there is such an injunction pending covering the same subject-matter and involving the same parties, said respondents have disregarded and discountenanced same by commencing during its pendency, foreclosure proceedings of the relevant Chattel Mortgage and then it is the said respondents who have thrown themselves against the majesty of the law and should not be encouraged to do so. In our opinion, whilst it is true, as the said respondents' counsel argued before us, that in such a case, reference of the alleged disobedience or disregard of the pending injunction proceedings should be made to the court before which the said proceedings are had for such actions as the said court might decide if, upon investigation, the facts submitted are proven ; yet this would not afford an adequate and complete relief and remedy.

" 'Prohibition has been likened to the equitable remedy by injunction against proceedings at law. The object in each case is the restraining of legal proceedings; and as the right to the remedy by injunction implies a wrong threatened by the parties litigant against whom the relief is sought, so the right to the writ of prohibition implies that a wrong is about to be committed, not by the parties litigant, but by the person or court assuming the exercise of judicial power and against whom the writ is asked. There is this vital difference, however, between them: An injunction against proceedings at law is directed only to the parties litigant, without in any manner interfering with the court, while prohibition is directed to the court itself, commanding it to cease from the exercise of a jurisdiction to which it has no legal claim. . . 22 R.C.L. page 3, para. 2.

"It is our considered opinion that, since the submission of the matter of an alleged disregard of a pending injunction would not afford petitioners the adequate and complete relief and remedy to which they felt themselves entitled, they were left no alternative but to apply for a Writ of Prohibition.

"Coming on to the issue that there is evidence of the existence of other adequate and complete remedy or relief, we have been left at sea as to what this other adequate and complete remedy is, since it has not been suggested by the respondents in their

returns and does not suggest itself to us; for injunction proceedings, as has already been remarked, will not afford it; neither would a remedy by appeal do so, since there is no provision in the Chattel Mortgage Act under which the proceedings in foreclosure were commenced entitling the petitioners, Mortgagors, to a right to defend or to appeal from any act or judgment of the Justice of the Peace before whom the proceedings are had. (See Chattel Mortgage Act of 1936.)

"This brings us to the submission that the Chattel Mortgage Act of 1936 is an infringement, if executed in foreclosure proceedings in manner set out in said Act, of the personal liberties and legal rights of the petitioners. Whilst it is true that courts do not usually pass upon the wisdom of legislation, yet, in our opinion it would not be doing this when it seeks to pass upon the question whether the enforcement of a law as enacted would not have a tendency to affect the legal rights of a party. Perhaps with a view of securing capital outlaid in our country, the Legislators thought fit to enact this law, and to say that it has afforded some benefits would not be doing too much, but let us see whether the provisions in said Act for the foreclosure of a Chattel Mortgage are in harmony with the provisions of our organic law, the Constitution.

"In the opinion of this court in the celebrated case of Juah Weeks-Wolo vs. P. G. Wolo [5 L.L.R. 423 (1937)] the doctrine of one's day in court was largely expounded, and this court declared that a denial of same is an infringement of the Constitution of this country and a denial of a legal right.

"Despite the fact that the said Chattel Mortgage Act makes provisions whereby said Mortgages are to be foreclosed, yet there is no provision therein whereby the mortgagor can be given his day in court. According to this Act,

" 'If the principal amount secured by the mortgage and the interest thereon or any part of such principal and interest be not paid at the original date of maturity, as therein stated, or any extension of such maturity granted by the mortgagee and noted in writing by him upon the mortgagor's duplicate of the instrument, the mortgage may be foreclosed in the following manner. . . .' (See Acts, Legislature 1936, page 6, section 17.)

"In the sub-sections to the principal section are mentioned the following as stages to be followed :

" 'The mortgagee shall present his duplicate of the mortgage to the Justice of the

Peace in whose judicial district the property is situated . . . , with a statement in writing as to the amount then due and owing thereon, that no extension . . . has been granted . . . , and demand that the mortgage be foreclosed.

" `If the amount due, as shown by the mortgage and endorsements thereon, be not less than that so stated by the mortgagee, the Justice of the Peace shall make an order in writing in which after a brief recital of the facts he shall direct the officer of his court to take possession forthwith of the mortgaged property, or such part thereof as he can find, bring it to the Court House for safekeeping, and make return of his proceedings.

" 'The officer . . . shall give the person . . . in whose possession it is found a receipt for the same, a copy of the mortgage and of the order of the Justice of the Peace and a written notice that unless previously redeemed, the property will be sold by order of the court pursuant to the provisions of The Chattel Mortgage Act.

" 'Upon receipt of the return of the officer the Justice of the Peace, if it appears . . . that the mortgaged property or any part thereof has been brought into the custody of the court, shall forthwith, by order in writing, direct that the same be sold at auction at a time not earlier than five days from the date of the seizure thereof and not later than twenty days thereafter.'

"From this it is apparent that there is no opportunity offered or afforded the mortgagor for his day in court to defend himself against any undue imposition or illegal practices against him. It simply leaves room for any unscrupulous or unfair mortgagee to take advantage of a mortgagor with no privilege reserved to the mortgagor to appear and defend. The only opportunity reserved to him is the redemption of the mortgaged property within five days after seizure.

"This is nothing short of a highhanded deprivation of one's constitutional right and privilege of representation in court either in person, by counsel or both, and its practice is also a denial to one of his day in court, so that the portion of the Act in this respect is unconstitutional.

"The fact that the petitioners have enjoyed benefits from the Chattel Mortgage, in our opinion, does not deprive them of taking advantage of any act against them which they consider prejudicial to their interest and right, despite the fact that they are also parties to the Chattel Mortgage. . . .

"In view of the premises above, we have no hesitancy in granting the Writ of Prohibition prayed for and it is hereby ordered issued, with costs against respondents. And it is hereby so ordered."

In addition to what has been so well and ably expressed by our distinguished colleague, we feel it our duty to express our surprise at and abhorrence of the acts of counsellors of this Court in deliberately ignoring and disregarding an injunction pending before the circuit court, of which they had notice, and in which they were interested as counsel for Central Industries, Limited. Said counsellors were oblivious of their oath as counsellors. We were loath to believe that any of our leading counsellors would allow themselves to be so intent on pleasing their clients that they would commit such an act, but as they themselves furnished the evidence by filing copies of the complaint and their "Return to Notice" marked exhibits "A" and "D" respectively, the truth was forced upon and driven into our unwilling minds as a nail driven into hardwood with a hammer wielded by brawny arms.

Now in examining the Chattel Mortgage Act upon which this foreclosure proceeding is supposed to have been based, we find it is in a material part in direct opposition to the organic law of this country in that there is no appearance in Court required by the mortgagor to afford him an opportunity to be heard and to show cause, if he can, why the mortgage should not be foreclosed. Such a provision would give him his day in court. The justice of the peace is authorized upon the filing of a statement of fact by the mortgagee to issue an order to any constable to proceed and seize all of the personal property, etc., make a list thereof and give a receipt therefor, and bring same to the courthouse, and to give notice to the mortgagor that unless the property was previously redeemed within a certain time as prescribed by law, same would be sold by order of court. L. 1936, ch. II, § 17.

In the case at bar, the order upon which the constable acted reads as follows:

"REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY,
OFFICE OF THE JUSTICE OF THE PEACE,
MONTSERRADO COUNTY
AT MONROVIA.

"Before His Honour, B. T. Collins, Justice of the Peace.

"Central Industries, Limited, Mortgagee versus Joseph and Richard Fazzah of Fazzah

Brothers, Mortgagors. FORECLOSURE OF MORTGAGE.

"To Joe Gio, constable, or to any other constable for MONTSERRADO COUNTY.

"Know ye, that Central Industries, Limited of 30 Church Street, New York, Mortgagee entered into a Chattel Mortgage with Joseph and Richard Fazzah of Fazzah Brothers on the 11th day of May, A.D. 1949, mortgaging all their personal property household lease in Liberia, for the amount of fifty-two thousand, two hundred and thirty dollars ($52,230.00) to be paid in monthly instalments of seven thousand, five hundred dollars ($7,500.00) with ten per centum (10%) interest, beginning on the 11th day of September, A.D. 1949, and that the said Central Industries, Limited, Mortgagee, by and through their Counsel, R. F. D. Smallwood, Counsellor-at-law, has appeared before me and filed a Statement of fact in writing and presented their duplicate of the Mortgage showing that the said Fazzah Brothers have defaulted in discharging their obligation on the terms of the said mortgage, and that they have not granted the said Fazzah Brothers, Mortgagors, further extension of time, and that the amount due is forty-seven thousand, two hundred and twelve dollars (47,212.00) including interest and demand the foreclosure of said mortgage.

"You are therefore commanded to proceed forthwith to the business places of Joseph and Richard Fazzah of Fazzah Brothers, and seize all of their personal property, merchandise, and all property of a personal nature belonging to the said Fazzah Brothers, making a list of same, and giving receipt therefor to them.

"You are also further requested to proceed to the Free Port of Monrovia and ascertain whether any property lying in the warehouse of the said Free Port belonging to Joseph and Richard Fazzah of Fazzah Brothers; and if any found, you are to attach said property, informing the Manager of said Free Port as to your service on said property, warning him not to permit said property to be removed except by authority of this Court.

"You are further requested to proceed to the Bank of Monrovia, Incorporated, and in like manner ascertain from the Manager of the Bank whether Joseph and Richard Fazzah of Fazzah Brothers, have any credit in said Bank, and if found, to attach said credit, informing the Manager not to permit any withdrawal therefrom without authority from this court.

"You are further requested that the property so attached, except those found in the Bank of Monrovia and Free Port of Monrovia you are to bring to my office, or any

place that may be designated by me, for safe keeping and make your returns as to the manner of service of this Order, giving them Notice in writing, that unless the property is previously redeemed within the time prescribed by law, said shall be sold by order of court.

"And for so doing this shall be your authority.
"Issued this 17th day of December, A.D. 1949.
"[Sgd.] B. T. COLLINS,
Justice of the Peace, Montserrado County."

The notice in writing purported to be given was not signed by anybody. No inventory was taken and no receipt given as directed by the Chattel Mortgage Act, *supra,* and by the order of the justice of the peace. Although respondents have set up that the application for the writ of prohibition caused the failure to take the inventory, yet as far as we have observed no effort was ever made, nor was it intended, to take any inventory, for it was three days after the attachment of the goods before the application for a writ of prohibition was filed, i.e., December 20, 1949. *(See* notice of His Honor B. T. Collins from the clerk of this Court.)

Further, upon an inspection of the chattel mortgage executed by Joseph and Richard Fazzah of Fazzah Brothers, it appears to us that they mortgaged to Central Industries, Ltd., all personal property in excess of $50,000, all merchandise and goods in the store and warehouse of Fazzah Brothers which are in excess of $40,000, goods presently in the Free Port of Monrovia which are worth at least $46,000, and the leasehold of Fazzah Brothers on their store and warehouse. Nothing is said about credits at the Bank of Monrovia, Inc.

We do not think it out of place to quote word for word the relevant clause of the Chattel Mortgage:

"We the said party of the first part, do hereby sell and assign to the party of the second part all and singular our personal property now owned by Fazzah Brothers, including, but not limited to, Fazzah Brothers accounts receivable, which are in excess of fifty thousand dollars ($50,000.00) merchandise and goods in the store and warehouse of Fazzah Brothers, which are in excess of forty thousand ($40,000.00) dollars, goods presently in the Free Port of Monrovia, which are worth at least forty-six thousand ($46,000.00) dollars, and the leasehold of Fazzah Brothers on their store and warehouse."

Hence it is obvious that freezing the credits of Joseph and Richard Fazzah of Fazzah Brothers at the Bank of Monrovia, Inc., was not contemplated by the chattel mortgage and was illegal. The other acts of seizure and attachment as carried out by the constable were also illegal, since he should have seized only personal property in excess of fifty thousand dollars, and goods and merchandise in excess of forty thousand dollars. Since no opportunity was given for petitioners to be heard, the only remedy open to them under the circumstances for the protection and securing of their property and rights was prohibition. Such highhanded practices with the rights, properties, and privileges of persons, be they citizens or aliens, is inconceivable and shocking to the conscience of men and of good citizens.

In *Harmon v. Republic,* 2 L.L.R. 480 (1924) the case was heard in the circuit court at Grand Bassa. After evidence had been concluded by the State, defendants filed a motion to dismiss based on a jurisdictional issue. The motion was denied, and judgment was rendered fining each defendant $1,000. Dissatisfied with the judgment, defendants prayed an appeal and the jurisdictional question came up before this Court under the following exception :

"And also because the court dismissed the motion offered by defendants to the jurisdiction of said court sitting in chambers, over said cause in summary proceedings.

The jurisdictional question raised was that under the Constitution,

" 'in all cases, not arising under martial law or upon impeachment, the parties shall have a right to a trial by jury,' and [this action] .. . not being . . . tried by a jury . . . is not in keeping with said Constitution.

". . . And also because the statute law providing for summary hearing of the above offense is in conflict with said section of the Constitution." *Id.* at 481.

It is well to be reminded that the questions settled were:

(1) "[T]he Legislature can enact no law which is in direct conflict with the organic law of the state . . .

(2) "[W]hen a case arises for judicial determination and the decision depends on the alleged inconsistency of a legislative -provision with the fundamental law, it is the plain duty of the court to compare the Act with the Constitution and if . . . [they are

irreconcilable] to give effect to the Constitution rather than the statute .. .

(3) [N]o person shall be deprived of life, liberty, property or privilege, but by judgment of his peers or the law of the land.' " *Id.* at 482, 483, 484.

In a later case, *Wolo* v. *Wolo, 5* L.L.R. 423 (1937) Chief Justice Grimes of this Court took pains to elucidate the term due process of law. Said he :

"American law writers commenting on the constitutional provisions which, in ours, would seem to be stronger, because, as aforesaid, of the inclusion of the word, 'privilege,' have agreed on the following as far as our examination of sundry authors goes :

" 'The term "due process of law" is synonymous with "law of the land." The constitution contains no description of those processes which it was intended to allow or forbid, and it does not even declare what principles are to be applied to ascertain whether it be due process. But clearly it was not left to the legislative power to enact any process which might be devised. "Due process of law" does not mean the general body of the law, common and statute, as it was at the time the constitution took effect. It means certain fundamental rights, which our system of jurisprudence has always recognized. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law extend to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive, and relate to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. The term "due process of law," when applied to judicial proceedings, means that there must be a competent tribunal to pass on the subject-matter; notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel; and if the subject-matter involves the determination of the personal liability of defendant he must be brought within the jurisdiction by service of process within the state, or by his voluntary appearance. And there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. But the forms of procedure and practice may be changed ; and the constitution is satisfied if the substance of the right is not affected and if an opportunity is afforded to invoke the equal protection of the law by judicial proceedings appropriate and adequate. . . .' 8 Cyc. 1083 and cases cited.

" 'The essential elements of due process of law are notice, and an opportunity to be

heard and to defend in an orderly proceeding adapted to the nature of the case. . . .' 6 R.C.L. *Constitutional Law § 442." Id.* at 427, 428.

These provisions, and others, incorporated in the Bill of Rights primarily for the protection of citizens would seem to inure also to the benefit of aliens who are here by permission of the government, and especially those by virtue of treaty stipulations. In the case before us it is clear to us that the determination of the case necessitates our passing upon the constitutionality of the Chattel Mortgage Act, and hence we cannot legally refuse to do so.

"Since the constitution is intended for the observance of the judiciary as well as the other departments of the government, and the judges are sworn to sup-port its provisions, the courts are not at liberty to over-look or disregard its commands, and therefore when it is clear that a statute transgresses the authority vested in the legislature by the constitution, it is the duty of the court to declare the act unconstitutional, and from this duty they cannot shrink without violating their oaths of office. . . ." 6 R.C.L. 72 (1915) . In view of the fact that the Chattel Mortgage Act in question makes no provision, as we have mentioned, for a party defendant to appear and defend, which provision would conform to the provision of our Constitution which forbids the forfeiture of life, liberty, property and privilege without an opportunity to be heard, that portion of the said act, in our opinion, is in contravention of our Constitution. Therefore, in the light of what has been said, we are in full accord with the ruling delivered by our distinguished colleague in Chambers, and affirm same and hereby declare section 17 of the said Chattel Mortgage Act unconstitutional, with costs against respondents; and it is hereby so ordered.

Ruling affirmed.