H. LAFAYETTE HARMON, Appellant, v. **C. FREDERICK TAYLOR**, Appellee.

APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 23, 25, 26, 30, 31, 1944. Decided December 15, 1944.

1. A deed of land from the Government may be either an aborigine deed or a public land grant.

2. Government land may not be acquired by preemption except by settlers and, to a limited extent, by aborigines.

3. A mere settler on public lands with a hope of preemption is, until he makes his entry, a tenant at sufference, and, as such, makes improvements thereon at his own risk.

4. A public land grant of 250 acres in consideration of one dollar and certain duties of citizenship to be performed in connection with the land, which is below the accepted minimum rate of fifty cents per acre formerly authorized by statute, is valid under the 1940 act of the Legislature authorizing the President to adopt measures which will insure the economic stability of the country.

5. It is not within the competency of a private individual in a public land grant to raise the question of insufficiency of monetary consideration as same can never operate in his favor. This is a point that relates to the revenues of the country and thus is properly within the bounds of the proper law officers of the Government to raise and propound.

On appeal from a decision admitting a public land grant to probate, *judgment affirmed.*

H. Lafayette Harmon for himself. *C. Frederick Taylor* for himself.

MR. JUSTICE SHANNON delivered the opinion of the Court.

On April 8, 1943 C. Frederick Taylor, appellee, obtained from the Government a deed of grant entitled on its face "Public Land Grant" executed by His Excellency Edwin Barclay, then President of Liberia, for a parcel or tract of land lying, situated,

and being in Kakata District Number 4 of the Central Province, Liberian Hinterland, for considerations therein stated and, when said deed was offered for admission into probate before the Monthly and Probate Court of Montserrado County, H. Lafayette Harmon, appellant, entered and filed objections to its admission, which said objections in their final analysis were by His Honor Nugent H. Gibson, Commissioner of Probate, overruled and dismissed with a decree ordering the admission of said deed to probate. To this decree or judgment of His Honor Commissioner Gibson, appellant, then objector, duly excepted and prayed on appeal to this Court.

The facts culled from the record of pleadings before us are as follows : Both appellant and appellee desired to farm and each in the same locality, that is, on the Kakata-Gibi motor road in the said Kakata District Number 4, Central Province, Liberian Hinterland. The appellant seeks to show that he made application to His Excellency Edwin Barclay, then President of Liberia, for permission to operate in this area and also asked for an order for the survey of two hundred acres of land; that the President did not grant him permission and did not give him the order for the survey for reasons which will be given later; that he took it upon himself, and gave notice to the President, to commence operations in the locality of the said Kakata-Gibi Road, planting rubber on a large scale; that subsequent to his commencement of operations under the circumstances stated above, appellee took up a surveyor, admittedly with a properly and regularly issued order of survey, and surveyed land on said Kakata-Gibi Road, which said survey took in all or nearly all of the land whereon the appellant had commenced operations; and that this survey constitutes the basis of the boundaries indicated on the deed, the subject of these proceedings.

The appellee, on the other hand, attempts to show that the facts substantially stated above and as pleaded by the appellant are of themselves self-serving evidence to show that the appellant has no vestige of legal claim to the land in question, appellant having entered it without the permission of the Government or, better still, against the express will and order of the President who, when appellant approached him for an order of survey for land in the interests of a certain lady who had already occupied same, informed the appellant that he could not then give appellant permission for the lady to operate in that area nor could he give the order for survey applied for because, as the said President told appellant, "her occupancy was contrary to the policy of the Government which required (a) that the Government should say where and when new developments would be opened and (b) a survey and map of the new area should first be made" ; that notwithstanding the above, the appellant persisted in the occupancy and encouraged work to go on, naturally at his own risk.

See letter from President Barclay to appellee, *infra,* p. 420.

It is in relation to these facts that appellant filed his objections. The main points, principally of law, raised in said objections are :

"1. That the deed from the Government was procured and has been clandestinely obtained under fraud, misrepresentations and prejudicial intrigues contrary to the statute laws of Liberia governing the purchase of public land, in that said tract of land which respondent (now appellee) has had surveyed and for which said deed is granted, is land which objector (now appellant) has occupied, operated and improved for nearly two years with the knowledge and acquiescence of the Government; that because of this, the right of preemption inured to him the said appellant;

"2. That because of the foregoing, he, the said appellant, has priority right of title in and to said land; and

"3. That said deed as granted carries on its face a dual aspect in character : one as an Aborigine Deed, and the other as a Public Land Grant—in either of which cases, it cannot stand, the appellee not being an aborigine and consequently incapable of enjoying a grant from the Government as such; and the said deed, whilst also purporting to be a Public Land Grant, cannot be correctly taken and accepted as such in that, although it carries a 250 acre grant it also appears to have been issued for a meagre consideration of One Dollar which is contrary to statutes relating to the sale of Public Land."

Respondent, now appellee, answering the said objections, denies that he obtained his deed clandestinely and through fraud, misrepresentations, and prejudicial intrigues. Appellee claims that the transaction was open and in consonance with adopted procedure for the acquisition of such deeds. Appellee also denies that appellant has any prior right of title or even a right of preemption to said land which is covered by the deed. He further denies that the deed as such is an aborigine deed, but insists that it is a land patent deed or, to use our statutory title for it, a "Public Land Grant Deed." Appellee contends that although the monetary consideration shown on the face of the deed for two hundred and fifty acres of land is one dollar it is not in conflict with the current laws of the country and the existing policy of the Government, especially since, from an inspection of said deed, there appears to be another consideration for the grant of said land, to wit:

"[F]or and in consideration of the sum of one dollar paid the Republic of Liberia

and of the various duties of citizenship hereinafter expressly stipulated to be legally performed. The duties of citizenship which the grantee has covenanted with the grantor to perform are : that he will cultivate the land hereby granted by the planting thereon from time to time of such agricultural products as may be prescribed by Government Regulations ; failing the performance of this obligation this grant shall become null and void; otherwise to remain in full force and virtue." Appellee argues that the President having issued the deed as a public land grant in the above manner, it is not within the rights of the courts to inquire into and attempt to pass upon its legality.

Correlating these several presentations of issues, it is the opinion of the Court that the decision of this case depends upon four cardinal points, namely:

(1) Whether or not said deed was obtained as claimed by appellant, clandestinely and through fraud, misrepresentations, and prejudicial intrigues;

(2) Whether the said deed as granted is an aborigine deed or a public land grant;

(3) Whether or not the appellant at the time of the granting of said deed had a priority right of title in and to said land that our statutes can recognize and, incidentally, whether or not our statutes recognize the right of preemption that the appellant can enjoy; and

(4) If the deed granted is found to be a public land grant, whether or not it is covered by any statute law or by regulations of this country.

Taking up the first point, it is our opinion that there was no fraud, misrepresentation, or prejudicial intrigue used by appellee to procure and to obtain said deed. This is supported by a letter from His Excellency Edwin Barclay, then President of Liberia, to the appellee dated April 15, 1943, which, as said letter indicates, is in the nature of an official statement and which was made profert of in the pleadings, wherefrom the following is drawn:

"The deed that was issued by Government in your favour was not influenced by an intrigue, fraud or misrepresentation ; it was a straightforward act on part of Government in accordance with Government policy, and upon a request made to me officially."

Coming to the second point, whether the deed as granted is an aborigine deed or a

public land deed grant, we do not hesitate to say that there is not the slightest indication in the wording of said deed that it is an aborigine deed or intended as such, barring the citation made therein that it is issued in pursuance of Chapter 1, Article 2 of the Revised Statutes, which said statute obviously relates to aborigine grants. The character of the deed must therefore be determined from its wording, and from this we conclude that it is a public land grant with additional considerations which the previous form of such deeds did not carry and which considerations possibly are inserted to adjust said deed to the present policy of the Government.

Now we come to one of the points in the case which we consider salient to the decision of the matter, whether or not the appellant at the time of the granting of said deed had a priority right of title to said land that our statute can recognize because of prior occupancy, and, incidentally, whether or not our statutes recognize the right of preemption that the appellant can enjoy. Appellant claims that he has a priority right of title in and to said land because of prior occupancy and because of extensive and expensive operations and improvements which he has carried on and made on said land, and that his operation was with the knowledge and acquiescence of the Government. In his objections appellant made profert of a letter addressed to His Excellency Edwin Barclay, then President of Liberia, dated February 11, 1943, protesting the survey of the appellee. In this letter appellant makes the following declaration :

"Some time ago during the early part of last year, I approached and informed you that I was preparing to open a rubber enterprise on the Gibbi Road, on the other side of the Borlorlah River, and asked you if you would be good enough to give me an order for survey of two hundred (200) acres of Public Land, which I had selected for this purpose. You informed me at the time that you were not issuing orders for the survey of land in that District until you had received the report from the District Commissioner on certain matters which, apparently, you had referred to him; but that as soon as you received such report you would give me the necessary order. In the meantime, I informed you that having selected the site, I would proceed with the felling of the bush and planting of the rubber nursery bed. I proceeded with this understanding, and made other expensive outlay and operation on this spot."

Appellee, on the other hand, insists that this claim of appellant to priority right of title because of prior occupancy should not and cannot hold because the manner of occupancy was absolutely and expressly against the will and consent of the Government. Appellee contends further that appellant cannot claim that appellant's occupancy was with the knowledge, acquiescence, and consent of the Government

for, besides appellant's own letter to the President, partially quoted above, wherein no mention is made of the President having given permission for appellant to occupy said land when approached by appellant, the President tacitly informed the appellant that the permission for occupation asked for was not granted and that an order of survey would not be issued, as will fully appear from the letter of the President to the appellee already referred to and from which the following is quoted :

"Mr. Harmon has never had acquiescence from the President of Liberia for his occupancy of said land.

"Mr. Harmon once came to me and reported that a certain lady had occupied lands across the Borlorlah River, and in her behalf he requested a deed. I refused to grant the deed for the reason, as I told him, that her occupancy was contrary to the policy of the Government which required (a) that the Government should say where and when new developments would be opened and (b) a survey and map of the new area should first be made. Mr. Harmon nevertheless encouraged this lady to go on with her planting notwithstanding the President's intimation to him of the policy of the Government. The policy of the Government, heretofore referred to, is outlined in Executive Order No. 9-1941, issued August 4, 1941. Attention is directed to the 11th section thereof. This was brought to the attention of Mr. Harmon and he was told for that reason no deed would be granted, and if the lady occupied the land it was at her own risk.

"You will note from Mr. Harmon's alleged letter to the President that he confirms in the first paragraph what I have said, and does not allege therein that I gave consent to this procedure. The letter that he wrote to me was designed, as all his statements about me are usually designed, as propaganda against me. . . . I had already told Mr. Harmon that the land could not be allocated until the surveys were made, and I had nothing more to say, and never considered the matter of such importance as to warrant a discussion of this particular claim with anyone. . . .

"The President never promised Mr. Harmon to give him a deed. That statement made in the third paragraph of Mr. Harmon's objections is absolutely false and untrue. . . .

"The question of so cents an acre for public land is a very small matter in comparison with the general advantages which will accrue to the citizen from following the development policy of the Government. It appears to me to be questionable whether a person who has no claim of legal right can make objections

to the President of Liberia exercising the power invested in him by law."

It is seen, therefore, that notwithstanding that appellant bases his claim to right of title in and to said land upon prior occupancy founded upon the knowledge, acquiescense, and consent of the Government, the President of Liberia, who is the only official of the Government whom, as his objections show, appellant approached on the matter of his land acquisition, emphatically and categorically denies ever giving such consent. The President instead alleges that he refused to give the permission to occupy and to give the order of survey as prayed for by appellant. In view of this, it cannot but be concluded that the occupancy of the land or any portion thereof by the appellant was without the sanction and/or approval of the President or of any other official of the Government connected with disposition of public lands.

The attempted invocation of the common law doctrine of the right of preemption or priority right of title must crumble because of the following reasons : (1) As far as our research of our statutes has carried us, we are still without any law whereby lands may be acquired in this way except by settlers, that is, immigrants, and, to a very limited extent, by the aborigines of the country. Art. IV of the Public Domain Act, Old Blue Book, 136; L. 186364, 24 (2d) § 3. (2) Even where this right of preemption could stand under our statutes, the appellant would be without its benefit in that his occupancy was without the bounds of the procedure prescribed and laid down to be followed since he had not even had the consent and/or approval of any land officer of the Government as the common law requires :

"While in a sense the right of pre-emption is a bounty extended to settlers and occupants of the public domain and as such cannot be extended to the sacrifice of public establishments, or of great public interests; yet in a larger sense, as advancing such public interests, it is a right secured by the constitution and laws of the United States. A mere settler on public lands, with a hope of pre-emption, is, until he makes his entry, a tenant at sufferance, and, as such, he makes improvements thereon at his own risk. It has been held that the rights of occupants of the public lands are founded on the presumption of a license from the government." 22 R.C.L. *Public Lands* § 19, at 255 (1918).

In addition,

"The power of regulation and disposition over the lands of the United States, conferred on Congress by the constitution, ceases under the pre-emption laws only

when all the preliminary acts prescribed by those laws for the acquisition of the title, including the payment of the price of the land, have been performed by the settler. When these prerequisites have been complied with, the settler for the first time acquires a vested interest in the premises occupied by him, of which he cannot be subsequently deprived. He then is entitled to a certificate of entry from the local land officer, and ultimately to a patent for the land from the United States. . . . The United States, by the preemption laws, does not enter into any contract with the settler, nor incur any obligation that the land occupied by him shall ever be put up for sale. . . . *Id.* ∫ 22, at 258.

"Mere settlement on or occupation of the public lands of the United States confers no rights upon the settler as against the government or persons claiming by legal or equitable title under it, although the occupant has made improvements on the land, and his occupation was for the purpose of subsequently acquiring title under the land laws; and so the settler is not entitled to compensation from the United States for losses sustained by reason of his enforced removal from the land. The settler acquires no vested interest in the land until he has entered the same at the proper land office, and obtained a certificate of entry. . . ." 32 Cyc. of Law & Proc. *Public Lands* 819-20 (1909) .

From the foregoing, it is also necessary to find out what constitutes entry under the law and what is the right of preemption. The very same authority sheds light on these questions :

"The term 'entry' as used in reference to public lands means, in its technical sense, the filing with the register of the land office of a claim to a portion of the public lands for the purpose of acquiring an inceptive right thereto; but the term is applied somewhat loosely to various proceedings under the land laws, and the courts also use it in its ordinary sense as importing the physical act of entering and settling upon land." *Id.* at 806.

"The statutes formerly gave to settlers on public lands who had improved the same a preference right to purchase such lands up to a certain amount, at the minimum price of such lands, upon complying with the statutory requirements, which was termed the right of preemption." *Id.* at 827-28.

It is readily seen, therefore, that since appellant is neither a settler within the meaning of our statutes nor an aborigine of this country, he cannot by any fiction of law enjoy the rights vouchsafed to settlers for occupying and settling upon lands. Furthermore,

even where there were statutory provisions governing the right of preemption, appellant could not enjoy this right since he had not availed himself of the opportunity of first obtaining the permission or consent of the Government before occupying the land in question. Therefore, he occupied the land at his own risk.

It is to be noted that appellant, in all of his efforts at defeating the title of the appellee, is not in the position to give the metes and bounds of the land to which he is laying claim since he never surveyed same so that the alleged encroachment of appellee upon his land could be ascertained and determined. Even though appellant's letter to the President, partially quoted *supra,* applies for the survey of two hundred acres of land, during argument before this Court and in answer to a question from a member of the Bench as to the quantity of land to which he lays claim, appellant replied that he was claiming about three hundred acres. It is obvious, then, that appellant has no vestige of claim to said land which can be a subject of judicial determination in his favor.

This brings us to the consideration of the fourth and last point, if the deed granted is found to be a public land grant, whether or not it is covered by any statute law or regulation of this country. Before discussing this question it is necessary to pass upon the submission made by appellant since one of his points of objection is that the deed showing on its face a monetary consideration of one dollar for a two hundred and fifty acre grant is ineffective and illegal, especially since this Court has unreservedly declared that the deed in question is a public land grant and not an aborigine grant. It appears to us that this point of insufficient monetary consideration on the face of the deed is a point not within the appellant's competency to raise since it can never operate in his personal or individual favor. If the point is well founded, it is a point that relates to the revenues of the country and is properly within the bounds of the proper law officers of the government to raise and propound.

However, it appears from an inspection of said public land grant in question that in addition to the one dollar monetary consideration there is another consideration stated in the deed which the President states in his letter to appellee, released as an official statement and made profert of in the pleadings without a protest against its existence and its efficacy. This second consideration consists of the performance of certain duties of citizenship which the said letter further declares to be in consonance with the policy of the Government. In this respect Administrative Circular No. 9-1941 is relied upon.

It is our opinion that, taking into consideration the enunciated policy of the Government with respect to the public domain as particularly emphasized in said Administrative Circular No. 9-1941, and the act of the Legislature passed in 1940 authorizing the President under existing world conditions to adopt measures to ensure the economic stability of the country, which legislation gave the Executive wide directionary powers (L. 1939-40, ch. III, § 2), the public land grant in question is in harmony with the spirit, meaning, and intention of the said act since grants of such a nature have a tendency to encourage agriculture and to stabilize the economy of the country. Since the Legislature, to whom is given the power of regulation and of disposition over the land of the country, has by this act obviously delegated its power to the executive head of the Government, we are of the opinion that this public land grant should be upheld and left undisturbed since to do otherwise, besides being an undue questioning of the right of the Executive, would also be questioning the wisdom of the said enactment or legislation, which it is not within the province of the courts to do.

On this last point of the legal propriety and sufficiency of the public land grant in question, especially with respect to the monetary consideration shown on the face thereof, which is below the commonly known and accepted minimum rate of fifty cents per acre as per former and existing statutes, our distinguished colleague, the Chief Justice, differs from us in our conclusions and is, therefore, filing a dissenting opinion. It is, however, useful to state that he agrees with our conclusion that appellant has no legally accepted right of preemption to the land by prior right of occupancy and that, as he is not a settler within the meaning of the statutes or an aborigine, he cannot enjoy the rights and benefits given such classes of citizens under our land laws. Nevertheless, the learned Chief Justice feels that the deed should be denied admission to probate because of the insufficiency of the monetary consideration appearing on its face which monetary consideration, in his opinion, is expressly contrary to existing statutes. Therefore Mr. Chief Justice Grimes feels that the land should revert to the Government.

It is also to be observed that, in arriving at the conclusion on the last point on which our learned Chief Justice differs from us and therefore dissents, there is no room for any impression that we have been moved by a notion which would suggest a belief in our acceptance of a position that the President of Liberia can do no wrong, as in the political institution of Great Britain it is said of the King. Any effort to do this must, besides being uninvited and unwarranted, leave room for multifarious impressions since neither the pleadings in the case make it an issue nor has it ever been insinuated either in the brief of the appellee before us or in the opinion that I am now reading.

Every student of the political institution of Liberia knows that it is not said of the President, as it is of the King of England, that he can do no wrong.

We are, therefore, of the opinion that because of what has been stated herein, the ruling of His Honor Nugent H. Gibson, Commissioner of Probate, should in principle be, and is, sustained, and that the deed in question should be admitted to probate, and it is hereby so ordered.
Affirmed.

MR. CHIEF JUSTICE GRIMES, dissenting.

When the above-entitled cause had been submitted to us for our consideration, it was discussed in our Chambers three distinct times, whereupon it became clear that on one point it was not possible for the views of the majority and myself to be reconciled.

Until July 26, 1847, Liberia was a colony of the American Colonization Society, which appointed a Governor to direct and control all its affairs. To him, as the representative of the Society about four thousand miles away, were given powers practically absolute. He was all that there was of executive power, he presided at all meetings of the Governor and Council to which Council all legislative power had been given, and last but not least he, the said Governor, was Chief Justice of the highest Court, and by virtue of his office had to preside over all the sessions of said tribunal. The relevant sections of the laws taken from the Colonial Constitution are :

"Art. 2. All legislative powers herein granted, shall be vested in a Governor and Council of Liberia; but all laws by them enacted shall be subject to the revocation of the American Colonization Society.

"Art. 6. The Governor shall preside at the deliberations of the Council, and shall have a veto on all their acts ; provided nevertheless, that if two-thirds of all the members elected to serve in the Council shall concur in passing a bill or resolution notwithstanding the veto of the Governor, the same when so passed shall become a law, and have effect as such.

"Art.10. The Executive power shall be vested in a Governor of Liberia, to be appointed by, and to hold his office during the pleasure of, the American Colonization Society.

"Art.15. The judicial power of the Commonwealth of Liberia shall be vested in one Supreme Court, and in such inferior Courts as the Governor and Council may, from time to time, ordain and establish. The Governor shall be, *ex officio,* Chief Justice of Liberia, and as such shall preside in the Supreme Court, which shall have only appellate jurisdiction. The Judges, both of the Supreme and inferior Courts, except the Chief Justice, shall hold their offices during good behaviour." Constitution of the Commonwealth of Liberia, 1 Hub. 650-52, 656.

Among the first ordinances passed by the Colonial Council was the Judiciary Act of the Commonwealth of Liberia, section 11 of which provides :

"Sec. 11. *Be it further enacted :That* there shall be—one Supreme Court for the Commonwealth, in which His Excellency the Governor shall preside (he being Ex-officio Chief Justice of Liberia) , to be held by him at such times, in such manner, and in such places as he shall from time to time direct, to it shall belong original jurisdiction in all maritime cases, and all cases of suits between citizens and aliens, and of all cases without or beyond the limits of the colony, and the returns on precepts issued therefrom, shall be made to such courts as may be directed : and said Court shall have appellate jurisdiction, in all causes originating in the Superior Courts, or carried up by appeal from the Courts of Pleas and Sessions, or on cases originating in Justices Courts that have travelled up to it by regular course of appeals, and the judgments and decisions of the tribunal both between man and man and the commonwealth and its citizens, or aliens, in all manner of cases shall be final. The Colonial Secretary shall act as the Clerk in said Court, and shall keep such record of all matters and things connected with the business thereof, as shall seem meet and right to the Justice thereof to have done and made." 2 Hub. 1468.

Vested with the above and sundry other powers not relevant to this dissent, to the said Governor was delegated, powers well nigh absolute, as the above provisions have been cited to show; but when it came to the disposal of the lands of the Colony, his power to dispose of them was hedged in by sundry restrictions which constituted one exception to his absolute power. I quote the pertinent sections from the ordinance relating to lands, reservations, apportionments and improvements :

"Be it further enacted:—That all settlers, on their arrival shall draw town lots or plantations for which the Governor shall give them a certificate specifying their number and the time of drawing. If, within two years from that date two acres of land on the plantation shall have been brought under cultivation, the town lot cleared and enclosed and a substantial house built, the said certificates may be exchanged for

title deeds in fee simple.

"Be it further enacted:—That every married man shall have for himself a town lot, or five acres of farm land, together with two more for his wife and one for each child that may be with *him—provided always* that no single family shall have more than ten acres." 1841 Digest, pt. I, Act Pertaining to Land, §§ 2, 3, 2 Hub. 1463.

Concurrent with the publishing of the Declaration of our Independence on July 26, 1847, whereby the Republic came into being, a Constitution was adopted. Article V, section 1 of said Constitution reads as follows :

"All laws now in force in the Commonwealth of Liberia and not repugnant to this constitutor *[sic],* shall be in force as the laws of the Republic of Liberia, unti[l] they shall be repealed by the Legislature." 2 Hub. 861.

By virtue of said constitutional provision the laws already in vogue governing the alienation of public lands automatically became operative save in any respect in which they are repealed or modified by enactment of the newly constituted Legislature.

Under the Republic, the Legislature by virtue of the above-mentioned provision did not find it necessary to prescribe a civil code of laws, as the section of the Constitution above quoted allowed them to copy en bloc all the legal forms and principles and other ordinances in force in the Commonwealth when the Republic came into being. But, as regards the alienation of lands, the Legislature early passed two laws, the relevant portions of which I now proceed to quote :

"Each settler on his arrival in this Republic is entitled to draw a town lot or a plantation, for which the President shall give him a certificate specifying the number and the time of drawing. If a town lot be drawn it is required, that a house of sufficient size to accommodate all the family of the proprietor, and built of stone, brick, or other substantial materials and workmanship, or if frame or logs, weatherboarded and roofed with tile, slate or shingles, be erected thereon, and if completed in two years from the date of the certificate, the drawer will be entitled to a fee simple deed. If a plantation be drawn, and within two years two acres of land on said plantation shall have been brought under cultivation, the certificate may be exchanged for a deed in fee simple.

"That every married man shall have for himself a town lot, or five acres of farm land, together with two more for his wife and one for each child that may be with

him—provided *always* that no single family shall have more than ten acres.

"That women not having husbands, immigrating to this Republic with permission, and attached to no family besides their own shall receive each a town lot, or two acres of farm lands on their own account, and one acre on account of each of their children—and unmarried men of the age of twenty one years arriving in the Republic from abroad, or attaining their majority while resident in the same, and having taken the oath of allegiance, shall be admitted to draw and hold a building lot or five acres of farm land on the same conditions as married men. . . ." Article IV of the Public Domain Act, Old Blue Book, 136, §§ 1-3.

The method of procedure for the sale of public lands is to be found in Article VI of said Public Domain Act. Section 1 of said enactment created the office of Land Commissioner and prescribed his duties. Section 2 prescribed the procedures for the sale of the desired lands, for the disposition of the certificates of survey, and for the payment of the purchase price ; it also set forth the liability of the purchaser to the Land Commissioner for the latter's commissions. Sections 3 and 4 state the following:

"All lands surveyed and offered at auction and not sold may be sold by the Land Commissioner at private sale, payment to be made the same as land sold at auction, provided it is not sold below the minimum prices of land. The minimum prices *[sic]* of land lying on the margin of rivers, shall be one dollar an acre, and *those lying in the interior of the lands on the rivers Fifty cents.* Town lots each shall be Thirty dollars, except marshy, rocky and barren lots and plots of land which may be sold to the highest bidder.

"That it shall be the duty of the Registrar, on receiving the certificate of the Land Commissioner with a copy of the Surveyor's certificate describing the number deed and boundaries of land, annexed, immediately to fill up adeed *[sic]* with the number of acres, number of lot and boundaries &c, as per Surveyor's certificate, countersigning the same as being executed on the authority of the Land Commissioner's certificate with the day and date so executed, and deliver the same over to the purchaser, he paying for the same. . . . The President is hereby authorized and requested to lodge in the hands of the Register of each County a sufficient number of blank deeds for lands, to be filled up by the Register according to the 4th, Section of this Act." Article VI of the Public Domain Act, Old Blue Book, 140, §§ 3, 4. (Emphasis added.)

The only methods by which the public lands could legally be alienated up to 1863

were those above cited.

In 1863, as an incentive to recruiting men to serve in the militia during the punitive expeditions which were so frequent in those days, the Legislature passed what has been known as the Bounty Land Law. According to said law the Legislature specifically prescribed a schedule for the grant by the President of a varying quantity of public lands to men who had served in any of the punitive expeditions, said quantity varying according to the number of days, weeks, or months that they had been in actual service. L. 1862-63, 6, § 1.

In the early sixties President Warner became Chief Executive and, in accordance with the ideology of the times which was to build Liberia exclusively by immigration from abroad in addition to encouraging those from the United States, he extended an invitation to the people of the British West Indies to come over and throw in their lot with us. The conditions under which they were to come were carefully examined by a group, at the head of which was Anthony Barclay, the second person of that name, as Mr. Justice Barclay now sitting on my immediate left is the fourth in unbroken succession, although not the immediate son of the Anthony Barclay referred to but that of his youngest brother, Arthur Barclay. Among the unsatisfactory terms offered as an inducement to the prospective immigrants to migrate was the quantity of land each might possess, and the President requested the Legislature to consider an amendment to the laws governing the apportionment of lands in that respect. Accordingly, at its session of 1864 the following enactment was passed, viz.:

"That as soon after the passage of this Act, as possible, the President be, and he is hereby authorized and requested to enter into such arrangements as shall, in the most economical manner, in view of our pecuniary embarrassments, increase the population of Liberia, by renewing the invitation extended in 1862 to persons of African Descent in the West India Islands, to Liberia, aiding worthy and industrious persons in the said Islands to emigrate to this Republic.

"That as an additional inducement to persons to emigrate to Liberia, from the West Indies a grant of Ten acres of land be assigned to each single individual, and of twenty five acres to each family.

"That the sum of Four Thousand dollars be appropriated to carry out the provisions of this Act, and the President be, and he is hereby authorized to draw for the same out of any monies in the Public Treasury." L. 1863-64, 24 (2d) §§ 1, 3, 4.

Accordingly, immigrants under the leadership of Anthony Barclay sailed from Barbados on the brig Cora on April 5, 1865 and arrived here on May Io, 1865.

Note, now, how the Legislature restricted this enlarged grant of lands only to those persons who should migrate from the West Indies and those who came in that immigration specially arranged for between the President and themselves. But what is even more pertinent to the question now being considered is that although President Warner seemed to have had an abiding conviction that immigrants from the West Indies would powerfully boost and enhance the progress of Liberia, which incidentally it did, he never undertook himself, alone, to give them the additional quantity of land for which they contended without legislative warrant for so doing. This was the fourth means prescribed by which the President could legally alienate any portion of the public domain. And so the law stood until the eighties.

The fifth means of disposing of the public domain was due to a new orientation of national policy. In the early days of the Republic the policy of the pioneer fathers was as aforementioned to increase our population by immigration of Negroes principally from the United States. Liberia had been founded as an "asylum from the most grinding oppression," and prior to the civil war in the United States and the incorporation into the Constitution of the United States of the fourteenth amendment, the opinion of Chief Justice Taney, in a five to four decision, that the Negro had no right which a white man was bound to respect, had some appearance of truth in spite of the concurrence of four Justices in the three dissenting opinions filed. *Dred Scott v. Sandford,* 60 U.S. (19 How.) 393, 15 L. Ed. 691 (1857). But after the thirteenth, fourteenth, and fifteenth amendments the position of the Negro in the United States began to undergo such a complete change for the better that Negroes became more and more unwilling to abandon their homes for an asylum 4,000 miles across the ocean, preferring to remain in the United States and improve their condition there.

Simultaneously, but independently, there was a new force at work in Liberia. Dr. Edward Wilmot Blyden, one of the greatest leaders of thought Liberia has ever had, had begun from the latter sixties to preach that Liberia, as a Negro state, could not be built up wholly by accessions from without. He insisted that we should have to turn our attention to the indigenous people of the country, and by amalgamation, intermarriages, and sundry other inducements cultivate in them a feeling of identity with the settlers. Benjamin Anderson, our greatest mathematician, had then made his visit to, and survey of, the route leading to Musardu, and declared that the best part of Liberia was not on the coast but up in the plains of Musardu and the Vukka hills.

He gradually won as converts such extraordinary personalities as the late G. W. Gibson, at one time Secretary of State and President of Liberia ; the late H. R. W. Johnson promoted from Cabinet rank to that of President; Dr. R. B. Richardson, a President of Liberia College and a former Associate Justice of this Court; Arthur Barclay, who having filled sundry positions up to and including three Cabinet portfolios rose to that of Chief Magistrate ; Thomas Washington Haynes, a man who held two Cabinet positions ; and Daniel Edward Howard, who also went from Cabinet rank to that of Chief Magistrate. These men and others similarly influenced were responsible for the new orientation of policy for Liberia.

The first step taken to try and impress upon the aborigines this change of policy was to provide an added inducement to their seeking education and Christianity. Consequently, in January, 1888, during President Johnson's administration, an enactment was passed which provided that all such youths, male and female, should be entitled to draw lands in the same quantity and in like manner as immigrants. L. 1887-88, 3 (2d) § 1.

In 1905, during the administration of President Arthur Barclay, a step forward in line with this new orientation of policy was made when the Legislature prescribed a law for the government of aboriginal districts. Section two of said enactment specifically authorized the President to grant lands in common within and around each site occupied by an aboriginal tribe in such quantity as to enable each family to have twenty-five acres, with the understanding that if the male members of the family desired to vote they would have to petition the Executive Government and, if the President were satisfied that they were sufficiently intelligent and civilized, he might order a division of the land so as to enable each male to have a tract in fee simple and thereby become a freeholder, one year after which he would be entitled to the suffrage. L. 1904-05, 25 (2d), § 2.

My reason for making this historical survey of the laws enabling the President of Liberia to dispose of any part of the public domain is to show that in each case the deed he has issued must have been authorized by some specific enactment, which enactment must have prescribed the consideration, the method of procedure, and all other details as a prerequisite to, and the authority for, the President signing any such deed.

The deed issued by President Edwin Barclay to Mr. C. Frederick Taylor admittedly does not conform to any one of the forms or conditions prescribed by law, and struck me as such an anomaly that I asked both parties in succession, while the

argument was pending, upon what authority of law the President had issued and had signed said deed.

Mr. Taylor replied with the utmost naivete that it was based upon a statute passed in 1940 authorizing the President, under existing world conditions, to adopt such measures as would ensure the economic stability of the country. Said enactment I now proceed to quote in full:

"JOINT RESOLUTION ENDORSING THE ACTION TAKEN BY THE EXECUTIVE GOVERNMENT REFERABLE TO THE DECLARATION OF NEUTRALITY OF THE GOVERN-MENT OF LIBERIA IN THE PRESENT EUROPEAN CON-FLICT AND EMPOWERING THE PRESIDENT TO TAKE SUCH OTHER ACTIONS AS WILL ENSURE INTERNAL ECONOMY AND EXTERNAL INTERESTS DURING THE EXISTENCE OF THE SAID CONFLICT.

"WHEREAS, because of the effect of the existing conflict in Europe on the legal relation of this Government with the Powers now at war, the President of Liberia on September 19, 1939, did declare the Neutrality of this Government in the Conflict,

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section 1. That the declaration of Neutrality in respect of the present Conflict between the United Kingdom of Great Britain and the French Republic on one hand and the German Reich on the other proclaimed by the President of the Republic of Liberia be and the same is hereby approved.

"Section 2. That the President of the Republic of Liberia be and is hereby empowered to take any and all further proper and adequate measures which in his judgment will effectively insure the internal economy and external interests of the Republic during the said Conflict.

"This Joint Resolution shall take effect immediately and be published in hand bills.

"Any law to the contrary notwithstanding.

"Passed by limitation." L. 1939-40, ch. III.

I next asked if that enactment were the only authority upon which said deed was granted. Mr. Taylor answered, "Yes," and seemed to have been surprised by the question.' But, in spite of the above reply and the exhaustive opinion of my learned colleagues, I still maintain that the answer to my question should have been in the negative. In my opinion not only was the deed, the subject of these proceedings, issued by the President without any law to warrant the grant but also said grant was *ultra vires*. And to seek to justify it upon the enactment of 1940 hereinbefore quoted is, in my opinion, to base same upon a statute wholly irrelevant, giving no authority therefor whatever.

When, for example, President Warner was convinced that the West Indian immigration of the sixties would be a great asset to the Republic, both financially and agriculturally, did he himself issue any such deeds or did he not apply to the Legislature for an enactment modifying the conditions up until then prescribed? In what way can a deed to Mr. Taylor of the nature of that in this record contribute towards the solution of the problems of this war?

Mark you, I fully agree that our government since the grant of that deed in 1940, because of international commitments following our change of policy from complete to benevolent neutrality and afterwards our entry into the war in 1944, is compelled to stimulate agriculture now as never before. But my mind refuses to be converted to the view that any such commitments would warrant the disposal of our public domain in the manner in which this record shows, without a specific enactment therefor; nor would any such commitment or any other consideration enable our President to alienate our public domain save by one of the statutes now in force or by some other enactment to be passed, specifically authorizing him to do so, how to do so, and upon what considerations such lands might be granted to any person or persons.

Moreover, it must not be overlooked that even in leasing out the public domain, especially to foreigners for long terms, the Legislature has invariably insisted on reserving to itself the right to approve the terms and conditions of the lease.

It is my opinion that, great and extensive as are the powers undoubtedly given to the President of Liberia, he has not been given the power to dispose of any part of the public domain save as expressly prescribed by existing laws or as impliedly given by subsequent approval by the Legislature of any grant or demise thereof which he may have made without having previously obtained a legislative enactment upon which to predicate same.

Now the deed, the subject of these proceedings, does not, in my opinion, conform to either of the two prerequisites above mentioned. It certainly is not a deed of sale because it is clear, from the fact thereof, that the President avers therein that two hundred and fifty acres of public land were sold for one dollar only, when the minimum price of public land is fixed by statute at one dollar per acre near the banks of rivers and at fifty cents per acre for all those lands interior to those on the margins of rivers. In the case under review, these two hundred and fifty acres of public land were disposed of at four-tenths of one cent per acre ! Nor is it an aborigine deed, as the rehearsals in the preamble of the deed itself evince, since indeed Mr. Taylor during his argument at this Bar admitted that he is not an aboriginal citizen but one who quite recently immigrated into Liberia from the West Indies. See preamble of deed under review; 1 Rev. Stat. § 298; Art. IV of the Public Domain Law, Old Blue Book, 136, §§ 1, 2.

To say that the President erred in making the grant which the deed before us evidences is not, in my opinion, to speak derogatively of the President. No President of Liberia is infallible. Nor, if he attempted to claim he were infallible, would he be able to find anything in our laws to support such a thesis. Nor does he enjoy even that psuedo-infallibility which a King of England enjoys as seen by the maxim "the King can do no wrong," since no such fiction has ever been attached to the President's political acts in this country.

If, then, in my opinion, any act of the President can be shown to be contrary to, or in excess of, the powers granted him by statute, I feel it to be the duty of the courts to so declare without any disrespect shown to, or imputation upon, the character of the President. Indeed, I may say emphatically, his duties are so many and so diversified, oftentimes without adequate technical assistance, that it is surprising that his errors are, relatively speaking, so few. For, as has been remarked and quoted with approval by us all from *Marbury v. Madison, 1* Cranch 137, 2 L. Ed. 6o (1803) in the case of *Wiles v. Simpson,* 8 L.L.R. 365, decided on November 17 during this term :

" 'The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

" 'If this obloquy is to be cast on the jurisprudence of our country, it must arise from the peculiar character of the case.' " *Wiles v. Simpson,* at 377.

My own personal opinion is that the deed granted by the President, objections to the probate of which are now under review, should be declared to have been issued *ultra vires,* and should therefore not only be denied probate but should also be ordered delivered up and cancelled.

On the other hand, and in regard to the claim to the land made by H. Lafayette Harmon, I have been converted to and am in full accord with my brethren of the Bench that same cannot be upheld by us, especially after a thorough examination of the statutes with the resultant failure to find therein any recognition of a "squatter's right" accorded to any person other than an immigrant, and the record does not establish that Mr. Harmon immigrated into Liberia. I agree also that the record does not show that he entered into possession with the approval of, but rather in defiance of, constituted authority, and that therefore he is a trespasser *ab initio.* I further agree that if the President did not give him permission to purchase the land, but rather refused said permission, that was one of the class of acts of the President with which the judiciary has no right to interfere.

The conclusions which appear to me to be deducible from the points arising from this case are the following:

1. Neither party has acquired any legal title to the premises because the deed in question was not issued in conformity with any existing statute. Hence the deed should not only not be probated but it should also be delivered up and cancelled.

2. This Court should decree that the premises are, and shall remain, a part of the public domain unless and until the President shall issue a deed based upon a statute authorizing him to part therewith for consideration prescribed by statute. Inasmuch as my colleagues see the matter differently

I feel it to be my duty to record this dissent.