

**JAMES HARRIS**, Chairman, **JOSEPH GEMAYEL** and **LIZZIE McCORMACK**, Members of the Sub-committee, Grand Bassa County, representing the NATIONAL ECONOMY COMMITTEE, Respondents-Appellants, v. **T. A. KAIDBEY**, Agent for MESSRS. KAIDBEY & COMPANY, Grand Bassa County, Petitioner-Appellee.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE RUSSELL.

Argued November 6-8, 1944. Decided December 15, 1944.

1. An executory contract is one in which a party binds himself to do or not to do a particular thing, whereas an executed contract is one in which the object of the agreement is performed.
2. Where the rights of third persons are concerned a sale is not complete until delivery is made.
3. A delivery of goods under a contract of sale after sale has been forbidden by a writ of prohibition constitutes contempt of court.
4. A person is guilty of contempt whose conduct tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during litigation.

A writ of prohibition was issued by Mr. Justice Russell on petition of petitioner ordering respondents to desist from selling certain goods. Petitioner complains of violation of the writ by respondents, who are now before this Court on a charge of contempt on an appeal *en banc* from the ruling of the Justice adjudging one of the respondents in contempt. Held *guilty of contempt*.

No appearance for petitioner. *Edwin A. Morgan* for respondents. *Wm. Monroe Phelps*, *amicus curiae*.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

This case comes before us on appeal from the Chambers of Mr. Justice Russell and grows out of a petition by the petitioner made to the said Justice whilst presiding in Chambers, said petition praying for the issuance of a writ of prohibition because of certain actions on the part of the members of the subcommittee of Grand Bassa County representing the National Economy Committee in seizing and confiscating

sundry goods of kerosene and of cottons which they were selling or had proceeded to sell without first giving relator, the petitioner, his day in court.

The subcommittee was thereupon by the Justice informed of the filing of the petition and ordered to desist and stop all activities in selling the kerosene and all of the goods of the said T. A. Kaidbey, agent for Messrs. Kaidbey & Company, so seized, pending a regular service upon them of a writ to be issued by the clerk of the Supreme Court at Monrovia ordering the respondents to appear to show cause why said writ of prohibition should not be made absolute.

This order or notification was delivered to the deputy marshal of this Court at Buchanan, Grand Bassa, on March 15, 1943, with instructions to serve same on the subcommittee. This was done, according to the returns filed by the said deputy marshal.

Whilst at Monrovia attending the regular session of this Court, to the surprise of the Justice he received information from the counsel representing the petitioner, which reads as follows :

"LAW OFFICE, LOWER BUCHANAN  
April 1st 1943.

"HON. MARTIN N. RUSSELL,  
JUSTICE OF THE SUPREME COURT, R.L.,  
(IN CHAMBERS) MONROVIA.

"YOUR HONOUR,

"It has come to my client, T. A. Kaidbey's petitioner in the Prohibition proceedings pending before you in Chambers knowledge that notwithstanding the Deputy Marshal, Grand Bassa County, served the Notice and Order emanating from you on the members of the sub-Committee, Grand Bassa County on the 15th March A.D. 1943 at the hour of five minutes after two o'clock p.m., yet said Committee continued the sales of the seized goods until four o'clock p.m. in disregard to said Order, which without further comment is contemptuous.

"Faithfully yours,  
C. B. REEVES

*"Counsellor-at-law for T. A. Kaidbey, Agent for Kaidbey and Company, Grand Bassa County."*

Accordingly, on April 13, 1943 a writ of summons was ordered issued on the members of the subcommittee to appear before the Justice presiding in Chambers on April 28 to show cause why they should not be attached for contempt. Respondents on June 23 filed returns, the cause of the delay of which is set out hereunder, and in which they state the following as reasons why they should not be attached for contempt :

"1. Respondents deny the allegations of relator [petitioner] that said Order was disobeyed by them and submit that on the contrary said Order was by them scrupulously obeyed and respected. The Order was served on them by the Deputy Marshal of this Honourable Supreme Court after the sale, which on the afternoon of the said 15th day of March A.D. 1943 was held in the Customs building, Lower Buchanan, and when the subcommittee assembled in the office of Mr. Joseph Gemayel, one of their members was checking the money the proceeds of said sale. Respondents most emphatically deny that after the service on them of said Order any further sale was made, or any of the goods in that order indicated, was disposed of by sale to any person or persons as the attached affidavits will show.

"2. Respondents submit that they are prepared to on their oath testify to the truthfulness of these returns and produce witnesses, should Your Honour so require, in support of same."

It is to be observed that the Chairman of the subcommittee, Mr. James Harris, was at Monrovia when the writ was served.

The reason for the delay of the case and for the hearing thereof at Grand Bassa instead of at Monrovia was due first to a letter received from the Chairman of the subcommittee dated April 23, 1943 in which he requested that the assignment of the case be postponed from April 28 to May 10, stating as his reason therefor that such a favor would give him sufficient time to go to Bassa and with the other members of the Committee prepare their defense and return. He further requested that he alone be permitted to appear and represent the Committee so as to save expense to the Government which the appearance of the whole Committee at Monrovia would entail. The Justice agreed to the postponement, but insisted that the whole Committee appear.

But on April 27 another letter was received from the Secretary of the Treasury who, by the way, was also Chairman of the National Economy Committee, which reads as follows:

"TREASURY DEPARTMENT,  
MONROVIA, LIBERIA.

"63 3/ 1 63/443C. *April 27, 1943* .

"HIS HONOUR M. N. RUSSELL,  
ASSOCIATE JUSTICE, SUPREME COURT.

"SIR:

"Confirming my conversation with you today, I have the honour to request that you would be good enough as to permit the Prohibition case of Mr. Kaidbey to be heard and disposed of by you at Grand Bassa where most of the witnesses are, to avoid the expense by Government of having to convey them to Monrovia.

"Faithfully yours,

"[Sgd.] JAMES T. PHILLIPS,

*Secretary of the Treasury, R.L. Chairman, National Economy Committee."*

This request was granted and as the Justice was then still in Monrovia attending the regular session of this Court the case could not be heard until after his return to Bassa. But the granting of said request, which was unprecedented under our present arrangement of the working of the Court, was done solely to exhibit our desire to cooperate amicably with the executive branch of the Government. Thus the case was heard at Grand Bassa instead of at Monrovia where it should have been heard.

From the evidence adduced at the hearing it was brought out that with reference to the kerosene all the drums were still there with the exception of three drums which the Chairman stated on oath had already been paid for and therefore subsequently had been delivered. The question then arises, did this constitute an executory or an executed contract so as to warrant or justify the Committee in delivering the said drums after service of the notice?

We must here observe that the statement or evidence of the Chairman as to the sale of and payment for the three drums of kerosene is not corroborated by any other witnesses.

"Consensual contracts are either executory or executed. Unlike the distinction between express contracts and contracts implied in fact, the distinction between an executory contract and an executed contract is not based upon the evidence necessary

to establish it. In fact, these terms may be used to describe different stages of the same contract. As an eminent jurist has observed, an executory contract is one in which a party binds himself to do, or not to do, a particular thing, whereas an executed contract is one in which the object of the agreement is performed. The distinction would seem to relate to the legal effect of a contract at two different stages. An executory contract, it is said, conveys a chose in action, while an executed contract conveys a chose in possession." 6 R.C.L. *Contracts* § 9, at 590 (15) .

In other words,

"A contract is executory when the thing agreed has not been done. It is executed when the thing has been done. After one party has performed while the other has not, it is said to be executed on the one side and executory on the other." Bishop on *Contracts* § 624, at 245 (1887).

Although we are of the opinion that the contract with reference to the three drums would fall under the head of an executed contract if the drums were really paid for under ordinary circumstances, yet under the facts of this case where no evidence corroborative of the evidence of the Chairman of the subcommittee in support of the sale and payment appears in the record and particularly where the rights of a third person were concerned, namely, the petitioner, the owner of the goods seized and confiscated, the act of delivery becomes important, for "delivery is not essential to a sale of personal property where no rights of third persons are concerned. . . ." *Id.* § 83, at 34; 35 Cyc. of Law & Proc. *Sales* 304 (1910).

"The reason why a sale, even though the price is paid, is not good as respects third persons without a delivery is that the law regards the buyer as in fault, and as acting unfairly and fraudulently in allowing the seller, by retaining the possession, to hold out the apparent evidence of ownership, and thereby induce others to purchase or to credit him to their injury; hence it would seem and it has been so held if the third party had notice of such sale before his rights accrued, he cannot allege any defect in the sale for want of a delivery, because he was not injured by it." 24 R.C.L. *Sales* § 314, at 52 (1919).

Hence where the rights of third persons are concerned, until delivery is made the sale is not complete and, since delivery had not been made up to the time of the service of the notice by the deputy marshal, neither the Chairman of the subcommittee nor any other member of the subcommittee had the right to deliver the drums after the service of the notice, for the effect of a writ of prohibition or even the notice to the

parties concerned of the application therefor is to suspend all action and to prevent any further proceedings in the prohibited direction. Consequently, the subsequent delivery of the three drums of kerosene in violation of the order and notice of the Justice presiding in Chambers was and is in our opinion contemptuous.

With reference to the cotton goods we must decide whether or not the defense put up by the subcommittee in its returns relieves said subcommittee of the charge of contempt. Every effort was made at the hearing to show that the notice was not served on the subcommittee until after the sale was completely over for that day, but in the face of the sworn statement of the deputy marshal that he served the notice at five minutes after two o'clock in the afternoon and of the evidence of the Honorable Mr. Greaves, Collector Nurse, R. C. Cooper, and others who stated that they bought cotton goods at three o'clock and paid therefor at four o'clock and that the sale was made behind closed doors and after reading the evidence of the Chairman of the subcommittee himself which we shall do presently, it appears to us that the evidence above referred to seems to corroborate that of the said Chairman as regards the hour of sale since he said that he did not sell the cotton goods until after he had returned from breakfast which was long after two o'clock in the afternoon. We quote from his statement :

"On the 15th March about 8 a.m. the Committee started for that day selling kerosene. We sold up to about 1:30 to 2 o'clock, closed down and went to breakfast. En route for home I met Hon. Greaves who said to me in these words, 'Harris I didn't get any of the kerosene as I wanted. Therefore I want some of the cloth now.' I said to him, as I usually call him Uncle Tom, 'I am hungry. Permit me to go home and get something to eat and when I return we shall see about it.' He asked where was the cloth. I said, 'At the Internal Revenue Office.' . . . When I returned, I met Hon. Greaves standing on the platform of the Customs. I asked him whether the office was opened ; he said he did not know. I ran up the steps and met the office of the Chief Clerk open, but the Collector's door was closed. I ran downstairs to him and said, 'Nobody is up there yet.' Then he said to me, 'What is the trouble between you and Nurse the Collector?' I said, 'To my knowledge, there is no trouble,' and [as] he is telling me what Mr. Nurse had said about me up came Hon. Brumskine. About two minutes later Collector Nurse came. Whilst asking Collector Nurse of what he had said about me, then came the Chief Clerk of the Bureau of Internal Revenue. I said to him, the Chief Clerk, 'Where is the cloth I left in your office the other day?' He said that the Collector took them to his Office. There the conversation between me and the Chief Clerk stopped. Then I turned to Collector Nurse with reference to what he had said about me. Whilst talking, the Collector of Internal Revenue, in the

person of Mr. Robert Cray, came in. We then went upstairs to his office; then rushed in several others to purchase cloth. Each person took what they wanted as well as thread and paid, with the exception of Hon. Greaves and Mr. Randolph Cooper. Then Hon. Greaves said to me, 'I'll hand you the money tomorrow, Harris.' Mr. Randolph Cooper said, 'Hon. Greaves will pay you for me.' I asked Hon. Greaves if it was okay. He said, 'Yes.' The parties left."

Eminent writers of the law have held ever and anon that courts should be jealous of their dignity and of their authority and any attempt to ignore their processes ought to and should be dealt with in a most rigorous manner. In *Ruling Case Law* we find that:

"Contempt of court has been defined as a despising of the authority, justice, or dignity of the court; and he is guilty of contempt whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigations." 6 *Id. Contempt* § 1, at 488 (1915).

In the face of the evidence given by the Chairman of the subcommittee himself, which shows that the sale of the cloth must have been long after two o'clock, and in the face of other evidence uncontradicted and in confirmation of what the said Chairman himself said, we have no alternative but to affirm the judgment of the Justice presiding in Chambers and adjudge the Chairman of the subcommittee guilty of contempt with costs of these proceedings; and it is hereby so ordered.

*Guilty of contempt.*