ALBERT J. KILPATRICK, Petitioner, v. **OOST AFRIKAANSCHE COMPAGNIE** through its General Agent, DANIEL VAN EE, and His Honor W. O. DAVIES-BRIGHT, Circuit Judge of the Sixth Judicial Circuit, Montserrado County, Presiding by Assignment, and Respondents.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE REEVES.

November 23, 24, 1948. Decided January 6, 1949.

Although generally prohibition is not demandable as a matter of right when another complete and adequate remedy is available, under certain circumstances the grant or refusal rests within the sound discretion of the court to which application is made.

Oost Afrikaansche Compagnie, co-respondent herein, instituted an action of damages against petitioner for breach of a contract. Simultaneously the company applied in equity for a writ of ne exeat to require petitioner to put up bail of eleven thousand one hundred fifty dollars or be jailed until further order of court. Petitioner moved to vacate the ne exeat proceeding and to be discharged without day. The lower court judge, corespondent herein, ordered petitioner imprisoned unless he could make bail. Petitioner applied to Mr. Justice Reeves for a peremptory writ of prohibition. Upon appeal to this Court *en banc* from the ruling in chambers granting the petition for the writ, *affirmed.*

Momolu S. Cooper for petitioner. O. *Natty B. Davis* for respondents.

MR. JUSTICE SHANNON delivered the opinion of the Court.

Because of what petitioner considered gross legal advantage sought to be taken of him by respondents, as will be explained herein, petitioner applied in the chambers of our distinguished colleague, Mr. Justice Reeves, for a writ of prohibition against respondents, which said Justice, after proceedings duly had, granted ; and it is from his ruling therein that this matter is before us sitting *en banc* on appeal.

The facts culled from the petition are as follows:

An action of damages for violation of a contract was instituted by Oost Afrikaansche Compagnie, one of the respondents herein, through its general agent, Daniel Van Ee, against the petitioner without attachment proceedings. Simultaneously said Oost Afrikaansche Compagnie went into equity and applied for a writ of ne exeat to

require petitioner to give bail in the sum of eleven thousand two hundred and fifty dollars or be detained in the common jail of the county to abide further orders of the court. Upon service simultaneously of the writs of summons and ne exeat upon petitioner, petitioner filed a motion to vacate the ne exeat proceeding and to discharge him without day, citing the Debt and Damages Act of March *5,* 1936, which said act, as petitioner contends, prohibits the imprisonment of judgment debtors in actions of debt and/or damages of the nature of the one in question. His Honor W. O. Davies-Bright, the presiding judge, who is the other respondent, without hearing the said motion to determine its merits, instructed the clerk of said court to issue a commitment for the imprisonment of petitioner in the common jail of the county unless he could give bail in the sum named above, a fact which, in the absence of the required bail, would have obviously effected petitioner's imprisonment and the restraint of his liberty contrary, as petitioner submits, to the provisions of the act cited above. L. 1935-36, ch. XXIII. It is because of the above, which petitioner submits was prejudicial to his interests and which tended to deprive him of his civil and personal liberty, that petitioner commenced the proceeding for a writ of prohibition against the respondents.

Upon issuance of the notice to the respondents to appear on a day named to show cause why the peremptory writ of prohibition should not be granted as prayed for and ordered issued, the two respondents separately filed returns, the respondent-judge subsequently amending his. It is striking to note that in neither of these returns are the facts set out in petitioner's petition denied, which was specifically noticed by our colleague before whom the matter was heard in chambers. Said returns only raised pleas in abatement or demurrers. We are so much in agreement with said ruling with respect to these pleas that we refuse to disturb it.

We are, therefore, left to consider whether or not, under the facts submitted in the petition and not controverted, the writ of prohibition was correctly granted. Both respondents have assumed the position that, whilst it is true that statutes of the country expressly prohibit the imprisonment of persons against whom judgments have been entered in either actions of debt or actions of damages of the character of one in violation of contract, this provision only refers to situations after judgment and not to situations before judgment, thereby implying that it is reasonable for a party to be imprisoned in the discretion of the court to secure his opponent in the satisfaction of an eventual judgment, notwithstanding the fact that after said judgment the provisions of the statute of March *5,* 1936 [L. 1935-36, ch. XXIII], can be invoked and applied to effect his release after the establishment of the claim for which the action was instituted. We ask what the purpose would be of imprisoning petitioner

before judgment if his release must naturally follow even if the judgment is against him. The folly and baselessness of the contention is apparent.

Whilst it is true that prohibition does not generally lie when and where there is otherwise available a complete and adequate remedy, nevertheless there are exceptions to this rule :

"In the absence of statutory provisions establishing a contrary rule, prohibition is not demandable as a matter of right when another complete and adequate remedy for redressing the action complained of is provided by law. Ordinarily prohibition will be denied where other remedies exist which, if availed of, would afford complete and adequate relief. However, the grant or refusal of prohibition in such cases is a matter resting within the sound discretion of the court to which application is made, and prohibition may be granted *notwithstanding the existence of another adequate remedy.* Thus, if the proceedings complained of are clearly beyond the jurisdiction of the inferior court or tribunal, and must ultimately be held to have been mistaken, prohibition should issue before the party aggrieved is put to the difficulties that would be raised, and the court to the inconvenience that would ensue, by permitting such proceedings to continue. So likewise, even though another adequate remedy is available to the party aggrieved, prohibition may nevertheless be granted where it is deemed to be in the public interest to put at rest the question of jurisdiction presented by the application, at the earliest possible moment.

"Prohibition may issue notwithstanding another remedy for the grievance complained of is available if such other remedy would not afford complete and adequate relief. To be adequate the concurrent remedy must be sufficient to afford the relief the case demands. . . . Whether a remedy is adequate or not is a question resting within the sound discretion of the court to which application for relief is made, and is to be determined on the facts of each particular case. The court may properly consider the expense involved in the prosecution of other remedies, or the delay or inconvenience incident thereto. The fact that the action complained of is about to be taken in violation of express statutory provisions may be considered. 50 C.J. *Prohibition* ∫ 56, *57* (1930). (Emphasis added.)

Petition for a writ of habeas corpus is one of the adequate and complete remedies suggested by the respondents in their returns and pressed in the argument before us ; but we are not in agreement with it because at the stage that the petition was made there is no indication from any of the pleadings that the physical body of the petitioner had already been restrained by imprisonment or otherwise, which would have

been ground for the writ. However, anticipating that action is about to be taken "in violation of express statutory provisions," it may be considered proper to issue prohibition to prevent the wrong.

Under the principles that "equity aids the law" and "equity follows the law," we are of the opinion that the invocation of equity in a pseudo-attempt to aid the law but in truth to supplement or evade express statutory provisions would be a travesty of justice and therefore should not be encouraged.

The judgment in chambers granting the peremptory writ of prohibition is hereby affirmed with costs against respondents; and it is hereby so ordered.
Affirmed.