NAGBAE WANNEY, Appellant, v. **NATHANIEL V. MASSAQUOI**, Stipendiary Magistrate for Firestone Plantations Area, Montserrado County, Police Officer MAYOR of the Bondiway Court, and **B. C. TABBLEH**, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 13, 18, 1949. Decided December 16, 1949.

1. On a hearing on a writ of habeas corpus a judge must grant a constitutional trial and examine prisoner and others under oath.

2. A prisoner has a constitutional right to bail unless *he* is held for a capital offense and the proof is evident or the presumption great.

3. A prisoner's notice of appeal serves as a supersedeas to the ruling of the judge remanding him to prison.

4. A writ of summons issued by a magistrate of one area cannot be served on a person without the area and thus cannot place such person within the jurisdiction of the court of the magistrate.

5. When a prisoner, having been denied habeas corpus and en route to jail again, pays the judgment by borrowing money after the judge has refused bail pending an appeal, said payment is made under duress, and a motion to dismiss the appeal on the grounds of compliance with the judgment will be denied.

T. G. Collins for appellant. *M. S. Cooper* for appellees.

An action of damages was brought by co-appellee Tabbleh in the stipendiary magistrate's court of the Firestone Plantations magisterial area before co-appellee Massaquoi against Isaac G. Tweh, a resident of Monrovia. After entry of judgment by default against Tweh and the return of a writ of execution unsatisfied, co-appellee Massaquoi issued a commitment against Tweh and led a corps of officers to Monrovia, whence they removed him by force to the Bondiway jail. Circuit Judge Phelps granted a writ of habeas corpus on the application of appellant, a relative of Tweh, but on hearing sustained the return of the appellees and denied Tweh the right to tender bail pending appeal. Tweh borrowed funds to pay the judgment, and on appeal to this Court appellees moved to dismiss on the grounds that the judgment of

the magistrate's court had been satisfied. *Motion to dismiss denied, judgments* of lower courts *reversed,* and *reimbursement ordered.*

MR. JUSTICE DAVIS delivered the opinion of the Court.

"[A]ll prisoners shall be bailable by sufficient sureties, unless, for capital offences, when the proof is evident, or presumption great: and the privilege and benefit of the writ of *habeas corpus,* shall be enjoyed in this Republic, in the most free, easy, cheap, expeditious and ample manner : and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding twelve months." Lib. Const. art. I, sec. 20, 1 Lib. Code 7.

Echoing in our ears, as we entered upon a hearing and adjudication of this case, was the pronouncement made thirty-six years ago by our late colleague Mr. Justice McCants-Stewart, when speaking for this Court in the case *Peakeh v. Nimrod, 2* L.L.R. 102, 104, he declared that the writ of habeas corpus was "the greatest writ known to the juridical systems of English speaking peoples the world over, as it is the life preserver of every man's personal liberty. . . ."

When this case was reached on our docket and assigned for hearing, appellees through their counsel filed a motion to dismiss the appeal on the grounds that the judgment rendered in the circuit court by His Honor Judge Phelps, from which the appeal had been prosecuted by appellant on behalf of her relative Isaac G. Tweh, the prisoner in question, had been fully complied with by the said prisoner Isaac G. Tweh. It was not until a resistance to this motion was filed by appellant that the true and real picture of this case was disclosed and the apparently concealed ghost of injustice that had haunted prisoner in the courts below and had driven appellant before this forum became not only visible but conspicuous.

From the records certified to us from the courts below and from the arguments and admission made by counsel at this bar, the following facts are culled : One B. C. Tabbleh, one of the appellees in these proceedings, instituted an action of damages against one Isaac G. Tweh in the Stipendiary Magistrate's Court of the Firestone Plantations Magisterial Area before Magistrate Nathaniel V. Massaquoi, one of the appellees in this case, for alienating the affections of his principal wife. Pursuant to the institution of said suit, the said magistrate issued a writ of summons which he sent down to Monrovia for service upon Isaac G. Tweh, who was and is up to this moment a resident of the Commonwealth District of Monrovia. The records further show that the writ was duly served upon Tweh, and that as a result of his failure to

appear at Bondiway to answer the said complaint a judgment by default was entered in favor of the plaintiff B. C. Tabbleh, now one of the appellees. Subsequently there was an entry of final judgment. After the entry of final judgment, Tabbleh prayed for the issuance of a writ of execution, which prayer was granted, and the Magistrate issued the execution, omitting arrest and land clauses, and making said writ of execution returnable before the stipendiary magistrate's court. The writ of execution having been served upon Tweh, the officer made return to said writ in the following language, to wit:

"I John Roberts, Policeman for Magistrate court, Firestone Plantations Area, Montserrado County, do hereby make return that by virtue of the within Writ of Execution in an Action of Alienation of affection of a Principal wife, between the within named B. C. Tabbleh Plaintiff, and the within named Defendant, issued on the 3rd day of December, A.D. 1948, I have duly served same according to law, and the Defendant has failed to show property to be seized and exposed to sale. Dated this 4th day of December, A.D. 1948.

"[Signed] JOHN ROBERTS,
Policeman."

On December 14, ten days later, a commitment was issued by Magistrate Massaquoi against Tweh, which commitment we deem it necessary to quote verbatim :

"COMMITMENT UPON CONVICTION.
REPUBLIC OF LIBERIA to *Mayor* Chief of Police for the Firestone Plantations Area, GREETING:

"You are commanded to receive into your custody the body of *I. G. Tweh* Defendant convicted this day of the offense of Alienation of a Principal wife and sentenced to pay damages in the sum of $100.00 together with ($21.75) costs and to be imprisoned in the common jail for the term of 304 days; and be detained until said sentence shall have been served and satisfied. "And for so doing this shall be your warrant.
"ISSUED THIS 14th day of December, A.D. 1948.
"[Sgd.] N. V. MASSAQUOI,
Stipendiary Magistrate Firestone Plantations Area."

It was also brought out by appellant's counsel at this Bar and not controverted by appellees' counsel, that Tweh having failed to show the policeman property to seize

and expose to sale, the magistrate, after receiving the officer's report of this, came down to Monrovia with a corps of officers, and forcibly seized Tweh and forthwith carried him to the Firestone Plantations to be imprisoned thereat. It was while serving sentence in the Bondiway Jail that the writ of habeas corpus, the subject of these proceedings, was applied for by appellant and granted by His Honor Monroe Phelps, who eight days later called the matter for hearing and sustained the returns of appellees, thus remanding prisoner Tweh to jail. Upon entry of the order by the judge for prisoner's remand, and notice of appeal being given, Tweh requested permission of the judge to tender bail pending the appeal prayed for, but the trial judge gave no hearing to this "bail-cry" of prisoner and prisoner was taken up and thrown bodily in the Bondiway pick-up. While prisoner was under such restraint, not wanting to suffer further imprisonment, he borrowed the amount from Magistrate Massaquoi and paid the sum adjudged against him.

Having thus given the genesis of the issue, we shall now proceed to state and pass upon the questions, which, in our opinion, we consider essential to an impartial determination of these habeas corpus proceedings.

At this Bar both appellant's and appellees' counsel argued with great acumen; and in their respective efforts to show the legal efficacy and correctness of their contentions they waxed eloquent. Passion however, as is usual, was stilled, and in the cool spirit of the law the blind goddess placed and weighed these arguments in the balances, not seeing the parties, but marking the merits of their contentions.

From the facts and circumstances recited above, the following questions are presented, to wit :

1. Whether the circuit judge who ordered the issuance of the writ of habeas corpus afforded appellant a constitutional trial in keeping with the provisions of our statutes controlling habeas corpus proceedings.

2. Whether said judge examined the prisoner or other persons under oath, thus ascertaining the truth surrounding prisoner's incarceration.

3. Whether he inquired into the truthfulness of the allegations that the Bondiway Magistrate whose territorial jurisdiction is limited by statute to the Firestone Plantations Magisterial Area, came into the city of Monrovia with a posse of men (officers of his area) and arrested prisoner without a warrant of arrest and forcibly took him away to the Firestone Plantations when the writ of execution issued by the

magistrate contained no arrest clause.

4. Whether the said circuit judge, realizing that he was hearing a matter which involved the personal liberty of a citizen, investigated how prisoner I. G. Tweh, ten days after the writ of execution was returned before the magistrate at Bondiway, found himself in the magisterial area and in the prison cell.

It is indeed regrettable to state that the records certified to this Court show that the judge, in utter disregard of the provisions of our statutes relating to habeas corpus proceedings which command him to examine upon oath the prisoner or other persons in position to give evidence, failed to inquire into these facts. Influenced possibly by some common law rule, which could have no effect in the face of our statute on the point, said judge sustained appellees' answer and remanded prisoner to still suffer forfeiture of his personal liberty and be haunted by the ghost of injustice.

Another reversible error was committed by the trial judge when, after entering the order remanding prisoner to Bondiway, prisoner gave notice of appeal from his decision, in the meantime asking to be allowed bail pending the appeal, and the judge, paying no heed to such application, handed him over to his former custodians to be borne away despite the provision of our Constitution, *supra,* which states in plain and simple, yet mandatory, language that all prisoners shall be bailable by sufficient sureties unless in capital cases, where the proof is evident and the presumption is great. Moreover, it should have appealed to the sober consciousness of the judge that prisoner's notice of appeal was sufficient to serve as a supersedeas to his ruling remanding him to prison and that the least that he could have done in the furtherance of justice was to have admitted prisoner to bail pending an affirmation or reversal of his ruling by the appellate court. This right prisoner was, however, denied. What an anomaly!

Appellees' counsel, in his efforts to justify the request for an affirmation of the judgments rendered against appellant in the circuit court and in the magistrate's courts, argued that the action instituted against prisoner Tweh, in satisfaction of judgment of which he was imprisoned, was one for the alienation of the affections of the head or principal wife of one of the appellees, Tabbleh, and is one of such actions which the statutes of 1940 denominate as actions in which punitive damages are awarded against the offenders, who may be imprisoned in the event of their inability or failure to satisfy said judgment. L. 1939-40, ch. XI I, §§ 1, 2. This argument would seem plausible, for recourse to the acts of the Legislature passed during the 1939-40 session discloses that there is such a provision authorizing the

imprisonment of persons who are unable or fail to satisfy a judgment rendered against them in actions of damages on this character. However, it seems to us inexplicable and enigmatic that a writ issued by the Stipendiary Magistrate of the Firestone Plantations Magisterial Area, whose territorial jurisdiction is defined and designated by the Legislature, and within which territorial jurisdiction Monrovia is not embraced, could have reached Monrovia, been served upon a party, and have placed such party under the jurisdiction of the magistrate's court at Bondiway. Moreover, how and by what legal and lawful means or authority was Tweh's body taken out of Monrovia in order to be incarcerated in the Bondiway jail, when ten days prior to the issuance of the commitment filed by appellee Massaquoi with his returns the policeman sent to serve the writ of execution had made a return stating that Tweh had shown him no property to seize and sell and in this return never stated that he had arrested Tweh's body in virtue of said writ of execution. How then did Tweh get to Bondiway? Was there a subsequent writ of execution issued ; and if so was there an arrest clause included in this subsequent writ of execution; and was it made returnable before the Circuit Court, in keeping with law?

In this argument respecting the alleged compliance of Isaac G. Tweh with the judgment of the circuit court by paying the amount covered by the judgment, appellant's counsel brought to the attention of this Court that said payment was made under duress while prisoner was in the custody of appellee Massaquoi's officers en route for Bondiway jail after his remand by the circuit judge and, of course, after the judge's refusal to allow him bail. Moreover the money paid by Tweh was borrowed from Magistrate Massaquoi by Tweh, for which notes of hand and receipts were issued and exchanged—some of which were exhibited at this Bar during the arguments. When asked whether this statement of appellant's counsel was true, appellees' counsel said that he could not say whether or not it was true ; but that he knew the money was paid by Tweh on the day of his remand by the circuit court to the Bondiway jail.

We do not hesitate in declaring and pronouncing the trial, imprisonment, and treatment of prisoner Tweh irregular, illegal, and an improper use of judicial power.

In view of which the motion to dismiss is hereby denied ; the judgments of the courts below are hereby reversed ; and, considering the circumstances under which prisoner Tweh was forced to pay said amount covered by said illegal judgment, same is hereby ordered refunded forthwith to him by appellees, that is to say within thirty days after reading and rendition of this opinion and judgment. Costs of these proceedings are to be paid by appellees. And it is hereby so ordered.

Reversed.