M. YUNIS and **FLORENCE HOWARD**, Petitioners, v. **WILLIAM R. DAVIES** and **G. C. N. TEHQUAH**, Justice of the Peace, Montserrado County, Respondents.

APPEAL FROM THE CHAMBER OF MR. JUSTICE DAVIS.

Argued November 20, 21, 1950. Decided February 2, 1951.

A writ of prohibition should be directed to the judge and parties litigant in the inferior court commanding them to cease from prosecution of the matter in controversy, and failure to join all parties litigant is fatal to the petition.

Respondent Davies and others sued petitioners in summary ejectment before co-respondent Tehquah. Petitioners demurred on a jurisdictional ground and were overruled by said co-respondent who suspended the case for a period of time prior to resumption of the case. Petitioners petitioned Mr. Justice Shannon in chambers for a writ of prohibition. Mr. Justice Shannon gave instructions for the issuance of the' writ, but before the prohibition proceeding could be determined Mr. Justice Davis was assigned to chambers. Mr. Justice Davis sustained respondents' defense of non-joinder of parties, and denied the petition for the writ. On appeal to this Court *en banc* from the order denying the petition, *petition denied and order affirmed.*

T. G. Collins and *Carney Johnson* for petitioners. *D. B. Cooper* and *R. A. Henries* for respondents.

MR. JUSTICE REEVES delivered the opinion of the Court.

In 1945 our law-making body, the national Legislature, in its wise judgment enacted a statute embracing summary ejectment. L. 1945-46, ch. VIII.

Under the rights authorized by said statute, William R. Davies, Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe, and Ella Findley, heirs and next of kin of the late William A. Johnson, filed a complaint in summary ejectment before Justice of the Peace J. C. N. Tehquah, Montserrado County, who accordingly issued the necessary writ of summons to M. Yunis and Florence Howard, defendants. Said defendants were summoned and appeared. All parties being present, the justice of the peace proceeded to hear the case when counsel for the defendants orally demurred, raising the jurisdictional question that the justice of the peace had no trial jurisdiction over the issue involved. Said jurisdictional issue was argued pro *et con* after which the justice of the peace overruled said demurrer, ruled the case to trial, but for

justifiable reasons suspended the case until Thursday, May II, at three o'clock.

In this interim defendants' counsel filed a petition for a writ of prohibition in the Supreme Court of March term, 195o, in chambers before His Honor E. Himie Shannon, Associate Justice, on the tenth day of said month. Justice Shannon gave instructions for the issuing of the necessary writ, but before said prohibition proceeding could be determined, His Honor Associate Justice Davis was assigned to chambers.

Plaintiffs, now respondents, raised in the first count of their returns the plea of non-joinder of parties-respondent. Since it was a law issue, it was the first to be considered among the many. The Justice in chambers directed his attention to said count which we hereunder recite:

"1. Because respondents submit there is a non-joinder of parties respondents in that in the original ejectment case filed in the court of Justice of the Peace Tehquah one of the respondents in these proceedings, the plaintiffs are : William R. Davies, Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe and Ella Findley, heirs and next of kin of the late William A. Johnson, and all of these parties should have been joined with C. N. Tehquah, Justice of the Peace for Montserrado County, as parties respondents which has not been done; for Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe and Ella Findley who are joint tenants with William R. Davies in the said property have not been joined as parties-respondents in these proceedings. And this respondents are ready to prove."

The petitioners traversed said count in count three of their motion to quash returns in the following manner:

"3. And also because petitioners submit as to the alleged non-joinder of proper parties in respondents, petitioners submit that inasmuch as omission , of the names of other respondents does not go to the merit or demerit of the jurisdictional issue, petitioners respectfully pray that this Honourable Court will grant this request of petitioners for the insertions of the omitted names, namely : Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe and Ella Findley, heirs and next of kin of the late William A. Johnson as respondents to these proceedings without prejudice to this application."

Respondents in count two of their resistance to said motion justified count one of returns, as follows :

"And also because respondents submit that a writ of prohibition under our Statutes is one directed to the court and the parties litigants. The Petitioners not having joined the proper parties litigants, the writ has not been directed to the court and parties litigants. Hence, before this court can entertain the petition for a Writ of Prohibition it has to place under its jurisdiction the proper parties to the suit. The return of respondents is therefore sufficient when it raises the question of non-joinder of parties-respondents. And this respondents are ready to prove."

There are many other questions raised in the various motions, answering affidavit, and other pleadings, but, as we previously said, the Justice in Chambers directed his attention to the issue raised in count one of said returns when he dismissed the petition with cost against petitioners. We are in harmony with this ruling, which we quote hereunder :

"Adhering to the provisions of our Statutes with respect to courts disposing of issues of law before proceeding to enter or pass upon the issues of facts or merits of the case, we shall address ourself to count (1) of the Returns which attacks the propriety of the procedure adopted by petitioners in failing to include in their Petition for Prohibition all of the partiesplaintiff in the original action of Summary Ejectment, namely: William R. Davies, Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe and and Ella Findley heirs and next of kin of the late William A. Johnson, but rather only included in this petition for prohibition one of the said partiesplaintiff, William R. Davies and omitted the rest. In other words they are stressing the question of a nonjoinder of proper parties. Let us see now what legal effect such a plea could have upon these proceedings.

"Reference to our Statutes on Prohibition reveals the following provision as being recorded on page 262 of volume two of our Revised Statutes :

" 'Sec. 1399. PROHIBITION.—A writ of prohibition is a writ commanding the Court and party to whom it shall be directed to desist and refrain from any further proceedings in the suit, or matter specified therein until the matter can be disposed of by the Court to which the writ is made returnable, and to show cause why they should not be absolutely restrained from any further proceedings in such suit or matter. . . ."

"The question evolving out of the reading and study of the foregoing citation of law is, who were the parties whose action petitioners sought to restrain by invoking the

strong arm of prohibition? Recourse to the records discloses that the parties were William R. Davies, Annette Potter by and through her husband Urias A. Potter, J. E. Crusoe and Ella Findley, heirs and next of kin of the late William A. Johnson.

"Petitioners' counsel in his argument at this bar, and in an effort to overcome the attack of respondents with respect to petitioners' failure to make all of the parties-plaintiff in the lower court parties to these prohibition proceedings, contended with emphasis that prohibition according to the common law rule is directed to the Judge of the inferior Tribunal, and as such its primary and main object is to restrain said Tribunal from acting in the particular matter without much reference to, or stress upon the parties litigant; consequently an omission of any of the parties in the original suit from the prohibition proceedings is not sufficient to vitiate the proceedings and warrant a dismissal of the petition. Countering this argument, and in an effort to negate same, respondents submitted that, in addition to the provisions of our Revised Statutes cited supra, which require the parties litigants in the original suit to be also restrained and naturally included in the petition or application for the writ, this court in the case Hansfield P. Parker versus E. J. S. Worrell decided January 6, 1925, and reported on page 525 of the second volume of the Liberian Law Reports, further supports the doctrine enunciated in our Statutes that a writ of prohibition should be directed to the Judge and parties litigants in the inferior court, commanding them to cease from prosecution of the matter in controversy in that court. It follows therefore, that in order to be able to have the writ directed to them, and in order to be able to correctly restrain or prohibit them from further prosecution of the given controversy, they should first be made parties to the prohibition proceedings, for whatever judgment is rendered by the court issuing the writ of prohibition, would certainly affect their interest either adversely or favourably.

"Dilating on the question of Joinder and Non-Joinder of proper parties, our distinguished colleague Mr. Justice Barclay, speaking for this court in the case H. Lafayette Harmon petitioner versus S. Raymond Horace Commissioner of Probate, Montserrado County, respondent—Objections to the probation of Lease Agreements, held that:

" 'We sustain the contention of respondent with respect to the issue of non-joinder of parties petitioners-appellants, since the parties in interest affected by the ruling of the Commissioner of Probate should have been brought into the petition as parties in interest, because the termination of a proceeding by this method would preclude all of them from attempting additional proceedings in the same matter, an effect which would not obtain if they were not brought in as parties litigant. Further, we are

not willing to concede the point that an attorney at law and not of fact has the legal right to bring actions, suits, or other legal proceedings in court in his own name and for his clients. The method, therefore, adopted by the petitioner in this regard does not find favor with us, especially so when it is not shown directly or by implication for which of the parties to the several indentures of lease, barring the one in which he is the lessor, he is solicitor and counsellor.

"On the issue of non-joinder of parties petitioners-appellants, we quote the following:

" "Persons having a joint or common interest in the issuance of a writ of mandamus may join in an application therefor, and are generally required to do so, unless a separate proceeding by one alone may be maintained without prejudice to the others. Persons having several and distinct interests, on the other hand, cannot join in the application, even though their interests are analogous, and accordingly anyone may bring a separate proceeding for relief without joining the others. . . ." 38 C. J. *Mandamus* § 552, at 847 (1925).' *Harmon v. Horace, 10* L.L.R. 29 (1948). "It requires therefore neither musing nor debate to show that William R. Davies, Annette Potter by and through her husband Urias Potter, J. E. Crusoe and Ella Findley, heirs and next of kin of the late William A. Johnson, had a common and joint interest in the property the subject of the Summary Ejectment suit, and naturally in the action itself in the Justice of the Peace Court, which suit petitioners sought by prohibition to restrain and inhibit them from prosecuting; and this being true, they should have all been made parties to said prohibition proceeding and not only William R. Davies, especially so where it is nowhere shown that he instituted the original action as agent or attorney in fact for the other parties, and therefore petitioners' failure to join them as parties-respondents is a fatal error.

"In the light therefore of the foregoing conclusions, and in view of the citations of law quoted *supra,* we regret that as much as we would like to reach and pass upon the other issues involved in the case, and which to us seem quite interesting too, yet we are barred from doing so, and are left with no alternative except to sustain the plea of respondents in respect to the non-joinder of proper parties in interest, and dismiss the petition with costs against petitioners. And it is hereby so ordered."

This court therefore affirms said ruling of His Honor Associate Justice Davis in chambers ; and it is hereby so ordered.
Order affirmed.