KPUNEL, A. GARGAR RICHARDSON, e/ *al.,* Ap-

pellants, r. Clan Chief ARMAH GBASS Ik and JAMES W. HUNTER, Assigned Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellees.

**APPEAL FROM** R **ULI NG I** N **CHAM BERS** O N **APPLICATION FOR WRIT OF**

PROH IBITIO N TO THE CIRC U IT CO URT OF TH E SIXTH *5* > DIC IAL CIRC U IT, MO NTSERRADO CO U NTY.

Argued April 9, 10, 1962. Decided June 1, 1962.

Contempt proceedings may be either criminal or civil in nature.

1. The purpose of criminal contempt proceedings is to vindicate the dignity of the court.
2. Civil contempt proceedings are instituted by private individuals for the purpose of protecting their rights.
3. Civil contempt proceedings must be instituted by a written complaint or bill of information which must be duly served upon the defendant or respondents by the aggrieved party who is called the informant or relator.
4. Contempt proceedings are distinct from any litigation from which they may arise, and must be separately tried and adjudicated.
5. A writ of prohibition will not be granted to correct irregularities in contempt proceedings wherein the petitioners for prohibition inexcusably failed to appear as defendants.
6. The basic function of pleadings is to give notice of facts which the pleader intends to prove. 1956 Code, tit. 6, § 252.

Appellant Kpunel instituted an action for damages in the circuit court, naming appellee Gbassie as defendant. During pendency of the action for damages, which in- volved a controversy over title to land, appellee Gbassie orally applied to appellee Hunter, as trial judge, for an order requiring ap pellant Kpunel, and appellant Rich- ardson as counsel for appellant Kpunel, to show cause why they should not be held in contempt of court. Ap- pellants failed to appear to defend in the contempt pro- ceeding, but applied to the Justice presiding in Chambers for a writ of prohibition to the circuit court against the contempt proceeding. A ruling in Chambers denying

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prohibition was appealed to the Supreme Court, en *banc*

by the petitioners. The ruling was *affrmed.*

A. Gorpnr Ht *cfinrdion* for appellants. *Peter H. Georg e* for ap pellees.

Mx. USTICE WARDSWORTH delivered the opinion of the Court.

Petitioners in the above-entitled cause are before this Court on appeal from the ruling of the Justice presiding in Chambers who, after hearing arguments *pro et con* upon the petition and returns of the parties herein, dis- posed of said cause by denying said petition and ruling petitioners to costs. Petitioners, not being satisfied with the ruling thus rendered, have come hither for a review of said matter by this Court en *banc.*

The genesis of these prohibition proceedings, as culled from the records before us, may be succinctly stated as follows. A dispute arose between Kpunel and Armah Gbassie over a certain parcel of land allegedly owned by Kpunel, situated within the tribal reserve of the tribal area wherein Kpunel is resident upon permission granted him by the tribal authorities. Gbassie claimed this par- cel of land which was occupied by Kpunel, alleging that it had been previously given to Gbassie by the tribal people of the area.

The contention between Kpunel and Gbassie over this parcel of land grew tense and bitter, and eventually re- sulted in a suit at law instituted by Kpunel in the Circuit Court of the Sixth judicial Circuit, Montserrado County, claiming damages for a wrong. Armah Gbassie, having been served with process in said matter, appeared and filed an answer claiming title to the land. The question of ownership of the parcel of land in dispute was raised in Counts i and z of the answer, and without the court pass- ing upon the merits or demerits of the complaint and an-

swer, although said matter had been ruled to trial by Judge Dennis on Counts I and 4 of the complaint, and I and 4 of the answer, plaintiff entered upon the premises and commenced operation thereon by cutting sugar cane, grinding it, and distilling domestic liquor.

In the light of this, the defendant gave information to the court that plaintiff had informed defendant that plaintiff’s counsel, A. G argar Richardson, had advised plaintiff to enter upon the premises and cut the sugar cane thereon and convert the proceeds to his own use. The court thereupon sent a summons to plaintiff and counsel to appear and show cause why they should not be held in contempt of court for interfering with property consti- tuting the subject of litigation pending before the court. The contempt proceedings having been assigned for hear-

ing on July i 7. 1 61, the said plaintiff and counsel, elect- ing not to appear as directed by the writ of summons in

the said contempt proceedings, fled to the Justice presid- ing in chambers with a petition for a writ of prohibition dated July i z, i q6 i, five days prior to the assignment date for the hearing of the contempt matter.

Contempt of court is divided into two classes: criminal, which is for the purpose of vindicating the dignity of the court ; and civil, which is brought by information filed by private individuals for the purpose of protecting their rights. I do not consider it relevant to the issue here to consider whether what happened could be construed as direct or constructive contempt. But it would seem that civil contempt was intended to be charged, since the suit was commenced by information given the judge by counsel for one of the parties in the case, apparently in protection of his client’s rights.

The questions before us in this case, then, are: ( i ) whether it was regular in civil contempt to have issued a writ for a party to answer in the circuit court on the verbal allegation of an informant; and (z) whether prohibition would lie to review the proceedings where the judge

attempted to have the respondent answer on the said

verbal allegation of the informant.

In the first place, all matters of civil contempt must be brought before the court upon a complaint of the ag- grieved party, who is usually called the informant or relator, which complaint is called a bill of information. Matters can only be adjudicated upon the institution of some suit; and the institution must necessarily begin by complaint in order to give the defendant or respondent notice of the charge. Most particularly is this true in courts of record ; and the more mandatorily is this re- quired to be in writing.

“In the case of a civil contempt the proceeding for its punishment is at the instance of the party interested and is civil in its character.” Gi6ion v. Wtfion, 8 L.L.R. 165› 7 ( 943-)

Contempt, even where it grows out of a matter pending,

is a separate and distinct matter in itself, and may be determined without necessarily affecting the results of the case out of which it grows.

This being so, how very irregular and contrary to rec- ognized procedure in courts of record it is for civil con- tempt proceedings to be commenced upon the information or oral allegation of counsel on one side in a civil case against his adversary on the other. In the contempt proceedings brought against Secretary of State Gabriel L. Dennis by Rufus Porte, information as to the acts which were held to have constituted contempt was given in a written bill of information filed by Mr. Porte as relator.

Zn *re Denn' •.* 9 L.L.R. 3 9 ( '947) - Likewise, in all of

the reported cases, civil contempt proceedings in our

courts of record were commenced by the filing of bills of information by informants or r,e1ators ; and we rely upon the following cases to support the position we have taken : *R tche.* v. Worref/, 3 L.L.R. 21 ( i pz8) ; *farris* v. *Kaidbe y,* 8 L.L.R. 4 ( i q ) ; *Gibson* v. fPtJJon, *su pra.* In addi- tion to these decisions, there are numerous others to show

that civil contempt proceedings before courts of record in this country must be commenced by written bill of information filed by a relator or informant.

In the instant case, the court ordered a writ issued to bring Counsellor Richardson and his client to answer in contempt upon the informal representation of Attorney Perry Baker, of counsel representing the parties on the other side in the action for damages. The strangeness and irregularity of such a procedure is so apparent that it should at once attract the attention of anyone who has practiced before courts of record. Then, there is the question of contempt growing out of damages where no restraining writ has been issued, the disobedience of which could have been considered contemptuous. We are of the firm opinion that, had the respondents been required to file returns to a written bill of information—which is the regular procedure—these, and perhaps other irregu- larities, might not have been questioned. But on the other hand, it is possible that no defense might have been made against the complaints laid in the bill. The fact still remains that the procedure of putting the information in writing would have been regular and in keeping with what is known to our practice.

Buttressing the foregoing, we also have the following: “The prosecution of a constructive contempt, as dis- tinguished from a direct contempt, involves many of the characteristic features of a formal trial, including the making of charges and giving notice thereof to the contemner. A constructive contempt is usually brought to the knowledge of the court by an affidavit, by information setting forth the facts, or by some equivalent proceeding which fairly informs the con- temner of the charge. i 2 AM. JUR. 43s- 436 *€lon-*

*fern pl o f €lourl }* 68.

There is no showing by respondent that the above con- ditions were met by the judge or court below, in the

absence of which the court in the initial stage of the contempt proceedings committed an incurable legal blunder. Our statutes provide:

“The fundamental principle upon which all plead- ings shall be based shall be that of giving notice to the other parties of all facts it is intended to prove.” '9s 6 Code, tit. 6 § z$z.

In Count io of the petition, the petitioners made clear

that the contempt case, in which a writ of summons had been duly issued and served upon the alleged contemner, and the sheriff's returns thereto duly made, was assigned

to be heard on July '7. \*9^\* , by the respondent judge. Instead of petitioners abiding the time, appearing accord- ing to the assignment made, and putting in any defense

they had, they preferred substituting prohibition for ap- pearance, based upon certain allegations made in their petition for prohibition, as also brought out in Counsellor Richardson’s argument before this bar that, because of certain circumstances which prevailed in a former con- tempt matter growing out of the same case, which led to the said Counsellor Richardson's imprisonment, he enter- tained fears that the same condition would obtain if he appeared before the court in obedience to the assignment mentioned *su pra.*

Although several irregularities were committed by the respondent judge, as pointed out *su pra,* yet petitioners, having failed to put in their appearance and prosecute their legal interest in the contempt proceedings in the court below, not only abandoned their defense, but fur- ther committed contempt of court when they failed to appear. Had they appeared in this case, they would now be in a better position to point out the irregularities in the hearing of the matter ; and if the respondent judge had ordered their imprisonment, they would have had a remedy at law for their release. In the face of the above- mentioned facts, prohibition does not lie.

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In view of the foregoing, it is our considered opinion that the ruling of the Justice presiding in Chambers should be affirmed with costs against petitioners. And it is hereby so ordered.

*A ffrmed.*