CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT THE

OCTOBER TERM, 1974

ALI AYAD, Petitioner, *v.* WILLIAM E. DENNIS, JR., et al., Respondents.

PETITION FOR A WRIT OF PROHIBITION TO THE MINISTER OF COMMERCE, INDUSTRY, AND TRANSPORTATION, AND ALL PERSONS AND AGENCIES INTERESTED IN THE ACTS COMPLAINED OF HEREIN.

Argued July 15, 16, 1974. Decided July 24, 1974.

1. When an application might raise a constitutional issue, the Justice presiding in chambers, to whom it is made, will refer the application for the relief sought to the full Court for the Supreme Court's consideration and final determination.
2. The adoption of price-controlled commodities, in the absence of constitutional inhibitions, is a proper exercise of the powers of the Executive and Legislative branches of government.
3. An Executive Order has the full force and effect of law for one year after its issuance even if not ratified by the Legislature, though, in the latter event, it shall thereafter lapse.
4. When criminal sanctions are provided, dependent on the guilt or innocence of an accused, they cannot be imposed by the Executive branch, for the fate of a criminal defendant lies in the exclusive province of the Judiciary and the safeguards surrounding his trial, which include constitutional guarantees and rights.
5. Especially is the latter true when the act under which the Executive agency conducted its proceedings is silent as to the procedure to be followed in determining whether the accused has or has not committed the offense charged.
6. In no event, whether authorized or not by legislation, can an accused be sentenced by an Executive agency which has not afforded the accused due process of law but finds him guilty after a summary investigation.

7. Under the doctrine of separation of powers, none of the three branches of government can usurp the functions of any of the other two, for to permit it once would initiate the erosion of the doctrine.
8. Though the maxim that justice delayed is justice denied is meritorious, it is balanced by the observation that undue haste does not insure a fair trial.
9. The writ of prohibition is designed to prevent what remains to be done as well as to undo what has illegally been done.

Petitioner was accused by the Ministry of Commerce, Industry and Transportation, of selling rice in excess of the price established by the President in his Executive Order No. 1 (1973), which was designed to prevent hardship to the populace. A penalty of fine and/or imprisonment was provided for in the Order.

An investigation was conducted by a member of the Ministry and the petitioner was advised that he had been fined $2,000 for violating the controlled price of rice.

An appeal to the Executive branch proved fruitless and the petitioner thereafter applied for a writ of prohibition to the Justice presiding in chambers, to stay all further proceedings in the matter and undo what had been done. The Justice referred the proceeding to the full bench.

The petitioner did not contend that the Executive Order was unconstitutional, but that he had been denied due process of law, since the offense he was convicted of was a crime under the Executive Order and he had, in fact, been found guilty of a misdemeanor by Executive officers who had not only usurped the judicial function but had not even held a trial at which the petitioner might have asserted his innocence and submit his proof thereof.

The respondents denied these arguments and contended they were following the procedure established under the Administrative Procedure Act and had been vested with such power as well under the Order, a provision of which authorized the Ministry involved to promulgate rules and regulations for the effective implementation of the Executive Order.

The Court denied all arguments used by the respondents and emphasized that no constitutional issue had

been raised, although the Justice had referred the matter to the full Court for that reason. No one denied the right to fix price-control structures, nor the constitutionality of the Administrative Procedure Act. The Court deemed the fine levied a judicial act by officers of the Executive branch and the denial of due process of law for the petitioner by reason of the Ministry's failure to afford the petitioner a fair hearing, even if it claimed to be acting under the Administrative Procedure Act, which could not apply herein because of the criminal nature of the wrong allegedly done by petitioner.

The final comment by the Supreme Court was that the Ministry could have held a fact-finding proceeding and gathered the evidence, if found, to transmit to the Ministry of Justice which, in turn, would have initiated the judicial process for the fair disposition of a criminal matter, that ultimately could only be afterward determined by the Judicial branch of government.

The petition was *granted* and the peremptory writ of prohibition was *issued*.

MacDonald M. Perry and *Patrick Sanyene* for petitioner. The *Ministry of Justice,* by *Jesse Banks, Jr.,* for respondents.

MR. JUSTICE HENRIES delivered the opinion of the Court.

According to the record certified to us, the petitioner was accused by the respondents, who are officials of the Ministry of Commerce, Industry and Transportation, of selling rice to the public at $25.80 per bag in excess of the price established by the Ministry for the area, in violation of Executive Order No. 1.

"Executive Order No. 1 (1973)
Price Control, Supervision and the Prevention of Hoarding

"Whereas, the recent currency crisis in the world has resulted in substantial price fluctuations in various essential commodities within the Country; and,

"Whereas, the total populace has been adversely affected by commercial houses exploiting the currency crisis and other world market conditions through the imposition of unfair and irregular mark-ups on imported commodities that bear no true relationship to these changing world market conditions; and

"Whereas, artificial scarcity of essential commodities are created within the Country through hoarding and other irregular practices;

"Now, therefore, with a view to giving proper protection to the people of the Country and preventing their exploitation by those seeking unjust enrichment, it is hereby ordered that,

"1. In furtherance of his broad powers respecting the regulation of commodity and trade standards and the establishment and enforcement of standards of business practice, the Minister of Commerce, Industry and Transportation is hereby empowered to fix and to regulate the prices at which all imported as well as locally produced goods and commodities shall be sold.

"2. No wholesaler or retailer may hoard, that is, to conceal or refuse to sell goods and commodities so as to create or cause to be created a shortage of such essential goods and commodities on the market.

"3. No wholesaler or retailer may receive or demand a price for a commodity higher than that fixed by the Ministry of Commerce, Industry and Transportation.

"4. The Ministry of Commerce, Industry and Transportation shall promulgate rules and regulations for the effective implementation of the provisions herein contained.

"5. Any wholesaler or retailer violating any of the

provisions of this Executive Order shall be subject to a penalty in the form of a fine of not less than $1,000.00 nor more than $10,000.00 or be imprisoned for a period of not less than one month nor more than one year or both; in the case of hoarding, the goods shall be confiscated and exposed for public sale at a price fixed by the Minister of Commerce, Industry and Transportation. If the violator is an alien, he shall also be subject to deportation.

"Given under my hand this 25th day of July, 1973.

"WILLIAM R. TOLBERT, JR.,
President of Liberia."

An investigation was conducted by representatives of the Ministry involved and a letter was sent to the petitioner.

"Republic of Liberia
Ministry of Commerce, Industry and Transportation
Monrovia, Liberia

"Office of the Minister
"Mr. Ali Ayad,
General Merchant,
Mano River,
Grand Cape Mount County,
Liberia.
"Dear Mr. Ayad:

"It has been reported by our Regional Inspector for Grand Cape Mount County, through an investigation held with you that your establishment was found selling rice to the public at $ 25.80, which is in excess over the price established for the area.

"This is not in consonance with the prices set by government. As such, you are hereby fined $2,000.00 for profiteering, to be paid into the local revenues of the Republic and receipts presented to our representative, Inspector James Benson, for forwarding to this Ministry at 2:00 P.M. on Monday, June 17, 1974.

"Failure on your part to do so will leave us no alternative but to close down your business until the fine is paid.

"Very truly yours,
"EDWIN M. BONAR,
Director of Domestic Trade.

"Approved:
WILLIAM E. DENNIS, JR.,
Minister."

The Ministry also wrote to the County Attorney for Grand Cape Mount County on June 15, to file a petition on the Ministry's behalf for enforcement of the Ministry's order, ten days after the due date of June 17.

Upon receipt of the Ministry's letter, the petitioner replied to the Minister, denying, by letter dated June 19, 1974, that the charges were true and indicating he would appeal to the President.

The petitioner then complained to the President of Liberia informing him that he had advised the Minister of the review he would ask of the President for the relief he felt entitled to.

He also filed a petition for a writ of prohibition, which primarily alleges that the Ministry was exercising judicial functions and, hence, in violation of the Constitution, was acting against public policy. He also stressed the supreme importance of constitutional issues, which should necessitate the issuance of a temporary writ by the Justice in chambers and reference by him of the case to the full bench thereafter. He also denied wrongdoing and swore to his innocence.

In answer to the petition, aside from the usual denials to be expected, respondents in the main argued against issuance of the writ of prohibition because petitioner had not availed himself of all legal remedies provided under the applicable law, for he could have sought review of the Minister's decision in the Circuit Court. Furthermore, they contended that the Constitution invests the

President with the power to recommend to the Legislature any measure which he believes expedient and that Executive Order No. 1, dated July 25, 1973, was in the nature of such measures.

The petition and returns were venued before our distinguished colleague, Mr. Justice Robert G. W. Azango, presiding in chambers, and because of the constitutional issues raised in the application he forwarded it to the Court en banc. See *Keyor* v. *Borbor,* 17 LLR 465 (1966).

At the outset, we must point out that the Executive Order issued by the President of Liberia is not in issue. There has been no attack against it in any manner. In the exercise of the executive power vested in him by the Constitution, the President may issue executive orders in the public interest, either to meet emergencies or to correct particular situations which cannot wait until the lengthy legislative process has run its course. However, he must refer each executive order to the Legislature as soon as possible for ratification. If the Legislature does not act upon the executive order after it has been referred to it, the order lapses a year after its issuance. Until it lapses it has the effect of law, and all courts of Liberia are bound to take note of and give effect to it. See *Opinion of the Attorney General, 1964–1968,* and 54 AM. JUR., *United States,* § 17. The Executive Order was issued on July 25, 1973, and, therefore, it still has the force and effect of law.

As far as the controlling of prices is concerned, we state here clearly and unequivocally that in the absence of any constitutional restriction the State is free to adopt whatever economic policy may reasonably be deemed to promote the public welfare, and to enforce that policy by legislation adopted to its purpose. The courts have no authority either to declare such policy invalid when it is declared by the Legislature, or, by the President as in this case, to override it. Price control, like any other

form of regulation is constitutional. It is unconstitutional only if it is arbitrary, discriminatory, or if shown to be an unnecessary and unwarranted interference with individual liberty.

In the petition and returns, the contending parties have raised several important and interesting questions, the answers to which will serve as a guide for the future, not only for the parties in the instant case, but for all who might find themselves in a similar situation.

The main issues, which we shall decide in reverse order, follow:

1. Did the respondents, who are under the Executive Branch of Government, exercise judicial functions in the handling of this matter; and, if so, were their acts constitutional, and does prohibition lie?

2. Was the petitioner deprived of his right to due process of law?

3. Had the petitioner exhausted the administrative remedies available to him before seeking judicial review?

4. If they were acting under the Administrative Procedure Act, is the Act applicable in this instance?

Taking the last issue first, the respondent ministry contended that it was handling this violation in accordance with the Administrative Procedure Act as found in Chapter 82 of the Executive Law, approved May 11, 1972, which provides for the holding of administrative hearings. In order to determine whether the Act is applicable in this situation, it is necessary to ascertain first the nature of the offense.

The parties agreed, and we concur, that the offense is criminal in nature; specifically, a misdemeanor. In fact, it is akin to extortion. According to the Penal Law "(1) A crime is an act or omission forbidden by law, and is either a felony or misdemeanor. (2) A felony is a crime punishable either by death or by imprisonment without the option of a fine. All other crimes are misdemeanors." 1956 Code 27:5. Section 30 of the Penal

Law also states that "The punishments prescribed by this Title or by some other statute can be imposed only upon a legal conviction in a court having jurisdiction."

Since the Executive Order herein forbids the selling of rice above the price fixed by the Government, we hold that, according to the law just cited, the offense is a crime, conviction for which must be done by a tribunal of competent jurisdiction. Therefore, it goes without saying that the Ministry of Commerce was incompetent to impose a penalty for the alleged violation, and should not have done so in an administrative proceeding because the Act was not designed or intended to handle criminal matters. The Ministry's action in this respect is unconstitutional. In *Harge* v. *Republic,* 14 LLR 217, 222 (1960), Mr. Justice Pierre, now Chief Justice, in his opinion said

> "Any sentence pronounced against an accused, which can be shown to have grown out of a trial not in harmony with procedure in our criminal courts, and which infringes the legal and/or constitutional rights of a defendant, could not be taken as being the result of a fair and impartial trial. The rights of a defendant to be tried in all criminal cases in the circuit court upon the charge of the grand jury and by a jury of the vicinity are constitutional rights and should not be denied a defendant."

This Court has also held that to imprison and impose fines are judicial functions, which cannot be exercised by an official of the Executive department without contravening the Constitution. See *Jedah* v. *Horace,* 2 LLR 265 (1916), and *Karmo* v. *Morris,* 2 LLR 317 (1919). We find support for this principle in 1 AM. JUR., 2d, *Administrative Law,* § 173, which states that generally the power to compel obedience to orders by a judgment of fine or imprisonment is a purely judicial one which cannot be conferred upon administrative agencies, except by the Constitution itself. See also *Flowers* v. *Republic,* 1 LLR 334 (1899), and *Hill* v. *Republic,* 3 LLR 130

(1929). We shall deal further with this aspect of the matter later in this opinion.

Reverting to the Administrative Procedure Act, even if it were applicable to the case at bar, and we hold that it is not, let us see to what extent its provisions were followed by the Ministry. It should be pointed out that this Act is general in nature, and is applicable to any agency within the Executive branch. There is no specific procedure laid down for the handling of the matter now under consideration, even though paragraph 4 of the Executive Order empowers the Minister of Commerce to promulgate rules and regulations for the effective implementation of the Executive Order. If the Minister had done so, the respondents neglected to put them in evidence. Be that as it may, in his argument, petitioner's counsel informed us that the administrative hearing mentioned by respondents was only a summary investigation held on the petitioner's premises in Mano River, Grand Cape Mount County, by one of the Ministry's inspectors. No opportunity was given petitioner to be represented by counsel, to produce witnesses or any evidence, and to cross-examine the witnesses of the respondents. Instead, the petitioner was reported to the Ministry and the Minister wrote him imposing the fine and threatening to close his business down if he failed to pay the fine. When petitioner's lawyer, Daniel Tolbert, sought to discuss the matter with the Minister he was turned away.

In the Administrative Procedure Act aforesaid, sections 82.2, 82.3, and 82.4, provide for the appointment of a hearing officer, representation by counsel, notice of the time and place of hearing, opportunity to present evidence and cross-examine witnesses. It was not denied by the respondents that these requirements were not met, and it was their failure to meet these simple, yet necessary, and important requirements, as well as the imposition of a penalty, which prompted petitioner to seek a writ of prohibition. Given these circumstances, we do

not hesitate in declaring that, in our opinion, the Ministry could not have been acting under the Act for it did not follow the procedure prescribed in the Act.

Since the offense is of a criminal nature, it would have been proper if the Ministry had held a fact-finding investigation, if it desired to do so, gathered the necessary evidence and transmitted it to the Ministry of Justice which, in turn, would have followed the procedure provided for the handling of criminal matters.

Another contention of the respondents was that the petitioner had failed to exhaust the administrative remedies available to him under the Administrative Procedure Act. Even though the Act is inapplicable to the case at bar, some attention should be given to this question. Before tracing the steps followed by the petitioner, it is necessary to point out that the main thrust of respondents' argument on this issue is that after excepting to the supposedly administrative decision of the Ministry, petitioner should have filed a petition in the Circuit Court for a review of this matter. The doctrine of exhaustion of administrative remedies is a cardinal principle of practically universal application, and it requires that where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will act. See section 82.8 of the Administrative Procedure Act. A classic example of failure to exhaust an administrative remedy is the failure to appeal from an administrative decision. 2 AM. JUR., 2d., *Administrative Law,* §608. But what the respondents regard as a failure to exhaust all administrative remedies is that the petitioner applied to the Supreme Court instead of the Circuit Court. The Circuit Court, like the Supreme Court, is a part of the Judiciary branch, and when one applies to either of these courts, he is seeking a judicial remedy. Whether a party applies to one or the other depends upon the particular relief being sought and its effectiveness.

A careful scrutiny of the Act reveals that while it does mention the taking of appeal in section 82.5, there is no clear guide as to where an appeal from a hearing officer lies within an agency. It may be presumed that an appeal would lie to the head of the agency. If this presumption is correct, then the opportunity to be heard had been afforded since the Minister had concurred in the decision as evidenced by the letter, dated June 12, 1974, written to the petitioner, and had refused to see petitioner's counsel. He explained that he appealed to the President merely because he did not know where else to go. It is clear that he had exhausted the available administrative remedies. A review by the Circuit Court is not an administrative remedy. This contention, therefore, is not legally tenable.

With regard to petitioner's right to petition the Circuit Court for a judicial review, we fail to see how the matter could be reviewed by that court when no record was taken at the investigation as required in section 82.8(4) of the Act. If there were records, respondents should have proferted them. Furthermore, the Act gives the losing party 30 days within which to file a petition before the Circuit Court, but the Ministry did not choose to wait that long; instead, it gave the petitioner five days to comply with its decision, and the county attorney ten days to petition the court for enforcement of the decision, contrary to said section of the Act. In the face of all of these irregularities it was proper for the petitioner to apply for a writ of prohibition, especially since, according to section 82.8(3) of the Act, the filing of the petition in the Circuit Court does not stay enforcement of the Ministry's determination.

On the question of due process we hold that the petitioner was not afforded the due process of law to which he is entitled. The term "due process of law" is synonymous with the term "the law of the land," and it brings

into sharp focus some of the basic rights of the individual as found in provisions of the Constitution of Liberia.

> "Article 1, Section 6th. Every person injured shall have remedy therefor, by due course of law; justice shall be done without sale, denial or delay; and in all cases, not arising under martial law, or upon impeachment, the parties shall have a right to a trial by jury, and to be heard in person or by counsel, or both.
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> "Section 7th . . . and every person criminally charged, shall have a right to be seasonally furnished with a copy of the charge, to be confronted with the witnesses against him,—to have compulsory process for obtaining witnesses in his favor; and to have a speedy, public and impartial trial by a jury of the vicinity. . . .
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> "Section 8th. No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land."

In *Wolo* v. *Wolo*, 5 LLR 423 (1937), this Court declared succinctly that due process of law means that there must be a tribunal competent to pass on the subject matter, notice, actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction of the tribunal. These fundamental constitutional rights extend to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive. In essence, due process embraces the fundamental conception of a fair trial, with an opportunity to be heard. It is a standard for judgment in the progressive evolution of institutions of a free society. The right of a person to be given a fair hearing, before he suffers a penalty, is a vital principle which both protects the individual's interest and improves the quality of administration. Any

act which tends to deprive any person, whether he be a citizen or an alien, of his property or other rights without employing these constitutional safeguards is unconstitutional, and will be declared as such upon proper application to the courts, for the protection of these fundamental rights falls peculiarly within the province of the judicial branch of government.

The other basic element of due process which we will now consider is that of a tribunal legally competent to pass on the subject matter. We hold that the respondents who are officials of the Executive branch of government were incompetent to adjudge the petitioner guilty of, and impose a fine for, committing a criminal offense. These are judicial functions and no department of the government can exercise judicial functions but the Judiciary itself. Therefore, the respondents' acts in this regard were unconstitutional.

Article 1, Section 14th, of the Constitution states clearly and positively that "The powers of this government shall be divided into three distinct departments: Legislative, Executive, and Judicial; and no person belonging to one of these departments, shall exercise any of the powers belonging to either of the others." In *Wolo* v. *Wolo, supra,* this Court said that the object of this provision was to block out with singular precision, and in both lines, the allotment of power to each of the three branches of our government so that no official of the one should be permitted to encroach upon the powers of either of the others. In consonance with this provision, this Court has consistently upheld the principle of separation of powers whenever this important issue was raised. For example:

1. In the case *In re the Constitutionality of the Act of the Legislature of Liberia approved January 20, 1974,* 2 LLR 157 (1914), when the Legislature reserved to itself the power to revise, amend, abrogate or totally annul an act of the Court properly performed within its constitutional scope, this Court declared the statute uncon-

stitutional, for the Legislature cannot exercise judicial functions. See also *Wolo* v. *Wolo,* 5 LLR 423 (1937), with respect to legislative divorces.

2. In *Jedah* v. *Horace,* 2 LLR 265 (1916), an act prescribing regulations to govern the Interior Department was held unconstitutional because it gave the Secretary of the Interior and Travelling Commissioners of that Department concurrent jurisdiction in matters of a judicial character, especially crimes and misdemeanors. An executive officer cannot exercise judicial functions.

3. In *Karmo* v. *Morris,* 2 LLR 317 (1919), this Court again held that to arrest, take bail, imprison and hold in contempt are all judicial functions which no official of the Executive department, in that case the Secretary of Interior, can legally exercise because of the inhibition found in Article 1, Section 14th, of the Liberian Constitution. See also *Manney* v. *Money,* 2 LLR 618 (1927), and *Posum* v. *Pardee,* 4 LLR 299 (1935).

4. In *Bell* v. *Republic,* 5 LLR 283 (1936), the appellant who had been convicted of a crime appealed to this Court for clemency. The Court, although in sympathy with him, declared that the power to grant mercy rests with the Chief Executive, and therefore it was powerless to grant his request.

5. In *Coleman* v. *Beysolow,* 12 LLR 234 (1955), when officers of one political party sought an injunction restraining officers of another political party from activities in connection with an election, this Court held that the courts had no jurisdiction over the conduct of elections or political matters and that the appropriate remedy was to submit the matter to the Legislature, comprised of those who are judges of election returns. See also *Emmons* v. *Williams,* 3 LLR 30 (1928). It should be observed here that the Court has zealously upheld the principle of separation of powers not only when the Judiciary was involved but also when the Executive and Legislative branches were affected.

In the case at bar the issue has been raised again, and again we have found executive officers exercising judicial functions. Needless to say, in view of the constitutional inhibition and the long line of precedents cited herein, we have no alternative but to declare the acts of these officials unconstitutional. To hold otherwise would permit serious incursions into constitutionally forbidden territory, and thus gradually erode and finally destroy the doctrine of separation of powers which is one of the hallmarks of our democracy.

It is reasonable for us to presume that the Legislature or the President, when it or he grants powers in a statute or executive order, intends them to be exercised properly and not in such a manner as to flout due process. As a matter of fact, the Executive Order does not empower the Minister of Commerce to fine or imprison an offender. It is clear that neither the Executive Order nor the Administrative Procedure Act has ousted the courts of jurisdiction over matters within their special competence. In fact neither can do so without contravening the Constitution. Neither can civil or administrative jurisdiction over a criminal cause of action be acquired by consent of the parties. *Davis* v. *Diggs,* 11 LLR 237 (1952).

It was argued by the respondents that to have proceeded in the regular manner would have caused delay in bringing the matter to a conclusion. This argument does not impress us. The main objective of a trial or any proceeding which could divest a person of his rights, privileges, or property, is not to convict but to mete out justice and to do so in accordance with law. Even a person charged with committing the most heinous crime, to say nothing of a misdemeanor, is entitled to a fair and impartial trial, no matter how long it takes. While it might be true that "justice delayed is justice denied," it is equally true that undue haste does not ensure a fair trial. More important is the fact that the right to a

speedy trial does not dispense with the basic elements of justice. See *Davies* v. *Yancy,* 10 LLR 89 (1949).

The final question is whether prohibition will lie. We have seen from the record and argument before us that the petitioner was not permitted counsel, to produce witnesses, or to cross-examine witnesses who testified against him; that a definitive sentence was rendered against him in an administrative hearing; and that orders for enforcement of the sentence were given even though he had excepted to the decision, given notice of his intention to appeal to the President, and the 30 days prescribed by the Administrative Procedure Act for a review of the matter had not expired. The purpose of the writ of prohibition is clearly set forth in our Civil Procedure Law. It provides that "Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein." Rev. Code 1:16.21(3). In a case almost similar, *Fazzah* v. *National Economy Committee,* 8 LLR 85 (1943), this Court held that prohibition will lie to prevent a tribunal from assuming jurisdiction not legally vested in it and from enforcing its judgment. It has also held that the writ is the proper remedial process to restrain an inferior tribunal which has exceeded its jurisdiction or attempted to proceed by rules different from those which ought to be observed. See *Parker* v. *Worrell,* 2 LLR 525 (1925); *Cole* v. *Payne,* 12 LLR 183 (1954); and *Caranda* v. *Fiske,* 12 LLR 243 (1956). Moreover, if the procedure and the method adopted is declared illegal and unwarranted, prohibition would lie to prevent what remains to be done as well as to undo what has been done. *Fazzah Bros.* v. *Collins,* 10 LLR 261 (1950).

In conclusion, we reiterate that the Government is within its authority to control prices; that the offense with which the petitioner is charged is a crime and can-

not be tried by the officials of the Ministry of Commerce, regardless of whether they were, or were not, acting under the Administrative Procedure Act; that their acts in doing so, and in imposing a fine upon him, constituted a denial of due process and hence were unconstitutional, for only the courts can perform judicial functions; and that prohibition will lie to restrain the respondents from further proceeding by wrong rules. We have not gone into the merits of the case for it is not within the office of a writ of prohibition to do so. All we are emphasizing is that the respondents follow the proper course prescribed by law for the prosecution of a criminal offense. In this manner, the guilt or innocence of the petitioner will be fairly and legally established, and the penalty, if warranted, will be imposed and enforced. These proceedings would have been wholly unnecessary had the Ministry concerned with law enforcement handled the matter from its incipiency or advised its withdrawal for the purpose of proceeding by indictment.

In view of the foregoing, the petition is granted and the peremptory writ is hereby issued prohibiting respondents from enforcing their decision. It is so ordered.

Petition granted.