

BLAHMO, Appellant, v. **FRANK WARE**, Appellee.

ARGUED JANUARY 11, 1912. DECIDED JANUARY 24, 1912.

Toliver, C. J., and McCants-Stewart, J.

1. The Act of 1905 does not apply to Kroo Town within the City of Monrovia.
2. Writs of execution are issuable only in the course of a judicial proceeding in accordance with law, and the act of a judge directing the issuance of a writ of execution, where there is no statute, is unwarranted by law.

Mr. Chief Justice Toliver delivered the opinion of the court:

Writ of Execution—Appeal from Order directing Issuance of Writ. This case comes up on a bill of exceptions from the Monthly and Probate Court, for Montserrado County, sitting in chambers on the 3rd day of August, A. D. 1911. The facts connected with the cause are that the appellant was sued by the appellee, before the Governor of Kroo Town for a sum of money called dowery, and the appellee obtained judgment against appellant, in consequence of which the Governor of Kroo Town issued an execution which was returned before the judge of the Monthly and Probate Court of Montserrado County; the appellant excepted to the ruling of the judge of the Monthly Court in the cause, (1) because no writ of summons had been issued, which rendered said execution without legal foundation; (2) and because said writ was not issued in the name of the Sovereignty of the State, and last because there was no such action as dowery; (3) the charter of the City of Monrovia granted by the Legislature accords to it certain rights within the prescribed limits of the corporation; it is a mere creature of the law, and possesses only those properties and prerogatives the charter of its creation confers upon it. Any ordinance passed by the Mayor and Common Council (which is not contrary to the Constitution and laws of the Republic), may be enforced.

The city ordinances of 1880, section 3, reads : "That the said officer shall possess magisterial powers in so far as to quell disturbances, hear and determine questions of dispute among Kroo persons residing or sojourning in said town, and in general to preserve order, keep the peace and require obedience to law : he shall not have authority to issue writs or to try and determine causes based upon writs nor imprison any one ; and it shall be unlawful for him to interfere in any judicial matters, where

parties are concerned who do not reside temporarily or permanently in Kroo Town."

It is not necessary for the court to say here what construction it places upon this ordinance.

The Act of January 25th, 1905, entitled "an Act providing for the government of districts in the Republic inhabited by aborigines," applies in no way to the Kroo Town situate within the corporate limits of the City of Monrovia. By an examination of the record there appears to be nothing whatever to show upon what grounds the Governor of Kroo Town predicated his action in issuing the writ of execution. It is our opinion that he had no legal right whatever to issue same. The judge of the Monthly Court in making his ruling upon the objections filed by appellant (defendant in the lower court), made use of some incomprehensible expressions in the latter clause of his ruling, to wit : "Since we find no law as to how the Governor and his council shall enforce their rulings this court will in the absence of law resort to the general practice which is the issuing of an execution." It is a maxim of law "Jus dicere et non jus dare", that is, the judge should declare the law and not make it. Writs of execution are judicial writ and are the life of the law, hence they are not issued but by judicial authority, and not then until final judgment has been rendered in the subject matter. The only bar to issuing the writ after final judgment is when an appeal is pending before a higher tribunal.

The Governor of Kroo Town acted without legal authority, and the judge of the Monthly Court erred in ruling the enforcement of an execution issued contrary to law.

The court adjudges that the ruling of said court is therefore reversed and the appellant recover all costs.

L. A. Grimes, for appellant. Edwin Barclay, for appellee.