S. DAVID COLEMAN, National Chairman, S. BENONI DUNBAR, Sr., General Secretary, and E. MURRAY BARCLAY, General Treasurer, of the INDEPENDENT TRUE WHIG PARTY OF LIBERIA, for Themselves and for the Members of the said Party, THOMAS N. BOTOE, Acting National Chairman, and GEORGE BLACKSTOCK A. JOHNS, General Secretary, of the NATIONAL REFORMATION PARTY OF LIBERIA, for Themselves and for the Members of the said Party, Petitioners, *v.* D. B. COOPER, Chairman of the Commission of Elections, J. F. B. COLEMAN and JAMES T. PHILLIPS, Commissioners of Elections, EDWIN A. MORGAN, National Chairman, McKINLEY A. DESHIELD, General Secretary, and WILLIAM E. DENNIS, Treasurer, of the TRUE WHIG PARTY, for Themselves and for the Members of the said Party, Respondents.

APPEAL FROM RULING ON APPLICATION FOR WRIT OF PROHIBITION TO THE ELECTIONS COMMISSION.

Argued May 25, June 14, 1955. Decided August 5, 1955.

1. A party who submits himself to the jurisdiction of a tribunal by appearing before the tribunal and contesting issues cannot properly thereafter object to the jurisdiction of the tribunal over his person with respect to any issues so contested.
2. A writ of prohibition will not lie to prohibit acts already completed.
3. The right to apply for a writ of prohibition will be deemed waived by failure to file timely application therefor.
4. Litigants cannot properly demand that courts perform acts which the litigants should have performed themselves.
5. A bill of exceptions should be submitted on a regular appeal and cannot be considered when attached to an application for a writ of prohibition.
6. The Supreme Court will not adjudicate matters not raised by the pleadings.

Petitioners, as officers of, and on behalf of the members of, political parties, appeared before respondents, as

Commissioners of Elections, to answer objections raised by other respondents, officers of another political party, respecting the printing of names on election ballots. Upon rulings of the Election Commission adverse to petitioners, they applied to the Circuit Court for a writ of injunction, 12 L.L.R. 234 (1955), and also applied, in the present action, for a writ of prohibition, which application was denied by a presiding Justice sitting in open court. On appeal to this Court, *en banc,* the appeal was *denied.*

S. David Coleman, pro se, and *S. Raymond Horace* for petitioners. *Richard A. Henries* and *Kolli S. Tamba* for respondents.

MR. CHIEF JUSTICE RUSSELL delivered the opinion of the Court.

This case is exceptional in the annals of this Court and of the Republic by reason of political involvements which have doubtless engendered unusual public interest. But such considerations cannot be permitted to intrude upon the application of settled principles of law to the determination of the issues to be decided by this Court in the administration of substantial justice to all parties concerned.

On April 28, 1955, the petitioners filed in the office of the clerk of this Court a petition praying issuance of a writ of prohibition on grounds alleged therein substantially as follows:

That the Elections Commission is an autonomous bureau created by act of the National Legislature of Liberia during its regular session of 1945–46; that the said Commission consists of three members including the chairman; that two of the said members, namely D. B. Cooper, chairman, and James T. Phillips, had been induced by the True Whig Party through the agency of

Edwin A. Morgan, McKinley A. Deshield, and William E. Dennis, as officers of the said True Whig Party, to act and dispose of matters which are cognizable only by the courts of Liberia, and are not cognizable by the said Elections Commission; that the said matters affect the franchise rights and privileges of members of the Independent True Whig Party and the Reformation Party; and that the said matters arose from the filing, with the said Commission, of certain objections to the nominating certificate of the Independent True Whig Party by the respondents herein; which filing resulted in the said Commission notifying the said petitioners to appear within three days for disposition thereof, failing which the said objections would be gone into by the said Commission.

The petitioners appeared and attacked the aforesaid objections by interposing a motion questioning the jurisdiction of the Elections Commission over the subject matter pertaining to elections. The petitioners further contended that the Elections Commission had transcended its bounds by passing upon a matter in special relation to the legality of the inclusion of names of candidates from a political party organized in one or two sections of the country, nevertheless forwarding names of persons to represent the other sections. The petitioners thus seem to have adopted irreconcilable and inconsistent positions. For the selfsame petitioners have applied for a writ of mandamus upon the refusal of a court of chancery to issue a writ of injunction, and thereby have departed from their regular remedy, which was to contest the election before the House of Representatives, a branch of the National Legislature. Yet the petitioners now contend that the objectors to the certificate of nomination should have sought redress before the National Legislature, the branch of Government empowered to determine such matters, which forum of justice they have elected not to resort to for relief.

The inconsistency is obvious. A court in chancery

was petitioned to issue an injunction restraining members of a political body, in this case the Elections Commission, an autonomous body created by the Legislature, instead of contesting the matter before the Legislature itself. The proper functions of a writ of prohibition would be perverted by issuance of such a writ in such a situation.

In *Ruling Case Law* we have the following:

> "The authorities all agree that prohibition is a common law writ of ancient origin. Indeed the writ is so ancient that forms of it are given in Glanville, the first book of English law, written in 1189, and mention is made of it in nearly all the treatises upon the common law, and the early reports. It is a civil remedy, given in a civil action, and has been held to be a suit. Jurisdiction by prohibition is primarily preventive or restraining, and only incidentally remedial in the sense of giving relief to parties. The original purpose of the writ was to secure the sovereign rights and preserve the public quiet; it was an emanative of the great executive authority the king delegated to his courts, and particularly to the king's bench; one of his prerogative writs, necessary to perfect the administration of his justice and the control of subordinate functionaries and authorities. The principal purpose at present is to prevent an inferior court or other tribunal from assuming jurisdiction with which it is not legally vested, in cases where wrong, damage and injustice are likely to follow from such action. It does not lie, as a rule, for grievances which may be redressed in the ordinary course of judicial proceedings, by other remedies provided by law." 22 R.C.L. 4 *Prohibition* § 3.

One can hardly read the above without arriving at the conclusion that a writ of prohibition is a preventive rather than a corrective remedy, and is designed to forestall the commission of a future act rather than to undo an act al-

ready completed. Once an act has been committed a writ of prohibition cannot undo the same. It is not an unlimited remedy.

We shall therefore proceed to examine the records in order to determine whether the Elections Commission had already performed the acts complained of herein before the petitioners instituted these proceedings seeking a writ of prohibition. The records disclose that the inclusion of certain names upon the ballot by the Elections Commission on behalf of the Independent True Whig and Reformation Parties was objected to by the True Whig Party on grounds mentioned herein, and that the objections were acted upon by the said Commission before the filing of the petition praying for the issuance of a writ of prohibition. Complacently and supinely, as the records disclose, the petitioners in these proceedings sat by and allowed the Elections Commission to complete the acts which this petition belatedly seeks to remedy.

Examining the records still further it is evident that, even after the Elections Commission had assumed jurisdiction to act upon the objections filed by the True Whig Party, the present petitioners voluntarily appeared and submitted themselves to the jurisdiction of the said Commission and thereupon contested the issue. Where a party voluntarily or otherwise submits himself to the jurisdiction of a tribunal he cannot thereafter contest the jurisdiction of the tribunal over his person.

The petitioners had three days' notification of the decisions of the Elections Commission. During this period of time the Elections Commission had not performed the act complained of. This intervening period was sufficient to have enabled the petitioners to apply for a remedial writ of prohibition to prevent the Elections Commission from performing the said act. The petitioners' failure to apply in good time subjects them to the penalty of waiver, and renders this Court powerless to aid them.

As this Court held in *Blacklidge* v. *Blacklidge,* 1 L.L.R. 371, 372 (1901), litigants must not expect courts to do for them that which it is their duty to do for themselves.

In *Corpus Juris* we have the following:

> "Prohibition is a preventive, rather than a corrective, remedy, and issues to prevent the commission of a future act rather than to undo an act which is already performed. It will not be granted when the act sought to be prevented is already done, even where such act has been done pending the application for the writ; but where the act sought to be prohibited is not a full, complete, and accomplished judicial act, the writ will lie, any further proceeding may be prohibited, and complete relief may be afforded by undoing what has been done." 50 C.J. 62–63 *Prohibition* § 18.

Application of the foregoing principles of law to the facts of this case leads to the conclusion that, at the time of the filing of the petition for a writ of prohibition, the respondents had fully and completely performed and carried into effect all the acts complained of by the petitioners. If any such act regardless how minute, remained unperformed, and if petitioners' allegation that the Elections Commission had no jurisdiction was sound in point of law, the writ of prohibition would lie herein. But such is not the case.

Petitioners' charges to the effect that the Elections Commission had committed "gross irregularities, injustices and illegal actions," do not relate to the issuance of a writ of prohibition, and therefore need not be passed upon, since the petitioners are specifically praying for the issuance of a writ of prohibition. This Court will only pass upon issues legally brought before it. A bill of exceptions is, in effect, a complaint alleging that certain errors were committed by a lower court. It can be passed upon only in a regular appeal to this Court. In this

case the bill of exceptions is attached to a petition praying issuance of a writ of prohibition, and therefore this Court cannot properly pass upon the said bill.

The functions of the Elections Commission are defined in the Act of Legislature, 1945–46, regulating all elections held within this Republic. The same statute contains a provision for the filing of bills of exceptions with the clerks of the Circuit Courts, whose duty it is to forward the same to the Legislature of Liberia, and whose decisions thereupon are, to all intents and purposes, final. When this has not been done the whole procedure is crowded with irregularities which this Court cannot remedy by issuance of a writ of prohibition.

We therefore refrain from passing upon jurisdiction of the Elections Commission over objections filed against the nomination of candidates by political parties. We likewise refrain from passing upon constitutional questions concerning the legal procedures governing the nomination of candidates by political parties. Such issues might have been passed upon had the petitioners prosecuted their appeal herein according to the notice recorded with the Elections Commission. Failing this the only issue which remains to receive the attention of this Court is whether a writ of prohibition may properly be issued under the circumstances summarized, *supra,* and the law applicable thereto.

In view of the foregoing we are in full accord with the ruling which Mr. Justice O. Natty B. Davis, acting for Mr. Justice Harris, handed down in open Court on May 3, 1955, denying the petition for issuance of a writ of prohibition.

Mr. Justice Shannon, who is in substantial agreement with the conclusion reached in this opinion that the writ of prohibition should be denied, is, however, of the further opinion, with a view to the possibility of subsequent presentation of the same issue, that the issue of the Jurisdiction of the Elections Commission should have been

decided. We are not in agreement with this view because it is our considered legal opinion that, in our appellate capacity, we are to review and pass upon only such points or issues as were decided by the Justice presiding in Chambers. The Justice presiding in Chambers (sitting in this case in open Court), not having passed upon this issue, but having decided the matter only on the question of whether or not prohibition would lie after the act sought to be prohibited or restrained has been fully and completely executed and performed, we can only pass upon the said ruling; for to do otherwise would, in our opinion, breach a long established practice of this Court. And it is hereby so ordered.

Appeal denied.