JOSEPH CARMO KUTUBU COLEMAN, Appellant, *v.* PHILIP F. N. CRAWFORD and JOHN DEXTER STUBBLEFIELD, Appellees.

APPEAL FROM THE RULING OF THE JUSTICE PRESIDING IN CHAMBERS DENYING A WRIT OF PROHIBITION TO THE DISTRICT COMMISSIONER, KLAY DISTRICT, MONTSERRADO COUNTY.

Argued (date not indicated). Decided June 14, 1968.

1. A private prosecutor, being one who only sets in motion the machinery of criminal justice operated by the State, is in no way concerned with the matter should the State's case fail, except in cases of breach of peace.
2. When the Republic of Liberia is a party to a suit, it neither recovers nor pays costs on appeal.
3. A writ of prohibition may issue even though the customary appeal procedures have not been pursued against the person sought to be enjoined.
4. An appeal to the Supreme Court from a ruling of a Justice presiding in chambers is tried *de novo* upon the entire record and not merely those phases of the case presented before the Justice.

The appellant was the private prosecutor in the Court of the County Commissioner, Klay District, charging petty larceny, in which case the Commissioner discharged the defendant and held the private prosecutor liable for the costs of the case. The appellant applied for a writ of prohibition against the enforcement of the judgment after abandoning his appeal, and the writ was denied by the Justice in chambers, from which ruling this appeal was taken. The *ruling* of the Justice was *reversed* and the peremptory writ of prohibition ordered issued.

Lawrence A. Morgan for appellant. *Solicitor General Nelson W. Broderick* for the appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the court.

This case emanates from the Court of the County Commissioner, Klay District, Montserrado County, in which,

according to the certified record, one Joseph Carmo Kutubu Coleman, a Liberian citizen, at Klay, within the Territory of Bomi, Montserrado County, swore to a writ of petty larceny against one Momo Seh, on March 2, 1963. Predicated upon this, a writ of arrest was issued against the said Momo Seh by Philip F. N. Crawford, then Assistant District Commissioner for the Area. Upon being arrested and brought before the Commissioner, the defendant pleaded not guilty to the charge.

In his defense, he contended that he had been instructed and authorized to take and carry away the said property by a Mr. Maxwell Warner, who, the defendant alleged, informed him that he was the legitimate owner of the land and the fruits thereon. At this stage of the petty larceny proceedings, the court called the private prosecutor to prove ownership of the land, and that said property had been stolen as claimed.

The private prosecutor and his witnesses testified, and so did the defendant and his witnesses. For reasons best known to himself, the respondent Commissioner apparently concluded that the defendant had not committed petty larceny as charged, but instead of dismissing the charge, and discharging the defendant without delay, and without any case having been brought against petitioner-appellant, he proceeded to render judgment against private prosecutor Joseph Carmo Kutubu Coleman, adjudging him liable for costs. The appellant applied for a writ of prohibition against the enforcement of that judgment. The matter was taken up in the chambers of Mr. Justice Simpson, whose ruling appellant feels was not in keeping with the law, and he has appealed to the Court. Before proceeding further, we deem it essential to quote the first four counts of the petition for the writ, said petition comprising seven counts.

"1. That on the 2nd day of March, 1963, petitioner complained to Mr. Philip F. N. Crawford, at the time

Assistant District Commissioner, Klay District, Montserrado County, Republic of Liberia, of a Mr. Momo Seh, at the time lodging in his District, who has stealthily entered your petitioner's premises at Klay and stolen therefrom sundry crops and other personal property, asking that the said Momo Seh be apprehended and sent to the proper judicial forum to be dealt with according to law.

"2. That pursuant to this report, the said Commissioner ordered arrested Momo Seh who, having been brought before the Commissioner, admitted taking away the property, but claimed that he had been sent to do so by one Maxwell Warner. Instead of forwarding the case to a Justice of the Peace, or Magistrate, with competent authority to try the charge of petty larceny, the Commissioner embarked upon a hearing of the case, requiring your petitioner to produce his deed to prove title to the land on which the stolen fruits had been planted, or to pay the costs of court.

"3. That your petitioner, realizing that the Commissioner had no jurisdiction over petty larceny, informed him that he had only requested that the defendant be apprehended and sent to a court of competent jurisdiction, and not for trial of the charge. Nevertheless, quite contrary to law, he embarked upon trial of a case of ownership of the parcel of land and the fruits planted thereon.

"4. That having thus proceeded, and although there was no complaint before him concerning ownership of the land, the Commissioner proceeded to render final judgment against your petitioner, the private prosecutor in the petty larceny case, and ordered that he pay costs."

Countering the petition, respondents filed a return consisting of ten counts, of which three and four, in substance,

contended the failure of petitioner initially to plead lack of jurisdiction, and claimed, in fact, jurisdiction to try cases of petty larceny.

From the picture given of this case as revealed by the record, it is crystal clear that the Commissioner in concluding the case of petty larceny did assess costs against the private prosecutor, who was not a party to the petty larceny proceedings. According to Judge Bouvier, a private prosecutor is defined as follows:

> "A private prosecutor is one who prefers an accusation against a party whom he suspects to be guilty. Every man may become a prosecutor; but no man is bound, except in some few of the more enormous offences, as treason, to be one." 2 BOUVIER'S LAW DICTIONARY, 2753.

Again, we have the following:

> "Private prosecutor. One who sets in motion the machinery of criminal justice against a person whom he suspects or believes to be guilty of a crime, by laying an accusation before the proper authorities, and who is not himself an officer of justice." BLACK'S LAW DICTIONARY, p. 1451.

From the above, a private prosecutor is one who brings to the knowledge of the law, or a judicial officer, that an offense has been committed, upon whose information the court might act in bringing a culprit to justice. This is done through the State and, if the State fails to convict the offender and the case is dismissed, the private prosecutor is in no way concerned, especially so in criminal matters, except for cases of infraction of the peace. Criminal Procedure Law, 1956 Code 8:440.

Further, the Commissioner contends, substantially, that petitioner should have continued the prosecution of his appeal and, having failed to do so, prohibition does not lie and, therefore, the petition should be denied. This Court, in *Fazzah* v. *Phillips,* 8 L.L.R. 85 (1943), held that prohibition will issue to prevent a tribal tribunal

from enforcing its judgment where there has been a notice of appeal therefrom.

The Republic of Liberia, when a party to a suit, does not receive nor pay costs. Civil Procedure Law, 1956 Code 6:1064.

In the prosecution of all criminal matters the Republic of Liberia is a party, the case of petty larceny being no exception.

It was brought out during the argument before the Court that this particular phase of the petition, the assessment of costs against the private prosecutor, as contained in count four, was not argued before the Justice whose ruling is now under review. Unlike matters on appeal from the subordinate courts which are principally based upon bills of exception, an appeal from the ruling of a Justice is not conditioned upon any technical legal formality, such as an approved bill of exceptions, or appeal bond, nor is it required that the parties should file briefs. Consequently, an appeal from the ruling of a Justice opens up the entire record without any reservation, and is heard by the full bench *de novo,* in that certain phases of the petition or the return not having been argued before the Justice whose ruling is being reviewed does not preclude the parties from argument when on appeal before the full bench.

In view of the foregoing, and the law cited, it is obvious that the respondent Commissioner erred in assessing costs against the private prosecutor. Therefore, the petition is hereby sustained, the alternative writ upheld, and the peremptory writ ordered issued. And it is hereby so ordered.

Reversed.

MR. JUSTICE SIMPSON dissenting.

The fallibility of man is readily evidenced by his daily life, which constitutes a continuing pursuit of perfection.

It therefore follows that man must accept his ability to err, for this makes him human.

Our Constitution, which is in a large measure patterned after that of the United States, divides Government into three distinct branches, Legislative, Executive, and Judicial. We, of the judiciary, are also governed by the Constitution, statutes made in pursuance thereof, and our rules that are not violative thereof.

The present case strikes me as being rather simple in respect to a determination thereof. The appellant, who was the petitioner in prohibition, was also the private prosecutor in a petty larceny suit at the level of the District Commissioner of Klay Sub-District, which is now a part of Bomi Territory. At the court of first instance, the private prosecutor contended that certain oranges had been unlawfully removed from his property by one Momo Seh. Momo Seh was thereupon arrested and brought into court, at which time he pleaded not guilty, not because he had not taken the oranges, but because of the fact that the oranges were on the property of one Maxwell Warner, and the said owner had authorized the picking and removal of these oranges.

In view of the above developments, the District Commissioner, acting under the quasi-judicial authority with which he was clothed by virtue of the provisions of the Aborigines Law, set out to determine whether or not the property was, in fact, that of Maxwell Warner, thus deviating from the original matter, to determine whether trespass had actually been committed, since there can be no larceny without trespass. The trial took five days and at the conclusion thereof the Commissioner gave what he styled a decision, which held that the private prosecutor was not the owner of the premises upon which the orange trees were situated. The Commissioner thereupon discharged Momo Seh and assessed costs against the private prosecutor, whom he at that time styled "plaintiff." An appeal was then taken from the decision of the Commis-

sioner to the Superintendent of Tribal Affairs. After the decision of the Commissioner was affirmed by the Superintendent, and no appeal was prosecuted from his affirmation of the Commissioner's decision, an attempt was thereupon made to enforce the decision of the Commissioner. It was at this time that prohibition was sought in this Court by an application for an alternative writ predicated upon the lack of jurisdiction of the Commissioner to entertain and determine a criminal cause involving petty larceny. It was in count four that the petition made mention of the order of the court that petitioner, now appellant, pay the costs of court. (For easy reference, see the majority opinion for count four of the petition.) Count seven of the same petition held, and we quote:

> "That not only is the respondent without jurisdiction over the subject matter, but that this action is also illegal and contrary to rules which ought to be observed at all times, and should not be allowed."

This petition was filed on the 23rd day of April, 1965, based upon a decision that had been rendered on the 17th day of February, 1964, one year and two months earlier.

In his return, the Commissioner contended that he did have jurisdiction over matters involving petty larceny and, for authority, cited the Aborigines Law, which not only conferred jurisdiction, but also established penalty for the offense. In the argument before the Justice, the main contention centered around the existence of jurisdiction over subject matter and party, and the issue of estoppel in respect to a party raising a jurisdictional issue when the matter before the court has been by him instituted. The issue of costs was never raised nor argued before the Justice and, therefore, constituted no part of his ruling.

Irrespective of the above, when argument commenced before the bench on an appeal taken from the ruling of the Justice, counsel for appellant most strenuously argued that prohibition would lie by virtue of the fact that costs had been a part of the decision of the Commissioner, and

enforcement of the decision would mean the payment of costs in an action to which the State was a party. When asked whether or not the particular issue had been raised before the Justice and if he had passed thereon, counsel for appellant was unable to say, for he had not himself conducted the case before the Justice.

It is elementary that our statute provides that where the Republic is a party to an action, costs may not be levied for or against her and, in the present case, the Republic, through the Commissioner, was in fact a party. However, in my view, the pivotal issue is concerned with whether or not the Supreme Court *en banc,* while engaged in the review of a ruling of a Justice in chambers, may not only touch upon but reverse that ruling predicated upon an issue subsequently raised in the application for the writ, but nowhere mentioned prior to a review by the full bench.

The Court has stated that an appeal from a Justice in chambers to the full bench constitutes a hearing *de novo* devoid of legal technicalities. This is an appellate court and we have often held that we entertain solely appellate jurisdiction while sitting *en banc,* except in instances where there has been a specific conferral of original jurisdiction by the Constitution. This Court has also held that even in instances where the Legislature attempts to confer upon it original jurisdiction in violation of the Constitution, the Court will refrain from acting in pursuance of this jurisdiction improperly conferred. In the circumstances, I say that for this Court to hear anew the application for the issuance of an alternative writ is to impliedly confer original jurisdiction upon an appellate court. For generally, in the review of a ruling, decree, or judgment, it predicates its affirmation, remand, or reversal, upon the ruling or other final determination of the inferior tribunal. What has happened in the present case is that the Court has gone outside the ruling to find a ground for reversal.

Another interesting issue here is whether the reversal of ruling just effected by the majority of my colleagues determines that the Commissioner had no jurisdiction, or means that no costs should have been assessed. What in actuality is the retrospective effect of the prohibition? Does it mean that the Commissioner had no jurisdiction irrespective of the plain wording of the Aborigines Law which does give jurisdiction? Or, does the granting of the peremptory writ mean that where a party appeals from a decision but finds that the appellate tribunal affirms that decision, he may come by way of prohibition to correct an alleged error that was not "corrected" by the regular appeal? In any event, I shall not labor too much on this particular issue.

It seems to me, that where an individual submits himself to the jurisdiction of a court which is possessed of *in rem* jurisdiction, and permits the proceedings of that court to reach final judgment, and subsequently appeals from the judgment rendered to an appellate tribunal, such an individual is estopped from denying the existence of jurisdiction. And where the judgment thus rendered is inclusive of certain provisions contrary to the interests of the particular individual, he may not have redress by way of prohibition. Prohibition lies where there is an improper exercise of jurisdiction, or, where jurisdiction properly exists, the court is proceeding by rules different from those that ought at all times be observed. When we speak here of "proceed by rules," it necessarily follows that the rules spoken of appertain to procedure, and when a trial judge or, in this instance, a Commissioner, violates a provision of substantive law, this, in my view, does not constitute a breach of rule so that prohibition would lie. Redress here must be had by appeal, since the appeal would have the same supersedeas effect and would eventually correct any substantive errors if there be any in the decision or judgment being appealed from.

I have pointedly and intentionally refrained from mak-

ing specific mention of other issues that would cause the peremptory writ of prohibition not to issue, and this I have done primarily because these are issues that were neither raised nor argued before the Justice and, therefore, should not here be determined, for a cardinal rule, hoary with age, is that this Court, or any other court for that matter, will not raise issues or do for parties litigant that which they ought to do for themselves. And this legal principle, in my estimation, should be followed when the raising of such an issue would give rise to the reversal of a ruling or judgment.

In consequence of the above enumerated facts and applicable legal precedents, I find myself unable to sign the judgment of the majority of the Court and, in the circumstances, must file this dissenting opinion.