

SADIE CUMMINGS, MOMOLU S. COOPER,  
Chairman, Claims Commission, LAWRENCE A.  
MORGAN, LAFAYETTE MORGAN, and BANK  
OF MONROVIA, Appellants, v. JAMES H.  
HUGHES, SARAH WALKER, and ROYAL  
CEASER, heirs of JAMES H. HUGHES,  
deceased, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
GRAND BASSA COUNTY.

Argued March 18, 1968. Decided June 14, 1968.

1. A restraining injunction is not designed to undo what has already been done.
2. The Supreme Court will only consider matters and issues properly presented before it in the certified record on appeal, and will consider allegations and arguments otherwise presented, as extrajudicial statements or unsupported contentions.
3. That party on appeal who has the burden of sustaining an argument should exercise due diligence in obtaining the requisite documentary proof to form part of the certified record on appeal.

It appeared that the terms of a temporary injunction had been violated when checks were paid out by defendants in an injunction suit, one payee thereafter obtaining a certificate from another judge in the same court attesting to the fact that no legal objections to such payment were on file in the court. However, the record on appeal was deficient, in that no documentation of wrongdoing was presented to the Supreme Court. On appeal by defendants from judgment of contempt of court, therefore, the *judgment was reversed*.

*Jacob H. Willis* and *Lawrence A. Morgan* for appellants. *Richard A. Diggs* for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the court.

A mining concession known as the Liberian American and Swedish Company, operating in Liberia, popularly called Lamco, acquired several parcels of land in Lower Buchanan, Grand Bassa County, in a location known as "Lamco Concession Area," from varied persons; direct owners of, or heirs to, these properties, through expropriation by the Government. Compensation for these properties was made by the Secretary of Treasury, through a Claims Commission specifically set up for the purpose.

For the settlement of one of these claims, two checks were issued in favor of the heirs of the late David Mann, alleged to be Sadie Cummings, James W. Hunter, and Sophia Hunter. On December 27, 1965, appellees filed a complaint in an action of injunction, in which they sought to enjoin, restrain and prohibit co-appellants Momolu S. Cooper, Lawrence A. Morgan, and Lafayette Morgan, members of the Claims Commission mentioned above, from paying over to appellant Sadie Cummings these checks, and the Bank of Monrovia from honoring them, contending said property to be theirs by virtue of descent. Hon. Joseph P. H. Findley, Circuit Judge for the Second Judicial Circuit, ordered the clerk of court to issue a writ of summons directed to appellants to appear on December 20, 1965, to show cause why the interlocutory writ of injunction should not be issued against them as prayed for by appellees. According to the brief filed by appellees, the clerk issued the writ together with a writ of injunction directed to the appellants. This last writ obviously impelled filing of pleadings by both sides, which progressed to the surrejoinder. Also filed was a motion for dissolution of the injunction, followed by opposition to the motion. This is also shown from the notations made by the judge on January 23, 1966.

In accordance with the assignment, and in compliance with the show cause writ, the court met on the 11th of January with appellants in attendance to consider the show cause order. The judge then and there declared

that he had not ordered the clerk to issue a writ of injunction, resulting in pleadings, and her act in this regard was unauthorized, for which cause he ordered the writ and the show cause summons abated, and directed that a new summons be issued to be served on appellants to show cause why the interlocutory writ should not issue. There is no showing from the record sent forward to this Court that the summons was issued, neither that the court met at any subsequent time to consider this matter, other than January 23, 1967. Appellees' counsel averred in his brief and argued during the hearing that the court met on January 17, 1966, and the judge ordered the writ of injunction issued, but this Court has no certain knowledge of this fact. Nevertheless, to the argument advanced by his adversary, he conceded that what was sought to be enjoined had already been done, in that one of the checks had already been delivered and honored. A second check was issued on the 25th of June, but this time delivered to a James W. Hunter, who was never a party to the injunction suit. Mr. Hunter, indubitably aware of the proceedings, appeared before Judge Roderick N. Lewis, presiding over the May Term of Court, Second Judicial Circuit, and importuned the court for a certificate evincing that there was no objection before the court in this regard. We find it necessary to quote the certificate given by Court, which reads as follows:

"In the office of the clerk of court,  
Second Judicial Circuit, Grand Bassa  
County, sitting in Buchanan, at its  
May Term, 1966.

"This is to certify that James W. Hunter is one of the legal heirs of the late D. W. Mann, to whom the Claims Commission has delivered his late uncle's claim reward for land he had signed over to the Government. There being no legal objections before this court, he is free to negotiate any check from the Claims Commission.

“By order of the presiding Judge, Second Judicial Circuit, Grand Bassa County, Republic of Liberia.

“[Sgd.] CHRISTINA V. COKER-SMITH,  
*Clerk of Court.*”

“Approved:

“[Sgd.] RODERICK N. LEWIS,  
PRESIDING JUDGE.”

To this certificate, the judge said:

“And we are led to believe, and this is our opinion, that they (meaning appellants) influenced the court to certify that there was nothing filed in this court against the heirs of the late D. H. Mann.”

Of course, counsel for appellee, Samuel W. Payne, a former Circuit Judge, requested the court to review the acts of a colleague, as apparent from his affidavit to a submission made by Jacob Willis, counsel for appellants, to be relieved from contempt proceedings, when he said:

“It is strange that without any notice to the plaintiff, Judge Lewis called the case in the absence of the plaintiff and took the action submitted by counsellor Jacob H. Willis, in favor of James W. Hunter, when he was no party to the suit; and, further, the judge’s remark, that as far as he has reviewed the records he has not been able to discover any objections being filed against the heirs of the late David Mann, nor do the clerks of both divisions of court have any knowledge or records that the aforesaid heirs are barred. This plaintiff says that the judge’s actions in this connection are without foundation. Wherefore, we ask the court not to entertain the submission and that the contempt proceedings be continued with, together with the injunction proceedings.”

The judge made the following ruling in the contempt proceedings:

“This court is convinced beyond all measure that the defendants have absolutely been in contempt of

court, especially the Claims Commission and Mrs. Sadie Cummings; not only has the Claims Commission failed to appear and to answer in these contempt proceedings, maybe because the plaintiffs appeared to them as nonexistent, but at least, without answering, they should have regard for the orders of this court by not paying out the money; furthermore, nothing in P/1 and P/2 directed the Commission to pay and the defendants are hereby guilty of contempt of court, they are jointly and severally fined \$100.00, that is, if the Sheriff cannot find all of them to pay this \$100.00 together, any of the three will be held to satisfy the judgment. Secondly, these defendants are again jointly and severally held to pay to the Sheriff of this Court the proceeds from the two checks, nos. 33183 and 21081. The Sheriff will thereupon deposit these amounts in a substantial bank, excluding the Bank of Monrovia, to be held in escrow until these injunction proceedings are determined by this court, or any court to which the matter may be removed, as to whether or not plaintiffs are entitled to injunctive relief. To which ruling defendants excepted and will avail themselves of the necessary statutory provision of appeal to the court of last resort sitting at March Term, 1967, and submit.

“At this stage, the clerk of court will seal the carbon copy of the writ of injunction issued by her on the 17th day of January, 1966, since the document is missing from her record, and issue a certified copy of the writ with seal. And it is so ordered. Matter suspended.”

From the records certified to this Court, there is no disclosure that the clerk issued the summons ordered by court, certainly there was no restraint on anyone giving and the other receiving and negotiating checks up to the 17th day of January, 1966, when the first check is said to have already been negotiated. A writ of injunction is a writ issued by a court of competent jurisdiction requiring

a party to refrain from performing the act specified therein. A writ of injunction is, therefore, not a writ to undo what has already been done. According to the records taken on January 23, this check was negotiated before notice of the injunction proceedings. If this is true, then our above paraphrase of this writ holds. Unfortunately, there is no record certified to us showing whether this check was negotiated before or after the issuance of the injunction. We have endeavored to show in this opinion that the record forwarded in this case is deficient and without many relevant documents. The file sent in this case consists of the following: (1) Notice of appeal; (2) Appeal bond; (3) Certificate of filing of the notice of appeal; (4) Bill of exceptions; (5) Minutes of court for January 23, 1967, and (6) Certificate from Judge Lewis and a letter to the Chief Clerk, Supreme Court of Liberia, transmitting these documents.

Strangely, this deficiency was never raised during the hearing, especially by appellees, who should have exerted all diligence to prove that appellants did violate the injunction. This Court takes cognizance of those issues that are regularly and legally brought before it. We do not take for granted issues advanced by counsel in their briefs and arguments, nor statements of judges unsupported by proper records, in accordance with *lex scripta*. The duties incumbent on counsel to perform is no responsibility of the Court. There are important issues raised and citations made by counsel for both sides which we refrain from delving into because of the manner of presentation.

It is rather unfortunate that the Court seems powerless to implicate Hunter, who obviously had knowledge of the injunction that impelled him to procure the certificate, and the clerks of both divisions of Court, whom Judge Findley regarded as having deceived Judge Lewis. Considering the above, we cannot but reverse the judgment of the court below, with costs against appellees.