WILLIAM GRAY, Appellant, vs. **GIBASELY BEVERLY**, Appellee.

[January Term, A. D. 1907.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Habeas Corpus.

Where a writ of habeas corpus is directed to a sheriff, commanding him to produce certain aborigines in court, and he makes a return to the writ that he had previously taken them into custody and delivered them to a native chief, by order of the Secretary of Interior so to do, such return is not sufficient to warrant the court, to which the writ is returnable, to discharge the sheriff from the responsibility of producing the prisoners before it.

This suit was brought into the Court of Quarter Sessions and Common Pleas for Montserrado County, upon a writ of habeas corpus issued by order of the judge of said court, under date June 6th, A. D. 1905, which was directed or addressed to the appellee, defendant in the court below, commanding him, the said appellee, to produce in court the persons of Vombah Fahine and Carwee, who, it was alleged in the petition praying for the writ, were the wife and child of appellant and that they were in the unlawful custody of the appellee.

The service of the writ upon the appellee was certified by the sheriff under date of June 12th of the same year, but from the record it appears that notwithstanding the due and legal service of said writ upon the appellee as aforesaid, the prisoners, Vombah Fahine and Carwee, named therein were not produced in court as the writ directed, nor did the appellee make any return whatever to said writ. This necessitated the issuing of a compulsory writ of habeas corpus, which was duly sued out under date the 20th of March, A.

D. 1906, and service upon appellee was certified by the sheriff on the 2d of April of the same year.

To this second or compulsory writ the defendant, now appellee, made a return alleging *inter alia* that he had taken custody of the prisoners by virtue of an order issued by the Secretary of Interior, under date of February 2d, 1905, which authorized him to take into his custody the said prisoners and to send them to Gorgee, to Tarway Dardo, a chief of that country. The returns further show that in keeping with said order the prisoners had been turned over to the chief named in the said order of the Secretary of Interior, and that they, the prisoners, were not in his custody or possession at the time of the service of said writ upon him. But it will be noted that the defendant, now appellee, did not claim in the returns that it was beyond his power to have produced the bodies named in the habeas corpus; on the contrary he impliedly confessed that he could and would have produced them had not Vombah been in delicate health and unable to travel, and Carwee been too young to travel without his mother.

Now let us see whether these returns of the defendant, now appellee, were sufficient in law to warrant the court below in discharging him from the responsibility of producing the prisoners, who, according to the appellee's voluntary confession, he had taken custody of, under color of the authority given him by the order of the Secretary of Interior. And firstly, let us inquire whether the Secretary of Interior had any legal authority for making such an order; and secondly, supposing he had, whether his whole actions in relation thereto would not be subject to a reviewal by a court of justice upon one of the highest writs of the country, the writ of habeas corpus, with the view of correcting whatever abuses of power there may have been in the exercise of his functions.

The Act of the Legislature of Liberia, approved January 23d, 1869, creating an Interior Department and providing for the appointment of an officer at its head, styled the Secretary of Interior, undoubtedly confers upon that officer very

large duties and authority in relation to matters affecting the aborigines of the country. It would seem from the provisions of this act and subsequent enactments relating thereto, that the intention of the law-makers was to create in this officer a sort of arbiter in all purely native matters arising between themselves and referred to the chief of this department for settlement, which he must settle with due regard to native customary law and native institutions, where not .repugnant to the organic law of the state.

We feel no hesitancy in asserting as our opinion, that in dealing with the numerous and varied matters that would come up under this act from time to time, relating to the rightful ownership and possession of native women, who according to native law are regarded and treated as chattels, occasions may arise where, after an impartial investigation of the facts and the application of the native customary law bearing thereon, it may become necessary for the Secretary of Interior, in the furtherance of justice and in the exercise of sound discretion, to issue orders to his subordinates of the nature of the one of February 2, 19o5, by color of which appellee claims he took custody of the prisoners Vombah and Carwee. But this court declines to enunciate the rule that any such order affecting, as the one in question does, the liberty of individuals and the relations of husband and wife and parent and child, and being in itself unsupported by other facts, is a legal and sufficient return to a writ of habeas corpus. For it is obvious that the said order did not inform the court below whether the detention of Vombah and Carwee was lawful or unlawful, and this we hold is the real gist and object of the writ of habeas corpus.

Again we would observe that there is nothing in the returns to said writ, nor in the evidence produced at the traverse of the writ, to show that the detention of prisoners is lawful. It also appears that the returns were not made upon oath as the law directs, and therefore should not have been taken by the lower court as sufficient grounds for discharging appellee from the responsibility of producing the bodies of Vombah and Carwee before the court. (Stat. Lib. Bk.

1, Chap. 23, sec. 8.)

After duly considering the principles of law involved in this case, and the circumstances surrounding it, as appear from the record, we are firmly of opinion that to affirm the judgment of the lower court would be supporting a principle repugnant to the letter and spirit of the Constitution and setting at nought the office, object and purpose of the highest writ of the country, the writ of habeas corpus, the privilege and benefit of which, according to the language of the Constitution, "shall be enjoyed in this Republic, in the most free, easy, cheap, expeditious and ample manner." (Constitution of Liberia, p. 1o, sec. 20.)

This court therefore hereby authorizes and directs the judge of the court below to resume jurisdiction of the cause, and by means of a compulsory writ to compel the appellee, defendant below, to produce before him the bodies of Vombah and Carwee, in order that the cause of their alleged unlawful detention may be fully and lawfully ascertained. And the clerk of this court is hereby authorized to issue a mandate to the court below as to the effect of this decision.