JAS. H. GREEN, Mayor et al., Plaintiffs, v. **P. J. L. BRUMSKINE et al**., Defendants.

ARGUED MAY 3, 1915. DECIDED MAY 10, 1915.

Dossen, C. J., Johnson and Witherspoon, JJ.

Injunction—Circuit Courts—Quo Warranto—Corporations.

1. In a suit of injunction brought to restrain parties from exercising the powers of Mayor and Common Councilmen it is error for the trial court to decide upon the contested election between the parties.

2. Right to municipal franchises is not triable in an action of injunction.

3. Circuit Courts are statute courts deriving their being and scope of powers from statutes and can exercise no jurisdiction beyond that which the statutes confer.

4. These courts have no jurisdiction over municipal elections nor the franchises of public corporations.

5. The proceedings applicable to such cases are proceedings upon quo warranto. The writ of quo warranto can only be issued by the Supreme Court or a Justice thereof, and is triable by that court only.

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

Injunction—Writ of Error. This case is one which has excited public attention in a great degree, not only because of the wideness of the interest involved, but also because of the uniqueness of its character, and its lack of a parallel in the history of the courts of this country.

The case grew out of a municipal election for the election of Mayor and Common Councilmen for the Corporation of Buchanan, some time in January, 1914, at which election plaintiffs and defendants in error were candidates for

the respective offices of Mayor and Common Councilmen, in opposition to each other. The records show that on the termination of the election both sides claimed to have been elected and the strife and disorder which followed as a sequence to such an anomalous state of things were discreditable to both parties.

As drawn from the records the immediate cause of this suit was the attempt on the part of plaintiffs in error, defendants below, to administer the affairs of said corporation in disregard of the fact that Phillip J. L. Brumskine, one of the defendants in error, had by virtue of his alleged election been sworn into the office of Mayor of the said corporation by the Superintendent of the County, which act however, was in itself a violation of the charter.

Under these circumstances the suit at bar was brought to restrain plaintiffs in error from exercising the functions of Mayor and Councilmen as aforesaid.

It would, we think, be difficult to find in the judicial annals of this Republic a case in which the law was more misunderstood and misapplied, and in which the judge displayed more of the powers of law-maker and judge at the same time, than is exhibited by the records of the proceedings in the court below. And just here, we would remark that while judges may not be responsible for injuries which may accrue to parties in suits, arising from an honest and conscientious misconception of the law, yet, we feel, that a palpable misapplication of the plain principles of law, producing, as in the case at bar, public injury and wrong, is at least a moral wrong which does not reflect credit upon the standard of efficiency and uprightness of a judge.

In considering the exceptions taken to the rulings and judgment of the court below in the premises as are contained in the assignment of errors before us, we propose to examine the law under which the case was brought and to apply the same to the several rulings and judgment whose reversal is sought.

The first exception laid in the assignment of error is taken as follows :

"Because on the said 30th day of May, 1914 after dissolving the injunction the court below in said decree barred the said defendants, now plaintiffs in error, who had already been legally qualified and were exercising and discharging

the duties of Mayor and Common Councilmen of the City of Buchanan,Grand Bassa County, from continuing to do so ; and further decreed, that all property of the City of Buchanan be turned over to the Superintendent and Sub-treasurer of the County of Grand Bassa who were by said decree appointed receivers until such time as the legal election and qualification of Mayor and Common Councilman for said city may have been held and had. And the said court further ordered the sheriff of Grand Bassa to carry out said decree. These rulings and orders of the said judge, the plaintiffs in error submit, were errors."

This suit being in injunction we propose to consider : (1) The scope and office of actions of injunctions, and (2) Public corporations—thee legal method of suspending' or cancelling the charter of corporations; and, the court competent by the laws of this Republic to exercise such powers.

The statutes of Liberia define an action of injunction to be one "in which the plaintiff seeks to compel the defendant to permit matters to remain in their present state," etc. (ch. I, p. 31).

"A writ of injunction, which is the foundation of actions of injunctions" may be described to be a judicial process whereby a party is required to do a particular thing or to refrain from doing a particular thing according to the exigency of the writ. (Kerr on Injunctions, ch. II, * p. 9.) An injunction will lie where the remedy at bar, though there be one, is inadequate. An injunction will not be granted on the application of a private person to protect purely public rights; nor to restrain the abuse of a public trust unless the complainant can show some peculiar interest therein. (Bouv. L. D., vol. 1, p. 1041.) It seems clear to us that if the defendants in error, plaintiffs below, were claiming the municipal franchises which the plaintiffs in error, defendants below, were attempting to exercise, they might restrain them from doing so by an injunction. But the court in adjudicating the case could not go into the question of the validity, or invalidity of the election of the contending parties and declare upon same; nor, could it make a decree suspending the charter and turning over the assets of the corporation to the Superintendent of the County, a person not recognized by the charter, nor by the municipal ordinances of the corporation. Such powers are not conferred upon the Circuit Courts of this Republic.

The Circuit Courts of Liberia are statutory courts. They derive their being from the statutes creating them and are limited in their jurisdictions to the powers conferred upon them by statutes. They cannot lawfully exercise any judicial powers, nor, in the adjudication of questions before them, extend their judgments or decrees over matters which are manifestly beyond their purview. And where in the adjudication of a cause properly within their jurisdiction, they go beyond that jurisdiction, and, embrace in their findings questions which do not fall within their lawful scope, such assumption the appellate court will regard as manifest and reversible error.

This brings us to the consideration of corporations in general, and, to public corporations in particular; and, to the law controlling them. Corporations are divided into aggregate and sole. A sole corporation is composed of one person, who is created a corporation in order to confer certain privileges, such as succession, which in his private capacity he would not possess. This class of corporations seems peculiar to English law.

Aggregate corporations at common law are combinations of individuals united into one collective body, under a special name, and invested with certain privileges, immunities and capacities as a body, which do not belong to them as individuals, such as the capacity of succession and perpetuity; this class of corporations is what is known to our law.

Aggregate corporations are sub-divided into public and private. Public corporations, such as the one involved in this controversy are founded by government for political purposes. Their existence is dependent upon the pleasure of the government by which they are created, and they may be modified in their constitution and privileges and powers by the government.

By enactment of the Legislature of Liberia the ward of Buchanan was created a city with perpetual succession of officers ; and, with certain privileges and immunities contained in its charter and amendments thereto. Among these privileges are the rights to hold elections of officers and to prescribe the manner how and the persons who shall be eligible to vote at such elections; to declare, by its legislative body, the Common Council, the persons duly elected at any such elections who are further authorized to administer the oath of

office to such persons as that body shall declare duly elected as Mayor. See charter granted.

Said corporation was further invested with powers to raise revenues and to appropriate same to the use and benefit of the corporation. Subsequent enactments conferred upon this corporation in common with other municipal corporations of Liberia, the monies arising from commercial licenses within their limits and from other sources of revenue which previously were paid into the Government, to assist and enable the corporation to carry out the object for which it was created.

These rights, privileges and franchises once conferred could not be recalled or abrogated except at the instance of the Government, and, if the question of revocation was to be made the subject of judicial inquiry and determination, only by a tribunal vested with power to adjudicate such questions. This brings us to consider what are the means and the procedure by which corporations may be judicially reached and their conduct investigated and their rights affected. We hold that any such judicial inquiry can only be had upon a writ of quo warranto issued by the competent authority, which in Liberia is the Supreme Court; or the individual Justices thereof if the court is out of session.

Mr. Blackstone with marked clearness has stated the reasons that will warrant judicial inquiry in such cases and the process by which this shall be had. I shall quote his own language. "A corporate franchise," says he, "is a species of incorporeal hereditament, in the nature of a special privilege or immunity, proceeding from the sovereign power, and subsisting in the hands of a body politic, owing its origin either to express grant, or to prescription which presupposes a grant. It follows, therefore, that the sovereign power has the right at all times to inquire into the method of user of such franchise, or the title by which it is held, and to declare a forfeiture for mis-user or non-user, if sufficient cause appears, or to render judgment of ouster if the parties assuming to exercise the franchise have no title thereto," and, continues this learned jurist, "it may be stated as a general rule that whenever there has been a mis-user or non-user of corporate franchises, which are of the very essence of the contract between the sovereign power and the corporation, and the acts complained of have been repeated and wilful, they constitute just ground for a forfeiture in proceedings upon an information." (High's

Extraordinary Remedies, 315.)

Says Mr. Shortt in his treatise on Injunctions : "There are certain cases in which, though the procedure by quo warranto information is the proper course to pursue, yet a private relator will not obtain leave to exhibit one."

"An information against a corporation as a public body can only be filed by the Attorney General *ex officio."*

"If any number of individuals" says Lord Tenterden, "claim to be a corporation without any right so to be, that is a usurpation of a franchise ; and an information against the whole corporation as a body, to show by what authority they claim to be a corporation, can be brought only by and in the name of the Attorney General."

In *R. v. The Corporation of Camarthen,* an application for an information against the corporation as a body having been refused to a private relator on the ground just mentioned, the court acceded to an application on his behalf for rules against the several individual members of the corporation; but in the subsequent case of *R. v. Ogden* the court discharged a single rule which had been obtained against five individuals by name, Lord Tenterden using the language just cited. (Shortt on Information, * pp. 117-118.)

It seems unnecessary to carry our research further to establish the fact that the decree of the lower court is erroneous.

It is not the purpose of this decision to declare which of the parties in the suit was duly elected as that question is not properly before us. The dissolution of the injunction by the lower court automatically placed the defendants below in the same position in relation to the City of Buchanan as they were before the writ of injunction issued.

It also seems unnecessary to remark that the lower court had no power to disposses the corporation of its revenue and to create a receivership to receive same nor to deprive it of any benefit conferred by the charter and subsequent enactments of the Legislature, and we feel no hesitancy in

declaring the decree a nullity in this respect.

It is the opinion of this court that the decree of the court, so far as it exceeds the mere dissolution of the injunction should be reversed and it is hereby so ordered.

J. H. Green and *Arthur Barclay,* for plaintiffs in error.

P. J. L. Brumskine, for defendants in error.