In re the CONSTITUTIONALITY OF THE ACT OF THE LEGISLATURE OF LIBERIA APPROVED JANUARY 20, 1914, entitled "An Act providing for uniform Rules of Practice in all the Circuit Courts of this Republic."

ARGUED MAY 8, 1914. DECIDED MAY 12, 1914.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. If the Legislature passes an Act infringing the Constitution, the Act is void ab initio

2. No department of the Government can exercise judicial functions but the court itself. Legislation, therefore, is unconstitutional which seeks to have other branches of Government participate in judicial work.

3. The Act under construction goes beyond the limit fixed by the Constitution for the Legislature as it reserves to the Legislature the power to revise, amend, abrogate, or totally annul an act of the court properly performed within its constitutional province and scope. The Legislature can not do this, and the Act at bar must be declared null and void because it is in conflict with the Constitution.

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

The Legislature during its session of 1913-1914 passed the following statute:

"Whereas it is necessary for the proper conducting of the business of the several Circuit Courts of the Republic that a uniform set of Rules of Practice should be made and enforced in each of the said Circuit Courts, therefore

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Sec. 1. That from and after the passage of this Act the President of this Republic be and he is hereby authorized to appoint a committee to be

composed of the Honorable Supreme Court and all of the Circuit judges, whose duty it shall be to formulate a full set of rules governing the practice of the Circuit Courts in Civil, Criminal, Equity and Admiralty practice.

"Sec. 2. The said committee shall be directed to enter upon this duty at as early a date as is practicable and upon the completion of the work they shall immediately forward same to the President to be by him laid before the Legislature at its session of 1914-1915 *for approval."*

In compliance with this statute the President under date March 13, 1914 addressed the following letter to the Supreme Court :

"Executive Mansion,
Monrovia, Liberia,
March 13th, 1914.

The Honorable
The Supreme Court, R. L.,
Monrovia.
Your Honors :

I am directed by His Excellency the President to inform you that, in keeping with an Act of the last Legislature your Honorable Body is hereby appointed to form part of a committee to formulate Rules governing the Practices of the Circuit Courts in Civil, Criminal, Equity and Admiralty cases.

The judges of the Circuit Courts complete this committee, and His Excellency trusts that the work as contemplated by the Act may be completed by the committee against the next session of the Legislature.

I have the honor to be
Honors,

Your obedient servant,
(sgd.) Walter F. Walker
Secretary to the President."

Now upon mature consideration of the foregoing communication and the statute upon which it is founded it becomes obvious to us that the provisions of the said Act are in certain respects in manifest conflict with the Constitution in a very material and essential degree and that compliance with the said Act on our part would violate a cardinal principle of the Organic Compact which is the foundation of our political society, and in its effect and operation interfere with that independence and separateness of the co-ordinate branches of the Government positively enjoined by the Constitution and which is the spirit and genius of this Democratic Institution. For the benefit of both bench and bar *as* well as for the information and enlightenment of the public on such an important issue as the Act under review presents, we deemed it proper to have a full discussion of the Act by the bar and in pursuance with this view the court propounded to the bar the following query :

"Does the statute approved January 20th, 1914, which provides that the Honorable Supreme Court shall form part of a judicial committee to formulate Rules of Practice for the Circuit Courts, which rules when framed shall be submitted to the Legislature for its approval, not infringe the independence and powers of the Supreme Court as an Organic branch of the Government possessing inherent rights and functions, whose actions in all matters of a judicial character are final and unreviewable?

"Would not, therefore, the compliance with the latter clause of said Act be a derogation of those rights and powers, and of its independence?"

The discussion of said query which came off at the appointed time, was participated in by every counsellor present, and led by the Honorable Attorney General, and the exhaustive and erudite manner in which counsellors conducted their discussions and the weight of legal authorities quoted in support of their respective arguments have thrown a flood of light upon the whole question and greatly aided us in our study and determination of this very important matter. We regard those arguments eminently worthy of a place in this opinion and therefore we have extracted from them the most salient and pertinent parts which we give hereunder.

By appointment of the court, the following counsellors appeared and submitted arguments upon the following query:

"Does the statute approved January 20th, 1914, which pro. vides that the Honorable Supreme Court shall form part of a judicial committee to formulate Rules of Practice for the Circuit Courts, which rules when framed shall be submitted to the Legislature for its approval, not infringe the independence and powers of the Supreme Court, as an Organic branch of the Government, possessing inherent rights and functions, whose actions in all matters of a judicial character are final and unreviewable?

"Would not, therefore, the compliance with the latter clause of said Act be a derogation of those rights and powers, and of its independence?"

Attorney General Haynes argued:
"The queries propounded, involve, in my opinion but one point, the solution of which will answer them fully.

"First: The powers of this Government are divided into three *distinct* departments — legislative, executive and judicial and no person belonging to either of these departments, shall exercise any of the functions or powers belonging to either of the others. (See Const., art. I, sec. 14.)

"I am of opinion, that if the Legislature were to interpose or interfere in any manner in reviewing rules made by the Supreme Court, that Honorable Body would be assuming the powers and functions of the Supreme Court in violation of the article of the Constitution above quoted.

"On the other hand if the Supreme Court should act in conjunction with the Legislature in making and approving rules for the government of the courts, she would not only be suffering her rights and inherent powers to be infringed, and that too, by her own acts, but would also be acting in violation of the said article of the Constitution.

"The compliance of the Supreme Court with section second of the Act above referred to, would in my opinion sweep away all of the independence of the

Supreme Court which the Constitution seeks to protect and safeguard."

Counsellor Grimes argued substantially, submitting several authorities : "That there is vested in every court of record inherent power to make, alter and amend in any way its Rules of Practice ; that under the Constitution the three departments of the Government are distinct, and no one can exercise functions in more than one department at the same time; that the Supreme Court being a co-ordinate branch of the Government would act in derogation of its rights, powers and independence, if it should submit its doings to another co-ordinate branch for approval."

Counsellor Barclay argued substantially, submitting an authority showing the refusal of certain judges of the United States to execute an Act of Congress directing them to ascertain the amount of pension claims due certain parties: "That within the last forty years the executive and legislative branches of the Government have been gradually encroaching upon the judiciary; that he remembers the time when the Legislature would ask the opinion of the Supreme Court with reference to the constitutionality of projected legislation; that since then statutes have been passed, like the statute for the removal of judges, which have not been challenged ; but whenever an issue shall arise respecting them, they will have to be declared unconstitutional; that the objections to the statute at bar have been pointed out by counsellors who have already argued the question; and it seems that many other objections could be raised. For example, the President acting under the direction of the Legislature in ordering the Supreme Court to perform a certain act. Now, the President can not do this, as the court is a co-equal in the administration of the Government; and in the matter of making rules, it possesses certain inherent power with which neither the legislative nor executive branch of the Government can interfere. Indeed, under the scheme of constitutional government, the judiciary is a check on both the legislative and executive branches. If this statute is complied with it may prove to be the entering wedge for the destruction of the separateness of the three departments of the Government, and may result ultimately in getting them out of their respective orbits."

Counsellor Dunbar argued substantially: "That there is an unfortunate impression prevailing in legislative circles, namely, that when the Legislature

is in session, it is in supreme command of the Government. This mistaken impression leads to the enactment of objectionable legislation like the statute at bar; that he opposed in his capacity as senator the passage of this Act when it was before the Senate on the ground that it was unconstitutional violating article I, section 14, of the Constitution, and that he attempted to point out to the Senate that there are limits beyond which the legislative power can not go. Counsel then cited Cooley on Constitutional Limitations, pp. 44 and 45, closing with the expression, 'that the Supreme Court could not act under the statute in question without doing an unconstitutional thing and jeopardizing its independence.'

Arguments were also made by Counsellors Gray, Karnga, and Williams, Mr. Karnga taking the position that the Act is not unconstitutional in that the work required of the Supreme Court is not that of a judicial character, but is purely administrative work. He cited a case from the Massachusetts reports showing that a statute was held valid under which certain judges were appointed to draw certain rules for a certain commission. Counsel quoted from a magazine article and was unable to point out the facts of the matter, and he admitted upon answering certain questions by the court, that there is a difference between an Act requesting judges to make rules for a commission of laymen and a statute like the one at bar directing a court to make rules for courts and then thereafter to submit the rules for the approval of the Legislature.

It will be observed that the arguments presented by the learned members of the bar upon the unconstitutionality of the Act under review are, with but one exception, unanimous and this unanimity of opinions among the learned counsellors of this bar, which finds concurrence in the conclusions we have reached after a careful deliberate study of the question, has afforded us the greatest satisfaction; and aroused in us deep appreciation not only for the legal erudition of this bar, but also for its high sense of responsibility and integrity in the consideration of a grave and momentous question.

We now proceed to construe and interpret the Act under consideration and to decide whether or not its provisions are in conflict with the Constitution. And first, let us inquire whether the Supreme Court has power to annul and set aside a legislative enactment when in its opinion it is repugnant to the provisions of the Constitution.

The Constitution of Liberia divides the Government into three separate and distinct co-ordinate branches; and declares in positive terms that in the exercise of the respective functions of the three co-ordinate branches, each shall be free and independent of the other. The same instrument lodges the power to enact laws in the legislative branch of Government, and its enactments, when they pass into law by force of any one of the three processes mentioned in the Constitution, become the law of the land. But the people, who are the sovereign power in a republic like ours, in this very instrument in which they conferred the power to enact laws upon a Legislature, composed of the representatives of the people, also of themselves, and by virtue of their right as the sovereign power of the Nation, created by the exercise of organic powers, certain fundamental laws and enunciated certain basic principles which are and must be regarded as the Highest Law.

It follows therefore from the most ordinary reasoning that if the Legislature passes a statute whose provisions infringe in the lowest degree what we have termed the Highest Law, that statute is void *ab initio,* because of its repugnancy to the Constitution. But it is equally obvious that to decide such points it was necessary that one of the three great powers of Government should be invested with that function. While the Constitution does not in express terms confer that power upon the courts, yet from the very nature of such questions they fall under judicial observation and we contend are a proper subject for adjudication by the highest tribunal of the country; and this view is uniformly held by authors and publicists on the American Constitution after which ours is framed, and by opinions and decisions of the Supreme Court of that country handed down from time to time. Let us, before announcing our opinion on this point quote some of these opinions. In the case *Marbury v. Madison,* Chief Justice Marshall held the following opinion on the power of the Supreme Court to construe and interpret legislative enactments; said he : "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. So, if a law be in opposition to the Constitution ; if both the law and the Constitution applied to a particular case, so that the court must either decide that case

conformably to the law, disregarding the Constitution; or conformably to the Constitution, disregarding the law ; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty." (Watson on the Const., p. 1182.)

Again in the *case Martin v. Hunter,* Justice Story held that : "The courts of the United States can, without question, revise the proceedings of the executive and legislative authorities of the States, and if they are found to be contrary to the Constitution, may declare them to be of no legal validity." *(Ibid,* p. 1183.)

And in the case *Hepburn v. Griswold* (8 Wall. 603) Chief Justice Chase laid down this rule that: "When a case arises for judicial determination and the decision depends on the alleged inconsistency of a legislative provision with the fundamental law, it is the plan duty of the court to compare the Act with the Constitution, and if the former cannot upon a fair construction be reconciled with the latter, to give effect to the Constitution rather than the statute."

All civilized nations jealously guard the independence of their judiciary. The courts stand between order and anarchy, facing the latter with a stern repressive frown, and extending aid and encouragement to the former. In the evolution of society a plan was reached providing for the choice of certain men to decide controversies, where the parties thereto were unable to agree. The essential element of such plan was that the men so set aside, must be free and that they must be above every outside influence whether sought to be exercised by king or people ; that they must decide all matters coming before them without fear, favor or affection.

John Marshall, the great American expounder of constitutional law, said in an address to the Virginia Constitutional Convention in 1820: "Avert Sir, to the duties of a judge. He has to pass between the Government and the man that the Government is prosecuting — between the most powerful individual in the community and the poorest and most unpopular. It was of the last importance, that in the performance of those duties he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depends upon that fairness? The judicial department comes home in its effects to every man's fireside, it passes on his property, his reputation, his life, his all. Is it not to the last

degree important that he should be rendered perfectly and completely independent with nothing to control him but God and his conscience ?" (Watson on the Const., p. 1080.)

Fearless judges have from time immemorial so conducted or delivered themselves as to maintain this independence without which the administration of justice would be a mockery. When Lord Mansfield took his oath as Chief Justice of England he knelt before the throne during that portion of the oath which bound him in loyalty to the King. But when he was to receive that part of his oath which bound him to justly administer the laws of the realm, to mete out impartial justice to all men alike, in order to show that in this respect he owed allegiance to no one but himself, his oath, his conscience and his God, he arose and stood erect, and his attitude then, and his judicial acts thereafter have entitled him to immortal eminence as a type of the just and fearless judge.

In the evolution of constitutional government nothing has been more marked than the evolution of the judicial system, and the Liberian student of constitutional questions will find suggestive and sometimes controlling arguments in American legal works, as our Constitution is based on that of the United States of America. In *Wood v. Republic* (I Lib. L. R. 447) this court held :

"The law involved in this exception relates to a constitutional provision, and is one which the Supreme Court of Liberia has never passed upon and thereby settled. The provision is borrowed from the American Constitution, after which our Constitution is framed."

In 1792, the Congress of the United States enacted a law requiring the Circuit Court to determine the amount of pensions which should be allowed in certain cases. The judges of the Circuit Court refused to administer this law practically holding it to be unconstitutional, and they gave their grounds of refusal to President George Washington in the following letter:

"To you it officially belongs to 'take care that the laws of the United States be faithfully executed.' Before you, therefore, we think it our duty to lay the

sentiments which on a late painful occasion governed us in regard to an Act passed by the Legislature of the Union. The people of the United States have vested in Congress all legislative powers granted in the Constitution. They have vested in one Supreme Court and in such inferior courts as the Congress shall establish the judicial power of the United States.

"It is worthy of remark that in Congress the whole legislative power of the United States is not vested. An important part of that power was exercised by the people themselves when they ordained and established the Constitution.

"This Constitution is the Supreme law of the land. This Supreme law all judicial officers of the United States are bound by oath or affirmation to support. It is a principle important to freedom that in Government the judicial should be distinct from and independent of the legislative department. To this important principle the people of the United States in forming their Constitution have manifested the highest regard. They have ordained that the judges of those courts shall hold their offices during good behavior, and that during their continuance in office their salaries should not be diminished.

"Congress have lately passed an Act to regulate among other things, the claims to invalid pensions. Upon due consideration we have been unanimously of the opinion that under this Act the Circuit Court held for the Pennsylvania District could not proceed.

"First, because, the business directed by this Act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States. The Circuit Court must, consequently, have proceeded without constitutional authority.

"Second, because if upon that business the court had proceeded, its judgments (for its opinions are its judgments) might under the same Act have been revised and controlled by the Legislature and by an officer in the Executive Department. Such revision and control we deem radically inconsistent with the independence of that judicial power which is vested in the courts; and, consequently, with that important principle which is so strictly observed by the Constitution of the United States. "Those, Sir, are the

reasons of our conduct. Be assured that though it became necessary it was far from being pleasant. To be obliged to act contrary, either to the obvious directions of Congress, or to a constitutional principle, in our judgment equally obvious, excites feelings in us which we hope never to experience again."

In harmony with the principle above set forth Congress modified the Act so as to relieve the judges of any connection with the pension matter.

Article I, section 14, of the Constitution declares that : "The powers of this Government shall be divided into three distinct departments, Legislative, Executive and Judicial, and no person belonging to one of the departments shall exercise any of the powers belonging to either of the others. This section is not to be construed to include justices of the peace."

It is clearly to be seen that no department of the Government can exercise judicial functions but the court except as it may be otherwise provided in the Constitution, as each branch of the Government set up in the Constitution is independent as well as coordinate. Legislation therefore is unconstitutional which seeks to have other branches of Government participate in judicial work. It is this feature of the Act under consideration which renders it void and inoperative.

No contention is raised to the power of the Legislature to authorize by statute the framing of uniform Rules of Practice for the subordinate courts and to specifically entrust that duty to the Supreme Court, although the Supreme Court by virtue of the power vested in it by the Constitution has power independent of any express act authorizing it, to formulate such Rules of Practice for the subordinate courts, consistent with existing laws. But the Act under construction goes beyond this limit and reserves to the Legislature the power to revise, amend, abrogate or totally annul an Act of the court properly performed within its constitutional province and scope. This we hold the Legislature can not do without transcending its constitutional limitation.

It is generally recognized throughout the country that there is great need of uniformity in the practice of our methods of procedure in the administration of justice, and that Rules of Practice should be made for the subordinate courts

promotive of that uniformity in the practice of those courts which is so greatly needed, and it is deeply regretted that the legislative Act at bar must be declared null and void because it is in conflict with the Constitution.

The clerk is therefore ordered to write His Excellency the President acknowledging the receipt of his communication above set forth and expressing our deep regret that we can not comply with his request to act in the premises for the reasons expressed in this opinion a copy of which shall be enclosed by the clerk with his letter.