IN RE THE CONSTITUTIONALITY OF SECTIONS 12.5 AND 12.6 OF THE JUDICIARY LAW, APPROVED MAY 10, 1972.

Argued February 10, 1975. Decided February 19, 1975.*

1. The constitutionally established original jurisdiction of the Supreme Court, including the power to punish for contempt, is independent of legislative action which can neither subtract from nor add to it.
2. Contempts are sui generis, neither civil nor criminal in the ordinary sense of the words.
3. Sections 12.5 and 12.6 of the Judiciary Law are unconstitutional insofar as they relate to the Supreme Court and are to be regarded as void *ab initio.*
4. Generally, contempt of court is conduct which tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties.
5. The power to punish for contempt of court is an essential element of judicial authority.
6. A legislative provision, if violative of the Constitution, is without legal force or effect from the time of its enactment.

On May 10, 1972, the Legislature approved sections 12.5 and 12.6 of the Judiciary Law, delineating the acts constituting criminal contempt of the courts, including the Supreme Court, and the maximum punishment therefor in the Supreme Court.

The Supreme Court invited comments from members of the bar and judiciary and was assisted by *amicus curiae.* After an exhaustive study the sections involved were declared to be unconstitutional insofar as they applied to the Supreme Court and were declared void *ab initio.*

Toye C. Barnard, amicus curiae.

MR. JUSTICE HENRIES delivered the opinion of the Court.

* Mr. Justice Horace did not participate in this decision.

On January 24 last past, the Supreme Court rendered judgment against K. Neville A. Best, Vittorio A. Jesus Weeks, Ernestine Cassell, and Willard Russell, for contempt of the Supreme Court, and imposed fines of $5,000 and $4,000, respectively, upon them, failing the payment of which they were ordered to be imprisoned until said fines could be paid.

Subsequently, upon their imprisonment for failing to pay the fines, the question of the legality of the said fines has been raised in legal circles, on the ground that section 12.6 of the Judiciary Law, approved May 10, 1971 (Rev. Code 17:12.6), limits fines which the Supreme Court imposes in contempt matters to only $300.00.

Whereas this important issue might have been passed upon and resolved by the Court, had the respondents availed themselves of their right to have petitioned for reargument within three days of rendition of judgment, they neglected to do so; hence, the Court, feeling the urgent need for the question to be passed upon and settled, invited comments from the members of the Supreme Court bar. The relevant portions of the sections involved are set forth.

The first section relates to power of courts to punish for contempt.

"1. Acts constituting criminal contempt. . . .

"(a) Disorderly, contemptuous or insolent behavior directly tending to interrupt its proceedings or to impair the respect due to its authority.

"(b) Breach of the peace, noise or other disturbance directly tending to interrupt its proceedings or to impair the respect due to its authority.

"(c) Willful disobedience or resistance willfully offered to its lawful mandate, except that it shall not apply to a person who disobeys a summons in a case in which a writ of arrest is expressly authorized by law.

"(d) Contumacious and unlawful refusal to be

sworn as a witness; or after being sworn, to answer any legal and proper interrogatory.

"(e) Publication of a false or grossly inaccurate report of its proceedings; but a court cannot punish as a criminal contempt the publication of a true and fair report of a trial, argument, decision or other proceeding therein." Rev. Code 17:12.5.

Section 12.6 provides for punishment of criminal contempt. "Punishment for a criminal contempt may be by fine, not exceeding $300 in the Supreme Court."

Promptly at 9 A.M. on February 10, 1975, the bench *en banco* met to hear comments and arguments from the bar on the constitutional question of whether, in view of the two sections of the Judiciary Law quoted above, the Legislature can limit the power of the Supreme Court of Liberia to punish for contempt.

Present at the discussion were three Circuit Judges, the Judges of the Debt and Traffic Courts of Montserrado County, the Commissioner of the Probate Court of Montserrado County, 58 members of the Supreme Court bar, headed by Counsellor Estrada Bernard, Deputy Minister of Justice, and several members of the public. The discussion, which was participated in by sixteen counsellors-at-law, was led by Counsellor Toye C. Barnard, *amicus curiae*. Some of the participants prepared submissions, while others spoke extemporaneously. We appreciate the interest of the members of the bar which was evidenced by their attendance at, and their contributions to, the discussion. These arguments and submissions were erudite, and we have extracted from them the most salient and pertinent parts which we feel are worthy of mention hereunder.

Counsellor Toye Barnard argued, substantially, that the Supreme Court's power to punish for contempt is inherent, and that since the Supreme Court is a constitutional Court, the Legislature was without authority to

limit the Court's contempt power. Therefore, sections 12.5 and 12.6 of the Judiciary Law were unconstitutional. He cited *In re Moore,* 2 LLR 97 (1913). This view was shared by Counsellors Estrada Barnard, Alfred J. Raynes, R. F. D. Smallwood, Joseph Findley, Joseph Andrews, O. Natty B. Davis, Samuel Pelham, and Nathaniel E. Marsh.

Counsellor William V. S. Tubman, Jr., contended that since in the Revelation Contempt Case (*In re Porte,* decided January 24, 1975) the sections were not declared unconstitutional, the Court should have imposed the statutory fine. He also argued that contempt is a crime and should be regulated by statute as is done with other crimes, and, therefore, the statute is not unconstitutional.

Counsellor J. Rudolph Grimes, in a letter, asserted that because our legal system in Liberia is based on adversary proceedings and the issue of the constitutionality of the sections had not been raised in any case before the Court, he doubted whether the question can be passed upon. This view was shared by Counsellors Caepar Mabande and C. Abayomi Cassell.

Counsellors T. Gyibli Collins and Mabande argued that the Legislature could enact such a statute as a result of the power given to it by Article IV, Section 2nd, of the Constitution to make regulations from time to time in connection with the jurisdiction of the Supreme Court.

Counsellors William A. Ward and Josph F. Dennis argued that section 12.5 was unconstitutional, because it tends to limit the Court in its determination of what acts are contemptuous; but that section 12.6 was constitutional because it is within the legislative power to prescribe fines for offenses, and also because it is in accord with Article I, Section 10th, of the Constitution, which prohibits the imposition of excessive fines. Otherwise, they argued, the fines could be left to a judge who could act arbitrarily. Counsellor MacDonald Perry shared the latter view, and also felt that section 12.5 did not restrict the Court to

the five instances of contempt enumerated therein and, therefore, this section is constitutional.

It will be observed from the synopsis of the arguments given above, that a majority of the participating members of the bar were of the opinion that sections 12.5 and 12.6 of the Judiciary Law are unconstitutional. During the discussion many interesting issues were raised which we feel should be given some consideration in our determination of the constitutionality of the contempt statute, and thus try to allay some of the fears which have been expressed. We shall now proceed to traverse these issues and, hopefully, in a dispassionate and judicious manner.

Some members of the bar have expressed grave concern about these proceedings because of the apparently mistaken belief that they were instituted as a result of a submission made by Counsellor Toye C. Barnard; that these proceedings seemingly grow out of a contempt case which has already been adjudicated; that the issue has not been raised in any court, in any proceeding, or by a party; and that these proceedings appear to impinge on the principle that courts do not hear and determine moot questions or those growing out of its action, except to recall its opinion on an issue pending before it.

The Court would be equally concerned if the fears expressed were well founded, or if there was really a departure from the time-honored procedure governing the raising of constitutional issues. At the outset, this Court must make it clear that the basis of these proceedings is not the submission by Counsellor Barnard; in fact, his submission is in pursuance of these proceedings. The only relevance these proceedings have to the Revelation Contempt Case (*In re Porte*) is that it was the first sensational case, since the publication of the Act, in which the statutory penalty was exceeded, thereby causing serious concern in the legal community. Since the issue could not be raised by the Court *sua sponte,* since it was not raised within three days of the rendition of judgment in

the Revelation Contempt Case (*In re Porte*), which the contemnors had a right to do under Rule 9 of the Revised Rules of the Supreme Court, if they felt some palpable mistake was made by inadvertently overlooking some fact or point of law; and since the fines imposed have been paid, this Court has no intention of reviewing or recalling, in these proceedings, its opinion in that case which is now *res judicata.*

It is true that the constitutional issue has not been raised in any court or by a party; but there is legal precedent for the procedure being followed because of the nature of the section under consideration and the erosive effect its implementation could have on the Judiciary, especially the Supreme Court, of this Republic. Sixty-one years ago, in the case *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,"* 2 LLR 157 at 158, 159 (1914), this Court, speaking through Mr. Chief Justice Dossen, said,

> "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."

It is in this spirit, and because we feel that the circumstances warranting these proceedings are analogous to the

situation existing in 1914, that we have proceeded in this manner.

Moreover, we find support for employing this exception to the general rule in 16 AM. JUR., 2d, *Constitutional Law,* § 125, which states that:

> "An exception to the general principle that an immediate, direct, and personal interest in the enforcement of an act is essential to raising questions of constitutionality has also been recognized by some courts in cases where the jurisdiction of the court itself depends on the validity of a statute, and the attention of the court is called to the fact by persons interested in the effect to be given to the statute, although not actually interested in the case before the court."

Now let us consider some of the issues raised by the members of the bar. That this Court has the power to set aside an act of the Legislature which conflicts with the Constitution has been settled by a long line of cases which need not be cited herein. It has been contended that the Legislature did not act unconstitutionally when it enacted the section of the law limiting the Supreme Court's power to determine what is contemptuous and to fine no more than $300.00, because this authority comes under that clause of Article IV, Section 2nd, of the Constitution of Liberia which states: "In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Legislature shall from time to time make."

The Constitution of the United States of America has a similar provision in Article III, Section 2. Since the Liberian Constitution is patterned after this document, we shall refer to decisions of the Supreme Court of the United States for guidance in interpreting this provision. In the case of *Durousseau* v. *United States,* 6 *Cranch* 307 (1810), that Court, in considering the Judicial Act of 1789, held that while, "the appellate powers of the court are not given by the judicial act, but are given by the

Constitution, they are nevertheless, limited and regulated by that act, and by such other acts as have been passed on the subject." That Court said, further, that the judicial act was an exercise of the power given by the Constitution to Congress "of making exceptions to the appellate jurisdiction of the Supreme Court."

Again, in *Ex parte McCardle, 7 Wall* 506 (1869), that Court reaffirmed its holding in the *Durousseau* case when it considered the Act of Congress of 1868, which repealed an act authorizing appeals from judgments of the Circuit Courts to the United States Supreme Court. That Court said that "the appellate jurisdiction of this Court is not derived from acts of Congress. It is strictly speaking conferred by the Constitution. But it is conferred with such exceptions and under such regulations as Congress shall make." It went on further to say: "We are not at liberty to inquire into the motive of the Legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this Court is given by express words."

We are in agreement with this interpretation insofar as our Constitution is concerned, not only because it is patterned after that of the United States, but also because the clause is so clear and unambiguous that it leaves no doubt as to the intent of the framers of the Constitution. Indeed, a careful scrutiny of the Liberian Civil and Criminal Procedure Laws reveals that the sections thereof which affect the Supreme Court are mainly those which relate to the appellate jurisdiction of this Court, whether it be by ordinary appeal or by the remedial writs of certiorari, prohibition, mandamus, and error. In no instance is there any regulation of this Court's original jurisdiction. As a matter of law the original jurisdiction of the Supreme Court is independent of legislative action. The Legislature can neither subtract from nor add to it. That being the case, the power of the Supreme Court to punish for contempt does not fall within its appellate

jurisdiction which is subject to regulation by the Legislature, but rather is a power inherent in the Supreme Court. The moment this Court was called into existence and invested with jurisdiction over any subject, it became possessed of this power which cannot be limited by statute. A contempt would come within the Supreme Court's appellate jurisdiction only when the contempt was committed in a lower court or against a judge of an inferior court, and an appeal was taken from a decision of that court. In that case, since the lower courts are creatures of the Legislature, statutes restricting the exercise of their contempt power must be complied with. See *Caranda* v. *Porte,* 13 LLR 57 (1957), in which the Probate Commissioner required the contemnor to file a bond in the contempt proceedings in the sum of $1600. Since the statute extant at that time limited the Probate Court to a fine of $20 for contempt, this Court, speaking through Mr. Justice Wardsworth, held the bail to be excessive. See also *In re Counsellor MacDonald Acolatse,* 22 LLR 219 (1973), in which this Court held that the trial judge erred in fining the lawyer $300 instead of $50 as prescribed by our Judiciary Law, 1956 Code 18:280.

It was also contended that the section is constitutional because contempt is a crime, and it is within the province of the Legislature to say what a crime is and how it should be punished. While at first blush this assertion might seem to be true, a closer look at the characteristics of contempt proceedings would show that contempts are *sui generis,* neither civil or criminal in the ordinary sense of the words. In some instances they may appear to be of a criminal nature because of the power to convict and punish for a wrong committed, but in other respects they partake of the nature of a civil remedy. It is possible that criminal contempt may arise out of actions that are purely of a civil character, and it is also possible that the contemptuous act constitutes a crime, for example, the bribing of an officer of the court; but the court by punishing

for contempt is not in that instance executing criminal law. 12 AM. JUR., *Contempt,* § 67; and 17 AM. JUR., 2d, *Contempt,* § 4. In *Blackmer* v. *United States,* 284 U.S. 421 (1932), and *Myers* v. *United States,* 264 U.S. 95 (1923), the United States Supreme Court said that "while contempt may be an offense against the law and subject to appropriate punishment, certain it is that since the foundation of our government, proceedings to punish such offenses have been regarded as *sui generis* and not criminal prosecutions within the Sixth Amendment or common understanding." The general view is that contempt proceedings are criminal only in form since their object is to compel obedience to, and respect for, the court, and not to punish for a public offense. Moreover, if contempts were regarded as being crimes within the true meaning of the word, the Legislature in most common law countries would have defined them as such. Later on in this opinion we shall examine contempt statutes of some common law jurisdictions.

Other members of the bar have asserted that the section of the Judiciary Law under consideration is constitutional because it is compatible with Article I, Section 10th, of the Constitution which prohibits excessive fines. This seems to imply that the excessiveness of a fine is determined by who sets the fine and not by the gravity of the offense, the ability to pay, and other factors. This contention misses the issue at bar which is: Can the Legislature prescribe what fines this Court should impose for contempt, regardless of the amount of the fine?

This is not to say that if a party considers a fine imposed by this Court to be excessive the issue could not be raised, or that it would not be given due consideration when properly and timely raised.

Let us now turn our attention to legislative contempt which harks back to Anglican beginnings, was transplanted to the United States, and is now a part of the power of the Legislature, as a result of our General Con-

struction Law, Rev. Stat. 15:4.1. We shall not delve into the long history of legislative contempt, but, rather, we shall confine ourselves to the practice in the United States, because of the similarity in the Constitutions and Legislatures of the two countries. The Constitution of that country does not expressly confer contempt powers on Congress, but it does expressly confer upon each house of Congress the power to punish its members for disorderly behavior. See Article I, Section 5, of the U.S. Constitution. The United States Supreme Court held in *Anderson* v. *Dunn,* 6 *Wheat.* 204 (1821), that this constitutional provision does not impliedly exclude the power to punish nonmembers for contempt. According to 17 AM. JUR., 2d, *Contempt,* § 125:

> "Congress has the power to punish for contempt persons other than its members if the contemptuous conduct occurred in proceedings strictly of a legislative character or in the course of an inquiry within the legitimate scope of the legislative functions of that body, at least where such conduct had the effect of obstructing such proceedings or inquiry. However, Congress has been said to be without power to punish as contempt an act that is not of a nature to obstruct the performance of the duties of the Legislature."

See also *Jurney* v. *McCracken,* 294 U.S. 125 (1935), *Kilbourn* v. *Thompson,* 103 U.S. 168 (1880).

In 1957 a federal statute, 2 U.S.C. § 192 (1958), was enacted, authorizing punishment for contempt of Congress. Prior to that time, the contempt power was exercised under a claimed inherent right. The procedure under the present statute requires the President of the Senate or the Speaker of the House, after a decision to punish for contempt, to send the case to the United States Attorney for the district where the contempt was committed. He in turn presents the case to a grand jury, which decides whether to indict the contemnor. If he is indicted, he stands trial in a federal court as any other

accused criminal. This statute did not preclude action under the prior inherent-claimed procedures, but since its enactment all congressional contempt procedures have been pursuant to the statute. Thus it can be seen that Congress itself, by this statute, delegated to the courts its power to punish witnesses for contempt; and its power to do so was upheld in *In re Chapman,* 166 U.S. 661 (1897).

In Liberia, the Legislature's exercise of contempt powers is based on an inherent right which, as we have stated before, traces its beginnings to the English Parliament. The Liberian Constitution, Article II, Section 8th, empowers each House of the Legislature to adopt its own rules of proceedings and enforce order, and this has been regarded as giving each House the power to hold in contempt nonmembers. Unlike the United States Congress, the Liberian Legislature has not found it necessary to delegate to the courts any of its contempt power and, therefore, though on rare occasions, persons have been summarily punished for contempt by the Legislature. In one instance, in 1955, the standard bearer of the Independent True Whig Party, who was not a member of the Legislature, was held in contempt and ordered to pay a fine of $20,000, which was paid. There has been no instance of judicial interference with the Legislature's contempt power.

One of the members of the bar, who is also a Senator, contended that because the Legislature can limit its contempt power, it also has the right to restrict the Supreme Court's powers of contempt. To support his contention, he pointed to a law which provides that the Legislature can fine a Cabinet Minister $200.00 if he fails to submit the annual report of his Ministry to the Legislature within a specified time. That law is contained in the Executive Law, 1956 Code 13:32. We doubt that the Legislature has regarded such act as contemptuous but if it has been regarded as such, we are certain that there is no other evi-

dence of the Legislature limiting itself as to what it will deem contemptuous or how much penalty it can impose upon one who contemns it.

We must stress that no one doubts that the Legislature has the power to limit or delegate its contempt power, but what is important here is that only the Legislature, and no other branch of our government, possesses the power to do so. Likewise, only the Supreme Court, which came into being at the same time as the Legislature, can restrict its own contempt powers within the limits of the Constitution. To permit one branch of government to interfere with another's power would be a serious infringement of the constitutional doctrine of separation of powers.

We shall now take a cursory glance at the contempt statutes of some common law jurisdictions.

A. England

The relevant sections of the English law of contempt as found in 8 Halsbury's LAWS OF ENGLAND, 3rd ed (1954), reads:

> "Sec. 1. Contempt of court is either (1) criminal contempt, consisting of words or acts obstructing or tending to obstruct, the administration of justice, or (2) contempt in procedure, consisting of disobedience to the judgment, orders or other process of the court, and involving a private injury.
>
> "Sec. 2. Jurisdiction to punish criminal contempt. Criminal contempt is a misdemeanor punishable on indictment by fine or imprisonment, or by order to give security for good behaviour.
>
> "The superior courts have an inherent jurisdiction to punish criminal contempt by the summary process of attachment or committal in cases where an indictment, or an information in Queen's Bench Division is not calculated to serve the ends of justice. The power to attach and commit, being arbitrary and unlimited, is to be exercised with the greatest caution."

Here we should make what we feel are three important observations, at the same time bearing in mind that England has no written Constitution; they are:

(1) that the definition of contempt is so unrestrictive as to permit a broad interpretation of what acts can be considered contemptuous;

(2) that the punishment for contempt is fine or imprisonment and there is no limit to the amount of the one or the duration of the other; and

(3) that the jurisdiction of the superior courts to punish for contempt is inherent.

B. Nigeria

In the Nigerian Constitution, Order in Council 1960, we find the following:

> "Sec. 21 (10). No person shall be convicted of a criminal offense unless that offense is defined and the penalty therefor is prescribed in a written law:
>
> "Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt or itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not prescribed."

A similar provision is found in section 10 of the Ghana Criminal Code of 1960.

Here again we observe that the power of the court to determine what constitutes contempt or what penalty should be imposed is limitless.

C. The United States

The relevant United States contempt statute was passed in 1831, and is now found in 18 U.S.C. § 401 (1948). It provides as follows:

> "Sec. 401. Power of court. A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority and none other, as
>
> "(1) Misbehavior of any person in its presence or

so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

This section first came up for judicial review in mandamus proceedings before the United States Supreme Court in 1874. The proceedings were instituted by an attorney who had been adjudged guilty of contempt by a District Court of the United States. In that case, *Ex parte Robinson,* 86 U.S. 205 (1874), Mr. Justice Field, speaking for the Court, in referring to the power to punish for contempt, said:

"But the power has been limited and defined by the Act of Congress of March 2, 1831. The Act, in terms, applies to all courts; whether it can be held to limit the authority of the Supreme Court which derives its existence and powers from the Constitution may, perhaps, be a matter of doubt, but that it applies to the circuit and district courts there can be no question. These courts were created by Act of Congress. Their powers and duties depend upon the Act calling them into existence, or subsequent Acts extending or limiting their jurisdiction."

Support for this view is found in *United States* v. *Hudson & Goodwin, 7 Cranch* 3 (1812), in which the Court said:

"Or all the courts which the United States may, under their general powers constitute, one only—the Supreme Court—possesses jurisdiction derived immediately from the Constitution, and of which the legislative power cannot deprive it. All other courts created by the general government possess no jurisdiction but what is given them by the power that creates them, and can be vested with none but what the power

ceded to the general government will authorize them to confer."

Although the contempt power of the United States Supreme Court has never been questioned, ever since *Ex parte Robinson, supra,* the doubt that the statute could apply to it continues to linger. However, it is settled that statutory courts of the United States cannot go beyond statutory boundaries in imposing punishment for a criminal contempt. See *Bessett* v. *Conkey Company,* 194 U.S. 324 (1904); *Cammer* v. *United States,* 223 F.2d 322 (1955).

While the federal statute has limited the inferior courts of the United States with respect to what conduct constitutes contempt, it has not restricted these courts in the punishment they can impose, except in those cases where the contemptuous act would also constitute a criminal offense. See 18 U.S.C. § 402.

A clear illustration of this fact can be seen in the following contempt cases which went up on appeal to, and whose judgments were affirmed by, the Supreme Court of the United States:

(1) in *Green* v. *United States,* 356 U.S. 165 (1951), the contemnor was sentenced to three years' imprisonment;

(2) in *Piedmonte* v. *United States,* 367 U.S. 556 (1961), the judgment was eighteen months' imprisonment;

(3) in *United States* v. *United Mine Workers,* 330 U.S. 258 (1947), John L. Lewis, the leader of the Union, was fined $10,000.00 and the Union itself was fined 3.5 million dollars. The Supreme Court affirmed the judgment, but reduced the Union's fine to $700,000; and

(4) in *United States* v. *Barnett,* 370 U.S. 681 (1964), a civil contempt case, Governor Barnett of Mississippi was fined $10,000 a day and his Lieut. Governor $5,000.00 a day, until they complied with the Court's order. This was the famous case involving the Governor who stood in

the doorway at the University of Mississippi to prevent James Meredith, a Negro, from attending classes.

We have referred to the contempt laws of these jurisdictions and made observations concerning them, to show that they are in accord with our view on the courts that can be restricted in their determination of what constitutes contempt and the amount of penalty to be imposed. They are persuasive evidence that statutory limitations of the contempt powers of courts are applicable solely to courts created by statute, and not constitutional courts; that rarely are limitations placed on what conduct constitutes contempt; and finally, that the duration of imprisonment and the amount of the fine are usually left to the discretion of the court.

We shall now proceed to construe and interpret the sections under consideration and to decide on their constitutionality. Briefly, sections 12.5 and 12.6 of the Judiciary Law empower every court, including the Supreme Court, to punish for criminal contempt in five instances, "and no other," and forbid the Supreme Court to fine more than $300.

Generally, contempt of court is conduct which tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties. 17 AM. JUR., 2d., *Contempt,* § 3. Contempts are punishable because of the necessity of maintaining the dignity of and respect toward the courts and their decrees. Therefore, the power to punish for contempt of court is an essential element of judicial authority. Insofar as they apply to this Court, section 12.5 is so all-inclusive that it tends to exclude other acts or conduct that may constitute contempt, while section 12.6 removes from the discretion of the Court the degree of punishment. By discretion it is not meant that the court must choose between fine and imprisonment; the term of imprisonment

is as much in the court's discretion as is the amount of fine.

Article I, Section 14th, 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 these 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."

The three branches of government being independent and coordinate, it is clear that one branch cannot limit another branch in the performance of its functions except as provided in the Constitution. See *In re the Constitutionality of the Act of the Legislature of Liberia approved January 20, 1914,* 2 LLR 157 (1914).

The question before us is, can the Legislature limit the Supreme Court in its determination of what acts constitute contempt, and what amount it should impose as a penalty? We hold that the Legislature cannot do so without transcending its constitutional limitation.

We have already mentioned in this opinion that the Supreme Court is a constitutional Court, that is to say, it was created by the Constitution, unlike the lower courts which came into being by legislative enactments in accordance with the Constitution. Article IV, Section 1st, of the Constitution states clearly that "the judicial power of this Republic shall be vested in one Supreme Court, and such subordinate courts as the Legislature may from time to time establish."

With respect to the Supreme Court's contempt powers, this Court in *In re John Moore,* 2 LLR 97, 98 (1913), held clearly and unequivocally that this power cannot be limited by statute. First, the Court pointed out "that there is a radical difference between a constitutional court and a statutory court." This Court is established by direct constitutional provision, and the Legislature is limited in its right to make laws concerning it. But the Legislature has full power over the statutory courts, as

they are its creatures, the exercise of such power being reviewable by this Court as to its constitutionality. It has been settled by many authorities that when the court is created by the Legislature, its powers and duties are dependent upon the act calling it into existence, and by that act, or by subsequent acts of the Legislature, what constitutes contempt of it may be defined, and how it may punish therefor may be prescribed: "But this is not the case with a constitutional court. The power to punish for contempt, as well as to determine whether a contempt has been committed, is inherent in all constitutional courts; and cannot be limited by statute."

Unlike *Ex parte Robinson, supra,* in which Mr. Justice Field expressed doubt as to the federal contempt statute being applicable to the United States Supreme Court, this Court declared positively in the *Moore* case that its contempt powers cannot be limited by statute. The two cases can be distinguished on the ground that in the former the Supreme Court's contempt power was not at issue, while in the latter, the first objection of the respondent was that he was not guilty of statutory contempt. To this contention, this Court, at page 99, said: "We do not have to examine the statute to discover whether or not respondent has committed a contempt of this Court, and the claim that he should not be punished because he was not guilty of a statutory contempt falls to the ground."

This Court, which came into existence by the Constitution without intermediary legislation, has general, extra-statutory power to enforce its mandates by contempt process. Courts whose source of existence is by statute can be subject to statutory restrictions of contempt process. The lower courts of this Republic being statutory courts, the Legislature is empowered to restrict them in the exercise of their contempt powers; but the Legislature exceeded its constitutional bounds when it extended these restrictions to the Supreme Court. Therefore, sections 12.5 and 12.6 of the Judiciary Law are unconstitutional insofar

as they apply to the Supreme Court of Liberia. It follows then that since this Court is a constitutional court, the only limitation on its power to punish for contempt are those found in the Constitution.

Finally, in answer to the contention that since in prior cases of contempt of this Court the statute under consideration was not declared unconstitutional, the Court should now comply with the statute, we have this to say: If we had applied it, we would have conceded its validity; and not only would we be aiding in the infringement of this Court's inherent powers, but we would also be acting in violation of Article I, Section 14th, of the Constitution, "thus sweeping away all of the independence of the Supreme Court which that constitutional provision seeks to protect and safeguard." Of course, courts have been known to give effect to an unconstitutional statute to protect those who have acted in reliance thereon, but this Court has not yet been shown any evidence that those whom it held in contempt had relied upon the contempt statute in the Judiciary Law.

A legislative provision, if violative of the Constitution, is without legal force from the time of its enactment. It has been said that "an unconstitutional act is not law. It confers no rights; it imposes no duty; it affords no protection; it creates no office. It is, in legal contemplation, as inoperative as though it had never been passed." *Norton* v. *Shelby County,* 118 U.S. 426 (1886). We find this to be the case with sections 12.5 and 12.6 of the Judiciary Law insofar as they relate to the Supreme Court and, therefore, we must declare them void *ab initio.*

The Clerk of this Court is ordered to send mandates to all subordinate courts of record informing them of this judgment. And it is so ordered.