DERK KEYOR, Appellant, *v.* BORBOR and SABOY CARR, Tribal Chief and Justice of the Peace for Montserrado County, Appellees.

APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF PROHIBITION.

Argued March 28, 1966. Decided July 1, 1966.

1. A person whose constitutional rights have allegedly been invaded by an act of the Legislature or of an administrative board must exhaust all available judicial and administrative remedies before raising the question of the constitutionality of a statute.
2. A justice of the peace is not authorized to declare a statute unconstitutional.
3. When a constitutional issue is raised in a court of first instance, it should be reserved for appellate review.
4. Where constitutional issues are involved in an application for a prerogative writ, the Chambers Justice should hear arguments on the pleadings and reserve determination for the Court *en banc.*
5. Prohibition will not lie to restrain a justice of the peace from exercising statutory jurisdiction with respect to assessment of damages.

On appeal, a *ruling* in Chambers denying an application for a writ of prohibition restraining the respondent justice of the peace from exercising jurisdiction in an action for damages was *affirmed.*

Morgan, Grimes and Harmon Law Firm for appellant. *Samuel B. Cole* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

Records before us in the present case show that during the year 1961 and on the 13th day of December, one Borbor presented himself in the justice of the peace court situated at Water Street in the City of Monrovia, Montserrado County, and by way of action damages for alleged injuries to the person, complained against the appellant herein before Saboy Carr, a justice of the peace, to the

effect that injuries had been inflicted upon him by the defendant in that court, who is the appellant herein, and that in consequence of said injuries, the said Borbor had been damaged in the sum of $50.

Predicated upon the complaint as mentioned *supra,* a writ issued against appellant herein to answer the action of damages. It was also discovered that, in a previous criminal action, the appellant herein, as defendant, had been fined by the justice of the peace in an amount of $10 for assault and battery common.

After the ascertainment of the above facts, we find ourselves confronted with a series of factual inconsistencies which are made more difficult when consideration is given to the fact that a justice of the peace court is not a court of record but one over which this Court has general supervisory powers in consequence of the requirement of statutes relating to the issuance of remedial writs in special proceedings.

In any event, the appellant herein has alleged that, after having been served with the writ of summons, he specially appeared before the justice of the peace and demurred to the writ challenging the jurisdiction of the court over the subject matter, an action of damages, since such an action in his view was directly under the jurisdiction of a court of original jurisdiction having attached thereto a jury; for an action of damages of necessity entails an assessment of the damages sustained, and this a justice of the peace could not do, for to do this would be in direct contravention of Article 1, Section 6th of the Constitution of Liberia, which provides that:

> "Every person injured shall have remedy therefor, by due course of law; justice shall be done without sale, denial or delay; and in all cases, not arising under martial law or upon impeachment, the parties shall have a right to trial by jury and to be heard in person or by counsel, or both."

The facts in this case become further confused when Count 4 of the petition is read in relation to the rest of the petition. In Count 4, it is stated that irrespective of the plea raised by petitioner, the justice of the peace proceeded to ignore the rights of petitioner and rendered judgment by default against the said petitioner. It is difficult to understand how judgment by default could be rendered against a party present in court.

Let us nevertheless proceed to examine the recitation of facts as laid in the returns of respondents. It is stated by the respondent justice of the peace that when the case was called upon an assignment duly issued, the petitioner did not come into court and thereafter judgment by default was entered against him. It is further stated that when the writ of execution was about to be served on the petitioner, he importuned the constable to accompany him to the Morgan, Grimes and Harmon Law office, where Counsellor G. P. Conger Thompson took the writ from the constable and drove him away, asserting that it had been illegally issued. It is further alleged that on a subsequent date a similar act was performed by Counsellor Emmett Harmon.

The respondent justice of the peace further stated that Counsellor Jacob Willis of the Morgan, Grimes and Harmon Law office made an application for a rehearing of the case. An assignment was made for a hearing of the application; however, Counsellor Willis never returned to the court for the hearing of the application. Thereupon, the case was further gone into when respondent Borbor requested the issuance of a writ of execution.

The facts as presented by the opposing sides are in complete contradiction of each other except for that portion of both the petition and returns which states that judgment by default had been rendered. This fact impels us to believe that the question of the constitutionality of Section 556 of the Judiciary Law (1956 CODE 28:556) de-

lineating the trial jurisdiction of justices of the peace was not timely raised in the court of original jurisdiction. It is a general rule of law that a person whose constitutional rights have been invaded by an act of the Legislature or of any administrative board must raise the objection at the earliest available opportunity and exhaust the remedies which may have been provided for the correction of unreasonable and improper orders before he will be permitted to make an attack in the courts on the constitutionality of the statute. *State ex rel Powell* v. *State Bank of Moore,* 90 Mont. 539, 550, 4 P. 2nd 717, 719, 80 A.L.R. 1494, 1479 (1931). The failure to raise an opportune objection to an order of the court amounting to an invasion of a constitutional right may amount to a waiver of this right. *Comm'rs. of Union Drainage Dist.* v. *Smith,* 233 Ill. 417, 84 N.E. 376, 392 (1908); 11 AM. JUR. 772 *Constitutional Law* § 125.

Irrespective of the above-cited rule of law as to jurisdiction in the interpretation of constitutional issues, let us turn the coin over and see what we have thereon. Petitioner has alleged that the issue of the constitutionality of the statute in question was timely raised in the court below. If we accept this assertion as correct, what then? Counsel for petitioner requested us not to listen to arguments in this case but instead to leave the same for action by the full Court. If this is in truth the proper approach to a determination of the legal validity of the statute, how then is this reconciled with the initial request of the petitioner to have a justice of the peace declare a statute unconstitutional and refuse to exercise jurisdiction granted him by the legislature through the same statute? This position of petitioner is certainly paradoxical. No justice of the peace should take it upon himself to declare unconstitutional an act of the Legislature. Instead, whenever a constitutional issue is raised, it should be preserved for appellate review, and in the final analysis it should be the responsibility of the Supreme Court of the

Republic of Liberia, sitting *en banc,* to declare unconstitutional an act of the Legislature of Liberia. For a justice of the peace to assume to do this would be usurpation of an authority with which he is not properly clothed.

Petitioner herein should have proceeded to except to the judgment of the justice's court and to pray an appeal to the circuit court to review the decision of the justice of the peace, still preserving the constitutional issue; thereafter, the same could have been brought up to this Court on a regular appeal from a determination *en banc.*

Looking further to the common law, we find the following with respect to the type of caution that should be exercised in determining the correct exercise of power through a determination by a court that the constitutional issue involved has not only been properly put before the court for this determination but that, additionally, the particular tribunal should take upon itself the task of determining whether or not the statute in issue contravenes the basic law and should therefore be set aside. Since the famous case of *Marbury* v. *Madison,* 1 Cranch (5 U.S.) 137 (1803), basic guidelines have been developed in the courts of the United States and made a part of our law through a series of pronouncements by this Court. See *Bryant* v. *Republic,* 6 L.L.R. 128 (1937). It has been said that:

> "The courts invariably give the most careful consideration to questions involving the interpretation and application of the Constitution and approach constitutional questions with great deliberation, exercising their power in this respect with the greatest possible caution and even reluctance; and they should never declare a statute void, unless its invalidity is, in their judgment, beyond reasonable doubt. For example, courts should be very slow in declaring legislation unconstitutional which has been frequently reenacted during the course of a century, where conditions may exist which make such a statute reasonably necessary

for the public welfare although the reason originally stated for its passage may have ceased to exist.

"The importance of correctly deciding constitutional questions is so great that the Supreme Court of the United States has announced that it is not accustomed to hear them in the absence of a full court if this can be avoided.

"These mandates as to the careful exercise of the judicial power in interpreting the Constitution have given rise to a variety of opinions as to the proper conduct of *nisi prius* courts when such questions are presented.

"A reluctance is expressed by many courts of first instance against exercising the power to declare an act of the legislature unconstitutional. In fact, it has been stated that a court of first instance will assume a statute to be constitutional until otherwise determined by the higher courts. Especially is this true where the statute in question is one under which the court of last resort of the state has acted. Other trial courts have said that the duty to declare invalid legislation which contravenes the constitution rests upon the court of first instance as well as upon appellate courts." 11 AM. JUR. *Constitutional Law* § 91.

In view of the above, it is the unequivocal position of this Court that a justice of the peace court is not a proper tribunal for the determination of whether or not a particular act of the legislation is in contravention of the Constitution and therefore void. Where a particular statute confers jurisdiction upon a justice of the peace court and the jurisdiction is being properly exercised by that court, any attack upon the legality of the conferral of authority, though timely raised in a justice of the peace court, may not be determined in that court but the same should be preserved for the determination of a court of higher jurisdiction.

Prohibition lies to enjoin one from acting contrary to

law. In the case at bar, the legislature has decreed by enactment that jurisdiction is conferred upon the justice of the peace to assess damages in the amount specified in the writ. It would be a clear violation of law for the justice of the peace to refrain from exercising jurisdiction statutorily conferred. Such a nonexercise of jurisdiction would impliedly constitute a determination of the constitutional issue relating to the supposed violation of Article 1, Section 6th of the Constitution. Under such circumstances, the constitutional issue would not have been squarely raised so as to require a determination of the same.

On the final question if whether or not it was proper for the Chambers Justice singly to make a determination as to whether or not the peremptory writ of prohibition should issue, it is our view that his actions were in harmony with law. It is submitted that a long line of decisions of this Court, e.g., *Fazzah* v. *National Economy Committee,* 8 L.L.R. 84 (1943), holds that where constitutional questions are involved the Chambers Justice should hear arguments on the pleadings, the determination thereof being reserved for the Court *en banc.* In the present case, the Chambers Justice did not determine a constitutional issue but instead held that there was no constitutional issue properly before the Court for a determination since the same was neither timely nor squarely raised in the court of first instance.

In view of the above, it is our determination that the ruling of the Chambers Justice be, and the same is, hereby affirmed with costs against petitioner. And it is hereby so ordered.

Ruling affirmed.