EMMANUEL S. KOROMA, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and ZONDELL B. JALLAH, Appellants, *v.* PARKER PAINT COMPANY, INC., Appellee.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS GRANTING A WRIT OF PROHIBITION TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 16, 20, 1974. Decided June 14, 1974.

1. Though a party has not been served with process, if subsequent steps are taken by him consistent only with a submission to the court's jurisdiction, then he has conferred jurisdiction over him upon the court.
2. Nor may he thereafter deny jurisdiction simply because his interests have changed, especially when another party who has acquiesced to such former position would be prejudiced thereby.
3. Though generally a writ of prohibition will only issue before judgment to stay proceedings, the rule need not apply where judgment has been taken by default or jurisdiction is lacking upon the face of the record.
4. A writ of prohibition will issue in an ejectment action where judgment has been taken by default, when the defendant has not been properly served in the action and jurisdiction over him was consequently lacking in the lower court.
5. The court which is competent to decide on its own jurisdiction in a given case, may determine that issue at any time in the proceedings when it is raised, before or after judgment.
6. A summons or citation requiring the defendant to appear at a past or impossible date does not confer jurisdiction upon service thereof and is not sufficient to support a judgment taken by default.
7. A court may be requested by a party to compel its ministerial officer to make a complete and perfect return when error therein appears.
8. To constitute valid service a corporation must be served with process through an officer or agent empowered to receive service in its behalf.

A writ of summons was issued on April 7, 1972, in an action of ejectment brought against appellee by appellant Zondell B. Jallah. P. Clarence Parker, the president of the defendant corporation, was not in Liberia from April 16, 1972, through May 19 following. Service of the summons was not effected and on May 28, 1972, a writ of resummons was issued by the court. The resummons was apparently served by the court's ministerial officer on some

person at the corporation, but his return did not name the person nor indicate whether he was empowered to receive process for the corporation by reason of his office or otherwise. Furthermore, in stating the date of service of the writ of resummons in his return thereto he gave April 28 instead of May 28 as the date, requiring defendant to appear by May 10, already passed. The defendant did not appear in the action and judgment was taken by default in ex parte proceedings of August 7, 1972. Thereafter, plaintiff was placed in possession of the land pursuant to a writ issued therefor. Subsequently, contempt procedings were instituted against Parker for alleged defiance of the court's writ of possession issued to plaintiff. The matter was still pending at the time of these proceedings.

On July 23, 1973, the defendant applied to the Justice presiding in chambers for a writ of prohibition directing the respondents to cease from prosecution of the ejectment action and the judgment obtained therein. The Justice granted the petition and ordered the peremptory writ issued. Respondents appealed to the full bench from the ruling. The Supreme Court emphasized the lack of jurisdiction over the defendant in the ejectment action and *affirmed* the ruling.

P. J. L. Brumskine for appellants. *Moses K. Yangbe* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

A petition for a writ of prohibition was granted by Mr. Justice Wardsworth in chambers, and respondents therein have appealed from the ruling.

The petitioners made an application on July 23, 1973, alleging by petition that F. Clarence Parker headed the corporation which was sued in an action of ejectment brought by Zondell Jallah, one of the respondents.

Parker states that he was out of the country from April 16, 1972, through May 19, 1972. A writ of summons was issued on April 7, 1972, but was never served. On May 28, 1972, a writ of resummons was issued against the corporation but was not served, nor is there any proof of valid service thereof on file. Nonetheless, final judgment, of which enforcement has been sought, was rendered on August 14, 1972, by the judge who is named as a respondent therein. Claim is also made that petitioner did not receive due notice of the pending action.

Respondents opposed the petition which was granted in chambers. We will now consider the issues presented by this appeal.

The first issue to be considered by us is that of jurisdiction, since the court which is competent to decide on its own jurisdiction in a given case may determine that question at any time raised in the proceedings, before or after judgment. *King* v. *Williams,* 2 LLR 523 (1925).

Zondell Jallah, one of the respondents, denied the court had jurisdiction in the prohibition proceedings because a writ was served on her attorney in the action of ejectment and not on her.

We are of the opinion that if a party not served with process takes such steps in an action, or seeks relief at the hands of the court, as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court and is bound by its action as fully as if he had been regularly served with process. And where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formerly taken. *King* v. *Williams, supra.*

We take the view that respondent, having appeared by

counsel, raised and contested various issues embodied in the petition, in the meantime seeking relief in asking the Court to quash the alternative writ of prohibition cannot now challenge the jurisdiction of the Supreme Court over her person. Count 7 of the amended return is, therefore, not sustained.

As aforesaid, it has been alleged in the petition that although service was never effected upon the defendant in the ejectment action, judgment was rendered in ex parte proceedings, depriving defendant of property without due process of law. In counts 4, 5, 6, and 8 of their return, respondents, among other things, have contended that service was effected upon the corporation, if not on Parker, and that prohibition is not the proper remedy herein and should not be entertained, for it cannot correct, review, or reverse a judgment.

What seems to be inexplicable here is that the writ of resummons was issued on May 28, 1972, commanding formal appearance by defendant on or before May 10, 1972, the return thereto showing that it was served on April 28, 1972.

According to most authorities a summons or citation requiring the defendant to appear at a past or impossible date, has been held to confer no jurisdiction and not to be sufficient to support judgment by default.

At this point we would think it not amiss to conclude that jurisdiction has not been obtained and to rest the proceedings here. For obviously any prudent man could not believe that the writ could have been served before it was issued. Therefore, service of the summons conferred no jurisdiction over anyone, as aforesaid. And if it could be considered a mere clerical error resulting in confusion of dates or obvious mistake it was an irregularity which could have been amended before the court.

We were informed by appellants' counsel during argument that after judgment was rendered upon default the plaintiff in the action was placed in possession. Appel-

lee defied the authority of the lower court and re-entered upon the land. A bill of information was filed in the lower court, but because of the volume of work during the December 1972 Term it was not heard.

The record shows that appellee was duly served with the writ of summons to the information, yet never answered nor raised the issue of service of the writ of resummons.

Consequently, a writ of arrest was issued and served upon one Boston Cooper, but he was later released by the judge and the matter was suspended subject to call. Subsequently the alternative writ of prohibition obtained by appellee was served upon counsel who represented appellant in the ejectment case.

Counsel has urged in argument that this Court take judicial notice of the obvious error made by the sheriff and deem the writ of resummons to have been served on May 28, 1972, and not on April 28, as shown thereon.

From our point of view, to do so would be improper and prejudicial, especially since the pivotal issue of service and jurisdiction has been raised.

Moreover, this argument was never raised before the Justice in chambers so as to have afforded him an opportunity to consider the point.

Moreover, counsel could have brought the matter to the attention of the court below from which the writ emanated. A court has power to compel a sheriff to make a complete and perfect return. The reason for this proposition stated seems to be that, as he is responsible for a false return, the sheriff must be at liberty to make his own return subject to that responsibility.

> "As a general rule, a defective return of process or a defect in the proof of service of the writ may be amended in order to make the record properly exhibit the facts and speak the truth, since it is the fact of service and not the return which confers jurisdiction."

We turn again to the contention of appellants that a

writ of prohibition will not lie because final judgment was rendered and plaintiff was placed in possession.

It is true that an application for a writ of prohibition will not be considered unless lack of jurisdiction has been first raised and denied in the lower court. For until an inferior court has been asked in some form, and without avail, to refrain from proceeding with the trial of an action or to dismiss the same, a superior court will not entertain an application for a writ of prohibition. However, this rule has been held to be inapplicable to ex parte proceedings in which the applicant for the writ of prohibition had no opportunity to object. And in some jurisdictions an exception to the rule is recognized where a want of jurisdiction is apparent on the face of the record. *Dennis* v. *Republic,* 7 LLR 12 (1941). Authority is clear on the matter.

> "While the superior court will be slow to use the writ where there is a right to appeal, its valuable office to the citizen who is being oppressed by unlawful assumption of judicial authority will not be limited by set rules. Where there is anything in the nature of the action or proceeding that makes it apparent that the rights of a party litigant cannot be adequately protected by any other remedy than through the exercise of this extraordinary jurisdiction, it is not only proper to grant the writ of prohibition, but it should be granted. 42 AM. JUR., *Prohibition,* § 38 (1942).
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> "Moreover, whenever, as incidental to the action of the court, there is involved an infringement of property right, or a subjection to a multiplicity of suits in such a way as to make its acts oppressive, there is no adequate remedy by appeal, it is proper to issue the writ of prohibition; and this is true, whether the court in which the proceedings is instituted has acted or not, if the effect of the void authority under which it is assuming to act stands as a vexatious menace to personal liberty or the destruction of property rights.

> The mere existence and availability of another remedy is not in itself necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy, and adequate in the circumstances of the particular case. The question for determination is not whether the other remedy is adequate generally, but whether in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance." *Id.*, § 9.

Mr. Justice Shannon addressed himself to ejectment actions in *Karnga* v. *Williams,* 10 LLR 114, 120–121, 122 (1949).

> "In passing, we would observe that the statutes of the country are somewhat more rigid in the conduct of cases in ejectment than they are with respect to many other civil cases. Since the Constitution of the Republic guarantees to each citizen the right to the acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded. For this reason, where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default; the statutes further provide that in this instance there shall be placed upon the property, the subject of the action, copies of the summons and re-summons as further assurance that the defendant or defendants will have due notice of the pending action."

Continuing, he said:

> "We quote the relevant statute: 'In ejectment there shall be no writ of attachment or of arrest, nor any bail required, but on a return of a writ of summons, the plaintiff, having filed his complaint, if the defendant does not appear, may cause a copy thereof, together with a copy of the re-summons, to be set upon

the property claimed, ten days before the return day of the re-summons, and for that purpose may have a writ of re-summons although the writ of summons may have been returned summoned; and if the defendant does not appear within four days after the said return day, the plaintiff shall be entitled to a judgment by default.' "

Moreover, there is additional evidence of the zealousness with which real property is guarded. One verdict and one judgment in a party's favor are not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.

" 'A verdict and judgment in ejectment shall be evidence, but not conclusive evidence of title, but two verdicts in actions between the same parties or those under whom they claim, in favor of the same side, shall be conclusive, unless it is shown that there has been a verdict and judgment the other way, and even in that case, three similar verdicts and judgments shall be final and conclusive.' Statute of Liberia (Old Blue Book) ch. XI, § 20, 2 Hub. 1552."

Progressing with this opinion, we further wish to observe that earlier in count 1 of the amended return respondents stated that the amended petition was invalid on the ground that the former petition not having been withdrawn as required, there was no valid petition before the court. We take the view that said count cannot be sustained because the record before us reveals that after the filing of the former petition, which was dated June 27, 1973, and opposed by respondents' return dated July 3, 1973, on the ground of failure to verify the petition, petitioner conceded this contention of respondents and on July 23, 1973, withdrew the petition, simultaneously filing an amended petition in its stead.

As to the contempt proceedings referred to in counts 1 and 2 of appellants' return, which relate to alleged defiance of the trial court's order placing the plaintiff in the

ejectment action in possession, we deem them irrelevant to the merits of these proceedings, including the recitation therein of the arrest of Boston Cooper and his release thereafter.

Why Boston Cooper was arrested instead of P. Clarence Parker, who allegedly defied the authority of the court by refusing to appear when summoned by the court to answer in contempt proceedings, is not indicated in the recitation of facts. There is no showing upon the face of the record, prior to the issuance of the writ of arrest, that Boston Cooper was an officer of the company or an agent thereof and had been designated as such to receive process. A corporation is an artificial entity and cannot be personally served with process. It can be served only through an officer or agent of the company or someone designated by law to receive process in its behalf. Courts must always protect a person's constitutional guaranty against deprivation of liberty and property without due process of law. We must regard the act of the court below in arresting Boston Cooper as illegal and improper.

From the circumstances appearing, it is clear that the contempt proceedings are still pending and undetermined and to avoid an unnecessary multiplicity of suits prohibition will also lie.

In view of the foregoing, the ruling of the Justice granting the peremptory writ of prohibition is hereby affirmed and the parties returned to their status prior to suit. Costs are ruled against respondents. It is so ordered.

Affirmed.