

C. B. A. WRIGHT, Appellant, *v.*
CHRISTIANA BEDELL and PETER B. JALLAH,
Stipendiary Magistrate of the City of Monrovia,
Appellees.

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

Argued November 8, 1965. Decided January 20, 1966.

1. Oral argument on an application for a writ of prohibition may be disallowed in the discretion of the Justice presiding in Chambers.
2. Prohibition will not lie to prevent enforcement by a magistrate in filiation proceedings of stipulations entered into by the father of an illegitimate child for the support of the child.
3. A magistrate may order the arrest and imprisonment of an alleged father of an illegitimate child on a sworn complaint by the mother. 1956 CODE 10:66.

The Justice presiding in Chambers denied appellant's application for a writ of prohibition to the Circuit Court of the First Judicial Circuit, Montserrado County, in filiation proceedings. On appeal to the full Court, the *ruling was affirmed.*

Bull Law Firm for appellant. *James A. Smythe* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

We glean from the records in this case that the above-named appellant filed an application with His Honor Mr. Justice Harris presiding in Chambers during the October 1962 term of the Supreme Court of Liberia, praying for the issuance of an alternative writ of prohibition against Peter B. Jallah, Stipendiary Magistrate of the Commonwealth District of Monrovia, to prevent him from carrying out an order emanating from the chambers of His

Honor, Judge Hunter, then presiding judge of the May 1962 term of the Circuit Court of the First Judicial Circuit, Montserrado County. The order directed the above-named magistrate to enforce the terms of certain stipulations against the present appellant for the support of an illegitimate child of Christiana Bedell, an appellee in these proceedings. Said application was subsequently denied by His Honor Mr. Justice Mitchell, presiding in Chambers at the March 1965 term of the Honorable Supreme Court of Liberia.

At the hearing in Chambers, appellant's counsel requested Mr. Justice Mitchell to apply Rule IV(6) of the Revised Rules of the Supreme Court (13 L.L.R. 693, 697-698) especially that part of the rule which relates to dismissal for failure of counsel or party to appear. In the opinion of appellant's counsel, Mr. Justice Mitchell did not fully apply the said rule in that he did not allow arguments before he proceeded to render his ruling denying appellant the writ applied for with costs against him. To this ruling of Mr. Justice Mitchell, the appellant excepted and appealed to the full bench of the Honorable Supreme Court of Liberia, which appeal was granted and heard during the current term of this Court.

The issues which the appellant considers cogent or pertinent may be mentioned hereunder as follows:

1. Was the incomplete application of Rule IV(6) of the Revised Rules of the Supreme Court prejudicial to petitioner's interest in the determination of said writ by His Honor Mr. Justice Mitchell?
2. Does a magistrate have the legal right to arrest for a crime not cognizable under the statutes or laws of Liberia?
3. Can a magistrate make a determination as to who is the father of an illegitimate child so as to compel support of said child by one so determined to be its father?
4. Does a writ of prohibition lie where a lower tri-

bunal exceeds its jurisdiction over the subject matter of a cause of action?

5. Can jurisdiction over the subject matter be waived?

In passing on these questions we shall commence with the first. The appellant contends that he should have been allowed by the Justice to argue his case. It is regrettable that the learned counsel overlooks the rule that matters pending before this Court may or may not be argued. In Rule VII (1) of the Revised Rules of the Supreme Court (13 L.L.R. 693, 701) it is provided *inter alia*:

“In the discretion of the Court argument may be disallowed; or the parties may, with the leave of Court, submit their case without argument.”

In this circumstance it was fully in the province of the Justice presiding in Chambers to disallow arguments in any matter pending before him. This contention or argument of the appellant is therefore unmeritorious.

We quote the controlling statute which reads as follows:

“The Justice of the peace or magistrate in any place where an illegitimate child has been born or resides, which child is or is likely to become a public charge, shall summon the mother of such child to swear as to its parentage; or any woman who has borne an illegitimate child, whether or not it is likely to become a public charge, may voluntarily appear before a justice or magistrate to swear as to the parentage of the child. In either case the justice or magistrate shall question the mother as to the parentage of the child; and if she charges in writing that a certain man is the father, the justice or magistrate shall issue a warrant to apprehend and bring such person before him or any other justice or stipendiary magistrate. The justice or magistrate before whom such man is brought shall commit him to jail unless he furnishes satisfactory security in a sum of not less than fifty-dollars that he will appear at the Quarterly Session of the Circuit Court.

“If the Circuit Court adjudges that the man so

charged is the father and, in a case initiated by action of a justice or magistrate, that the child is or is likely to become a public charge, it may provide for the maintenance of the child by requiring the father to pay not less than one dollar a week, payable monthly to the ministerial officer of the court, as long as the child is likely to be a public charge. In a case initiated by the complaint of the mother, the Circuit Court may, if it adjudges that the man so charged is the father, provide for the maintenance of the child in the same manner as prescribed in the first sentence of this paragraph until the child attains his majority or becomes independent of parental support. In either case the Court shall order the father to deposit with it security for his compliance with its order. If the father fails or refuses for a period of six months to pay the maintenance money as required by the Court's order, the Court shall give judgment for the arrears, and the sheriff may levy execution against the non-exempt property of the father or his executors or administrators." 1956 CODE 10:66.

The above statute answers the second, third, and fourth questions *supra*. The fifth question refers to jurisdiction. This Court has held that:

"Territorial jurisdiction is given by law and can not be conferred by consent of the parties." *Hill v. Republic*, 2 L.L.R. 517 (1925) Syllabus 5.

"A privilege defeating jurisdiction may be waived if the court has jurisdiction of the subject matter." *Id.* Syllabus 6.

From the above, it is obvious that jurisdiction over the subject matter cannot be conferred by waiver. Therefore this issue is untenable in law and not sustained.

From what we have observed, this action entitled "Support of Illegitimate Child" does not strictly conform to that laid down in the statute, but it does carry the spirit and intent of said law, that is to say, filiation proceedings,

in that the present appellees in Count 1 of their returns as respondents to the application for prohibition alleged as follows:

"1. Because respondents aver that the allegations contained in Counts 1-3 of said petition are false, erroneous, distorted, exaggerated and misleading in that: (a) instead of bastardy as erroneously averred in Count 1 of said petition over which petitioner claims that the respondent magistrate lacks jurisdiction, the crime is illegitimate children, over which he has full jurisdiction, for the support of which petitioner did long ago enter into cognizance with said court as more fully appears from hereto attached facsimile copies of the said writ of arrest in the birth case, stipulations of child support and the order of the presiding judge of the criminal law court for the May 1962 term of the Circuit Court of the First Judicial Circuit, Montserrado County, to form cogent parts of these returns and to which the judicial attention of this Honorable Court is cordially invited.

"And this the respondents are ready to prove."

The position thus assumed by the present appellees in Count 1 of their returns to the application for prohibition was uncontroverted by the present appellant as applicant for the writ when in Count 3 of the petition the appellant averred as follows:

"And also because petitioner further says that the said Christiana Bedell, one of the respondents in these proceedings, as a married woman who has never been divorced from her present marriage and being a *feme covert* could not have a bastard nor would said child be legally considered a charge to the public.

"All of which petitioner is ready to prove."

Since the present appellant as defendant in the court below never did raise any issue as the original complainant being a *feme covert*, this allegation remains uncontradicted.

We shall incorporate into this opinion a portion of the ruling made by our colleague Mr. Justice Mitchell from which emanates this appeal and which reads as follows:

"This case was assigned for hearing on the 5th day of February and notice of assignment accordingly served, but the returns show that Counsellor James H. Smythe, of counsel for the respondent Christiana Bedell, refused to accept and acknowledge the service of the same on him; hence at the call of the case he did not appear. The Court being satisfied that the service was made, petitioner's counsel appeared and prayed the Court to apply its rules on the grounds of his petition. According to the rule relied upon by petitioner's counsel, the case could not be dismissed because it was the respondent who failed to appear and not the petitioner, and so it becomes imperative for the Court to make a ruling on the issues *pro et con*.

"I have patiently perused the records in this case and I am of the candid opinion that petitioner has not shown justifiable grounds for the issuance of the writ of prohibition. In the first place it was not a matter of bastardy, but rather a matter of support for an illegitimate child, over which the magisterial court does have jurisdiction. Secondly the arrest of the petitioner which necessitated him to pray for the writ was only in consumation of stipulations he had voluntarily signed to pay \$20 monthly for the support of his said illegitimate child, which he had failed to do.

"The court records made profert in this case, including the letter from His Honor Judge Hunter addressed to corespondent Magistrate Jallah, all go in clear verification that the matter was one purely cognizable by the magistrate and merely for the enforcement of an obligation which petitioner had voluntarily stipulated to do and perform hence he cannot by prohibition seek to disavow his voluntary act as such; moreover prohibition cannot lie. The petition there-

fore is unmeritorious and is the proper subject for dismissal.

“Under the circumstances it is my ruling that the petition be, and the same is hereby dismissed; the preliminary writ already issued is hereby quashed and the issuance of the peremptory writ denied with costs against the petitioner. The clerk of this Court is hereby ordered to send a mandate to the respondent magistrate informing him of this ruling and ordering him to resume jurisdiction in the matter out of which these proceedings grew. And it is hereby so ordered.”

It is further to be observed that the present appellant failed to assert his rights at the proper time as defendant in the lower court; that is to say, we cannot bring ourselves to believe that he was coerced and/or denied the privilege or opportunity to file bail whereby he might have been better placed to retain the services of a lawyer to protect and defend his interest. Having voluntarily signed stipulations as mentioned *supra*, he is estopped from any attempt on his part to repudiate same. In view of the foregoing, it is our considered opinion that the ruling of the Chambers Justice in these proceedings should be affirmed. And it is hereby so ordered.

Ruling affirmed.