

In re GABRIEL L. DENNIS, Secretary of State of the  
Republic of Liberia, Respondent.

CONTEMPT PROCEEDINGS.

Argued April 1, 8, 1947. Decided May 9, 1947.

1. To render a person amenable to an injunction it is necessary neither that he be a party to the suit nor be served with a copy of it as long as he appears to have had actual notice.
2. The fact that a party acted upon the advice of counsel while violating an injunction is no excuse and should not be considered in justification thereof, although in some instances it may be considered in mitigation of the punishment.
3. A constructive, indirect, or consequential contempt is one committed outside the presence of the court and done at a distance which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice.
4. Legal objections mean objections interposed by anyone having authority to do so.
5. Where the thing ordered to be done is within the power of the person against whom the order is directed, his refusal or neglect to obey such order is contemptuous.

Frances A. Porte was granted a divorce from Rufus A. Porte, relator. Exceptions were taken and notice of appeal was given. During preparation of the appeal relator wrote to the Secretary of State, respondent, stating that his wife should not be granted a passport because of an appeal to the Court that was pending in the divorce action. The Secretary of State informed relator that, on the advice of the Attorney General, he would issue the said passport. Relator obtained from the circuit court an injunction to restrain the Secretary from issuing said passport and ordering the Secretary to show cause why said injunction should not be made permanent. At the hearing respondent moved to dismiss on the ground that he was not amenable to court process because the President had given respondent a patent to discharge the duties of the office of the President in the

President's absence. The injunction was dissolved on this ground. On appeal the Solicitor General, counsel for respondent herein, applied for leave to withdraw the respondent's defense. This Court reversed the judgment dissolving the injunction and remanded the case. *Porte v. Dennis*, 9 L.L.R. 213 (1947). It had been alleged in said case that after the Secretary had received notice of the completion of the appeal from the decision dissolving the injunction, said Secretary had issued said passport; this Court summoned the Secretary to show cause at the March, 1947 term why he should not be held in contempt. Upon a hearing of the contempt proceedings by this Court, respondent adjudged *guilty of contempt* and the Attorney General ordered to show cause why he should not be held in contempt.

*B. G. Freeman* for relator. *C. Abayomi Cassell*, Attorney General, for respondent.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

These proceedings grew out of an injunction proceeding initiated by Rufus A. Porte against Gabriel L. Dennis, Secretary of State of Liberia, the appeal of which was heard and determined by us in January of the present year. *Porte v. Dennis*, 9 L.L.R. 213. In the opinion handed down by Mr. Chief Justice Grimes, speaking for the Court, appears the following paragraph:

"An information having been filed before this Court on October 4, 1946, although obviously prepared many months before, wherein it is complained that despite the fact that appellant excepted to the court's decree dismissing the injunction and prayed an appeal which was granted and despite the fact that said appellant had perfected said appeal by filing of an approved bill

of exceptions and approved appeal bond with the consequent issuance and service of a notice of the completion of appeal, the appellee flagrantly and wantonly disobeyed said writ of injunction by issuing to Frances Porte, wife of appellant, a passport to travel to foreign parts, an act the said appellee had been enjoined by said writ from doing; the clerk of this Court is hereby ordered to issue a summons commanding the appearance of said appellee before this Court at its March term ensuing, opening on March 10, 1947, to show cause why he should not be held in contempt of court. A certified copy of the information is to be served on said appellee simultaneously with the summons above ordered." *Id.* at 224.

In accordance with the order above-mentioned, which was served, respondent filed the following returns:

"And now comes Gabriel L. Dennis, Secretary of State of the Republic of Liberia, respondent in the above entitled proceedings of Contempt of Court, by and through his Attorney, C. Abayomi Cassell, Attorney General of the Republic of Liberia, and respectfully submits the following as Returns to the Information filed into the Honourable Supreme Court of the Republic of Liberia by Rufus A. Porte, relator, as well as legal reasons why he should not be held in Contempt of Court as follows, to wit:-

"1) That on the 17th day of April, A.D. 1946, Frances A. Porte, wife of relator applied at the Passport Division of the Department of State for a passport to travel to the United States of America, she, said applicant, having fully complied with the requirement of the Statute governing and controlling the issuing of passports, the Passport Officer of the Department of State did make and fill out a passport for said applicant and lay same before

your respondent for approval and signing; and on the 27th Day of April, A.D. 1946 your said respondent did sign said passport and cause the Seal of the Republic to be placed thereon in keeping with law; as more fully appears from copy of said Application hereto annexed and marked Exhibit 'A.'

- "2) That although prior to the signing and sealing of said passport, relator did address a letter to respondent protesting against the issuing of a passport to his said wife, your respondent consulted the Chief Law Officer of State who advised him that the objections of relator were no bar to the issuing of a passport to the wife of relator; whereupon your respondent did on the 27th day of April, A.D. 1946 issue said passport to said applicant.
- "3) That subsequent to the issuance of said passport at 10 o'clock in the morning of the 28th of April, A.D. 1946, your respondent found among certain mail on his desk enclosed in an envelope the Writ of Injunction together with a copy of the Written Directions and complaint of your relator, all of which he referred to the Chief Law Officer of State for his legal attention thereto.
- "4) That your respondent was not aware of the issuance of the aforesaid Writ of Injunction at the time of the delivery of said passport to the applicant, and although your respondent admits the receipt thereof as aforesaid on the day following the delivery of the same he has never been served in person with a copy of said Writ of Injunction in keeping with law.

"Wherefore, in view of the above facts and circumstances as well as the premises laid, respondent respectfully submits that he ought not to be held in Contempt

of Court, and that the Proceedings should be abated with Ruling in his favour.

“Dated this 13th day of March, A.D. 1947.

GABRIEL L. DENNIS,  
*Secretary of State of Liberia,*  
Respondent,

“(Affidavit attached)

“By:—C. ABAYOMI CASSELL,  
*Attorney General of Liberia.”*

It is to be observed that respondent in his returns admits the issuance of the passport; admits that before the issuance he received a letter of protest from relator, who is the husband of the applicant, opposing the issuance of the passport; and states that upon receiving the letter of protest he referred the matter to the chief law officer of the State, the Attorney General, who advised him that the protest was no bar to the issuance of said passport, whereupon he issued and delivered same to applicant on April 27, 1946. In count 4 of said returns, however, we notice endeavors therein to vindicate his acts by stating that at the time of the issuance of the passport he had no knowledge of the writ of injunction, and, further, that the writ has never been served on him in person in keeping with the law.

Let us now see whether the defenses set up are tenable and sufficient under the law to cause these proceedings to be abated. Although respondent states in his returns that it was not until the morning of April 28, 1946 that he found in his mail a writ of injunction and other papers in an envelope addressed to him, nevertheless upon an inspection of the returns filed by the sheriff we find that his sworn returns show that the writ was never served on Gabriel L. Dennis, Secretary of State of the Republic of Liberia, on April 27, 1946. The Attorney General in his argument stated that he took the writ and other documents from the sheriff on April 27 and promised to see that they were forwarded to the Secretary of State.

Nevertheless, we regret to have to reiterate what was expressed in the opinion handed down at our October term, 1946, *supra*, in the case of injunction out of which these proceedings grew:

“Whenever an injunction is issued, it is a contempt of court not only for any party who is summoned as a defendant in the cause to disregard it, but also it is as much a contempt of court for any party to disobey who was informed of the issuance of the writ without having actually been served with a copy thereof. As Bouvier puts it, ‘To render a person amenable to an injunction, it is neither necessary that he be a party to the suit or served with a copy of it, so long as he appears to have had actual notice. . . .’ 2 Bouvier, Law Dictionary 1569, 1578 (Rawle’s 3d rev. 1914); In re *Lennon*, 166 U.S. 548, 554, 41 L. Ed. 1110 (1897).” *Porte v. Dennis*, 9 L.L.R. 213, 216.

Further, in *Ruling Case Law* the same principle is stated thus:

“Under some circumstances, at least, a party to an injunction suit may be chargeable with notice of the issuing of the injunction so that his violation thereof will render him guilty of contempt, even though he has no actual notice; but it is otherwise as to one not a party. . . . It is well settled that actual notice of the injunction is sufficient to render even one who was not a party guilty of contempt in violating it, and that it is not necessary, if he had actual notice, that he should have been served with a copy of the injunction or the writ. . . .” 6 *Id. Contempt* § 16, at 504 (1915).

It is also no excuse that respondent acted upon the advice of counsel while violating an injunction, and such fact is not to be considered in justification thereof, although in some instances it may be considered in mitigation of the punishment.

“A constructive, indirect, or consequential contempt

is one committed outside the presence of the court; it is an act done at a distance, which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice." 17 C.J.S. *Contempt* § 4, at 6 (1939).

The statute law cited by respondent in his brief provides that the Secretary of State shall grant the passport applied for if satisfactory proof is given to the Secretary that ten days' public notice has been given, but also *provided no legal objection is interposed*.

Legal objections mean objections interposed by anyone having authority to do so. The law recognizes the husband to be the head of his family, which is subject to his control. He is responsible for their acts, criminal excepted. As soon as the recognized husband of applicant interposed objections by filing a written protest against the issuance of the passport to his wife, respondent then and there had notice and warning to move slowly and act cautiously. A disregard of such objections, however, would not be embraced in these contempt proceedings, although it would indicate and show a disregard for and violation of the law cited by respondent in vindication of his act.

We do not see in what way the respondent expects to be purged of the contempt, for the information states that on or about May 10, 1946 information reached relator that his wife was boasting in the city of Monrovia and elsewhere that although her husband had tried in every possible way to prevent her getting a passport to travel from Liberia to the United States, his said efforts had proved futile and that she had been handed her passport and hoped soon to be leaving the Republic, his notice of appeal to the Supreme Court notwithstanding. Not believing the rumor and assuming that the Honorable Secretary of State knows the law governing appeals, relator addressed a letter to him, which letter reads as follows:

"77/6/46

"MONROVIA, LIBERIA,  
May 11, 1946.

"HIS EXCELLENCY  
GABRIEL L. DENNIS,  
SECRETARY OF STATE,  
REPUBLIC OF LIBERIA,  
STATE DEPARTMENT, MONROVIA.

"EXCELLENCY :—

"Through the boastings of Mrs. Frances A. Porte, wife of our client Rufus A. Porte, we have learnt with a great deal of surprise, that she has been handed her passport, the subject matter of the Injunction Proceedings now before Court, by the Department of State.

"We are unwilling to believe that the information thus gained is correct, because when on the 8th instant His Honour Emmanuel W. Williams, Resident Circuit Judge, dissolved the injunction, Mr. Porte through his legal representative promptly excepted to the judge's rulings and final judgment and there and then announced APPEAL to the Honourable the Supreme Court of Liberia at its ensuing October Term of Court.

"Under the statute governing appeals, the moment an appeal is announced in any case, the records thereof made, the law gives appellant certain number of days within which to perfect his said appeal, pending which the judgment appealed from is suspended, the matter allowed to remain in *status quo*, awaiting the final disposition of the matter by the appellate court.

"Our reason for still doubting the correctness of the information is that, the Honourable C. Abayomi Cassell, the Attorney General of the Republic of Liberia, who conducted the pleadings on part of the State Department was present in Court when the appeal was announced and recorded.

"We are therefore respectfully requesting you



through this medium, to be gracious enough as to set our minds at rest on this matter by honouring us with a reply.

“Your Excellency’s obedient servant,  
[Sgd.] MOMOLU S. COOPER,  
*Attorney-at-Law,*

Of Counsel for Rufus A. Porte”

It was not until nine days later that he received this reply:

“786/L

“DEPARTMENT OF STATE,  
MONROVIA, LIBERIA,  
*20th May, 1946.*

“DEAR ATTORNEY COOPER:—

“His Excellency the Secretary of State for Foreign Affairs acknowledges the receipt of your letter of May 11, 1946, and instructs me to inform you that acting upon the express advice of the Principal Law Officer of State, the Department has handed Mrs. Frances Porte her passport.

“Very truly yours,  
[Sgd.] KOLLIE-SELLEH TAMBA,  
*Passport Officer.*

“ATTORNEY MOMOLU S. COOPER,  
BEYSOLOW & COOPER,  
BROAD STREET,  
MONROVIA.”

The question then arises as to whether the Honorable Secretary of State of Liberia on April 28, 1946, the day on which he admits receiving the writ, and thereafter up to the time Mrs. Frances A. Porte left these shores was still able to comply with the order of court. If so, in our opinion and in view of the law hereunder cited he is to be adjudged guilty of contempt of court.

“It is essential to constitute a contempt that the thing ordered to be done be within the power of the person against whom the order is directed. Accordingly, there is no contempt in refusing to obey an

order where the party charged, without fault on his part, is unable to comply therewith, as, for instance, where he is unable to comply with an order to surrender property or a person over which he no longer has possession or control. To excuse, however, it must be shown satisfactorily that the party charged cannot obey or perform the thing required, for if articles ordered to be produced can be obtained by the party charged, failure to produce will be held contempt. Also, a party will be punished as for contempt where the inability to obey is brought about through his negligence or willfulness. So, too, if the order could have been obeyed when made, the party is in contempt, although at the time of the contempt proceedings he could not comply. . . ." 17 C.J.S. *Contempt* § 19, at 24 (1939).

In the present case in view of all the attending circumstances it is clear to our minds that respondent could still have complied with the injunction, had he desired to do so, by recalling the passport from Mrs. Frances A. Porte, since indeed she was still in the city of Monrovia and within the confines of this Republic up to about two weeks after the alleged issuance of the passport on April 27, 1946.

We would like here to observe that the law punishes one who commits contempt out of no personal consideration for the judge, nor is there in the law any malice against him who is punished. The power is exercised by the court simply as representative of the people of the country, and for their interest, their good, and their protection. For them the maintenance of the authority of the judiciary is to all intents and purposes indispensable to the stability of the government, this government recognized and considered to be of the people, for the people, and by the people.

Because of these proceedings, the information, the returns filed by respondent, respondent's brief, and the argu-

ment of respondent's counsel, the Attorney General, who stressed the fact that respondent acted upon his advice, although as already pointed out, *supra*, the fact does not absolve respondent but may be taken in mitigation of the punishment, we consider it advisable to issue the following order:

The clerk of this Court is hereby ordered to issue a summons commanding the appearance of the Honorable C. Abayomi Cassell, Attorney General of the Republic of Liberia, before this Court at its October term ensuing, opening on October 13, 1947, to show cause why under the circumstances appearing in the record he should not be held in contempt of court.

It is our opinion, therefore, that the act of the respondent, the Honorable Gabriel L. Dennis, Secretary of State of Liberia, is to be adjudged contemptuous, and he is amerced by a fine of one hundred dollars to be paid within two weeks from the date of the judgment in this case, with costs; and it is hereby so ordered.

*Guilty of contempt.*