

ARNOLD HENRICHSEN, Agent for WEST & COMPANY, LTD., foreign Merchants of Germany, transacting mercantile Business in the County of Grand Bassa, Republic of Liberia, Plaintiff-in-Error, v. LEVI H. MARTIN and His Honor EDWARD J. SUMMERVILLE, Resident Judge of the Circuit Court, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
GRAND BASSA COUNTY.

Argued December 14, 22, 29, 1938. Decided January 13, 1939.

It is the duty of the President, and his alone, to nominate and with the advice and consent of the Senate, to appoint and commission all public officers.

Defendant-in-error brought an action of damages for breach of contract in the police court of the Municipal District of Buchanan, and judgment was granted for the plaintiff-in-error. On appeal to the Circuit Court the judgment was reversed. On appeal to this Court, *reversed and remanded for new trial*.

*E. A. Morgan* for appellant. *David A. B. Worrell* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

Plaintiff-in-error has this cause before us for a review upon a writ of error issued out of the chambers of Mr. Justice Dossen.

The cause of action had its genesis in the purchase by defendant-in-error of a half pint of Martel brandy from plaintiff-in-error for seven shillings six pence, which

brandy defendant-in-error complains was found unwholesome when he opened it a short while after it had been purchased and reached his home, where he was ill at the time; brandy had been prescribed by his physician for him to take for his said illness.

Finding the brandy unfit for consumption as alleged, defendant-in-error returned same to the plaintiff-in-error and requested that he change it or refund to him the amount he had paid same.

Plaintiff-in-error refused to do this, claiming that it was not the brandy sold to defendant-in-error; consequently defendant-in-error entered an action for damages in the police court of the Municipal District of Buchanan, Grand Bassa County, which court entered judgment in favor of plaintiff-in-error. Defendant-in-error excepted and appealed from said judgment to the Circuit Court of the Second Judicial Circuit, Grand Bassa County.

This court after hearing the cause reversed the judgment of the police court and entered judgment for defendant-in-error, to which judgment plaintiff-in-error excepted and moved the cause by writ of error as aforesaid.

While there are several interesting issues involved in the trial of this action which constitute the assignments of error, we have found an undeterminable barrier at the outset of the review up here, raised by the first count in the assignment in error set out therein. We find the cause turning to a conclusion as far as we can proceed with it in the present circumstances, but the first count of the said assignment of errors urging that:

“The records of the Police Magistrate’s Court disclosed the fact that at the call of the case in the said Magistrate’s Court, defendant now plaintiff-in-error, objected to Justice of the Peace Kennedy presiding over the Magistrate’s Court on the grounds as laid in said records. Levi H. Martin, then plaintiff, now one

of the defendants-in-error, in supporting the procedure contended that it was authorized by an administrative Circular D.P. 175/6-'28 issued by the Attorney General of Liberia. The defendants contended that from the very wording of this Circular it is plain that it does not authorize the procedure, which was illegal, hence, even if the Circular be taken as supporting it, the Circular could not set aside the Constitution and Statute Laws of Liberia. The court supported the position of plaintiff Levi H. Martin to which defendant now plaintiff-in-error excepted."

The assignment of errors continued:

"In reviewing the issue as raised above, His Honor Edward J. Summerville ruled that 'Inasmuch as the President whom the Constitution designates to commission all officials approved of the administrative Circular from D.P. 175/6/'28, the court hesitated to presently decide the unconstitutionality of said circular and proceeds to hear the other issues in the case.' To this ruling of Judge Summerville, plaintiff-in-error excepted and submit as error."

It appears from the record in the cause that the same having been commenced before one of the associate magistrates the Municipal District of Buchanan then acting for the police magistrate, who was out of the municipal jurisdiction at the time, a notice of change of venue was given by the plaintiff-in-error, then defendant, in said municipal court, and there was not an associate magistrate available for this purpose; whereupon the County Attorney of Grand Bassa assumed to swear into office as associate magistrate one Kennedy, who was a justice of the peace for Grand Bassa County, and assigned him to proceed with the trial of the cause as venue magistrate, basing his assumption upon departmental circular no. 175/6/'28, the relevant portion of which said circular is as follows:

“Departl. 175/6/’28  
“CIRCULAR

“DEPARTMENT OF JUSTICE,  
REPUBLIC OF LIBERIA,  
*July 31, 1928.*

“When a defendant applies for a change of venue the presence of an Associate Magistrate within, or around, the precincts of the court will render him disqualified to preside over that particular case. Should both Associate Magistrates be thus disqualified an application must be made by the Magistrate’s Police to the ranking administrative officer of the Department of Justice in the vicinity who will temporarily assign another officer in commission as a Magistrate to the trial of said cause, said officer to assign to be paid the sum one dollar (\$1.00) net, out of Municipal funds, and the costs and fees of the special suit be deposited in the Municipal treasury. . . .

“Approved:

“[Sgd.] L. A. GRIMES  
*Attorney General of*

“[Sgd.] C. D. B. KING *Liberia.*  
*President of Liberia.”*

Plaintiff-in-error through his counsel objected to being tried by the said person designated by the County Attorney for Grand Bassa County as venue magistrate as being in conflict with the Constitution and statute laws of the Republic, and contended that the said circular was unconstitutional.

His honor the trial judge declined to pass on the legal effect or constitutionality of the circular, because, according to his ruling, the President whom the Constitution designates to commission all public officials approved the circular.

But it is clear to our minds, and should have been to the mind of the court below, that said administrative circular is grossly misinterpreted, for the language of said circular was “that said officer will temporarily assign

another officer in commission as a Magistrate to the trial of said cause" and does not direct the ranking administrative official to make any appointment whatever. However, inasmuch as the judge of the trial court proceeded to deal with the cause as though it had enabled the County Attorney to make such appointment, we shall *now* proceed to review the case from the angle that it was viewed by the court below.

His honor by this ruling implied said that the circular is in contravention of the Constitution which provides that all public officers shall be appointed by the President with advice and consent of the Senate, but because the President approved same, he declined to pass on same. Thereby he does not say that the President had a right under the Constitution to delegate or transfer any of his power and duties given him by the Constitution or not; but he refused to pass on same and proceeded to a trial of the cause of the case, leaving this constitutional issue undecided.

The Constitution, article 3, section 1, under the title "Powers of the President" provides that:

"The Supreme Executive Power shall be vested in a President, who shall be elected by the people, . . . [and he shall] with the advice and consent of the Senate appoint and commission, all Ambassadors, and other public Ministers and Consuls, Secretaries of State, of War, of the Navy, and of the Treasury, Attorney General, all Judges of Courts, Sheriffs, Coroners, Marshalls, Justices of the Peace, Clerks of Courts, Registers, Notaries Public, and all other officers of State civil and military, whose appointment may not be otherwise provided for by the Constitution, or by standing laws. And in the recess of the senate, he may fill any vacancies in those offices, until the next session of the Senate."

By the recitation of the Constitution above made, it is plainly the duty of the President and his alone to nomi-

nate, and with the advice and consent of the Senate, to appoint and commission all public officers; and it is a settled rule of law almost uniformly and universally held by the law writers, and courts, that such powers cannot be delegated, transferred, or alienated, except in pursuance of law.

The Act of the Legislature passed and approved February 12, 1926, entitled "An Act creating the Areas known as the Cities of Upper and Lower Buchanan, a Municipal District," on page 26, section 8, is drawn and framed in the exact likeness of the Constitution, for in providing how the municipal court shall be established and constituted, it is written thus:

"That there shall be established within the limits of said Municipal District, One Municipal Court, which shall be presided over by a Police Magistrate, who shall be appointed by the President and with advice and consent of the Senate, and within the limits of the City shall have the power and jurisdiction of a Justice of the Peace, over the violation of all Administrative regulations and laws of the Republic, and shall be governed by the laws relating to Justices of the Peace. Nothing in this Act shall be construed in any wise to prohibit the Appointment of Associate Magistrates provided the number of said Associates does not exceed Three (3). The Salary of the Municipal Police Magistrate shall be Four Hundred Dollars per annum, which shall not be diminished during the term for which he was appointed. Associate Magistrates shall receive fees prescribed for the Justices of the Peace in cases tried by them. The Police Magistrate may, with the approval of the President make such rules for the Government of the Court as are not inconsistent with law. And he may require the Superintendent of Police to detail suitable number of Policemen to attend upon said Court."

The Constitution taken together with portion of the

Act of the Legislature just mentioned, decidedly devolves upon the President the duty and power to appoint and commission the Police and Associate Magistrate of the City of Buchanan, with the advice and consent of the Senate, without the privilege on his part to delegate or alienate such powers and duties to another, except as may be provided for by law; and more especially does this seem out of place when he does so to the County Attorney, for there is no statute or other law of this country which authorizes the County Attorney to represent the President in the counties without the Capital. There is however a statute which designates an official styled Superintendent who represents the President and departments of government in the counties without the Capital; and this circular was wrongly construed so as to appear to turn aside from him, and require the County Attorney to exercise presidential functions.

It is stated in *Corpus Juris* on "Constitutional Law" that under a constitution which vests the power of appointing to public office in the President even the Legislature itself cannot by enactment confer that power on itself or any other official. Thus it is forcefully written on page 837:

"Appointment by Legislature forbidden by Constitution. Where the constitution expressly confers the power of appointment on the executive department, or expressly denies it to the legislature, the latter may not appoint by enactment. But under a constitutional provision forbidding the legislature to appoint certain officers, it may, nevertheless, designate the existing executive officers who shall make such appointments."

In view of the Constitution and acts of the Legislature bearing on this point 1) we are of the opinion that the court below misunderstood the departmental circular aforesaid; 2) that had the same conflicted with the Constitution and statute laws of the Republic as interpreted

by the court below, it would have been unconstitutional and consequently void *ab initio*; and 3) the trial conducted by Mr. Kennedy upon appointment of the County Attorney as Associate Magistrate was a usurpation of executive power which cannot be allowed delegated, and the appointment is therefore illegal.

The judgment of the Judge of the Circuit Court for the Second Judicial Circuit, and all proceedings had thereon in the police magistrates' court as well as in the said trial Circuit Court, are hereby set aside and made void and a trial ordered to be conducted by a legally and constitutionally appointed magistrate.

The purported trial having been an extra-judicial one, not made such by the acts of either of the parties, no costs shall be assessed, in the illegal trial heretofore had; and it is so ordered.

*Reversed.*