

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA
AT
APRIL TERM, 1942.

In re R. F. D. SMALLWOOD, Resident Circuit Judge,
First Judicial Circuit, Montserrado County, POHL-
MAN J. BRACEWELL, Sheriff of Montserrado
County, H. LAFAYETTE HARMON, Counsellor-at-
law, and FRANK E. TOLBERT, Respondents.

In re JAMES T. PHILLIPS, Secretary of the Treasury,
Respondent.

CONTEMPT PROCEEDINGS.

Argued April 22, 27-29, 1942. Decided May 8, 1942.

1. An appeal when perfected operates as a stay of execution and the sheriff is thereby enjoined from taking any further steps.
2. It is a contempt of court where an appeal serves as a supersedeas and any person interferes with or adversely affects it.
3. Where a mortgage is regarded only as a security as it now generally is, the mortgagor remains to all intents and purposes the beneficial owner of the estate and may control, manage, and dispose of it as he wills, subject of course to the mortgage.
4. The relation of attorney and client, being one of trust and confidence, disqualifies the attorney because of such relationship from purchasing at a judicial sale the property in litigation in which his client is concerned, and from holding it for his own use, such purchase being regarded as contrary to public policy.

H. Lafayette Harmon,* co-respondent herein and
counsel for Frank E. Tolbert, co-respondent herein and

* Ed. NOTE: This case and related cases are defective in that there are conflicting statements as to who instituted the proceeding in equity and in what capacity.

assignee of the mortgage in question, initiated a proceeding in equity in the Circuit Court for the First Judicial Circuit to correct an alleged error in a lot number in a mortgage deed. The circuit court decreed that the number be corrected. On appeal to the Supreme Court by the administrators of the estate of the mortgagor, this Court denied the petition on the ground that it was defective. *Ex parte Massaquoi*, 7 L.L.R. 273 (1941), *rearg. denied*, 7 L.L.R. 404 (1942). Subsequently during the hearing in this Court of a related injunction proceeding we ordered the case continued on the docket and in an interlocutory order substantially affirmed the order of the lower court which had ordered the moneys accruing from the lease of the lot in question sequestered in the Treasury Department. After the appeal in the equity proceeding, *supra*, had been perfected but pending review by the Supreme Court, the trial judge, co-respondent herein, heard a bill in equity for the foreclosure of the mortgage deed as corrected, decreed it foreclosed, and issued a bill of sale. Pohlman J. Bracewell, sheriff, co-respondent herein, sold the land to H. Lafayette Harmon and executed a deed for the corrected lot number. The Commissioner of Probate refused to admit the sheriff's deed to probate. On appeal from this decision of the Probate Court, the Supreme Court denied probate, *Bracewell v. Massaquoi*, 7 L.L.R. 390 (1942), and issued a Rule for Judge Smallwood, Pohlman J. Bracewell, H. Lafayette Harmon, and Frank E. Tolbert to show cause why they should not be held in contempt and for the Secretary of the Treasury to appear in connection therewith. After trial in this Court, Judge Smallwood, H. Lafayette Harmon, and Frank E. Tolbert adjudged *guilty of contempt*, Pohlman J. Bracewell adjudged *not guilty of contempt*, and *judgment suspended* as to Secretary of the Treasury Phillips.

Judge R. F. D. Smallwood, H. Lafayette Harmon, Frank E. Tolbert, Pohlman J. Bracewell, and James T.

Phillips, Secretary of the Treasury, for themselves. *A. B. Ricks* and *C. Abayomi Cassell*, amici curiae.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

One of the distinctive privileges of the courts and one which they regard with jealous care is their inherent power to preserve and uphold their dignity and ensure obedience to their orders and mandates by proceedings for contempt.

The most learned of the judges, and especially those of courts of last resort, exercise this power with great caution but when necessary with marked effectiveness.

We think it necessary to quote excerpts from what this Court said in 1864 in the case *Johnson v. Johnson*, 1 L.L.R. 24, which involved a review by certiorari of an injunction to stay an execution.

“The law carries with it great power where defiance is practiced, but on the other hand it is reasonable where responsibilities make it expedient. . . . The court is a mighty organ and any person who is clothed with its prerogatives has in a very large degree the care and protection of all living under its influence. . . .

“The law never contemplated violence, only when violently assailed, and no person has the right to violate the law, or in other words obstruct it in its legitimate pursuits.” *Id.* at 24-25.

There were multifarious litigations in this Court, as revealed by the docket, between the administrators of the estate of the late Momolu Massaquoi, and J. J. Massaquoi, Frank E. Tolbert, and H. Lafayette Harmon. A bill in equity for correction of a number in a mortgage deed, *Ex parte Massaquoi*, 7 L.L.R. 273, *rearg. denied*. 7 L.L.R. 404 (1942) an injunction proceeding, and objections to the probate of a sheriff's deed arising out of a lower court decree foreclosing a deed for the corrected

mortgage number, *Bracewell v. Massaquoi*, 7 L.L.R. 390 (1942) were appealed from the Circuit Court for the First Judicial Circuit to this appellate jurisdiction.

The bill in equity for correction of a number was the first taken up and disposed of at the April term, 1941, of this Court. But upon motion filed by counsel for appellee against whom final judgment had been entered in said case, His Honor Mr. Justice Russell, one of the concurring Justices, under Rule of Court granted an application for a reargument of said cause on the ground that whereas the opinion had dismissed the case the judgment had remanded same. On appeal to this Court *en banc* at its November term, 1941, the case was remanded for the parties to replead.

Next came the trial of the injunction case which, when it reached a certain stage, was ordered continued on the docket and an interlocutory order was issued ordering the moneys accruing from the lease of lot Number 272, sequestered in the Treasury Department by orders of the court below, to be continuously held under sequestration, with the exception of the eighty-one dollars mentioned in the stipulations of counsel dated September 25, 1939, until further orders of this Court. A copy of this order was to be sent to the court below and to the Honorable Secretary of the Treasury of Liberia. This was done.

Lastly the objections to the probate of a sheriff's deed, resulting from the foreclosure of the mortgage deed and sale of the property to H. Lafayette Harmon, came up for hearing. In the process of hearing this cause, it was revealed that the appellant therein, H. Lafayette Harmon, counsellor and attorney-at-law for Frank E. Tolbert, assignee in the mortgage between the Massaquois, had brought an action for the correction of the number in the original mortgage deed between the Massaquois, which said original mortgage deed mortgaged lot Number 226. The action for correction of number sought to have said number 226 changed to number 272. The

Judge of the Circuit Court for the First Judicial Circuit had made a final decree ordering said change, which said final decree had been appealed from said court to the Supreme Court by the administrators of the estate of the late Momolu Massaquoi. While said appeal was upon the docket of this appellate Court and undecided by it, the said H. Lafayette Harmon and Frank E. Tolbert had brought their action of foreclosure of said mortgage, but for lot Number 272 instead of lot Number 226, which said lot Number 226 was the lot set out in said deed of mortgage. His Honor Judge Smallwood, Resident Judge of the Circuit Court for the First Judicial Circuit, had proceeded to hear and determine said action of foreclosure and had entered a final decree decreeing said mortgage foreclosed and lot Number 272 sold. H. Lafayette Harmon, counsellor and attorney-at-law for Frank E. Tolbert, assignee, had bid in said lot Number 272 and had obtained a sheriff's deed and offered same for probate, at which time the administrators of the estate of the late Momolu Massaquoi had objected to the probate thereof on grounds that lot Number 272 had not been mortgaged by their intestate, and that the decree of the trial court decreeing the number changed was not enforceable as said decree had been appealed from and was then still *sub judice* in the appellate Court on appeal.

Objections to the probate of said deed were made to the Commissioner of Probate who, finding out from a certificate from the clerk of this Court that the petition for the change of number had not been decided, sustained the objections, ruling *inter alia*:

“. . . [T]hat respondents, now objectors, having completed their appeal to said Court, the said appeal seems to have grown out of exceptions taken to the ruling of the Judge of the First Judicial Circuit Court, on a petition filed by one Frank E. Tolbert for change of number in a certain mortgage deed, from 226 to 272, said case being on appeal as afore-

said it is obvious then, that this Court cannot, and will not assume jurisdiction of it. . . .”

Counsellor Harmon and the sheriff excepted to same and appealed the matter here.

At the last November term of this Court, we sustained the position of the Commissioner of Probate and ordered the said sheriff's deed held in the office of the clerk of that court, and issued a rule for His Honor Judge Smallwood, Resident Judge of Montserrado County, H. Lafayette Harmon, counsellor-at-law, and Frank E. Tolbert to be summoned to appear at the April term of this Court, 1942, to show cause why they should not be found in contempt.

In obedience to these mandates, His Honor Judge Smallwood filed returns to justify his conduct alleging *inter alia* that: (1) Appellant in the correction of number case had failed to file an approved bill of exceptions and an approved appeal bond within statutory time, and (2) He did not intend to commit a contempt of Court and, if the Court considers his conduct contemptuous, he prays for absolution. He also objected to Counsellor A. B. Ricks as *amicus curiae*.

Counsellor Harmon and Frank E. Tolbert filed returns to justify their conduct, also alleging that there was no legal appeal in the correction of number case as the appellants had not filed an approved appeal bond or an approved bill of exceptions, and consequently they felt justified in filing and prosecuting their mortgage foreclosure case.

The sheriff submitted in his returns that: (1) He was the ministerial officer of the Circuit Court for the First Judicial Circuit and his acts were done upon orders of the judge of the circuit court, and (2) In executing those orders of the court, he had acted within the scope of his authority and within the law.

With these returns read, His Honor Judge Smallwood was the first to address the Court. He gave solemn assurance that he had lost sight of the fact that he had approved

the appeal bond when he proceeded to hear and determine the case of foreclosure, that he had never approved the bill of exceptions, and that no one had called his attention to the fact that there was an appeal in the change of number case.

At this point, Counsellor A. B. Ricks informed the Court, as he had done at the last term in the case of objections to the probate of the deed, that he had repeatedly in open court called the judge's attention to the pendency of the appeal when he was about hearing said foreclosure case, but his honor the trial judge had wantonly disregarded said notice and that he, Counsellor Ricks, thought Mr. Carney Johnson, clerk of said court, would remember it. Mr. Carney Johnson, clerk of the trial court, was summoned, and thus he appeared for the first time on the scene and said that he did not recall that Counsellor Ricks had called the judge's attention to the pending appeal in the correction of number case.

Questions from this Bench put to His Honor Judge Smallwood and his answers gave the impression that he had committed purely an unintentional error of judgment, which he confessed when he asked to make a statement on the record of Court and threw himself upon the Court for absolution. This request of his we required to be reduced to writing in the nature of an amended return. He did so and wrote the following:

"Further to the returns of His Honour Judge Smallwood, on page three in the above entitled cause and the latter part of the fourth paragraph on said page and page four, His Honour Judge Smallwood concedes the point that where an appeal bond is approved by the trial Judge, the Judge thereof loses jurisdiction over the cause and jurisdiction can only be resumed by a Mandate from an appellate court.

"In the case now under consideration by the Honourable Supreme Court of Liberia from which grew these contempt proceedings, the approval of the bond

was not then within the knowledge of His Honour Judge Smallwood and upon the service upon him of the Writ to show cause why he should not be held to answer for contempt, he was surprised to note that he had approved said appeal bond as same had slipped his memory and he was not reminded by the officers of the court nor the lawyers in the case nor the parties themselves before nor after he took up and tried the case of Foreclosure of mortgage, and it was not until he had been served with process to appear and show cause why he should not be held to answer for contempt that he observed that he had approved of said bond.

“Judge Smallwood wishes to bring to the attention of the Honourable Supreme Court, that upon his elevation to the Bench of the Circuit Court he made a ruling to the effect, that upon the trial of any case by him where the party was appealing, and if he is out of the City when the time comes for the filing of bills of exceptions and appeal bonds, the appellant was to file same with the Clerk and the Clerk was ordered to make a notation as to the date of filing and when he returns to the City and this fact is brought to his attention by the Clerk or the parties themselves he would approve same as of the date of filing in order not to delay or prejudice anyone’s appeal, then would it be consistent to approve of an appeal bond and said fact as still within his knowledge and ignore same and try a matter the subject of an appeal? Wherefore Judge Smallwood submits that he was not reminded by the pleadings of the opposing lawyer nor in open court and that this fact of his approving of the appeal bond upon his honesty as a Judge had been forgotten and he sincerely apologizes for this act and asks that Your Honours be good and gracious enough to forgive him for this first offence, not so much that he is afraid of the punishment that the Supreme Court

might inflict, but to see that an attempt has been made to contravene the prerogatives of the Supreme Court gives him more pain than any punishment that the Court might inflict, as I have always tried to make it my duty to do justice to all parties coming before me. Judge Smallwood has no knowledge of any other development in these proceedings and is not a party of them.

“Wherefore in keeping with that part of his returns referred to, Judge Smallwood, again asks the Supreme Court of Liberia to relieve him of the idea of contempt, as his sense of justice is too high to have the desire to contempt any court, to say nothing of the Honourable Supreme Court of Liberia.”

“Respectfully submitted,

[Sgd.] R. F. D. SMALLWOOD,
Resident Judge.”

Counsellor H. Lafayette Harmon and Frank E. Tolbert were the second in order to argue their returns. They vigorously urged that the appellants in the correction of number case had not perfected their appeal because they did not: (1) File an approved bill of exceptions, (2) File an approved appeal bond, (3) Pay costs, and (4) Serve notice of the completion of appeal. Hence, they contended, there was no appeal that could serve as a supersedeas. They therefore felt justified in having the mortgage foreclosed and lot Number 272 sold.

After a series of questions from the Court to these two co-parties and after their answers, it soon became evident even to themselves, it seemed, that defects in perfecting an appeal of the nature of those claimed to have existed in that appeal would be grounds for the dismissal of an appeal by the appellate Court upon motion properly filed in the appellate Court, especially so where the trial judge had approved the appeal bond and thus lost jurisdiction over the cause. Harmon and Tolbert therefore brought into Court amended returns which, while in

some degree apologetic, yet sought subtly to justify their conduct, the soundness of which was soon shattered. Then finally they asked leave of Court to withdraw both their returns and amended returns and to file substitute returns. With leave granted, the following were what they filed as such returns:

"H. Lafayette Harmon, Counsellor at law, and Frank E. Tolbert, co-respondents in proceedings for contempt, most respectfully beg leave of court to withdraw their returns and amended returns filed in these proceedings, to substitute the following as their returns:

- "1) They acknowledged the service on them of the Writ of Summons to appear and show cause.
- "2) As to the substance of the charge of contempt made against them, they do hereby admit that their act of bringing and prosecuting an Action of Foreclosure of Mortgage, while an Action for Change of Number in said mortgage was pending on appeal in the Honourable Supreme Court, and not then disposed of by Your Honours, was indeed out of order and an error. They believed at the time that since the bill of exceptions filed by appellants had not been approved, and no notice of appeal had been issued and returned in the cause:

'Ex Parte J. J. Massaquoi, for his Wife, Sarah Massaquoi, Petitioner-Appellee, Administrators of the Estate of the Late Momolu Massaquoi, Intervenors-Appellants,'

that there was no appeal, without any intention whatever to contempt this Honourable Court; but when the proceedings in contempt were in process of hearing, and various questions were being propounded to them by Your Honours, they became convinced that they were legally out of order, and wrong.

“3) They therefore tender this written Apology to Your Honours for their actions, and confessing their guilt, and acknowledging their wrong, and most humbly and earnestly implore your pardon, clemency and forgiveness.

“Respectfully submitted,

[Sgd.] H. LAFAYETTE HARMON,
Counsellor-at-law

[Sgd.] FRANK E. TOLBERT,
Respondents.”

Both the judge and other parties having confessed their guilt but declaring it unpremeditated and praying to be absolved, we thought that we had about concluded our inquiry; but when the returns of the Honorable Secretary of the Treasury, James T. Phillips, were called for and it was discovered that the Honorable Secretary had filed none, a Rule was entered against him and he was summoned to show cause why he had failed to make returns to the mandate served on him. He appeared and made returns and supplemental returns. As the lava came bursting forth we found that our investigation had been playing upon the crater of a volcano and that his returns had caused it to erupt.

We quote those returns:

“The Honourable James T. Phillips, Secretary of the Treasury, Republic of Liberia, one of the appellants in the above entitled cause, begs to acknowledge the service upon him of a copy of the Court’s Order embodied in the Court’s Judgment handed down on the 20th day of February A.D. 1942, and respectfully makes the following returns:

“1) Because the Honourable Secretary of the Treasury says that he has literally obeyed the Orders of this Honourable Court with respect to the funds that have come to his hands since the order of the Circuit Court first judicial circuit was issued on the 27th day of August A.D. 1940, in that said funds have remained se-

questered and not paid out in conformity with the Order and Judgment of this Honourable Court dated 20th February 1942, as aforesaid, as will more fully be shown by the following documents, profert of which is herewith made, *viz.:*

- "1) Statement showing disposition made of checks issued in favour of the estate of the late Momolu Massaquoi, etc., dated April 27, 1942.
 - "2) Order of His Honour Judge Summerville signed by Acting Clerk of Court, J. Daniel Beysolow, dated 30th day of August A.D. 1939.
 - "3) Notice from the Clerk of the Circuit Court dated August 27, 1940.
 - "4) Certificate from the Clerk, Circuit Court, dated September 20, 1940.
 - "5) Notice from Clerk of the Circuit Court dated September 20, 1940.
 - "6) Certificate from the Clerk of Circuit Court dated September 11, 1940.
 - "7) And this the Honourable Secretary of the Treasury is ready to prove.
- "2) That the \$81.00 stipulated to be paid out and confirmed by order of court has been accordingly paid out, leaving a net balance in the hand of the Honourable Secretary of the Treasury of the sum of \$405.00 unpaid to this date. And this the Honourable Secretary of the Treasury is ready to prove.
- "3) That the Honourable Secretary of the Treasury regrets very exceedingly that he omitted to make the formal and legal returns required by the letter of His Honour the Chief Justice dated March 10, 1942. The reasons which the Honourable Secretary of the Treasury begs

leave to assign for this oversight is inadvertence and pressure of overwhelming duties which caused him to overlook said letter of the Chief Justice directing the course to be pursued in making returns to the judgment of the Court dated February 20, 1942. For this inadvertence the Honourable Secretary of the Treasury begs to offer his deepest regrets and apology, wishing at the same time to assure this Honourable Court that it was very far from his intention to contempt this Court. He therefore respectfully begs the Court to accept said apology as a purge of any contumacy which the Court might otherwise have attributed to his inadvertence. And this the Honourable Secretary of the Treasury is ready to prove.

“Respectfully submitted,

James T. Phillips, Secretary of the
Treasury, R.L., by his Attorney

“[Sgd.] NETE SIE BROWNELL

Attorney General of Liberia.

“Dated this 26th day of April A.D. 1942.”

1939

T.O. No. 374 dated 15/4/39—

Checks Nos. 66730 and 66738 \$162.00

“(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40)

“T.O. No. 1020 dated 30/2/39—

Check No. A8402 81.00

“(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40)

1940

T.O. No. 89 dated 6/3/40—

Check No. A10423 81.00

"(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40)

"T.O. No. 895 dated 30/9/40—

Checks Nos. A20886 and A20887 162.00

"(Received by Hon. H. Lafayette Harmon on the 26th day of September, 1940, in keeping with order of Circuit Court dated 20/9/40)

"T.O. No. 626 dated 8/10/40—

Check No. A21408 81.00

"(Received by Hon. H. Lafayette Harmon on the 10th day of October, 1940, in keeping with order of Circuit Court dated 20/9/40)

Total \$648.00

1941 and 1942

Total payments due for 1941 and 1942 (up to and including March 31) 405.00

"(Held up by the Treasury in keeping with letter dated September 9, 1940 from Al-Haj Massaquoi, Co-administrator of the Estate of the late M. Massaquoi; Vide Treasury Department No. 2179/186/940D, dated September 10, 1940)

"Respectfully submitted

[Sgd.] W. R. TOLBERT, JR.
Disbursing Officer, R.L."

Said respondents two days later filed supplemental returns as follows:

"Further to our returns of today's date, we beg to file the following documentation, to wit:

- "a) Letter from Al-Haj Massaquoi to the Secretary of Treasury dated September 9, 1940;
- "b) Treasury's letter No. 2179/186/940D dated September 10, 1940;

- “c) Treasury’s letter No. 2270/173/940D dated September 30, 1940, addressed to the Honourable Attorney General with six (6) enclosures;
- “d) Letter No. 2165/92/40 addressed to the Clerk of Probate Court, Monrovia, dated 15th November 1940 by the Department of Justice;
- “e) Letter No. 1920/78/40 addressed to the Secretary of the Treasury by the Honourable Attorney General dated 16th October 1940;
- “f) Letter from the Clerk of Probate court to the Honourable Attorney General dated 15th November 1940 together with a statement of the real estate holdings of the late Hon. Momolu Massaquoi as issued by J. J. Mends-Cole, Collector of Internal Revenues;
- “g) Letter No. 2175/78/40 from the Attorney General to the Secretary of the Treasury, dated 15th November 1940.

“Respectfully submitted,
 James T. Phillips, Secretary of
 the Treasury, R.L., by his Attorney
 [Sgd.] NETE SIE BROWNELL
Attorney General of Liberia.”

“Dated April 28, 1942.”

Here it was discovered that several orders and certificates had been issued by the clerk of the Circuit Court for the First Judicial Circuit as upon orders of the judge thereof. His honor the judge disclaimed knowledge of these and disavowed having given orders to the clerk to issue them.

The relevant certificates and orders are as follows:

“OFFICE OF THE CLERK
 OF COURT OF THE FIRST
 JUDICIAL CIRCUIT, MONT-
 SERRADO COUNTY, MON-
 ROVIA.”

“REPUBLIC OF LIBERIA,
 MONTSERRADO COUNTY.”

"REPUBLIC OF LIBERIA to the Administrators of the estate of the late Momolu Massaquoi, (Al-Haj Massaquoi, et al.,) the Secretary of the Treasury, R.L., and the Paymaster of the Treasury, R.L. respondents, GREETINGS:

"You, and your agents, and all persons whatsoever acting directly or indirectly under you, are hereby restrained, prohibited and enjoined, under the penalties by law prescribed, until this court shall have made further orders hereupon, from collecting any of the rents accruing from lot number 272, situated on Ashmun St., Monrovia, Liberia of the Estate of the late M. Massaquoi, nor to interfere therewith, directly or indirectly.

"And you are hereby further commanded to appear before this court on the time required by law, if you desire to show cause why this Injunction should be dissolved.

"Issued by orders of His Honour Judge Summerville, and given under my hand and seal of court this 30th day of August A.D. 1939

[Sgd.] J. DANIEL BEYSOLOW,
Acting Clerk of Circuit Court."

and

"OFFICE OF THE CLERK
OF COURT, FOR THE FIRST
JUDICIAL CIRCUIT, MONT-
SERRADO COUNTY, MON-
ROVIA.

27th August, 1940.

"REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY.

"THE HONOURABLE SECRETARY OF THE
TREASURY, R.L.,
THE PAYMASTER OF THE TREASURY, R.L.,
MONROVIA.

“GENTLEMEN,

“Please take legal notice that in keeping with terms of stipulations filed in Court in the Cause:—

Ex parte Massaquoi, for his Wife, Sarah Massaquoi, Petitioner-Appellee, Administrators of the Estate of the Late Momolu Massaquoi, Intervenors-Appellants.

the court has today dissolved said Injunction and ordered the release of such checks which may be in the hands of the Paymaster of the Treasury on account of rent for premises No. 272 held under lease by the Government to the Sheriff for Montserrado County to be paid over to Petitioners to satisfy an order of sale.

“You are therefore requested to surrender said checks to the Sheriff of this County and obtain his receipt.

“By order of the Resident Judge.
(Seal) Yours faithfully,
[Sgd.] CARNEY JOHNSON,
Clerk of the aforesaid court.”

In addition,

“REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY.

“IN THE CIRCUIT COURT
OF THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO
COUNTY, CLERK'S OFFICE,
MONROVIA.

“Certificate

“THIS IS TO CERTIFY, that according to due legal and regular proceedings had, the title to premises Lot Number 272 situated on Ashmun Street in City of Monrovia, and only occupied by Government for the use as Office of Civil Service Bureau, has passed by Decree of Court and Sale from Momolu Massaquoi – to – H. Lafayette Harmon.

"Effective as from July 18th A.D., 1940.
Given officially, as per order of Court for the
First Judicial Circuit, R.L., this 20th day of
September A.D. 1940.

"[Sgd.] CARNEY JOHNSON
*Clerk, Circuit Court First Judicial Circuit,
Montserrado County, R.L."*

and

"REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY.

"OFFICE OF THE CLERK
FOR THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO
COUNTY, MONROVIA.
20th September, 1940.

"THE HONOURABLE,
THE SECRETARY OF THE TREASURY, R.L.,
TREASURY DEPARTMENT,
MONROVIA.

"MR. SECRETARY,

"I append hereto a dossier of Court's record marked
'A' to 'C' in reference to Lot No. 272 situated on Ash-
mun Street in the City of Monrovia, and leased to the
Government of Liberia.

"His Honour the Judge of the Circuit Court for
the First Judicial Circuit, Montserrado County, has
instructed me to notify you that as a result of Fore-
closure Proceedings had between the substituted mort-
gagee, Frank E. Tolbert against the Administrators
of the Estate of the late Momolu Massaquoi, who
leased the said lot No. 272 to the Government, that
the title to said lot has legally passed to Mr. H. Lafay-
ette Harmon, under Decree, and sale, and Order of
Court. See copies marked 'A' and 'B' respectively.

"The Treasury Department, R.L., is therefore fully
authorized to treat with the said H. Lafayette Har-
mon, in future on all matters touching and concerning

the said Lot No. 272; Mr. H. Lafayette Harmon is also empowered and entitled to receive all rents now due or which may hereafter be due on said premises.

“Your obedient servant

[Sgd.] CARNEY JOHNSON

Clerk of the aforesaid Court.”

and

“REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY.

“OFFICE OF THE CLERK
OF COURT FOR THE FIRST
JUDICIAL CIRCUIT, MONT-
SERRADO COUNTY, MON-
ROVIA.

“Certificate

“This is to certify, that on the 18th day of July, 1940, when His Honour Judge Smallwood entered FINAL DECREE in the case:-

Frank E. Tolbert, substituted Mortgagee,
petitioner

vs.

Al-Haj Massaquoi, Nathaniel Massaquoi
and T. W. D. Leigh, Administrators of the
late Momolu Massaquoi, respondents

there were no exceptions entered, no appeal prayed for in the proceedings. (See copy of Minutes for the 18th July 1940). There is no Bill of Exceptions nor an Appeal Bond in the proceedings.

“Given under my hand and seal of
Court this 11th day of September,
A.D. 1940.

[Sgd.] CARNEY JOHNSON

Clerk of the Aforesaid Court.”

His honor the trial judge aforesaid having denied knowledge of the existence of these orders, it was necessary for the clerk of the trial court, Mr. Carney Johnson, who issued said orders, to appear a second time on the

scene to give testimony as to how and why he issued such orders in the name of the court without orders of the judge.

Mr. Johnson emphatically declared that he had been ordered by the judge to issue all of the orders just read except one but that said orders were given to him orally by the judge, and that since the orders grew out of a judgment and writ of sale given in writing by the trial judge he had thought the oral orders sufficient.

After a repartee in the character of questions and answers between the judge and his clerk, Mr. Johnson, the sheriff was called before Court, and he affirmed that the judge had given the orders, the clerk had upon the judge's orders issued them, and that he, the said sheriff, had served them. We feel impelled to place on record that the sheriff, Pohlman Bracewell, Esq., showed while before this Court a tendency neither to cover up anything nor to twist anything, but instead seemed to make a clear breast of what he knew, and we do not hesitate to say that we were favorably impressed with his disposition in this regard.

Now to the analysis of the facts brought out and the application of the law controlling them.

His Honor Judge Smallwood, Counsellor Harmon, and his client Mr. Tolbert, who is also an attorney-at-law, insisted throughout the hearing in these proceedings for contempt that they had no knowledge of an appeal pending in the Supreme Court from the final decree of his honor the trial judge.

As much as we are inclined to accept and even desirous of accepting the solemn declarations of a judge as possessing great credibility and as absolutely unimpeachable, we have been startled when we endeavored to harmonize his honor's statement with the attendant facts and circumstances of the case.

His Honor Judge Smallwood entered a decree ordering the number in the mortgage deed changed from Number 226 to Number 272 on October 26, 1939. The

intervenors-appellants therein excepted and gave notice of appeal on the same date; His Honor Judge Smallwood approved the appeal bond on December 22, 1939. On April 3, 1940, the record of appeal was filed in the appellate Court. Because of the inability of a majority of the members of the Court to arrive at the seat of Court, no business was transacted at the April term, 1940. On July 18, 1940, his honor the trial judge entered a decree foreclosing said mortgage while the appeal in the correction of number case was yet pending in the appellate Court and undecided by that Court.

If the above be true and correct as it is, then it would appear obvious that the respondents herein, Counsellor H. Lafayette Harmon and his client Frank E. Tolbert, who brought the foreclosure suit to foreclose the mortgage and sell the lot as Number 272, which number they were seeking to have inserted in said deed of mortgage instead of lot Number 226, and His Honor Judge Smallwood, who heard the case and ordered the mortgage foreclosed and lot Number 272 sold when the appellate Court had not affirmed his judgment, were guilty of an attempt either to anticipate the appellate Court's judgment or to adversely affect any judgment the appellate Court might give that would not affirm the said lower court's judgment, or were guilty of an arbitrary and deliberate disregard of the law on appeal which provides that an appeal shall serve as a supersedeas, or were guilty of a disregard for the dignity, authority, and power of this appellate Court.

"An appeal when perfected operates as a stay of execution, and the sheriff is thereby enjoined from taking any further steps under any writ of execution, or otherwise." 1 Rev. Stat. § 427.

This is the *lex loci*.

It is contempt of court, says the law, where an appeal serves as a supersedeas and any person interferes with or adversely affects it.

"Where steps taken to review an order, judgment,

or decree by appeal, writ of error, certiorari, or other authorized proceeding amount to supersedeas, it is not contempt to refuse to act under the order of the trial court. On the other hand, any attempt to carry out the order during the pendency of the proceedings for review will be adjudged contempt, although, if the party so acting has no knowledge of the appeal and supersedeas, he is not in contempt; and where a stay of proceedings on defendant's motion is granted until the hearing and determination of the motion, plaintiff is not punishable for contempt in proceeding after denial of the motion, because he did not wait until a formal order on the decision had been actually entered. If the action to review does not operate as a supersedeas, execution of the order of the court of first instance is not suspended during the pendency of the proceedings. Disregard of a supersedeas afterward vacated is not contempt. Exercising the right to have an order on which contempt proceedings are based revised is not contempt of court. One disobeying an order of court, pending appeal therefrom, may question such order only in so far as he can show it to be absolutely void, and cannot be heard to say that it is erroneous, however flagrant it may appear to be. It has been held that a reversal of the decree on which contempt proceedings are predicated operates to abate such contempt proceedings, although the rule does not seem to be of universal application; and an order of commitment cannot be opposed on the ground that the order determining liability on which the commitment was based has been modified on appeal." 13 *Corpus Juris Contempt* § 19, at 16-17 (1917).

The parties respondent in these proceedings argue that they were not aware that an appeal had been taken in the correction of number case; but why was the judgment in the correction of number case not first executed and the change of number effected as the law directs if they

had no knowledge of the pending appeal? Without enforcing the decree of the trial court which decree had been appealed from, by correcting the number in the mortgage deed on record and by procuring a copy thereof under seal as evidence of the fact, Frank E. Tolbert and/or his counsel deliberately changed the number in his, Frank E. Tolbert's, assignment of mortgage, while the original mortgage deed remained the same, and brought and prosecuted their action of foreclosure. The judge decreed the mortgage foreclosed and ordered the lot with the unauthorized corrected number sold without having first corrected it in the records or in the original deed of mortgage, and ordered rentals that had accumulated prior to the assignment of the mortgage and prior to its foreclosure released, first to Frank E. Tolbert and then to his counsel who is supposed to have bought the property.

The next question that strikes us hard is, how can the respondents in these contempt proceedings claim ignorance of the perfecting of the appeal in the correction of number case when the parties defendant, the intervenors, in the correction of number case gave notice of exceptions to the final decree and of appeal which was noted in the records of the trial court? Did not the trial judge consult the record before he approved the approved appeal bond? Would he not have consulted the record when the petition for foreclosure was presented him with a view of ascertaining whether the appeal in the correction of number case had been perfected by the intervenors-appellants and disposed of and whether or not same had been disposed of by the Supreme Court? Surely if it had been disposed of, a mandate from this Court to the trial judge would have been sent down to the trial court with the final judgment as is done in every case decided here; and we have pursued the practice of sending not only a copy of the judgment but also a copy of the opinion.

In any case, supposing the number had been ordered

corrected by the appellate Court or there had been no appeal taken from the trial court's final decree, upon what authority of law could respondents have acquired the rentals that had accrued and had been sequestered prior to the foreclosure of the mortgage, could they have deprived the mortgagor of his equity of redemption, and what was his honor the judge's legal authority for so ordering, considering the kind of mortgage this was?

"Where a mortgage is regarded only as a security, as it now generally is, the mortgagor remains to all intents and purposes the beneficial owner of the estate, and may control, manage, and dispose of it as he wills, so far as concerns all persons except the mortgagee, and subject to the condition that he must do nothing to destroy or impair the mortgagee's security. He is a freeholder, as regards all the rights and privileges, both civil and political, which the possession of a freehold confers, and cannot be deprived of his title, even after breach of condition, except by a voluntary surrender or conveyance or by a due and regular foreclosure." 41 *Corpus Juris Mortgages* § 591, at 620-21 (1926).

And the following is even more pertinent:

"Notwithstanding the existence of a mortgage on land, the owner thereof may sell and convey his interest, that is, the equitable title or equity of redemption, to a third person, transferring to the latter all his own rights in the premises, and the mortgagee has no right to interfere in the sale or prevent it. But of course such a sale does not prejudice the rights of the mortgagee; the grantee succeeds to the mortgagor's estate, occupies his position, takes subject to the encumbrance, and is subject to the same equities." *Id.* at 621.

"Under the influence of the equitable conception that the mortgagor is the substantial owner of the property mortgaged, and of statutory enactments

either expressly announcing or impliedly confirming that view, the courts of many jurisdictions have adopted the rule that a mortgage passes to the mortgagee neither the legal nor equitable title to the property mortgaged. The mortgage, according to these authorities, merely pledged the property for the performance of the obligation secured, and the mortgagee acquires a bare right to enforce performance against the property. This right is not enlarged by default in performance or by possession of the mortgaged premises. On the contrary, the mortgagor retains until foreclosure and sale both the legal and equitable ownership. It has been held that the rule is not altered by the circumstance that a power of sale is granted the mortgagee, but on this point there is authority to the contrary. Furthermore, under this doctrine a deed of trust in the nature of a mortgage is commonly though not universally regarded as leaving the legal title in the mortgagor. But while an opposite view finds some support, a deed absolute intended as a mortgage is considered by the weight of authority to transfer legal title to the mortgagee. Statutes have been enacted in some instances not prohibiting a conveyance of the legal title to the mortgagee, but merely providing that such a conveyance shall not be presumed in the absence of express stipulations." 19 R.C.L. *Mortgages* § 88, at 311-12 (1917).

And lastly:

"By the strict doctrine of the common law a mortgagee is entitled to the immediate possession of the mortgaged premises, in the character of the legal owner, and therefore, unless his right in this respect is waived or controlled by stipulation in the mortgage, he may, even before breach of condition, maintain ejectment and oust the mortgagor. But according to the modern equitable doctrine, which regards the

mortgage as nothing more than a lien or security, the mortgagor is entitled to remain in the possession and enjoyment of the estate at least until breach of condition, even without the clause now commonly inserted in mortgages securing this right to him. A mortgagor of one undivided moiety of land cannot have partition against his mortgagee who is the absolute owner of the other moiety. But a mortgagor in fee is entitled to possession against the grantee of the mortgagee." 27 Cyc. of Law & Proc. *Mortgages* 1234-35 (1907).

A striking revelation was made when Mr. Johnson, the clerk of the trial court, was before this Court. In a batch of court papers which he held in his hand was discovered a bill issued to J. J. Massaquoi by him, the clerk, in which he asked for fees for the registrar and for himself for changing the number of the mortgage on record. This bill was made before the ten days for filing a bill of exceptions had expired and was approved by Counsellor Harmon with a notation to Mr. Tolbert to pay same.

"REPUBLIC OF LIBERIA,
MONTSERRADO COUNTY.

"OFFICE OF THE CLERK OF
COURT FOR THE FIRST JUDI-
CIAL CIRCUIT, MONTSER-
RADO COUNTY, MONROVIA.

"THE HEIRS OF J. J. MASSAQUOI

to

CLERK OF CIRCUIT COURT, MO. CO. for services rendered in the matter of correction of deed as follows:

Order on Registrar for correction	\$.50
Copy of Court's Ruling	.50
" " Surveyor's certificate	.50
" " stipulations	.50
	<u>\$2.00</u>

"Received payment with thanks

"Clerk of Court.

"MONROVIA,
November 3, 1939.

"NOTE: As soon as this amount is received the documents will be handed the Registrar for the correction.

"O.K.

MR. FRANK TOLBERT

Please pay 8/4d

[Sgd.] H. LAF. HARMON

3/11/39.

"Certified true and correct copy of the original filed with the records for the correction of deed between the heirs of J. J. Massaquoi and Al-Haj Massaquoi et al., for lot No. 272, City of Monrovia.

"CARNEY JOHNSON

Clerk Circuit Court, Mo. Co.

(Seal of Court)."

What could have been Mr. Harmon's intention in having such a bill issued before the ten days for filing a bill of exceptions had elapsed when the intervenors-appellants had placed on record a notice of appeal? We see no purpose in Mr. Harmon's action other than to deprive the intervenors-appellants of an appeal. It seems to us clear, therefore, that there was an intent *ab initio* to deprive said appellants of their right of appeal and thus acquire said property at any hazard.

Counsellor Harmon claimed that he was the highest bidder at the sheriff's sale and that he paid three hundred and fifty pounds for the property. The sheriff's certificate of sale supports Mr. Harmon's assertion in this respect, which certificate of the sheriff is as follows:

"REPUBLIC OF LIBERIA

MONTSERRADO.

"CERTIFICATE OF SALE

"I, Pohlman J. Bracewell, Sheriff for the County of Montserrat, do hereby certify that on the 20th day

of August A.D. 1940, at the Court House in the City of Monrovia at [time omitted] o'clock p.m. pursuant to the order of the Court and Notice of Sale hereto annexed, I sold to H. Lafayette Harmon, he being the highest bidder, the premises lot number two hundred and seventy-two (272) on Ashmun Street, in the City of Monrovia, described in said Notice of Sale; and I therefore certify that such sale was in all respects honestly, fairly and legally conducted to the best of my knowledge and ability and the proceeds thereof will be disposed of, as follows, to wit:

"The sale price and high-		
est bid being	\$1680.00	£350.0 .0
To pay cost of court	31.60	6.11.8
" " Sheriff's collection		
@ 6¼%	105.00	21.17.6
" " mortgage against		
debt	<u>1543.40</u>	<u>321.10.10</u>
	\$1680.00	£350. 0. 0
Balance of debt	\$293.40	
10% Attorney		
fee	<u>183.68</u>	
	\$477.08	— £ 99.7.10

"[Sgd.] POHLMAN J. BRACEWELL,
Sheriff, Mo. C.

"Monrovia, Liberia, August 20, 1940.

Certified true copy

[Sgd.] CARNEY JOHNSON

Clerk of Court.

"True copy of the original.

[Sgd.] H. LAF. HARMON."

It appears from the tabulations in said certificate that \$1543.40 or £321.10.10 of said amount was paid against the mortgage debt to Mr. Tolbert, the assignee who had procured the foreclosure of the mortgage.

From a statement of amounts paid by Mr. Tolbert to

J. J. Massaquoi for the assignment of the mortgage, which statement with receipts was presented by Mr. Tolbert himself, it will be seen that the total amount paid by Mr. Tolbert for the assignment was £138.0.0 or \$662.40.

Counsellor Harmon was the purchaser at the sheriff's sale and, when a question was put to the counsellor as to whether or not he could legally purchase the property when he was the lawyer for the assignee, Mr. Tolbert, Counsellor Harmon replied that there was no law that prevented him from so doing. We were amazed at such a reply coming as it did from a lawyer of Counsellor Harmon's ability and astuteness, for it is plainly forbidden by law for him to have done so.

"The rule seems to be well settled that, the relation of attorney and client being one of trust and confidence, the attorney is by reason thereof incapacitated to buy and hold property sold at a judicial sale in which his client is interested, where the purchase would result in any injury or disadvantage to the client, or involves any act on the attorney's part that is in any degree inconsistent with his duties toward the client. In some jurisdictions it is further said that an attorney is disqualified by the relationship of attorney and client alone from purchasing at a judicial sale the property in litigation in which his client is concerned, and from holding it to his own use without the consent of his client; such a purchase being regarded as contrary to public policy, regardless of motives or of whether the client actually lost or gained by the transaction." 16 R.C.L. *Judicial Sales* § 80, at 11 (1917).

But the ridiculous was reached when the sheriff informed the Court that Counsellor Harmon had not paid him anything for the property sold. There seemed to have been some illicit understanding between Mr. Harmon and Mr. Tolbert so that although Mr. Tolbert paid only \$662.40 for the assignment of mortgage, he received

\$1543.40 from the sale of the lot, according to his acknowledgment of the same. He also received \$324.00 from the rentals, according to the statement of the Treasury Department, making a grand total of \$1867.40 received by him. According to the sheriff, Mr. Harmon, who although present in Court did not challenge or offer to rebut the said statement, paid nothing for the property but drew from the Treasury Department upon the court's order \$224.00 on account of rental and a sheriff's deed for lot Number 272 and \$183.68 as a ten percent attorney's fee from said sale. What a travesty of justice and a pollution of judicial procedure and what collusion and connivance by and between judge, officers of court, lawyer, and client! We cannot too strongly indicate our detestation and abhorrance of this affair.

At the last stage of the hearing, his honor the trial judge having continuously and categorically denied knowledge of the pendency of the appeal, the clerk of court, Mr. Johnson, produced from his office a certified copy of an application for a writ of injunction addressed to His Honor Judge Smallwood praying him to stop and prevent the sale of the said lot Number 272 because of the pendency of an appeal in the correction of number case, and he also produced a minute showing his honor the judge's ruling thereon, which we think was the death knell to the alleged ignorance of the judge and parties of the pendency of said appeal.

We recite that application and ruling:

"Al-Haj Massaquoi and Nathaniel Massaquoi, Administrators of the Estate of late Momolu Massaquoi, Plaintiffs in the above entitled cause, complain of Frank Tolbert and Pohlman J. Bracewell, Sheriff of Montserrado County, Defendants, that said Defendants intend to sell at public auction or private sale premises Number 272 situated in the City of Monrovia, County of Montserrado and Republic of Liberia, and that the said Defendants ought not to do the

said acts which they intend to do as aforesaid, because the said plaintiffs say that there is a case now on appeal from this Court before the Honourable Supreme Court of Liberia with reference to the change of the number of the premises affecting materially the sale about to be made by Defendants not yet heard and decided; that to sell said premises under such circumstances would be illegal, and anticipating the Judgment of the Honourable Supreme Court of Liberia.

"All of which said plaintiffs are ready to prove."

"C.C.F.J.C.

August term 1940

5th day's session

"August 19, 1940

"10 A.M.

"The Circuit Court for the First Judicial Circuit, Mo. Co., met today pursuant to adjournment. His Honour Richard D. Smallwood, Judge presiding by assignment. Officers of Court present. Minutes of the last day's session approved with the necessary correction.

"2 P.M.

"The hour of recess having expired Court resumed business. . . .

"Counsellor Harmon in closing for Defense argued and cited. . . .

"The Court recessed in law and opened in Equity."

The Court then said:

"The Clerk of this Court handed me a complaint in an Action of Injunction filed by Counsellors Barclay and Ricks for Al-Haj Massaquoi and Nathaniel Massaquoi, Administrators of the estate of the late Momolu Massaquoi versus Frank Tolbert and P. J. Bracewell, Sheriff Montserrado County to enjoin the sale of the premises of the late Momolu Massaquoi mortgaged to Frank Tolbert which Mortgage was

foreclosed by a regular proceeding in this Court and a decree rendered thereon in favour of the said Frank Tolbert from which no appeal was taken and prosecuted; the complaint was handed me by request of Counsellor A. B. Ricks for the purpose of securing an order before the filing of the document, which note of Counsellor Ricks is attached to said document. The Court issued an Injunction to stay the enforcement of the execution from which no appeal was taken and prosecuted."

That these certified copies were correct was not denied by respondents.

In view of all the circumstances, the magnitude, and the gravity of the case, we are of the opinion that His Honor Judge Smallwood, Counsellor H. Lafayette Harmon, and Frank E. Tolbert are each and all guilty of contempt; and that since the sheriff's actions were in obedience to the orders of the judge by whose orders said sheriff claims he was bound, although we do not uphold the unrestricted legal correctness of his theory, yet because of his frank attitude we are disposed to refrain from punishing him at this time.

The Honorable the Secretary of the Treasury who failed to make returns to the mandate served on him and even neglected so to do after having received the letter of direction of His Honor the Chief Justice until he had been summoned to appear and show cause, has asked to be purged of his contempt and, in view of the promptness of and the comprehensiveness of the returns which he finally did file, we are willing to suspend sentence against him for the present pending our consideration of his returns to the mandate that will follow this opinion.

His Honor Judge Smallwood, shall forthwith pay to the marshal of the Court a fine of one hundred dollars; Counsellor H. Lafayette Harmon shall forthwith refund the amount of \$224.00 received from the Treasury for rentals of lot Number 272, pay a fine of one hundred

dollars, and be suspended from practice until the Justice presiding in Chambers shall have inspected receipts showing that the fine of one hundred dollars and the refund of \$224.00 shall have been paid, at which time he may order the suspension lifted; Frank E. Tolbert shall forthwith refund the amount received by him from the Treasury for rental of lot Number 272 in the sum of \$324.00 and pay a fine of seventy-five dollars. Sheriff Bracewell shall be absolved. Judgment against Secretary of the Treasury Phillips is suspended. The foreclosure proceedings and all actions taken in relation thereto are hereby nullified and adjudged void *ab initio*; and the cost of these proceedings shall be borne equally by Counsellor H. Lafayette Harmon and Frank E. Tolbert.

The sums to be refunded by Counsellor Harmon and Frank E. Tolbert on account of rental shall be collected through the Circuit Court for the First Judicial Circuit and shall be paid over to the administrators of the estate of the late Momolu Massaquoi forthwith to be handled by them in keeping with law. The sum of \$405.00 sequestered in the Treasury account shall also be released and paid to said administrators to be also handled by them as aforesaid, and his honor the judge of the said court shall see that these orders are forthwith executed and shall make returns to the Justice presiding in Chambers within fifteen days from the date of the judgment about to be announced; and the marshal of the Court shall collect all of the fines hereby imposed forthwith; and it is so ordered.

Judge Smallwood, H. Lafayette Harmon, and Frank E. Tolbert *guilty of contempt*. Pohlman J. Bracewell *not guilty of contempt*. Sentence *suspended* as to Secretary of the Treasury Phillips.