CLEMENT JAMES, Authorized Agent for Messrs. W. D. WOODIN & COMPANY, LIMITED, Foreign Merchants of England Transacting Mercantile Business in the County of Grand Bassa, Petitioners, *v.* JACOB H. LOGAN, Respondent.

APPLICATION FOR A MANDATE ENFORCING A JUDGMENT.

Argued June 20, 29, and July 4, 1934. Decided July 9, 1934.

1. On an application to a Justice in chambers for a mandate to enforce a judgment of the court below, the case may be sent to the full Bench for decision if it presents questions of great importance.
2. An attorney who makes representations which he knows to be untrue, thereby misleading the court, his own clients, and the other party to an action, may be attached for contempt of court.

This is an application for a mandate to enforce a judgment rendered in an action of debt against the defendant, respondent herein, by the Circuit Court of the Second Judicial Circuit, Grand Bassa County. *Application granted in part,* and case referred to full Bench for further consideration.

H. Lafayette Harmon for petitioner. *Edwin A. Morgan* for respondent.

On the 29th of January, 1934, H. Lafayette Harmon, Esquire, counsellor at law for Messrs. W. D. Woodin & Company, Ltd., respondents, applied by letter to us, in our chambers, for the issuance of a mandate to the court below ordering it to enforce the judgment that had been rendered in favor of petitioners in this case and another case in which he was also attorney of record. He was then told that the Court could not act upon a mere letter, nor would it permit more than one cause to be blended in one single application. He was then given permission within forty-eight hours to file *nunc pro tunc* a separate application in each case in proper form.

Instead of filing the said applications within forty-eight hours as permitted, Mr. Harmon waited until March 26th, and then filed a several application in each cause which he claimed was a substantial compliance with the orders of the Chief Justice; but this was returned to him with the information that he could not file on March 26th applications *nunc pro tunc* dated January 29th when the Court had extended the privilege for forty-eight hours only. Again, on May 18th, Mr. Harmon wrote a new letter complaining that the clerk had not acted upon orders he assumed we had given to issue mandates in the several cases which he had blended in his original letter of January 29th. A letter dated May 19th was ordered sent him from our chambers recapitulating the orders we had previously given with which he had not complied, and emphasizing our legal inability to act until proper applications had been filed in each several cause, and also reminding him of the reason why his applications filed on March 26th had been taken off the files as noted *supra.* At last, on the 21st day of May, 1934, Mr. Harmon filed applications in two separate causes, one of which is the subject of these proceedings, and the other, namely, *Cavalla River Company, Ltd.* v. *King,* although not relevant to these proceedings, is mentioned here in order to indicate the careless method by which Mr. Harmon was proceeding since it was subsequently shown that no such cause had been appealed to this Court, hence no judgment in any action of debt against Alfred D. J. King had ever been entered in this Court as he had falsely or erroneously represented, and as he was informed by a letter from our chambers dated May 23rd. The latter mentioned application was thereupon necessarily denied; but the one in which Messrs. Woodin & Company, Ltd., were petitioners, versus Jacob H. Logan, respondent, was entertained and the present proceedings were commenced.

It was then discovered that on the 6th day of May,

during the April term, 1932 of this Court, a judgment had been filed awarding Messrs. W. D. Woodin & Company, Ltd., defendants-in-error, plaintiffs in the court below, a sum of ninety-five pounds nineteen shillings and five pence sterling, equivalent to four hundred sixty dollars and sixty-six cents and all costs, against Jacob H. Logan, the plaintiff-in-error, who had been the defendant in an action of debt.

Thereafter, to wit: on the 20th day of May, 1932, an execution had been ordered issued out of this Court against the plaintiff-in-error; and the Marshal, the ministerial officer of this Court, had been permitted to deputize one L. P. Miller to go to the County of Grand Bassa for the purpose of executing said writ and other similar processes growing out of certain other proceedings settled at the aforesaid term of said Court.

Upon his arrival in Grand Bassa the Deputy Marshal served the writ, and the plaintiff-in-error having failed to satisfy the judgment or to show property from a sale of which the satisfaction of the judgment could be effected, said plaintiff-in-error was taken and committed to the debtors' hall of the prison in Buchanan, Grand Bassa, on November 24th, 1932, until such time as a conveyance was obtainable in which he could be taken to Monrovia in order that the execution might be properly returned before one of the Justices of this Court. Because of a serious illness which overtook him in prison, however, upon representations properly made to the late ex-Chief Justice Johnson by an order of the latter's dated December 2nd, 1932, Mr. Logan was temporarily discharged from prison until the danger of death was passed. See letter from the Chief Clerk of this Court to His Honor Judge Russell, now Mr. Justice Russell, dated January 30th, 1933.

We may observe in passing that we have not yet been able to find at what time, and under what circumstances, arose the innovation of having executions to issue out of

this Court to enforce the judgments of a trial court appealed against, and which this Court has only to reverse, affirm or modify. But it does appear that such a practice did arise at some time within the past decade, and was allowed to obtain in most of the cases brought up for review in the interval. Upon our attention having been called to it at the last (November) term, 1933, this Court decided to return to the practice that had been in vogue from time immemorial, and which is founded upon the law of the land, of having the judgment in all cases enforced by the trial court except any which, like the one now under consideration, had been reviewed by our predecessors on this Bench, and upon whose orders writs of execution had already been issued. The wisdom of remitting to the trial court for execution all cases reviewed and our decision to revert to the old procedure have been repeatedly demonstrated during these proceedings.

To return to the history of these proceedings, when we had directed an order to issue out of our chambers for the aforesaid writ of execution to be enforced, the Deputy Marshal of Grand Bassa took Logan, the respondent, before our colleague, Mr. Justice Russell, at his private chambers in Grand Bassa, at which time Logan set up a defense, and filed sundry copies of records and other documents in support thereof. As said defense contained accusations against Counsellor Harmon, who was then in Monrovia, and other points which could not be settled without reference to the records on file in the offices of the clerk and Marshal in Monrovia, Mr. Justice Russell ordered the officer to bring Logan to Monrovia, and he submitted his findings to the Chief Justice with a suggestion that inasmuch as all the parties were in Monrovia, the matter could better be handled by the Chief Justice in this City.

According to this request of my colleague we fixed a time for the hearing, and the respondent on the 20th of

June filed an objection to the enforcement of the execution, setting up: (1) That he had sent to Mr. Harmon, the attorney for petitioner, limited powers of attorney to the amount of four hundred fifty dollars which he had accepted in full satisfaction of the judgment; (2) That he had paid the Marshal fifteen dollars and ninety-two cents in cash as part of the costs, and given him a note of hand for the balance. He also informed the Court that he had submitted to Mr. Justice Russell records of the Circuit Court of the Second Judicial Circuit in support of his contentions noted above, and Mr. Justice Russell having informed him that he had sent them to our chambers for our information, he asked permission to use them.

At this time Mr. Harmon had left Monrovia and gone to Edina, Grand Bassa, but sent his assistant, Attorney B. G. Freeman, who filed a written request from Mr. Harmon to appear in his behalf and defend the interests of his clients, the said Messrs. Woodin & Company. Said request stated for the information of Mr. Freeman and this Court that Mr. Harmon admitted having received from Logan in 1932 limited powers of attorney for four hundred fifty dollars; but he also alleged that he had subsequently returned the securities to Logan. The allegation of the return by Mr. Harmon to Logan of the limited powers of attorney to the amount of four hundred fifty dollars having been denied on oath by Logan, an issue was thereby raised, and Mr. Freeman was then asked to produce proof of the return of Mr. Logan's paper securities. Mr. Freeman sheltered himself behind the statement that he had entered Counsellor Harmon's legal business after the incident referred to, and hence was unable to give any evidence on the subject.

It became therefore necessary to send for Mr. Harmon himself to give evidence, and failing to come to Monrovia promptly upon receipt of the request, it became necessary to issue a summons for his appearance; but before the

writ of summons could be served by the Deputy Marshal, Mr. Harmon arrived in Monrovia and submitted to the jurisdiction of the Court.

Arrived here, Mr. Harmon has not been able to produce any evidence whatever that he ever returned Mr. Logan his four hundred fifty dollars (or to be more accurate $444.76) in limited powers of attorney. He offered what purports to be the copy of a letter alleged to have been written by himself on April 25, 1933, to Mr. Logan, under cover of which he stated that the documents were returned; but was unable to produce either an acknowledgment of receipt from Logan nor from any other source, nor that such a letter was ever mailed or otherwise delivered for dispatch to Logan.

Mr. Morgan, arguing the case for Logan, contended that the execution should be dismissed and Logan discharged because: (1) On September 12, 1932, Mr. J. A. Benson, another member of the law firm of Counsellor Harmon, had appeared in the Circuit Court of the Second Judicial Circuit and stated that he knew that Logan had sent limited powers of attorney to the amount of four hundred fifty dollars to Counsellor Harmon in Monrovia, and that the said Mr. Harmon had promised to try and arrange to have his clients accept same; (2) That on October 3, 1932, Mr. Harmon had himself appeared in the said Court and put upon the record that his clients were willing to accept the limited powers of attorney in settlement of the principal but not of the costs, and requested that the Court should have Mr. Logan arrange for the payment of the costs in cash; (3) That from that day until his client was retaken on the execution at the beginning of these proceedings in 1934, he had not been informed that the creditor company refused to accept the claims against the debt he owed, nor had he received the letter alleged to have been written by Mr. Harmon to him on April 23rd, 1933, returning the limited powers of attorney to him as Mr. Harmon alleged; (4) That not only

Mr. Harmon but also his clients were now estopped from repudiating their acceptance of the said limited powers of attorney, because by Mr. Harmon's statement in the Circuit Court at Bassa on October 3rd, 1932, his subsequent reiteration of the statement in this Court (see again letter from the clerk of this Court to His Honor Judge Russell), and his conduct thereafter they had been impressed that the limited powers of attorney had been accepted and the bill of costs credited with said amount; and hence now not only petitioner's lawyer whose declarations and conduct were in evidence, but also petitioners themselves whose agent for the conduct of the cause Mr. Harmon was, were estopped from making any further demand; and Mr. Morgan in support of his contention cited 1 Greenleaf on *Evidence,* §§ 207, 208, and Statutes of Liberia, ch. X, p. 52, § 15.

On the other hand Mr. Harmon contended: (1) That a limited power of attorney is not legal tender in Liberia for the payment of a debt to a creditor other than the Republic, and when he agreed to endeavor to have his clients accept said securities in satisfaction of their debt he acted as the attorney of Logan and not of Woodin, and cited Rood's *Attachments, Garnishments, Judgments and Executions* 219; (2) That he had returned the securities to Mr. Logan, and although he could not prove the delivery of his letter containing said securities, his clients were still entitled to have their execution satisfied, and Mr. Logan who claimed he had not received them back might be permitted to sue him, Counsellor Harmon, for debt or damages for carelessly handling the securities.

Counsellor Morgan replied: (1) That Mr. Harmon did not act as the agent of Mr. Logan but of Messrs. Woodin in receiving the limited powers of attorney; that if Woodin contended they were not acceptable in satisfaction of the debt because not legal tender, they should have been promptly returned with that information and not, as Mr. Harmon contends, held for more than six

months without the alleged attempt to return them as he was now contending, or, as Logan contends, not returning them at all; (2) That, if a principal chooses to disavow the acts of an agent of his he must do so promptly, and not speculate upon the possible benefits or otherwise as, Mr. Morgan contends, Messrs. Woodin were attempting to do in this case.

After carefully considering all the points submitted, and the objects the framers of the Constitution had in view in making the quorum of the Court consist of at least three Justices, I have reached the conclusion that the points at issue are of too great importance to be disposed of by one Justice in chambers.

It is, therefore, my opinion that: (1) The questions which have arisen about the four hundred fifty dollars, clearly proven to have been received by Counsellor Harmon from Mr. Logan, the respondent, and which Mr. Harmon informed both the court below, as well as this Court by letter to the late ex-Chief Justice Johnson dated November 30th, 1932, had been accepted by him and by his clients, be sent forward to the full Bench for its consideration at the November term of this Court, 1934, at which time the issues can be more fully threshed out and definitely settled;

(2) The amount of ten dollars and sixty-six cents, the difference between the amount of the judgment of four hundred sixty dollars and sixty-six cents and the four hundred fifty dollars suspended in the former paragraph until the next November term, be forthwith paid by respondent to the Marshal to be paid over to petitioners, together with the sum of eighty-seven dollars and ninety-two cents costs agreed by both parties to be correct as per their signed stipulations.

(3) The item eleven dollars and sixty-six cents costs about which a dispute has arisen, be suspended until the next November term, thereby giving Counsellor Harmon an opportunity to produce evidence to the full Bench and

show receipts for the expenditure which alone would warrant us in ordering that said amount should be included in the bill of costs; and,

(4) Inasmuch as Mr. Harmon appears to have acted unprofessionally in making representations which he knew, or could not help but know, were untrue, and thereby the court and both parties, including his own clients, appear to have been misled and this matter unduly protracted and the courts of the Republic made to appear in a false light, a writ of summons should be issued against him to appear at the ensuing November term of this Court to show cause why he should not be attached for contempt of court; and it is so ordered.

Application granted in part.