LIBERIAN BAR ASSOCIATION, Relator, *v.* JAMES A. GITTENS, Counsellor-at-Law, Respondent.

CONTEMPT PROCEEDINGS.

Argued April 16, 17, 28, 1941. Decided May 3, 1941.

1. It is contemptuous for a counsellor of the Supreme Court to discuss in the hearing of any member of the Court matters *sub judice* which may embarrass the administration of justice.
2. *Sub judice* is defined to be "under or before a judge or court; under judicial consideration; undetermined."
3. A constructive contempt is an act done not in the presence of the court, but at a distance, which tends to belittle, to degrade, or to obstruct, interrupt, prevent, or embarrass the administration of justice.

In contempt proceedings before the Supreme Court, respondent adjudged *guilty*.

James A. Gittens for himself. *C. D. B. King,* President of the Liberian Bar Association, and *Anthony Barclay* as *amici curiae.*

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This matter had its genesis in the manner following: On the afternoon of April 15 His Honor the Chief Justice visited the clinic of Dr. Schnitzer, in Monrovia, to obtain relief from a violent headache after a trying session of the Court. While awaiting the doctor's arrival he was cordially received and welcomed with every outward show of respect into a group of persons, among whom were Counsellor Gittens, the respondent, and the Honorable James F. Cooper, an intimate friend and former cabinet colleague. He entered into conversation with the latter on matters purely agricultural when suddenly

Mr. Gittens interposed, taking advantage of the usual bonhomie of His Honor the Chief Justice, changed the conversation from farming to some brewing schism in Trinity Memorial Church, of which both the Chief Justice and Mr. Gittens are members, originating in certain matters pending in the Sunday School of said parish. The conversation drifted by easy and apparently pleasant stages into matters fraternal, particularly concerning the Masonic fraternity of which all three, namely, the Chief Justice, the Honorable James F. Cooper and the respondent are all members; and Mr. Gittens so far forgot himself as to begin making comments upon a recent decision of the Supreme Court. At this stage Counsellor Caranda, who had been promenading in the vicinity without paying any special attention to what was being said, arrested his promenade, edged up to Counsellor Gittens, and said: "Remember it is His Honor the Chief Justice to whom you are talking, and you should not in his presence discuss this matter which is still *sub judice*."

Counsellor Gittens continued to disregard the admonition of Counsellor Caranda in spite of repeated remonstrances from the former, during all of which time, according to the testimony of all witnesses who testified at this bar, the Chief Justice braced himself and sat bolt upright, absolutely silent.

This incident having been reported to this Court, the Honorable Mr. Cooper and Counsellors Caranda and Gittens were by letter invited to this Court in order that an investigation of this matter might be had. That done and their testimony recorded, the Court gave an interlocutory order that, from the testimony on record, it was necessary to give the proceedings a more formal character by ordering a writ issued against Counsellor Gittens commanding him to appear before this Court and show cause why he should not be cited for contempt of court. He was, however, then and there informed that in accordance with the procedure heretofore followed in other

cases of allowing one against whom process had been ordered issued voluntarily to appear, waive the service of process, and submit to the jurisdiction of the court, the same privilege would be extended to him.

The Court simultaneously ordered a letter sent inviting the Honorable C. D. B. King, President of the Liberian Bar Association, and the Honorable Anthony Barclay to serve in the matter as *amici curiae.*

The gentlemen so invited very promptly replied accepting the invitation, and the Court hereby expresses its gratitude to them for their services and records its esteem for them as worthy Aarons and Hurs not only willing and ready to uphold the dignity of the Court, but also as among those members of this bar interested and anxious to see to it that the streams of justice flow on pure and unsullied.

Tuesday, April 29, was the day appointed for Gittens to have "his day in court." On said day he appeared in person and filed a document which reads as follows:

"In *re*: The matter of Contempt Proceedings before the Honourable Supreme Court, by Counsellor James A. Gittens.

"Counsellor James A. Gittens, in the above entitled cause begs most respectfully to show before this Honourable Supreme Court of Liberia, that he intended no disrespect whatsoever, directly or indirectly, personally or otherwise, to His Honour the Chief Justice Grimes, when he made use of the expression at the Clinic of Dr. Schnitzer in conversation with him as the records in these proceedings show.

"2. He further wishes to impress this Honourable Supreme Court of Liberia, that he has always had, and will ever have the highest respect and deference for His Honour Chief Justice Grimes, as well as for the other Members of the Supreme Court Bench, and has never at any time shown any sign of disrespect to

him, or either of them previous to this occurrence at the Clinic of Dr. Schnitzer.

"3. And that he would not at any time, knowingly or wilfully, commit any act or acts, which would unfavourably reflect upon that High and correct ethical standard of conduct which is requested of a Counsellor-at-law in his relations with this Most Honourable Court.

"That he hereby humbly begs the pardon of this Honourable Court, and begs that the Court will forgive the offence, committed in discussing what he did in the presence of His Honour the Chief Justice, blot it out of their remembrance and permit him to enjoy the same good feelings in the future as he has hitherto done in the past. And, he assures this Honourable Supreme Court that a repetition of his action in this respect will never again be repeated while he is in a sane state of mind.

"And this he most humbly prays.

"Respectfully submitted,
(Sgd.) JAMES A. GITTENS,
Counsellor-at-Law."

The next question to be considered is what is a contempt of court. In *Ruling Case Law* we find the following:

"While it may seem somewhat incongruous to speak, as the courts often do, of enforcing respect for the law and for the means it has provided in civilized communities for establishing justice, since true respect never comes in that way, it is apparent nevertheless that the power to enforce decorum in the courts and obedience to their orders and just measures is so essentially a part of the life of the courts that it would be difficult to conceive of their usefulness or efficiency as existing without it. Therefore it may be said generally that where due respect for the courts as ministers of the law is wanting, a necessity arises for the

use of compulsion, not, however, so much to excite individual respect as to compel obedience or to remove an unlawful or unwarranted interference with the administration of justice. . . . Contempt of court has been defined as a despising of the authority, justice, or dignity of the court; and he is guilty of contempt whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigations. Contempts are classified as direct or indirect, and as criminal or civil; a direct contempt being such as is offered in the presence of the court while sitting judicially; and an indirect or, as it is sometimes called, a constructive contempt being such as tends by its operation, though not committed in court, to obstruct and embarrass or prevent the due administration of justice. . . ." 6 R.C.L. *Contempt* § 1, at 487–88 (1915).

This is in accordance with the principle laid down in *Cyclopedia of Law and Procedure* where constructive contempt is defined as follows:

"A constructive contempt is an act done not in the presence of the court, but at a distance which tends to belittle, to degrade, or to obstruct, interrupt, prevent, or embarrass the administration of justice." 9 Cyc. Law & Proc. *Contempt* 6 (1903).

According to the testimony on record, when Mr. Gittens commenced making comments upon a decision of this Court Counsellor Caranda interposed and reminded him that the matter was still *sub judice* and it was improper for him to discuss same in the presence and hearing of His Honor the Chief Justice. The term *sub judice* is defined by Bouvier as "under or before a judge or court; under judicial consideration; undetermined." 3 Bouvier, Law Dictionary *Sub Judice* 3163 (Rawle's 3d rev. 1914).

This Court construes the definitions of *sub judice* to

mean that a case is *sub judice* from the time the first document in a case is filed until final judgment shall have been given and executed.

The addresses delivered by His Honor the Chief Justice at the opening of sundry sessions of this Court abound in admonitions to the members of the bar, particularly on matters of professional rectitude and the ethics by which they should be guided. Both at the November term 1935 and at the November term 1940, he quoted the following from the *New York Times:*

> "The life of a Supreme Court justice is necessarily somewhat circumscribed. He cannot talk in mixed company on topics which are ordinarily connected with government or problems of public policy, for it is seldom that a subject can be broached which does not hold the possibility of coming before the court at one time or another. There are a few exceptions to this rule, and at least two of the present court talk freely among their friends, knowing that their position will be respected. But in an ordinary gathering a Supreme Court judge is confined in his comment to the weather, art and literature." *Id.* Jan. 20, 1935 (Magazine), p. 6, col. 4.

Indeed the Supreme Court of the United States is so tenacious of judicial propriety that one does not ask a Supreme Court Justice whether or not the Court will be guided by the election returns lest he be cited to answer for contempt. This is on the authority of a write-up in *Time,* November 26, 1934, page 13.

We, on our part, so far follow the lead they have set that we will not bend our ears to the ground in order to ascertain, much less be influenced by, such a fickle thing as public opinion. Our duty is each to follow the dictates of his own conscience and the construction of the law and facts of a given case in arriving at our conclusions, remembering always that our Heavenly Father will judge

each one of us by our individual conception of what is right in any given cause.

If the principles above expressed be generally true, as we have no reason to doubt they are, how much more careful should one be, especially a member of this profession, in avoiding the discussion in the presence of any judge of a matter actually or potentially *sub judice.*

Among the many evils that may arise from a disregard of this rule, one quite apropos of the facts on record may here be mentioned. The case to which Counsellor Gittens specifically made reference had been argued in this Court and remanded for a new trial; and, as Counsellor Caranda pointed out to him at the clinic on that day and put on record during the course of his testimony here, "There is every possibility that the case may be again appealed here either in the same, or some other form."

Let us suppose then, for argument's sake, that testimony of witnesses who did not depose at the former trial or some fact not elicited before from those who did, should later on be put on record in said case so that the case when again appealed should be presented in a somewhat different light. Isn't it clear that some of the expressions made use of by respondent might cause an embarrassment to one or more members of this Bench in considering the matter in its altered aspect, in view of his present interference, and would not the same principle obtain in other matters *sub judice?*

This admonition against any attempt to embarrass the Court applies as aforesaid with greater emphasis to an attorney at law. In *Ruling Case Law,* we find that, "It is peculiarly the duty of an attorney to maintain the respect due to courts and judicial officers, and any breach of this duty is a contempt." 6 R.C.L. *Contempt* § 7, at 493 (1915).

In view of the foregoing it is the opinion of this Court that respondent is guilty of a gross contempt of court and

should be severely punished therefor. But, in view of the document he spread upon record herein reproduced and in view of his oral appeals for mercy which seemed to have found an echo in the hearts of counsel appearing as *amici curiae,* the Court will not pronounce sentence now, but will keep same suspended, reserving to itself the right to pronounce the sentence the gravity of the case demands in the event that within three years from the filing of this opinion said respondent, unmindful of his apology and protestations, should prove that apology to have been insincerely made by some further act or expression of his; and he, in the meantime, should be required to pay all accrued costs within twenty-four hours after the marshal shall have presented the bill of costs to him; and it is hereby so ordered.

Guilty of contempt.