ency to affect her title to the said property, without leave of court or permission to do so.

The general rule is that if a defendant, though not served with process, takes such a step in an action, or seeks such relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process. Likewise if a defendant has been served with process, any objection he may have to the irregularity of the service, must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formerly taken. A court which is competent to decide on its own jurisdiction in a given case may determine that question at anytime in the proceedings of the cause, whenever that fact is made to appear to its satisfaction, either before or after judgment.

Therefore the judge of the court below, in absence of all legal technicalities, did not commit material error, when he sustained the petition of the defendants in error.

The plaintiff in error should follow the statutory procedure to acquire his property, if his claim be valid. The judgment of the court below is affirmed, with costs in favor of defendant in error.

R. E. Dixon and *Anthony Barclay,* for plaintiff in error.

H. L. Harmon, for defendants in error.

MANSFIELD F. PARKER, Petitioner, *v.* HIS HONOR E. J. S. WORRELL, Judge of the second judicial circuit, Grand Bassa County, Respondent.

HEARD DECEMBER 29, 1924. DECIDED JANUARY 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. A writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction; or having jurisdiction the court has attempted to proceed by rule different from those which ought to be observed at all times.

2. In case of replevin, when the goods sought to be replevied can not be found, the justice of the peace should issue a writ of summons, changing the action to one of damages; and thereby give the defendant ample chance to defend himself.
3. The writ of prohibition is a remedial process which affords a remedy or makes good a defect.

Mr. Justice Bey-Solow delivered the opinion of the court:

Escape for a Writ of Prohibition. The writ of prohibition is issued by a superior court, directed to the judge and parties litigant in a suit in an inferior court, commanding them to cease from prosecution of the same upon suggestion that the cause originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the *cognizance* of some other court.

The writ may be issued when, having jurisdiction, the court has attempted to proceed by rules different from those which ought to be observed at all times; the writ is never allowed except in cases of usurpation, acts *ultra vires,* and abuse of power; as the facts are observed upon the records of this case, the petition is hereby granted.

In the case Joseph E. Clarke, plaintiff, v. Mansfield F. Parker, defendant in the court below-Replevin. The statute laws of Liberia make it very clear in all cases, when, where the writ is returned and the articles are not found the justice of the peace should issue a writ of re-summons and change the action into damages, and thereby give the defendant ample chance and opportunity to defend himself, which was not done in this case.

When the justice of the peace found out by the returns of the constable that the articles sought to be replevied could not be found he ought to have informed the plaintiff in the case so that the said plaintiff might seek the proper remedy. But when the justice of the peace ignores the statutory procedure, and attempts to try the defendant without issuing the second writ of re-summons made returnable before him, and in the absence of the facts, he renders final judgment against the defendant, petitioner by default, then and there the whole trial and proceedings became *ultra vires,* beyond the power of the justice of the peace. Hence the final judgment is a nullity. The Circuit Court should not have incarcerated petitioner. The judgment of the justice of the peace being void ***ab initio,*** all subsequent acts to enforce the same were void. (See Lib. Stat., p. 39, secs. 42-45 under replevin.) The procedure

in this case was not according to the statute laws of Liberia. The court below upon its own motion, under the Criminal Code of Liberia and the Constitution, had no power to arrest the petitioner appellant for an escape in civil actions and that too before the return of the original writ of execution to the court. The court had no legal right to fetter, confine and treat as a criminal, the petitioner. Therefore the proceedings in the court below are hereby vacated, and all the doings of the justice of the peace in the premises are null and void; and the prisoner is hereby released from custody and the plaintiff below is hereby ordered to pay all costs in this case.

Arthur Barclay, for petitioner.

No one appearing for respondent.