

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT
OCTOBER TERM, 1946.

RUFUS A. PORTE, Appellant, *v.* GABRIEL L.
DENNIS, Secretary of State for the Republic of
Liberia, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued December 18, 19, 1946. Decided January 24, 1947.

1. Upon the commencement of injunction proceedings to enjoin a Secretary of State from issuing a passport, said Secretary is compelled to refrain from issuing the passport until after the dissolution of the injunction.
2. To render a person amenable to an injunction it is not necessary that such person be a party to the suit or be served with a copy of the injunction. Actual notice is all that is necessary. Therefore one who is informed of the issuance of the injunction and disobeys it is in contempt.
3. A writ of injunction may be served by the sheriff or by any other person except the plaintiff.
4. It is only when acting as the agent of the President in a matter in which discretion is by the Constitution or by law lodged in the President, and in him alone, that the Secretary of State and other cabinet officials are not subject to the ordinary process of the courts. In all other matters, especially performance of a duty specifically enjoined upon the Secretary of State, he is amenable to the ordinary process of the courts.

Frances A. Porte was granted a divorce from Rufus A. Porte, appellant herein. Exceptions were taken and notice of appeal was given. During preparation of the appeal appellant wrote to the Secretary of State stating that his wife should not be granted a passport because an appeal to the Court was pending in the divorce action.

The Secretary of State informed appellant that he would issue the said passport. Appellant obtained from the circuit court and served an injunction to restrain the Secretary from issuing said passport and ordering the Secretary to show cause why said injunction should be dissolved. At the hearing appellee moved to dismiss on the ground that he was not amenable to court process because the President had given appellee a patent to discharge the duties of the office of the President in the President's absence. The injunction was dissolved on this ground. On appeal the Solicitor General, counsel for appellee, applied for leave to withdraw the appellee's defense. It is alleged that appellee, after service of the writ of injunction, issued said passport. Held that appellee is summoned to show cause why he should not be held in contempt and *judgment dissolving injunction reversed and remanded*.

B. G. Freeman for appellant. *The Solicitor General* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

This case had its genesis in a case in which Frances A. Porte sued her husband Rufus A. Porte, appellant at this bar, for divorce on the ground of desertion. The facts in that case will be stated in detail in the opinion in the case *Porte v. Porte*, 9 L.L.R. 279, *infra*, and it is not necessary for us to go into the details of that case, but only to touch upon those high points therein which form the foundation for the injunction proceedings.

When the verdict in the said case of divorce had been returned in favor of plaintiff, and a final judgment entered thereon granting said divorce, the defendant excepted and gave notice of appeal to this Court in the regular and legal manner. During the preparation of the

appeal, the record before us shows that on April 15, 1946 the said appellant, Rufus A. Porte, addressed a letter to the Secretary of State, appellee in these proceedings, informing him that his wife, Mrs. Frances Porte, planned to leave Liberia to travel abroad, stating that she ought not to do this because a case was still pending in which she, the said Frances Porte, had sued him, the said Rufus A. Porte, for divorce before the Civil Law Court, Sixth Judicial Circuit, His Honor Emmanuel W. Williams, Circuit Judge, presiding, and that although she had obtained a verdict and judgment against him, he had excepted to the verdict and prayed an appeal to the Supreme Court of Liberia at its next (October) term, 1946. He therefore requested that no passport be issued to Mrs. Porte so long as she was his wife without a written authority from him so to do.

The record further shows that subsequent to the dispatch of said letter, the said Rufus A. Porte was by the Secretary of State invited to a conference at the Department of State and shown two letters, namely, one from the Honorable Attorney General and the other from Counsellor H. Lafayette Harmon representing the said Frances Porte. These letters both advised that the passport prayed for be issued to the said Mrs. Porte because, as the Attorney General put it in his letter,

“[A]s far as I understand Government's policy on the score of married women not being granted passports, I am of opinion that the objective was to prevent a woman living in the capacity of a *feme covert*, and not separated from her husband *nor supported by him*, from suddenly leaving him and making her departure from the Republic without his consent, or without an opportunity for reconciliation being afforded. . . . [that she had] obtained a judgment in divorce against him in the Circuit Court, and although the case is pending on appeal her presence is not a requisite to the determination of the appeal; and

even where she lost on the appeal, there appears nothing to prevent her travel out of the Republic. I am therefore of the opinion that a passport may be granted her and accordingly advise you to do so."

The views expressed by Counsellor Harmon in his letter were that although Mrs. Porte is plaintiff in the case of divorce against her husband which had ended in her favor and although her husband had taken exceptions and was taking the case to the Supreme Court for review, yet he did not think that there was anything in the pendency of that litigation and other attending facts which he mentioned that should prevent her from traveling abroad if she so desired. The Secretary of State then handed to Mr. Porte copies of these letters and informed him that because of the opinion of the Attorney General he would issue and deliver to Mrs. Porte the passport prayed for. At this stage, Rufus A. Porte, appellant, feeling that he had taken every step legitimately possible to prevent the issuance of the passport to his wife, on April 26, 1946 filed an application with His Honor Judge Emmanuel W. Williams presiding in the Sixth Judicial Circuit for a writ of injunction against the Secretary of State to refrain and abstain from granting the passport, and to appear before said court and show cause why said injunction should be dissolved. This writ of injunction when issued and served on April 27, 1946 gave the matter an entirely different aspect, for although the Secretary of State may have with impunity accepted or disregarded the advice and opinion of Counsellor Harmon, and even of the Attorney General, he was compelled by the laws of the land, after the injunction proceedings commenced, to refrain from taking any step whatever toward issuing the passport prayed for until the court which had ordered the injunction issued had dissolved the same. Whenever an injunction is issued, it is a contempt of court not only for any party who is summoned as a defendant in the cause to disregard it, but also it is as much a contempt of

court for any party to disobey who was informed of the issuance of the writ without having actually been served with a copy thereof. As Bouvier puts it, "To render a person amenable to an injunction, it is neither necessary that he be a party to the suit or served with a copy of it, so long as he appears to have had actual notice. . . ." 2 Bouvier, Law Dictionary 1569, 1578 (Rawle's 3d rev. 1914); In re *Lennon*, 166 U.S. 548, 554, 41 L. Ed. 1110 (1897).

Injunction is one of the most commonly used of the extraordinary remedies. It is one of the few cases in which process need not necessarily be served by an officer of the law. Our statute provides the following:

"A writ of injunction may be served by the sheriff, or any other person except the plaintiff, by leaving it or a copy or duplicate thereof, with the person to whom it is directed. The original or its duplicate writ, must be returned to court on or before the day appointed for the defendants [*sic*] appearance accompanied by a solemn affirmation of the service." Stat. of Liberia (Old Blue Book) ch. II, § 39, at 38, 2 Hub. 1533.

It should be noted that injunction is one of two cases only, the other being habeas corpus, in which the writ may be served by anyone not an officer of the law and it cannot be disregarded with impunity.

"If the defendant disobeys the injunction, the court on being satisfied of the facts by affidavit, may issue a writ of arrest against him, although privileged under the twenty-ninth section, and punish him by a fine or imprisonment, or otherwise, in their [*sic*] discretion. . . .

"An injunction shall not be dissolved, unless the defendant appears and files a sufficient answer to the complaint, verified by oath, it shall not be dissolved merely because he denies knowledge of the facts alleged in the complaints [*sic*] and puts the plaintiff

upon the proof thereof." Stat. of Liberia (Old Blue Book) ch. II, §§ 40, 41, 2 Hub. 1534.

A very careful scrutiny of the record shows that no answer was ever filed in this case. On May 4, however, appellee in person and by his counsel C. Abayomi Cassell, Attorney General of Liberia, presented to the Court a motion to dismiss in which they advanced the following reasons for so praying:

"1. Because it is illegal and unconstitutional for this Honourable Court at this time to exercise jurisdiction over his person since he has been especially charged, and granted a PATENT from His Excellency the President of Liberia, who being absent from the Capital, to discharge all duties appertaining to the office of the President of Liberia, in conjunction with the Cabinet, wherefore by being subjected to Court process he would be incapacitated in the discharge of these duties so specifically assigned him, and a submission thereto would be in violation of the Constitution of Liberia;

"2. And also because of the premises stated in count one of this Motion he is at present discharging the duties assigned him by said PATENT of the President of Liberia, in conjunction with his office as Secretary of State of the Republic of Liberia notwithstanding which all courts, authorities and persons are barred from exercising jurisdiction over his person during this period of the absence of the President from the Capital by virtue of aforesaid PATENT because the greater function merges the lesser one; wherefore no court can at this time exercise lawful jurisdiction over the person of the Secretary of State whilst in the lawful discharge of the duties of the office of the President of Liberia. . . ."

Appellant, by his counsel, strongly demurred to this

defense in a six count resistance, the salient points of which may be paraphrased as follows:

- (1) He demurs to pleas based upon a "patent," which patent had not been made profert of, and avers that it is illegal to file a motion to dismiss instead of a regular answer. (See counts one and six of appellant's resistance.)
- (2) He challenges the authority by which the President is alleged to have assumed to delegate any of his presidential immunities by patent or otherwise, and submits that to allow to go unchallenged this hypothesis by respondent would ultimately result in conceding immunities to the entire cabinet which are not warranted by the Constitution. (See counts two and three of appellant's resistance.)
- (3) He contends that under the Constitution of Liberia there never can be an "acting president"; and that the courts are fully warranted by injunction or by other extraordinary writs to direct executive and administrative officers to proceed, or restrain them from proceeding, should they act or attempt to act in violation of the Constitution or infringe or attempt to infringe upon the rights of private individuals. (See counts four and five of appellant's resistance.)

His honor the judge trying the case gave a ruling upholding the contention of Attorney General Cassell and affirming the position of the Attorney General that the Secretary of State had had conferred on him by the letters patent aforementioned certain immunities of the President, and averring that the Constitution of Liberia has invested the President of Liberia with certain dictatorial powers, etc. To this ruling the appellant, through his counsel, excepted, and he has brought the injunction and the rulings thereon to this Court for review.

When the case was called at this bar and the briefs

filed by the appellant and the appellee were being argued, the Court was struck by the noncommittal attitude assumed by the Solicitor General who did everything he possibly could to avoid expressing his personal and professional support of the position taken by the Honorable Attorney General and of the judge's comments thereon on the one side, and his opposition to the strong attack on their legal position made by Counsellor Freeman representing the appellant. The Honorable Nete Sie Brownell, Acting Attorney General, was thereupon requested to come to Court and to place upon record whether or not the Department of Justice would support the views which the judge had placed upon record in support of the Attorney General's position, in view of the fact that delegates of the Liberian Government had not long returned from the United Nations Organization in San Francisco to which they had been sent and had aligned this Government on the side of democracy and against dictatorship. The Acting Attorney General promptly said that he had been stunned by what he saw upon the record and would be infinitely obliged if the Court would give him a chance to put on record his own views. The Court agreed to grant his application, and on December 21, 1946, received from the Department of Justice the following application for leave to withdraw which, with the omission of proper headings, reads as follows:

"The above named appellee by and through the Honourable D. Bartholomew Cooper, Solicitor General of Liberia, most respectfully moves this Honourable Court for leave to withdraw appellee's entire defense in this action of injunction; and for appropriate orders effectuating the same.

"Dated this 21st day of December A.D. 1946.

[Sgd.] D. BARTHOLOMEW COOPER
*Solicitor General of Liberia, Of counsel
for appellee."*

In view of the foregoing, the Court could well accept said withdrawal as a settlement of the issues *inter partes* and now give judgment for the appellant, but so much has been submitted by both parties that we feel it necessary in so doing to make the following comments upon what has been submitted to us.

The motion filed by appellee shows clearly that he had not read over and carefully digested the opinion of this Court in the case *Wiles v. Simpson*, 8 L.L.R. 365, decided by this Court on November 17, 1944, especially that part beginning on page 370 which quotes from the opinion of Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch 137, 165, 2 L. Ed. 60 (1803).

“By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.

“In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the decision of the executive is conclusive. The application of this remark will be perceived by adverting to the act of congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

“But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others.

“The conclusion from this reasoning is, that where the heads of departments are the political or confidential agents of the executive, merely to execute the will of the President, or rather to act in cases in which the executive possesses a constitutional or legal discretion, nothing can be more perfectly clear than that their acts are only politically examinable. But where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy.’ . . . (Emphasis added.)”

With regard to the position taken by the court below on the issue of immunities we turn to the same opinion and quote here from that part of it from Watson, *The Constitution of the United States*:

“The immunity of the President is because of his official position. He is a great and necessary part of our government. The legislative branch is composed of many members, while the judicial branch is a collective body and it would be difficult to injure either numerically so as to interfere with the administration of the Government. But it is wholly different with the executive branch. One man constitutes all there is of that, and upon him the Constitution has placed many great and important duties, and these duties are constant. He does not sit in authority at stated intervals like Congress and the courts. There is no recess in the discharge of his official duties. From the time he takes the oath until his office expires there

is a continuity of official obligations and duties, sacredly and solemnly imposed upon him by the Constitution. Anything which impairs his usefulness in the discharge of his duties, however slight, to that extent impairs the operation of the Government. If in any way he is rendered incapable of performing his duties, to that extent the Government is weakened. There is no sacred charm in the personality of the President that protects him. It is only because of his official relation to the Government. If he should be imprisoned that would prevent the discharge of many official duties which the Constitution imposes upon him. How could he receive ambassadors, and other public ministers, while in jail? How could he see that the laws were faithfully executed when the law was keeping him a prisoner in a dungeon? How could he command the army or the navy in time of war if he were locked in a cell? Subjecting him to civil process might result in his being imprisoned and therefore he is not amenable to it. The President is the only constant and continuing factor in the division of governmental power under our Constitution which is necessary to its existence. This is because the Constitution has imposed upon him many duties which he must discharge and he must be personally free—that is, there must be no restraint of his person in order that he may be able to discharge them. The President enjoys no privileges not given to every American citizen, except such as flow from his official position. It is only because the Constitution makes him a necessary part of the Government that he is protected from legal process.’ 2 *Id.* 1023–24 (1910).

“Hence it is that only when acting as the agent of the President in a matter in which discretion is by the Constitution or by law lodged in the President, and in him alone, is the Secretary of State or other cabinet officer not subject to the ordinary process of the courts.

For were it otherwise, the act of the agent might involve the principal, and were that action adjudged a violation of law the legal consequences that might flow therefrom might, as a logical sequence, end in the detention of the President, which would be in violation of the Constitution both in fact as well as in spirit. But in all other matters, especially in performing a duty specifically imposed upon the Secretary of State or upon other cabinet officials by the Constitution or by law, the Secretary is fully amenable to the ordinary process of the courts." *Id.* at 371.

An information having been filed before this Court on October 4, 1946, although obviously prepared many months before, wherein it is complained that despite the fact that appellant excepted to the court's decree dismissing the injunction and prayed an appeal which was granted and despite the fact that said appellant had perfected said appeal by filing of an approved bill of exceptions and approved appeal bond with the consequent issuance and service of a notice of the completion of appeal, the appellee flagrantly and wantonly disobeyed said writ of injunction by issuing to Frances Porte, wife of appellant, a passport to travel to foreign parts, an act the said appellee had been enjoined by said writ from doing; the clerk of this Court is hereby ordered to issue a summons commanding the appearance of said appellee before this Court at its March term ensuing, opening on March 10, 1947, to show cause why he should not be held in contempt of court. A certified copy of the information is to be served on said appellee simultaneously with the summons above ordered.

In view of the above, the conclusions at which we have been forced to arrive are: (1) That the judgment of His Honor Judge Williams dismissing the injunction be, and the same is, hereby reversed and the cause remanded for a new trial according to law and in consonance with the spirit of the opinion this day filed in said case, because

said appellee, as Secretary of State, is not protected in this case by the immunities specifically conferred upon the President of the nation by the Constitution; and (2) That appellee be ruled to all costs of these proceedings; and it is hereby so ordered.

Reversed.