

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA
AT
APRIL TERM, 1932.

In the Matter of the Petition of C. D. B. KING, Former
President of Liberia.

PRAYER FOR A WRIT OF PROHIBITION.

Submitted April, 1931. Decided April, 1932.

1. A writ of prohibition will issue to prevent prosecution of a criminal charge if the court in which proceedings have been instituted would be acting unconstitutionally or without authority.
2. In order to give the courts jurisdiction to try a former President for a crime committed while in office, he must first have been impeached for that crime and convicted by the court of impeachment.

The petitioner was indicted as accessory before the fact to the crime of slave trading. He has applied to this Court for a writ of prohibition to the judges of the Circuit Court of Sinoe County and to the Attorney General commanding that they desist from further proceedings upon such indictment. *Writ granted.*

Barclay & Barclay and *C. D. B. King* for petitioner.
The Attorney General and *Solicitor General* for the Republic of Liberia.

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

The Petitioner C. D. B. King was elected President of Liberia for three consecutive terms and served in that

capacity for eleven years, less twenty-nine days, to the date of his resignation on the third day of December in the year 1930.

During his third term, owing to charges made from various sources that conditions analogous to slavery and forced labor existed in Liberia an International Commission of Inquiry was instituted in Liberia to inquire into these conditions, and after hearing all complaints against the Government and certain individuals connected therewith and investigating said complaints, the said Commission submitted a report and made certain disclosures which caused excitement and great unrest among the people of the Country, which resulted in demands being made that the President and all other officials of Government who were charged in the report as being guilty of committing acts amounting to slavery and forced labor, should be retired and prosecuted.

The report having been submitted to the national Legislature, a Special Committee was appointed to consider the report and investigate the findings of the Commission of Inquiry and the following report was drawn up and submitted to the national Legislature. We quote verbatim the report so far as it refers to petitioner, to wit:

“Your Special Committee appointed to investigate the Report, Recommendations and Suggestions of the International Commission of Inquiry begs that first in submitting this Report the Committee would like to have it understood that they have not as yet taken into consideration the recommendation and suggestions as contained in the Report of the International Commission of Inquiry, nor are they reporting on any of the current rumors and information that are yet undeveloped as concerning them; but rather their whole attention has been given only to the Report itself as far as it concerns the country internally.

“The Committee feels also that it becomes their bounden duty to state, and it cannot too strongly em-

phasize, that the restiveness of the people at this time, the departure of ambitious political subtlety of presidential aspirants from genuine patriotism and unfeigned loyalty, the finding of unwarranted criticism and rebuke have contributed to mar the good feelings and the calm deliberation that should characterize that body upon whose decision hangs the perpetuity of the nation, the blasting of characters of renown, and even the destruction of property and life. However the committee under Divine guidance is pleased to submit a partial report as follows:

“Lastly the committee takes into consideration the name of His Excellency, C. D. B. King, President of the Republic of Liberia. They recommend the resignation of President King, and his retirement from office, principally upon the reported request of the People of all political parties which, if not in words, in substance, have availed themselves of their constitutional privilege to have the Legislature retire the President. The Committee feels that to deny them this request would be a breach of the Constitution and may likely result in disaster to the perpetuity of the nation. In connection re the President retiring, the committee recommends that sufficient protection be given him by the Government until such time as public sentiment would have subsided.”

On the adoption of the report, the House of Representatives addressed the following letter to petitioner:

“I have the honour herewith to transmit to your Excellency a certified copy of the original report of the Honourable House of Representatives of the Republic of Liberia to investigate recommendations and suggestions of the International Commission of Inquiry as submitted to the Liberian Government for your information.

“I am further instructed to inform your Excellency

that the Honourable House of Representatives, growing out of the rumors and restiveness as set forth in the Special Committee's report, advise your retirement.

"I have the honour to be,
Excellency,
Your obedient servant,

[Sgd.] W. H. RICHARDS,
Chief Clerk, House of Representatives, R. L."

Accordingly on the third of December, 1930, the petitioner tendered his resignation which was worded as follows:

"GENTLEMEN,

"Having received a letter from the Honourable House of Representatives of Liberia dated December second, 1930, informing me that in view of rumors and restiveness as set forth in the Special Committee's Report, it advises my resignation, I now have the Honour to tender my resignation as President of Liberia.

"I seize this occasion of conveying through you to the people of Liberia, my thanks and appreciation of the confidence which they heretofore reposed in me and to the National Legislature, my appreciation of the cordial relations which existed between your Honourable Body and the Chief Executive."

In this connection, we quote the following clause which was embodied in the report of the Special Committee:

"In consequence of the Committee having found sufficient magnitude in the report of the International Commission of Inquiry to recommend that articles of Impeachment be preferred against the Honourable Allen N. Yancy, Vice-President of Liberia and that the resignation of His Excellency President King be not accepted until arrangements shall have been concluded for carrying on the Government in the interim. . . ."

His resignation was subsequently accepted, and in keeping with the suggestion of the Special Committee, a guard from the Frontier Force was stationed at his country seat where petitioner resided, some of whom accompanied him in his car. When after his retirement from the Presidency, the grand jurors for the county of Sinoe indicted Joseph B. Watson, Edward H. A. Blakett, Thomas H. Pelham, John C. Morris, and Robert Draper for the crime of slave trading, petitioner was also indicted as an accessory before the fact to said crime while President of Liberia. At the April term, 1931, of this Court, petitioner applied for a writ of prohibition which prayer was worded as follows:

"The Petitioner C. D. B. King of the City of Monrovia, County of Montserrado and Republic of Liberia, Former President of Liberia, respectfully shows as follows, to wit: That having previously been constitutionally declared elected President of Liberia, was on the first Monday in January in the year of our Lord nineteen hundred and twenty, at twelve o'clock meridian in the presence of the National Legislature, constitutionally sworn in office as President of Liberia, which position by repeated elections constitutionally held and declared, he filled for eleven years less twenty-nine days, to the date of his resignation of said office which resignation was submitted to the National Legislature on the third day of December in the year of our Lord Nineteen hundred and Thirty and accepted by said Legislature without any charge of criminal responsibility or mal-administration in office being attached to the Petitioner. See House Committee Report on Findings of the International Commission of Inquiry on slavery and forced labour in Liberia, with covering letter from the House of Representatives addressed to your Petitioner as President of Liberia as well as copy of my official resignation herewith filed.

"Your Petitioner further shows that for all and each of his official acts committed or orders given or alleged to have been committed or given by him when serving as President of Liberia, he was accountable only to the Legislature by impeachment proceedings and could be subject to indictment after final judgment, and only then, provided impeachment offense was also of an indictable nature.

"3rd. Your Petitioner further shows that in violation of the rights secured to him and all Presidents of Liberia by and under the Constitution of Liberia, and contrary to its provisions and to hold up to public ridicule and contempt as well as to the annoyance, humiliation, inconvenience and expense of your Petitioner, the Grand Jurors of the county of Sinoe, by and through the County Attorney of said County, Sitting in its law Division in the city of Greenville, did make a Presentment and Indictment against your said Petitioner, charging him as an accessory before the fact to the crime of Slave Trading while serving as President of Liberia; as will more fully appear by an inspection of said Indictment.

"Wherefore your said Petitioner prays the issuance by the Honourable Supreme Court of a writ of Prohibition directed to His Honour Stephen H. Dickerson, Judge of said circuit court, or to any other assigned Judge of said Judicial circuit and to the Attorney General commanding them to desist and refrain from any further proceedings upon said Indictment against your said Petitioner."

In accordance with the rules and practice of this Court, the Attorney General and others were cited to appear to show cause why the writ should not be granted, but in consequence of his absence from the country and serious illness of the Solicitor General, the matter at the request of the latter was continued until the November term of this Court, 1931.

It was contended by the Attorney General that a writ of prohibition by the President will not lie, as petitioner has an adequate remedy by appeal at law.

But in the case *Bruner v. Superior Court*, 28 Pac. (Cal.) 341, the court made the following observation:

“Would petitioner have a plain, speedy, and adequate remedy in the ordinary course of law? If there be such remedy, it must be by appeal. But it would be a difficult proposition to maintain that a defendant in a criminal case, forced through all the stages of a trial for felony, . . . upon a void indictment, would have a plain, speedy and adequate remedy, because, after conviction and judgment, and perhaps after suffering the ignominy of imprisonment in the state prison, he could have the illegal proceeding reversed on appeal. But it is not necessary to discuss that question, because it has been held several times by this court that the point here made by petitioner cannot be reached on appeal.”

This view has since prevailed in many of the States. Spelling, *Injunctions and Other Extraordinary Remedies* § 1729 and notes.

The author remarks that this doctrine is quite reasonable and in accordance with general principles governing the employment of an extraordinary remedy, for if such remedy as is available in the ordinary course of law does not afford a party the specific relief to which he is entitled or if it does not meet the emergencies of his case, it is no bar to injunction, mandamus or other remedies of an extraordinary character, why, then, should such fruitless resort stand in the way of prohibition? *Id.* at § 1730.

It was also held by the courts that the writ of prohibition shall issue in proper case on the application of the person beneficially interested. 22 R.C.L. 7, § 6. With reference to the question of adequacy or inadequacy of a remedy at law, it has been said:

“There is no general rule by which the adequacy

or inadequacy of a remedy can be ascertained, but the question is one to be determined on the facts of each particular case. The necessary delay and expense of an appeal ordinarily furnish no sufficient reasons for holding that the remedy by appeal is not adequate or speedy. But whenever, as incidental to the action of the court, there is involved an infringement of property rights, or a submission to a multiplicity of suits in such way as to make its acts oppressive, there is no adequate remedy by appeal, and it is proper to issue the writ of prohibition; and this is true, whether the court in which the proceeding is instituted has acted or not, if the effect of the void authority under which it is assuming to act stands as a vexatious menace to personal liberty or the destruction of property rights." 22 R.C.L. 11, § 9.

"In such a case the inconvenience and litigation which must arise if the act is unconstitutional and the proceedings unauthorized make it a proper case for the issuance of the writ to the lower tribunal. If the fact that the application possesses an adequate remedy is not made to appear, the court will exercise its discretion to hear the case on application for a writ of prohibition, and will determine the constitutional questions arising therein." *Id.* at p. 13, § 11.

"In a number of cases the constitutionality of statutes has been determined on the theory that if the statute is unconstitutional it gives the court no jurisdiction of the subject matter, and consequently that prohibition will lie to prevent the lower court from enforcing it and thereby exercising an excess of jurisdiction." *Id.* at p. 25, § 23.

It has also been held that, in criminal cases where imprisonment is threatened, it seems that neither appeal, habeas corpus, nor certiorari would be a plain, speedy, or adequate remedy. *Id.* at p. 12, § 9.

The next point to discuss is the question of jurisdiction.

Has the Circuit Court of Sinoe County or any other court the constitutional right to inquire into the acts of the President after his retirement from office without having been impeached? Mr. Cooley in his work on *Constitutional Law* holds that the President cannot be called to account in prosecutions civil or criminal, impeachments alone excepted. Cooley, *Constitutional Law* 115.

Mr. Bouvier also holds that the President is not responsible to the courts civil or criminal. B.L.D. 1131, "Executive Power." It was, however, held by the Attorney General that after he has been disrobed, that is to say, after he has either been impeached or retired from office, the acts of the President may be brought within the scope of judicial examination.

Now let us see if this question is tenable. The 6th section, article II of the Constitution of Liberia reads as follows:

"The Senate shall try all impeachments; the Senators being first sworn or solemnly affirmed to try the same impartially, and according to law; and no person shall be convicted but by the concurrence of two thirds of the Senators present. Judgment in such cases shall not extend beyond removal from office, and disqualification to hold an office in the Republic: but the party may be tried at law for the same offence."

Now it is obvious from the above text that the offense for which the party may be tried at law must be the same offense for which he was impeached and no other. In this connection we may quote the Constitution of the United States which reads as follows:

"Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law." U.S. Const. art. 1, sec. 3(7).

In 1876 owing to the impeachment of President Payne by the House of Representatives, this Court, in compliance with a resolution of that body requesting its interpretation of section 6 of article 2 of the Constitution of Liberia, said *inter alia*:

"The constitution discloses that judgment in such cases shall not extend beyond removal from office and disqualification to hold an office in the Republic, but the party may be tried at law for the same offence. The word '*but*' in this connection means 'further' or 'besides'; hence we say, after conviction of the accused upon articles of impeachment, he may be further tried or held to answer at law for the same offence."

It follows from the above reasoning that in order to give the court jurisdiction over the President, he must first be impeached and convicted by the court of impeachment, and if the offense is an indictable one, he may be further tried at law for such offense; hence there are two things prerequisite to the judicial prosecution of a President; viz., *impeachment* and *conviction*. In view of the foregoing we are of the opinion that the Circuit Court of the Third Judicial Circuit of Sinoe County has no jurisdiction under the circumstances of this case to inquire into the administration of the petitioner or to hold him at law for orders alleged to have been given by him while performing the duties of President.

We are therefore of the opinion that a writ of prohibition should issue commanding the Judge of the Circuit Court of the Third Judicial Circuit and the Attorney General to desist from further proceedings in the premises, and it is so ordered.

Writ granted.