WILLIAM V. S. TUBMAN, Relator, *v.* WILLIAM SIMPSON MURDOCH, and the Officers of the Several Courts, Respondents.

APPLICATION TO VACATE A WRIT OF EXECUTION.

Argued November 27–28, 1934. Decided December 7, 1934.

1. A judgment concludes only parties to the suit, and those in privity of relation with them.
2. To every suit there are two necessary parties,—viz.: the parties plaintiff and parties defendant.
3. Parties plaintiff are they who bring the suit and, by their voluntary appearance and their prayer for redress or relief, thereby submit to the jurisdiction of the court. Parties defendant are those who have been served with process commanding their appearance or who, having notice that process has been issued or ordered issued, voluntarily appear and submit to the jurisdiction of the court.
4. A court has no authority to enter a judgment or decree against anyone over whom it has no jurisdiction either by service of process or by his voluntary appearance and submission to the court's jurisdiction.
5. An action of injunction is not a possessory action, but one of a restraining or prohibitive character.
6. Hence in an action of injunction the court cannot legally order the payment of money other than costs of court.
7. An opinion is the authorized exposition and interpretation of the law which is binding upon all the citizens or other inhabitants. On the other hand, a judgment settles the rights of suitors, and they have a right to have same pronounced as speedily as possible.
8. A judgment then when once pronounced should not be altered except after notice to, and a rehearing of, the parties thereto.

On application to vacate a writ of execution issued against relator in action of injunction brought by United States Trading Company against respondent Murdoch and to grant relator refund of money and property taken under such writ, *application granted in part and refused in part.*

William V. S. Tubman for relator. *H. Lafayette Harmon* for respondent.

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

By virtue of a writ of execution which issued out of this Court on the 17th day of February, 1932, under the regime of the Court immediately previous to this whereby judgments reviewing decisions of subordinate courts were directly enforced by this Court instead of being remitted to the trial court as was originally the case, sundry real and personal property of William V. S. Tubman, relator, was seized, and his body arrested, for the purpose of collecting a judgment of eight hundred sixty-six dollars and nineteen cents ($866.19) in an action of injunction in which W. S. Murdoch was plaintiff-in-error and the United States Trading Company, represented by Firestone Plantations Company, Cape Palmas, Liberia, by Warren Brockett, manager, were defendants-in-error.

Upon the reconstitution of this Court, the said execution, which had not been fully satisfied but had been held in abeyance because of the disorganization of the former Court, was again being used by the Marshal as a means of further levying upon Mr. Tubman, relator, for the collection of a balance of one hundred and twenty dollars. Mr. Tubman on January 17, 1934, filed an application praying that: 1) the final judgment of this Court, rendered by the former Bench, be vacated, and the execution issued thereupon quashed; 2) that his deeds be returned to him; 3) that fifteen pounds (£15.-) illegally collected in excess of the "illegal judgment" by virtue of said writ of execution be refunded; and 4) that the Court grant him such other and further relief as the nature of the case may require. The reasons he alleged for these apparently extraordinary prayers are the following: 1) that the case was an action of injunction between the United States Trading Company, plaintiffs, and W. S. Murdoch, defendant; 2) that he was not a party to the said suit, not having been summoned or ordered summoned, nor had he voluntarily appeared and submitted to the jurisdiction of the court, hence the court had no jurisdiction over him; 3) that at an initial stage of the case defendant had

pointed out that relator had certain interests, and should be joined as a party defendant, which the court, upon opposition of the plaintiff, overruled; and hence he was not so joined; 4) that in spite of his not having been a party, this Supreme Court, under the old regime, had rendered judgment against him, to the effect that the plaintiff-in-error should recover from relator one hundred ten pounds; 5) that after the rendition of judgment Mr. Justice Page, now retired, one of the concurring Justices, had inserted in the opinion an additional amount of fifty pounds (£50.-) for "spare parts," which had never been included in the original complaint, nor any part of the proceedings; and 6) that without having any notice of said action or said judgment the execution was suddenly served upon him, his property forcibly seized by the Marshal, and he was compelled to make the payments to prevent his being imprisoned in Harper where he was without any relief whatever, as no member of this Bench was then resident or available in Maryland County where the Deputy Marshal was forcibly, and against his protests, executing the writ of execution he claims was illegally issued.

Mr. Harmon who appeared in opposition to Mr. Tubman's motion set up in his written submission against same: 1) that this Court has no power to review a judgment rendered by the former Court, especially in view of the fact that Mr. Tubman made no application for a re-argument; 2) that it was a false statement of Mr. Tubman's that ex-Justice Page had made insertions in the opinion after final judgment, as the final judgment was for one hundred fifty pounds and signed by all the Justices of this Court; 3) that to reverse the judgment given by the former Court could not benefit relator unless we violated the Constitutional provision about *ex post facto* laws; 4) that this Court has no power to order a refund of moneys paid by Tubman even though, upon the hearing, the said judgment might be considered void.

These are the principal issues presented to us upon the writ of execution, and argued before this Court on the 27th and 28th of November, 1934.

Inasmuch as the second count of Mr. Tubman's submission involves a question of fact we shall deal with that first.

The opinion and judgment were called for and inspected in open court during the trial, and it was discovered that Mr. Tubman's sworn statement was correct, and Mr. Harmon's not. For, as Mr. Tubman pointed out, the opinion and judgment were both typewritten, and the judgment, signed by all the Justices on the Bench, was for one hundred and ten pounds and not for one hundred and fifty pounds and costs were disallowed. The typewritten part of the opinion, item c, was altered by inserting with pen and ink the words: "of one hundred and ten pounds sterling and forty pounds for cost of various spares including fan assembly and radiator."

Mr. Justice Grigsby, the only member of the former Court now associated with us, states that the handwriting is that of his former colleague, Mr. Justice Page, and that said insertion was not there when the opinion was submitted to, or read from, the Bench; and the officers of this Court who served both the former and the present Court, identifying the handwriting, have stated that the Court had adjourned and the Justices had gone to their respective homes away from the Capital when ex-Justice Page made the additions. The officers of Court state that this was made as the result of a letter written by Mr. Harmon to Mr. Justice Page which they saw, but which Mr. Justice Page did not file in the office of the Clerk.

Coming now to the more vital points at issue the question is: Can or cannot we enforce this judgment?

First of all as Mr. Harmon was forced to admit during his argument, on questions propounded from the Bench, that a judgment concludes only parties to the suit and

those in privity of relation with them. 2 B.L.D., "Judgment."

There are two necessary parties, viz.: parties plaintiff and parties defendant. The former are those who bring the action; and they, by their voluntary appearance and the prayer for redress or relief, as the case may be, thereby submit themselves to the jurisdiction of the court. The latter are those who have been served with process or who, having notice that process has been issued or ordered issued, voluntarily appear and submit to the jurisdiction of the court.

On being further interrogated Mr. Harmon admitted to this Court, as Mr. Tubman contended, that Tubman, the relator, was neither a party plaintiff or defendant judged by this rule, nor in privity with either party, either as a privy in blood, in representation, or in estate; in other words that plaintiff-in-error and relator were privies neither in fact nor in law. 3 B.L.D., "Privies."

He next admitted the applicability, in view of his previous admissions, of the opinion of this Court given in 1908, cited by relator, to the effect that:

> "If the judgment or decree of a court were rendered against one without summons or warning of the suit, both personal and real property would truly be insecure and innumerable evils created in communities. For this reason a judgment or decree is not only voidable but void where there is want of jurisdiction over the subject matter or over the parties to the action or some of them. A court in pronouncing a judgment or decree in such cases acts without jurisdiction if there is want of jurisdiction over the parties, in that regular process has not been served upon them thereby bringing them within the jurisdiction of the court. There is no doubt such judgment or decree is void for want of jurisdiction, especially where the records uphold the fact that parties inter-

ested in a decree had not been summoned to attend the time and place of the trial." *Maurice* v. *Diggs,* 2 L.L.R. 3, 1 Lib. Ann. Ser. 8 (1908).

This principle, so settled by our own Supreme Court twenty-six years ago, is so much in harmony with the rule in vogue in all other jurisdictions the decisions of which are available to us, that we could well refrain from citing other authority. But the language of the following makes the position, clear as it is, so much more plain that we have decided to add it. It is this:

"It is a rule of universal application that the rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and that a party cannot be bound by a judgment without being allowed a day in court. He must be cited or have made himself a party in order to authorize a personal judgment against him. A judgment rendered against a party who is brought in by motion as a defendant after the trial is concluded is erroneous as to such party.

"A court cannot render a valid judgment in favor of a party who is not before the court and is not represented in any manner in the action." 11 Ency. of Pl. and Prac., 842–843.

In holding that the judgment against relator was absolutely void we do not, as Mr. Harmon originally contended, violate the rule laid down by us in *Daniel* v. *Comp. Trasmed,* 4 L.L.R. 97, 1 Lib. New Ann. Ser. 99 (1934), that:

" 'a change in the membership of the court is about to take place, or has already occurred, is not in itself sufficient reason for granting a rehearing . . . ' ";

nor that

" 'A reargument will not be ordered for the mere reason that the decision of one general term does not meet the approval of the judges composing a second general term. . . .' "

The citations last quoted would be applicable if one

of the parties to the suit, such as Murdoch or the United States Trading Company, without an application for a re-argument, had applied to us to set aside the judgment, in which case whether we agreed with the former Court or not, we would be powerless to act. But this is a case which, as Mr. Harmon, when pressed by the Court to state his honest convictions upon his honor, admitted was not analogous, for, as he says he now sees, Mr. Tubman was not a party nor a privy, nor was he present in court or at the Capital when the judgment was given, and hence could not be legally bound. Nor had he, as Mr. Harmon also conceded, any opportunity of knowing of the judgment within the period within which a motion for re-argument can legally be made, nor at all until the Deputy Marshal suddenly landed in Cape Palmas from a ship, and swooped down upon him with the execution now on the tapis without any previous notice or warning that he had been a party to a suit in this Court.

As for his contention that to vacate the writ of execution would be equivalent to giving effect to an *ex post facto* law it seems to us so far-fetched and erroneous as to be unworthy of further comment.

One point which developed during the argument closely connected with the foregoing is: An action of injunction is not a possessory action, but one of a restraining or prohibitive character. Our statute prescribes that an action of injunction "is one in which the plaintiff seeks to compel the defendant to permit matters to remain in the present state; either in pursuance of a contract or because of a right growing out of the general principles of law. It is classed with actions founded on contract as a matter of convenience although it is capable of being applied in cases where the wrong is not, precisely, a breach of any contract." Statutes of Liberia (Old Blue Book), t. II, ch. I, § 8. In an action of injunction the form of the final judgment shall substantially be:

"The court adjudges that the defendant be forever

> enjoined and prohibited from . . . and that the plaintiff recover against the defendant the sum of . . . for his costs in this action." *Id.,* at ch. XVII, § 5.

Even had Tubman been a party, the judgment could only have enjoined and prohibited him from exporting the car, the subject of the action. By no principle of law we have been able to find could the court order even a party, to say nothing of a stranger, to pay over the value of a chattel mortgage or to make any other payment, save costs; even if such additional payments had not, as is the case, been inserted in the opinion after the court had adjourned.

Parenthetically we desire here to make it clear that this Court does not condemn the correction of obvious errors, or the embellishment of an opinion after it shall have been read, by extending passages of law already quoted or referred to in order to make the principles enunciated as clear as possible. For as the Attorney General of Liberia in an opinion printed on page 18 of his second annual series (1923) pointed out:

> "The opinion is the authorized exposition and interpretation of the law binding upon all the citizens. They declare the unwritten law, and construe and declare the meaning of statutes, citing 34 Cyc. p. 1614 Note 47."

On the other hand it is the judgment, the Attorney General then pointed out,

> "which settles the rights of suitors, and they have such a right to have same pronounced as speedily as possible, that for any unnecessary delay an interested party may obtain a mandamus against the defaulting judge to compel him to perform said duty, or if it is wilful and corrupt he may be impeached."

A judgment then, when reached and pronounced, should not be altered except after notice to and a rehearing of the parties; and this is especially true where, as in the case before us, said judgment was so modified after

the adjournment of the term as to materially increase the financial burdens of him against whom it was rendered.

The principle above enunciated, to the effect that in injunction proceedings the court cannot legally order payments, other than costs, has previously been settled by this Court ever since the year 1900. In the case referred to, one E. A. L. McAuley was Commissioner of Education, and while holding said position engaged himself as a school teacher. A writ of injunction having been applied for to prevent him from holding simultaneously the two offices upon the ground that the Commissioner of Education was the agent of Government in employing school teachers, and that one person cannot even when acting in a dual capacity contract with himself, the court both perpetuated the injunction and ordered McAuley to refund to the Government all moneys obtained by him from the Government as a school teacher. Upon appeal the following opinion was expressed by this Court.

"This court has failed to discover the law upon which this portion of the judgment is founded. By reference to the record we find that the suit was brought to restrain the appellant from doing certain acts, and the form of action chosen by appellee (the plaintiff in the court below) was injunction. Undoubtedly the appellee could not recover moneys alleged to have been wrongfully and unlawfully received by appellant from appellee, under this form of action, for the issues involved in this question are clearly beyond the power of the court to decide in the case before it. An action of injunction is defined by our statutes to be an action in which the plaintiff seeks to compel the defendant to permit matters to remain in the present state. (Stat. Lib. ch. I, p. 31, sec. 8.) And this definition is upheld by Mr. Kerr, a leading authority on the law of injunctions, as well as by Bouvier, Blackstone, and other law-writers.

> "If upon the hearing of an action of injunction it shall appear to the court that the defendant ought not to do the act from the doing of which he is sought to be restrained, the court shall simply proceed to perpetuate the interlocutory injunction and award costs for the plaintiff. The court below therefore erred in ruling the appellant to refund to appellee moneys received for teaching school, which, this court is of the opinion, could not be recovered in an action of injunction. This court therefore reverses this portion of the judgment and will proceed to give the decree which in its opinion the court below ought to have given in the premises." *McAuley* v. *Republic of Liberia,* 1 L.L.R. 354, 357 (1900).

For this reason also the execution upon which relator is held was based upon a judgment that cannot legally be enforced as to relator. Nor can we, for the same reasons, grant Mr. Tubman's petition to order a refund of moneys or other property illegally taken from him upon such void judgment as, were we to so do, we would, among other things, be also converting an action of injunction into a possessory action contrary to law, a course we have shown to be illegal. Mr. Tubman has therefore to pursue the remedy for the injuries thus apparently done him by due course of law.

In view of the foregoing it is our opinion that the execution against Tubman, relator, is based upon a judgment void as to him, and should therefore be vacated; that his bond and deeds now in the custody of the Marshal by virtue of said writ of execution should be surrendered to him; that he should be allowed to go without day; and the respondent pay the costs of the proceedings the relator was compelled to take to vacate the writ of execution; and it is so ordered.

Application granted in part and refused in part.