

ARAMINTA A. TUBMAN, Plaintiff-in-Error, v.  
WILLIAM V. S. TUBMAN, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL  
CIRCUIT, MARYLAND COUNTY.

Decided May 15, 1931.

Where it appears that officers of the court below have acted in a manner suggesting suspicion, corruption or fraud the case will be remanded for an investigation and a new trial ordered.

In an action for divorce, judgment was given for plaintiff, now defendant-in-error, in the Circuit Court. On writ of error to this Court, *remanded* for trial *de novo*.

*N. H. Sie Brownell* for plaintiff-in-error. *William V. S. Tubman* for defendant-in-error.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case was filed in the February term of the Circuit Court for the Fourth Judicial Circuit, Maryland County, sitting in its Law Division, in the year of our Lord 1929 by the defendant-in-error, against the plaintiff-in-error, defendant in the court below, his wife, praying the court and jury to award unto him the said plaintiff a bill or writing of divorcement to the effect that the relation of husband and wife now existing between them be annulled and made void, and that they be forever regarded as separate and distinct persons in law as if no such relation ever existed, growing out of certain alleged immoral conduct of the wife, as alleged against her in his complaint (see complaint).

To this complaint, the defendant, now plaintiff-in-error, put up no defense, relying upon the statute in such cases provided; namely,

“the defendant may appear and plead upon the rec-

ord, or at the trial, in person, or by counsel, or both; but where the defendant wilfully neglects to appear and plead under the rules of practice and pleading, his or her defense shall rest exclusively upon the plea of not guilty. The Court shall direct the clerk to enter a plea of not guilty in the event of the failure of defendant to appear and plead, and the trial shall proceed as if the defendant had appeared and pleaded."

1 Rev. Stat. § 992.

The same statute further provides that upon the trial of any action of divorce, although the charge of adultery may be proven, the court or jury may deny the divorce upon the grounds of collusion, condonation or recrimination. *Id.* at § 994.

What is more puzzling to understand is that the defendant having failed to appear, thereby placing herself under the jurisdiction of the court, and plead upon the records or to be even present at the trial, and the court having been brought in and made the third party to the suit in ordering the plea of "Not guilty" to be entered upon the records, by whom, and by what method is the plea of condonation, recrimination or collusion to be raised?

This Court will here remark that the present divorce law is not only inconsistent with and contrary to the settled rules of pleadings and practice and also to the principles of justice in law practice, but is a reflection on the marriage relations of the country, and an invasion of the rights and privileges of citizens. It is hoped that the attention and consideration of the coming Legislature will be given towards its revision and thereby avert the necessity of an opinion of this Court on its unconstitutionality.

Now then, from the records of the case it appears that a motion was made by the plaintiff, now defendant-in-error, W. V. S. Tubman, for a continuance of the case six consecutive terms from the February term 1929 to the August term of court 1930. It appears that during all

this time the defendant, now plaintiff-in-error, was in the county. It was not until the February term of Court 1931, His Honor E. J. S. Worrell presiding, when the defendant, now plaintiff-in-error, was out of the County of Maryland and in the County of Montserrat that the case was taken up and verdict and judgment was obtained against her. (See verdict and judgment.) Plaintiff-in-error hearing of this, petitioned this Court for the issuance of a writ of error setting forth the following:

“That she was united in the Bonds of Holy Matrimony to her husband Wm. V. S. Tubman, defendant-in-error, March 8, 1917 to January, 1929 when she was compelled to leave her husband as a result of an action of divorce filed against her January, 1929. That in the month of February 1930, they reunited, went and lived together as man and wife, although the case was still on the docket of the court, not withdrawn. That in the month of June 1930, she was compelled to leave his bed and board, but, notwithstanding this new separation he still continued to cohabit with her as man and wife up to and including January, 1931 both at Cape Palmas and in the city of Monrovia while he was attending the session of the Legislature.

“That in view of their living together as husband and wife during the pendency of this action, His Honour Judge Dent at the August Term 1930, had stricken from the docket the said action of the Divorce on motion made, but said judge was ordered to restore said case to the docket by orders of the Chief Justice upon representation made to him by defendant-in-error.

“That on the 9th day of February, 1931, when counsel for defendant, now plaintiff-in-error, was away from Cape Palmas at Monrovia on business and the defendant, now plaintiff-in-error, was without legal representative, his Honour Judge E. J. S. Worrell took

up the case and granted plaintiff, now defendant-in-error, a judgment of divorce against the defendant, now plaintiff-in-error; wherefore plaintiff-in-error says that in the proceedings and final judgment of the court below there was manifest error; and she not being at Cape Palmas and in the position to append copies of the records she petitions this court for the issuance of a writ of error that the proceedings of the court below may be reviewed and the errors corrected, if any."

The petition was granted and proceedings brought before this Court for review.

Upon reviewing the records sent up, the first point which attracted and claimed the attention and consideration of this Court was a letter or document from Araminta A. Tubman, the defendant in the court below, now plaintiff-in-error before this Court, disclosing corruption, fraud and sharp practice on the part of officers of the judiciary branch in Maryland County, which is looked upon by this Court with great disfavor. The letter reads as follows:

"HARPER CITY, MARYLAND COUNTY,  
REPUBLIC OF LIBERIA,  
*January 26th, 1929.*

"HIS HONOUR JAMES HENSON DENT,  
IN CHAMBERS, JUDGE, CIRCUIT COURT,  
FOURTH JUDICIAL CIRCUIT, *Maryland County, R. L.*

"YOUR HONOUR:

"A very reprehensible and dangerous happening has occurred which if not checked immediately will surely work a great deal of wrong and injustice to the citizenship of this county. On Friday, the 25th of January A. D. 1929 I filed a Divorce case against William V. S. Tubman, the precepts of which were placed in the hands of Chad P. Ivy, Sheriff of the County, for immediate service on the defendant, Mr. Tubman. Mr. Tubman, the defendant, having

heard of the steps that were being taken against him sent one Lewis Free to call the Sheriff to his (Tubman's) office and took from him, the Sheriff, the Summons that had been issued against him Tubman as defendant in the Divorce Case:

"Araminta Tubman . . . . . Plaintiff

Vs.

"William V. S. Tubman . . . . Defendant, with the name of one Aisee as Co-respondent.

"Further, to my surprise, I received a summons issued by the Clerk of the Circuit Court on the 26th day of January, A. D. 1929, to appear in the February Term of said court to answer the complaint of William V. S. Tubman in an action of Divorce.

"William V. S. Tubman . . . . Plaintiff

Vs.

"Araminta Tubman . . . . . Defendant, coupling the name of George T. Brewet, Jr., as Co-respondent.

"Said complaint being issued on the 26th instant was altered, changed and predated so as to read as having been filed on the 25th day of January 1929, as will appear by the copy of the Summons certified as being true and correct from the Original by Mansfield Fulton Yancy, Clerk of the Circuit Court Fourth Judicial Circuit, Maryland County, with the seal of the said court attached.

"Your Honour knows very well that my complaint was filed on the 25th of January A. D. 1929 and placed in the hands of the Sheriff for immediate service, and thinking that the same had been served on the defendant Tubman, I was greatly surprised when I received the summons on the 26th day of January from Mr. Tubman as plaintiff when I had filed my notice of summons on the 25th instant which caused me to apply

to the clerk's office to inquire of the Sheriff's returns. If I am correct, I understand that it is required of the Sheriff to return all precepts issued and placed in his hands for service which precepts form a part of the records in the case and gives the court jurisdiction over the parties.

"Your Honour will do me a great favour if you should inquire into and investigate this dangerous and reprehensible official misconduct and omission and thereby prevent a recurrence of similar disadvantage and serious injustice being taken of the citizens and residents of this country.

"Respectfully submitted,

[Sgd.] ARAMINTA A. TUBMAN."

This document was submitted to His Honor Judge Dent and filed with the records of the case; and it is obvious to the mind of the Court that before action on the question therein raised could be investigated, he was by writ of mandamus stopped from presiding over or taking any further steps in the case. The complaint being filed in the clerk's office and put in the records of the case, it seems very strange and difficult for this Court to understand how a complaint of such magnitude embodying such grave charges against law officers of the court below could pass the notice of His Honor Judge E. J. S. Worrell and not result in an investigation to ascertain whether or not the facts as complained of could be established. For if indeed the facts could be established, this Court will consider it more than a prostitution of justice by the judicial officers named in said complaint, and against the dignity and high reputation of that court, and to such, this Court cannot and will not lend its aid. There are many things the state may or may not do, but there is one thing among others the state must do and that is, the state must administer justice to every man, and this the Court will see to being done without denial, or delay, regardless of consequences. And in addition to this omission there

were no records of the testimony of deposing witnesses kept and sent up in the records.

This case is therefore remanded to the court from whence it originated to be tried *de novo* at the present May term 1931, in order that all parties concerned may be given equal chances of a fair and impartial trial.

The Clerk of this Court is, therefore, ordered to forward immediately a copy of this opinion and decision to the judge presiding over said court at its present session. And it is so ordered.

*Remanded.*