# JUAH WEEKS WOLO, Appellant, *v.* P. GBE WOLO, Appellee.

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

Decided February 12, 1937.

1. The term "due process of law" is synonymous with the term "the law of the land."
2. It is "a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."
3. It extends to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive.
4. It relates to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government.
5. Hence, the term "due process of law" means in brief that there must be a tribunal competent to pass on the subject matter, notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel, or both, having been duly served with process or having otherwise submitted to the jurisdiction.
6. In fine, to deprive even an official of office, be said official legislative, executive or judicial, or to deprive any person of his property or other right, without notice, an opportunity to appear and cross-examine witnesses adduced against him, to produce witnesses in his own behalf, and to be heard in person, by counsel or both, is to deprive such official of office, or person of his property or other rights, without "due process of law," and is therefore unconstitutional.
7. The powers of this government shall be divided into three distinct departments, legislative, executive and judicial, and no person belonging to one of these shall exercise any of the powers belonging to either of the others.
8. The object of said provision was to block out with precision, and in bold lines the allotment of power to each of the three departments of government so that no official of the one should be permitted to encroach upon the powers confided to those of either of the others.
9. Legislative divorces were granted in Liberia up to 1873 when the first amendatory statute on divorce was passed prohibiting divorce by collusion.
10. In so doing the Legislature followed a rule in vogue in the United States of America in their old colonial days which rule was imported from Great Britain where there never was a written constitution.
11. Moreover, neither up to 1873 nor since, until now, was the legality or unconstitutionality of a legislative divorce ever raised in a court of justice until these proceedings; nor elsewhere until 1920 when the Legislature itself refused jurisdiction.
12. What shall constitute a valid marriage, the age when or other capabilities of the parties to enter into the contract, are all legitimate exercises of legislative power with which the judiciary may not interfere.

13. So, too, it is within the sole purview of the legislative power to prescribe what shall be the legitimate grounds for divorce, and by which of the courts same shall be tried.
14. But, to determine whether or not the tribunal be indeed a court of justice and thereby capable of divesting a party of his vested rights or whether the party has been proceeded against after due process of law is wholly a judicial function; and no department of government can exercise judicial functions but the court itself.

Appellant brought proceeding to obtain alimony from appellant her husband, but the court below found that alimony was barred by a legislative divorce granted appellee. On appeal, *judgment reversed and case remanded.*

*S. David Coleman* and *Chas. B. Reeves* for appellant. *P. Gbe Wolo* for appellee, assisted by *M. Dukuly.*

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

According to the records filed here appellant and appellee were lawfully married in the City of Monrovia on the 10th day of February, 1925. The petition further alleges, in counts 2 and 3 thereof, that having cohabited with and impregnated three girls that she had been rearing, he, the husband, in 1932, left the home with said three girls, and set up a new and separate abode, and that from that time the appellee had refused and neglected to provide the wife with any means for her support and upkeep. The petition thereupon rehearses his occupation and status, his probable income, and prays that alimony be awarded her.

Appellee, on being summoned, appeared and answered: (1) that there was no longer any "jural contractual marital relation between the parties, and hence no basis for a suit for alimony"; (2) that said marital relation had been dissolved by an Act of the Legislature passed and approved on February 14, 1936, profert of a copy of which was made as a part of said answer. Appellant

replied that (1) since their marriage no judgment of divorce had been rendered against her in favor of appellee, nor had she brought any such action against him; (2) that the legislative enactment, profert of which had been made in the answer, was in the nature of class legislation and, therefore, unconstitutional; (3) that the marriage relationship is contractual, and can only be dissolved by "due process of law," within the courts of justice of the Republic; (4) that the action of divorce is only cognizable in a court, and inasmuch as our Constitution provides that neither one of the three coordinate branches of government shall exercise any of the functions belonging to either of the others, the legislative enactment, made profert of in the answer, had usurped certain judicial functions, and was therefore unconstitutional.

Appellee, in the first and second pleas of his rejoinder, joins issue with appellant on the allegation that said enactment was unconstitutional, averring that said enactment was in the exercise of a strictly political and legislative function, and hence not a subject for judicial determination.

The above are the principal issues submitted to His Honor Nete Sie Brownell, the trial judge who, on the 23rd day of April, 1936, delivered his judgment on the pleadings. Said judgment which is an interesting dissertation on the power and duty of courts to declare legislative enactments unconstitutional in certain cases concluded: "that until the constitutionality of the Act of the Legislature dissolving the marital relation between petitioner and respondent has been duly raised and passed upon petitioner is not entitled to maintain suit in the form of these proceedings under the alimony Act" etc.

It is from the said judgment of Judge Brownell's that an appeal has been prosecuted to this Court, which we have now to consider.

And first of all we have to reiterate what was expressed in the concurring opinion of His Honor the Chief

Justice in the case *Delaney* v. *Republic,* 4 L.L.R. 251, 2 Lib. New Ann. Ser. 92, when he said:

> "For, 'While the courts may, and, when the question arises and is properly presented, must, determine the constitutional power of the legislature to enact a particular statute, where a law does not transcend the limits of legislative power it cannot be held invalid by the courts because they may question the wisdom of the enactment. Within constitutional limits, the necessity, utility and expediency of legislation are for the determination of the legislature alone. The remedy for unwise legislation is not in the courts but remains in the people, who, by making the necessary changes in the legislative body, may have the unwise, improvident or pernicious legislation of one legislature corrected by another. . . .' 25 R. C. L., 'Statutes,' § 60; . . ."

Coming back now to the case under review, counts 1 and 3 of appellant's reply raise the question that the enactment of the Legislature had attempted to dissolve the marital relation between appellant and appellee without giving appellant an opportunity to answer, and hence without due process of law, which is unconstitutional.

The first question then arising is: What is meant by the expression "due process of law"? It has been defined as: "A law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. Law in its regular course of administration through courts of justice." 8 Cyc., 1081.

In the year 1922 the question arose, under what circumstances would the Government of Liberia be justified in expropriating private property for public use, and could that be legally done without notice to the party concerned? The Attorney General of Liberia in his opinion given on that question on the 11th July, 1922, pointed out that Lord Coke had held that the term "law of the land" used in Magna Charta meant exactly the same thing as

"due process of law" used in the Constitution of the United States. Opinions of the Attorney General of Liberia for 1922, p. 50.

The provision in our Constitution reads:

> "No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." Lib. Const., art. I, sec. 8.

We must observe in passing that the Constitution of the United States, as originally framed, contained no Bill of Rights. Such Bill of Rights as we have embodied in the first Article of our Constitution, insofar as there is any analogy, is contained in Articles I to IX of the amendments to said American Constitution; and the one relevant to this phase of the question is found in the latter clause of amendment 5, from which is omitted the word privilege embodied in our Constitution. Thus the provision therein reads: ". . . nor be deprived of life, liberty or property without due process of law."

American law writers commenting on the constitutional provision, which, in ours, would seem to be stronger because, as aforesaid, of the inclusion of the word "privilege," have agreed on the following as far as our examination of sundry authors goes:

> "The term 'due process of law' is synonymous with 'law of the land.' The constitution contains no description of those processes which it was intended to allow or forbid, and it does not even declare what principles are to be applied to ascertain whether it be due process. But clearly it was not left to the legislative power to enact any process which might be devised. 'Due process of law' does not mean the general body of the law, common and statute, as it was at the time the constitution took effect. It means certain fundamental rights, which our system of jurisprudence has always recognized. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law extend to every govern-

mental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive, and relate to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. The term 'due process of law,' when applied to judicial proceedings, means that there must be a competent tribunal to pass on the subject-matter; notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel; and if the subject-matter involves the determination of the personal liability of defendant he must be brought within the jurisdiction by service of process within the state, or by his voluntary appearance. And there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. But the forms of procedure and practice may be changed; and the constitution is satisfied if the substance of the right is not affected and if an opportunity is afforded to invoke the equal protection of the law by judicial proceedings appropriate and adequate. . . ." 8 Cyc. 1083 and cases cited.

"The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial.' Somewhat similar is the statement that it is a rule as old as the law that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly

> cited to appear, and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression and can never be upheld where justice is fairly administered." 6 R.C.L. "Constitutional Law," § 442.

It now becomes pertinent to inquire, what were some of the rights and privileges vested in Juah Weeks Wolo by her marriage to P. Gbe Wolo that the enactment of the Legislature made profert of in appellee's answer would deprive her of contrary to the law of the land? They are the right to share the bed and board of her husband, to his protection, support, comfort and society during their joint lives, and in the event he predeceased her to the possession and enjoyment of one-third of his personal property forever, and one-third of his realty for her natural life. Lib. Const., art. V, sec. 11.

According to the laws in vogue, and until the passage of the new Matrimonial Causes Act, approved February 24, 1936, ten days after the approval of the enactment now under consideration, she could only be deprived of these rights and privileges after a verdict and judgment of divorce against her for adultery; and since the passage of said Matrimonial Causes Act for six additional reasons, and after having been given an opportunity to be heard in her own defense. Mr. Wolo, arguing the case here in his own behalf, admitted that she was not cited to appear and answer; that no opportunity was given her to produce witnesses in her own behalf; nor was she given the opportunity to cross-examine witnesses offered against her; nor indeed could he show that his petition, upon which the Legislature is supposed to have acted, complained of any misconduct committed by her in marked contrast to the sworn allegation, in the second count of her petition, that he had cohabited with and impregnated three different girls that she had been rearing. Com-

pare in this connection Mr. Wolo's own argument in the case *Bryant* v. *Bryant,* 4 L.L.R. 328, 2 Lib. New Ann. Ser. 169 *et seq.,* esp. 185–187.

The principle involved in the construction of this constitutional provision now submitted for our consideration is so broad, so deep, so fundamental, that when considered in all its possible ramifications the case *Wolo* v. *Wolo* cannot but sink into insignificance beside the potential applications that might arise from any decision we might give in the premises.

Thus in this, and in the matter submitted for the opinion of the Attorney General of Liberia in 1922 to which reference has been hereinbefore made, we have presented a picture of two persons whose respective social positions are in antithesis the one to the other: the one, the Honorable Arthur Barclay, then as now an ex-President of Liberia, and therefore of the highest social status in this country, the other Mrs. Juah Weeks Wolo, a woman of practically no social status or importance, both alike appealing to the law of the land in defense of vested rights about to be wrung from them by violence, and invoking *inter alia* the same section 8 of the Article I of our Constitution, the latter in defense of her rights and privileges as a married woman, the former in defense of his rights of property. This picture should be a constant reminder to us that in a country such as ours the only bulwark of the people against oppression, or the illegal deprivation of their rights and privileges, be they high or low, be they rich or poor, is the written constitution handed down to us as the most precious heritage bequeathed to us by our fathers. If this Court should decide that Juah Weeks Wolo, appellant, can be deprived of her rights and privileges as a married woman without due process of law, in violation of the constitutional inhibition, then what will become of the rights and privileges of those civil officers whose removal from office upon the joint address of both branches of the Legisla-

ture must be for cause stated? Lib. Const., art. III, sec. 6, art. IV, sec. 1.

Should we affirm the judgment of His Honor Judge Brownell on the point now under consideration, could any member of the Legislature who might at any time, for any purpose, lose his popularity and prestige complain if: (1) the branch of the Legislature to which he belonged exercised the right of expulsion, given in the last sentence of the 8th section of Article II of that sacred document, without previous notice, an opportunity to be heard in his own defense, to cross-examine witnesses produced against him, and to offer witnesses in his own behalf? Then last but not least, and bearing in mind that the disregard of law constantly repeated develops a psychology to violate law just as the propensity to kill unchecked develops homicidal mania, what guarantee would any President of this Republic have that in the event any new crisis should arise in this country as that of 1930, he would not be deprived of the right of legal trial provided for in our Constitution and removed from his high office, the highest in the gift of this people, without a legal impeachment, and therefore without due process of law, which, as has been shown, is identical with the term the law of the land?

All of these probabilities, and more, appear to us to be involved in that particular constitutional point submitted for our consideration in this particular case.

It may be argued, as it has been contended here during the hearing, that private property has in times past been condemned for public use without due process of law; that civil officers and members of the Legislature have been removed from office without due process of law; but, so far as we have been able to ascertain, this is the first time in the history of the country that such a question has been fairly and squarely submitted for the consideration of this Court, and having envisaged the extent to which the rights of the people can be successfully as-

sailed by disregard of the principle of due process of law were we to place our imprimatur upon the enactment, the basis of appellee's contention, we feel that we would be recreant to the high trust and confidence imposed in us.

The fourth count of the reply of appellant raises the point, that the granting of a divorce by legislative fiat is an unwarranted exercise of a judicial function, and hence a violation of Article I of our Constitution.

Appellee rejoined in the 9th and 10th pleas of his rejoinder in essence that actions of divorce are not exclusively cognizable by the judiciary, and hence that the Constitution was not violated by the action of the Legislature in question. Said contention of his he has endeavored to support upon two pillars, namely (1) that legislative divorces have heretofore been granted in other jurisdictions, and (2) that legislative divorces have been granted in Liberia, which propositions it now becomes our duty to examine.

Most of the citations produced on both sides in connection with this phase of the argument have been found to contain notes referring to the case *Maynard* v. *Hill,* decided in the United States on March 19, 1888, and reported in 125 U.S. 190, 31 L. Ed. 654.

The first fact we found from a careful examination of this case is: that the legality of the divorce was raised in a collateral proceeding about the title to a piece of property between *Maynard and Patterson* v. *Hill,* eleven years after the death of David S. Maynard, which parties, David and Lydia Maynard, were divorced by legislative enactment in the territory of Oregon in 1852 before said territory became a state of the United States of America, and thirty-six years before the legality of the divorce was questioned.

This point in our opinion is important, because it appears to us to contradict the theory advanced in the ninth plea of the rejoinder of the appellee that the constitu-

tionality of a legislative enactment cannot be raised collaterally, a contention by which obviously His Honor Judge Brownell was influenced.

Another important point to be observed is: that the opinion cites a case where a legislative divorce was upheld in Connecticut, the act having rehearsed that "the divorce . . . was granted on a petition of the wife, who alleged certain criminal intimacies of her husband with others; and the Act of the Legislature recited that her allegation, after hearing her and her husband, with their witnesses and counsel, was found to be true. The inquiry appears to have been conducted with the formality of a judicial proceeding, and might undoubtedly have been properly referred to the judicial tribunals; yet the Supreme Court of the State did not regard the divorce as beyond the competency of the Legislature." *Id.* at 208, 31 L. Ed. at 658.

Here we must observe in passing that said legislative divorce was, as expressed in said opinion, not expressly prohibited by the constitution of the State of Connecticut, nor of the United States, nor was it granted without due process of law, dealt with *supra*. *Id.* at 208, 31 L. Ed. at 658.

We must now trace legislative divorce to the source before we shall be in a position to apply the provisions of law relevant to our own jurisdiction.

In the days when Blackstone wrote, divorces were of two kinds, the one *a mensa et thoro* which was granted by the common law courts, the other *a vinculo matrimonii* granted only by the ecclesiastical courts, and alternatively by Parliament. See Blackstone's *Commentaries*, *440, and n. 12, where it is explained:

> "Divorce was entirely unknown to the courts of common law in England until long after the latest date at which the American law diverged from the parent system. The only divorce from the bonds of marriage was given by the legislative power by a private

bill in each case. The ecclesiastical courts granted divorce from bed and board only (therefore without the privilege of marrying again to either party) for adultery and other causes. In the United States divorces were formerly granted by Acts of the state legislatures; but in most of the states this is now forbidden by constitutional provision, and the power to dissolve the bonds of matrimony is in the courts of law by a general grant from the lawmakers. There being no spiritual courts in the American colonies, the legislature possessed the only power that could at first be invoked to dissolve a marriage, and divorce by special act was the original rule in most, if not all the states. And it is still under authority derived from the legislature by general act that the courts obtain the power to dissolve a marriage regularly formed."

Bishop, in the first volume of his treatise on the law of *Marriage, Divorce and Separation,* sections 97–99, dealing with this subject says:

"When this country was settled from England, and we derived thence our unwritten law, marriage and divorce causes were heard in the ecclesiastical courts. Our unwritten law of the subject, therefore, is the law which was then administered in those courts. Hence the importance of the explanations of this chapter.

"These courts, at the present time in England deprived of their divorce and probate jurisdiction, are regular tribunals of the country as truly as the others. For though their judges derive their commissions directly from the functionaries of the Church, yet indirectly and really they are from the Crown, because the sovereign of England is the head of the English Church.

"How the Church, first on the Continent, and afterward in England, Scotland, and elsewhere in the British Islands, gradually obtained jurisdiction over various things relating to civil affairs, is matter of

history, not belonging particularly to these pages. Matrimonial causes were naturally within her sway, because marriage was one of her sacraments; and so there was always less question of the rightfulness of her authority over them than over many others."

The rule above stated appears to have remained in vogue up to the time that the Pilgrim Fathers settled the New England States.

Mr. Justice Field, speaking for the Court in the case *Maynard* v. *Hill,* to which reference has already been made, states upon the authority of Cooley, in his *Constitutional Limitations,* as well as of Chancellor Kent:

" 'The granting of divorces from the bonds of matrimony was not confided to the courts in England, and from the earliest days the Colonial and State legislatures in this country have assumed to possess the same power over the subject which was possessed by the Parliament, and from time to time they have passed special laws declaring a dissolution of the bonds of matrimony in special cases.' . . . 'During the period our colonial government, for more than a hundred years preceding the Revolution, no divorce took place in the colony of New York, and for many years after New York became an independent State there was not any lawful mode of dissolving a marriage in the lifetime of the parties but by a special Act of the Legislature.' . . . The same fact is stated in numerous decisions of the highest courts of the States." *Op. cit.,* 206, 31 L. Ed. 657.

Mr. Justice Field's opinion then proceeds to cite from decisions of sundry states.

It is now necessary to observe that between the period to which Justice Field had reference and the present, the government of the United States has been twice transformed. First, during the Revolution to which reference has been made the thirteen states bound themselves together for the purpose of common defense by Articles

of Confederation, declared their independence and passed from a colony to an independent national entity. The second transformation was when, about a dozen years thereafter, they adopted a written constitution for the purpose of forming "a more perfect union, to establish justice, insure domestic tranquility" etc. Preamble to the Constitution of the United States of America.

The Republic of Liberia was commenced with a written Constitution published to the world on the same day, and at the same time as the Declaration of our Independence. Although in many respects ours would appear, prima facie, to have been modelled after that of the United States, the more one studies the two, the clearer it becomes that there are certain points of difference between them. As far as is pertinent to the points now submitted for our consideration, we have, after the most careful examination, failed to find in the Constitution of the United States of America any provision analogous to sections 2 and 14 of Article one of ours which read as follow:

> "All power is inherent in the people; all free governments are instituted by their authority and for their benefit and they have the right to alter and reform the same when their safety and happiness require it."
>
> "The powers of this government shall be divided into three distinct departments: Legislative, Executive, and Judicial; and no person belonging to one of these departments, shall exercise any of the powers belonging to either of the others. . . ."

It is true that the Constitution of the United States of America, article I, vests all legislative power in a Congress, article III vests the judicial power in the Supreme Court and such inferior courts as the Congress may establish, and article II vests the executive power in a President of the United States, but there is lacking therein that inhibition against any person belonging to one of the three distinct departments exercising any of the powers belong-

ing to either of the others, which is a provision unique in ours, as found in section 14 of Article I.

Keeping in mind that there is the omission from the Constitution of the United States of America of the clause found in ours to which attention has just been drawn, yet it is nevertheless true that the Supreme Court of the United States has repeatedly so construed their constitution as to "block out with singular precision, and in bold lines, in its three primary articles, the allotment of the powers." *Kilbourn* v. *Thompson,* 103 U.S. 168, 190, 26 L. Ed. 377, 387 (1880); *Martin* v. *Hunter's Lessee,* I Wheat. 304, 4 L. Ed. 97 (U.S. 1816).

Expounding this point at greater length, Mr. Justice Miller, speaking for the Court in the *Kilbourn* case, said:

> "It is believed to be one of the chief merits of the American system of written constitutional law, that all the powers intrusted to governments, whether State or national, are divided into three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined. It is also essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other. To these general propositions there are in the Constitution of the United States some important exceptions. One of these is, that the President is so far made a part of the legislative power, that his assent is required to the enactment of all statutes and resolutions of Congress.
>
> "This, however, is so only to a limited extent, for a

bill may become a law notwithstanding the refusal of the President to approve it, by a vote of two-thirds of each House of Congress.

"So, also, the Senate is made a partaker in the functions of appointing officers and making treaties, which are supposed to be properly executive, by requiring its consent to the appointment of such officers and the ratification of treaties. The Senate also exercises the judicial power of trying impeachments, and the House of preferring articles of impeachment.

"In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of these departments cannot be exercised by another." *Ibid.*

If, with a constitution lacking the unique and express inhibition in ours to which attention has been called, the Supreme Court of the United States felt itself in duty bound to emphasize the separateness and distinctness of the powers of the three co-ordinate branches of that government, based upon logical inferences, how much more is not that duty enjoined upon us since the provision in ours is express and not merely implied?

When it comes to determining what shall constitute a valid marriage, the age when, or other capabilities of the parties to enter into the contract, we are of opinion that that is purely a legislative function in which ours, the judicial branch of the government, may not interfere. So too, determining what shall constitute legitimate grounds for divorce, when and by what tribunal same shall be tried, etc., also seems to us to be purely a subject of legislation, with regard to which as we have before said, the laws, when passed, whether in our opinion any such law

be good or bad, wise or unwise, we have no constitutional authority to question. But as to whether the tribunal empowered to divest either of the parties of vested rights shall be a judicial tribunal or not and shall proceed only by due process of law, does seem to us to be a question wholly and solely within the power of the judiciary to determine, since the legislature would be acting *ultra vires* to confer judicial power upon any other branch of government but the courts, for this Court has decided since 1914 that "no department of government can exercise judicial functions but the court itself."

See In re *the Constitutionality of the Act,* 2 L.L.R. 157, 4 Lib. Semi-Ann. Ser. 4, 15, where the late Chief Justice Dossen, speaking for this Court, said:

> "It is clearly to be seen that no department of the Government can exercise judicial functions but the court except as it may be otherwise provided in the Constitution, as each branch of the Government set up in the Constitution is independent as well as co-ordinate. Legislation therefore is unconstitutional which seeks to have other branches of Government participate in judicial work. It is this feature of the Act under consideration which renders it void and inoperative." See also *Posum* v. *Pardee,* 4 L.L.R. 299, 2 Lib. New Ann. Ser. 139.

It was contended during the argument at this bar that the Legislature of Liberia in times past granted divorces; and when the old statutes were examined, the following facts were established: (1) That in all thirteen legislative divorces had been granted in Liberia, viz.:

> John B. and Otillia Julien Jordan—Acts of 1857–58, 39 (1st); Georgianna M. and Jeremiah Hilliard—Acts of 1860, 67 (1st); Tristam Waters and Elizabeth Waters—Acts of 1861, 75 (2nd); Rebecca Overton and Edward Overton—Acts of 1863, 8; Jacob M. Moore, Jr., and Ann M. Moore—Acts of 1863, 12 (2nd); Thomas E. Dillon and Elizabeth Dillon—Acts of 1863,

13; John Luca and Sarah Luca, Urias A. McGill and Angeline E. McGill, R. R. Savage and Marion L. Savage, and Samuel Powers and S. E. Powers—Acts of 1864, 28; E. R. Smith and Jane Smith—Acts of 1867, 60 (2nd); Peter Adams and Mary Adams—Acts of 1867, 61 (1st); and Martha E. McKenzie and Lambert McKenzie—Acts of 1868, 8 (2nd).

(2) That until the case now under review, no legislative divorce had been granted since 1873, after the passage of the first amendatory statute on divorce.

Obviously our forefathers followed the rule with which they were familiar in the United States, imported there during their old colonial days from Great Britain, where, as we have seen, there never was a written constitution nor the separation of the powers of government into separate and distinct departments as is the case in the United States of America, and more particularly so in Liberia.

This evoked another query, namely: why were these legislative divorces discontinued in this country after 1873?

It appears that in 1920 the Honorable James S. Smith, then a Senator of the Republic of Liberia from Grand Bassa, applied to the Legislature of Liberia for a legislative divorce from his then wife. Said matter having been, by the Honorable the Legislature, referred to its committees on judiciary, of one of which committees our colleague, Mr. Justice Dossen, then a member of the Legislature from Maryland County, was a member, said committees instituted joint hearings to ascertain under what circumstances such divorces had been granted up to 1873 and discontinued thereafter. It was then established before said committees, largely upon the testimony of the late Rev. R. A. M. Deputie, then one of the oldest citizens of Liberia, who had held several important public offices and was then serving as Chaplain of the Senate, that all such divorces were granted upon the

joint petition of the parties, and hence there was no one to raise any objection. This would seem to be further supported by the fact that in those days the defendant in a divorce proceeding, especially for incompatibility of temper, always had to signify his or her consent to be filed with the pleadings. The practice appeared to have ceased when the Legislature of Liberia first prohibited a divorce procured by collusion; and hence upon the committees' reporting their findings to the Honorable the Legislature, the petition of the Honorable James S. Smith was denied, and he was admonished to seek his divorce before the courts which had exclusive cognizance of such matters.

There are other questions raised in the pleadings in the court below, and argued here, such as whether or not a contract of marriage is or is not strictly to be interpreted according to the law of contracts generally; how far legislation of the character under review tends to impair the obligation of contract as prohibited in the 10th section of Article I of our Constitution; and whether or not the enactment was not in the nature of class legislation. But these we do not consider it necessary, in view of the discussions above, to consider now. For we have reached the conclusion, from the foregoing reasoning, that the enactment specially pled by Mr. Wolo in his answer is in violation of sections 2, 8, and 14 of Article I of our Constitution above quoted, and is, therefore, unconstitutional and void.

It follows then, from the aforesaid conclusions, that the judgment of the court below should be reversed, and the cause remanded for such further proceedings as may not be inconsistent with this opinion, and that the costs should be paid by the appellee; and it is hereby so ordered.

*Reversed.*