DECISIONS AND OPINIONS

OF THE

SUPREME COURT

OF THE

REPUBLIC OF LIBERIA

APRIL TERM, A. D. 1918.

JOHN E. D. PRATT, and JOSEPH C. KAUNOAH, Aliens resident at Sasstown, Sinoe County, Petitioners in Certiorari, *v.* REPUBLIC OF LIBERIA, Respondent in Certiorari.

ARGUED APRIL 3, 1918. DECIDED APRIL 24, 1918.

Dossen, C. J., and Johnson, J.

1. A State has unquestionable power to regulate by statute the admission of aliens into its territories and to prescribe the cause for which their residence may be determined and they be deported.
2. The "Alien Residence Act" of Liberia is within the exercise of those powers of Government derived from the independence and sovereignty of a State.
3. The enforcement of the "Alien Residence Act" is primarily lodged in the hands of the Secretary of the Interior, who must initiate all proceedings involving the deportation of aliens.
4. Statutes authorizing summary proceedings and by which extraordinary powers are given to courts and officers of justice are to be strictly construed.
5. In summary proceedings the formal proceedings prevailing at trials are dispensed with.
6. The power of the Supreme Court and of the individual justices thereof to issue a writ of certiorari rests not only upon the common law authority, but upon express statutory provisions as well.
7. The Supreme Court has authority in cases brought before it upon certiorari to correct errors in fact as well as errors in law.

Mr. Chief Justice Dossen delivered the opinion of the court:

Action to Revoke Permit of Residence—Writ of Certiorari. This case emanates from the third judicial circuit, Sinoe County, upon

a judgment rendered against the petitioners in certiorari at the August term of said court for nineteen hundred and seventeen (1917) upon a complaint filed in summary proceedings.

The records disclose the following facts: That the petitioners in certiorari being aliens, and not citizens of the Republic of Liberia, in conformity with the Act of the Legislature approved February 7, 1916, requiring aliens residing, or who may wish to reside, in the Republic of Liberia to obtain a Permit of Residence so to do, applied for and obtained said permit from the proper authority and were residing at a place known as Sasstown, within the county and Republic aforesaid. That thereafter, to wit: on the 18th day of July, 1917, a suit in summary proceedings was brought by the County Attorney of said County of Sinoe to have the Permit of Residence duly granted petitioners in certiorari revoked, and have them deported from the country. The suit was brought by said County Attorney who, it appears, prosecuted under color and virtue of his office as such. The complaint filed set up as the grounds for the revocation and deportation of the petitioners in certiorari that they had heretofore, "at Sasstown through their pernicious actions rendered undesirable their further residence in that section of the Republic, in that they had instigated great disturbance and unrest between the peaceful citizens of that section and the Liberian Frontier Force located at Sasstown."

The petitioners in certiorari denied the truthfulness of the charge and at the summary proceedings held in the premises put upon the stand witnesses to support their defense.

The judge of the lower court after hearing the evidence for and against the petitioners entered judgment against them in substance as follows: "That the Permit of Residence granted to John E. D. Pratt and Joseph C. Kaunoah (now petitioners in certiorari) is hereby revoked with costs, and they are further deported from the Republic." Exceptions were taken to said judgment and the cause brought before this court upon a writ of certiorari for review and the correction of such errors which are alleged in the petition applying for the said writ to have been committed by the trial judge.

This is the synopsis of the case as culled from the records before us.

The petition applying for the writ of certiorari, and upon which

the case is now before us, assigns as the grounds for same substantially as follows:

1. "That there is no averment in the complaint that the suit was brought upon information emanating from the Interior Department."
2. "That the evidence adduced at the trial disproved conclusively the allegations set forth in the complaint."
3. "That the statute under which the suit was brought is repugnant to the general statutes so far as it denies the right of appeals in suits brought under its provisions."
4. "That the summary proceedings had in the premises, and the final judgment rendered thereon, are illegal and materially prejudicial to the rights of petitioners in certiorari."

Considerable importance attaches to this case; first, because of the uniqueness of its character, and secondly on account of certain principles growing out of it which this court has never yet settled, and which, it is argued, should be embraced in our decision of the case at bar.

Before proceeding to consider the points in the petition which constitute the petitioners' case, as put before us, we regard it enlightening to consider briefly the first four paragraphs in the exhaustive brief submitted by the learned Attorney General in support of the constitutionality of the Alien Act upon which the suit at bar is predicated, so far as it relates to the power of the Government to enact laws to govern the admission and deportation of aliens to and from the Republic of Liberia.

We would here remark that the right of a State to decide by statute the conditions upon which aliens shall be allowed to reside within its territories is an unquestionable one and is inherent in every sovereign and independent State.

"Every independent State," says Mr. Taylor in his treatise on International Law, "possesses, certainly in theory, the right to grant or refuse hospitality. Undoubtedly such a State possesses the power to close the door to all foreigners whom for social, political or economic reasons it deems it expedient to exclude; and for like reasons it may subject a resident foreigner, or group of them, to expulsion." (Taylor's International Law, p. 231.)

It has been held by the United States Supreme Court that: "the right of a nation to expel or deport foreigners who have not been naturalized, or taken any steps towards becoming citizens of the country, rests upon the same grounds, and is as absolute and un-

qualified as the right to prohibit and prevent their entrance into the country." (149 U. S. 698.)

This principle is also upheld by Vattel in his Laws of Nations.

The right and power of our law-makers then to enact a statute prescribing the condition upon which aliens may be allowed to enter and reside within the territories of the Republic, and the cause for, and manner in which, they may be deported, is within the exercise of those powers of government derived from the independence and sovereignty of a State, and are unquestionable.

But while we hold that the Act under construction is perfectly within the scope of the powers of sovereignty it is contended that its enforcement can only be legally done by following strictly the *modus* prescribed by it. This brings us to consider the first point in the petition on which it is contended the trial judge erred in his judgment.

From inspection of the said Alien Residence Act we find the power of initiating proceedings for the enforcement of the Act is lodged in the Department of Interior. We quote the concluding section of the Act which is as follows:

"The supervision of the enforcement of this Act shall be vested in the Secretary of the Interior who shall have authority to make all such rules, regulations and ordinances which may be necessary for the proper enforcement of this Act," etc.

In a preceding section the adjudication of causes involving the deportation of aliens, where they arise in a littoral district of the Republic, shall be held in the Circuit Court; but here again the intervention of the Secretary of the Interior is made necessary to put in motion the machinery of the court, and to give it jurisdiction over the parties or party, since the court can only proceed when it has been made clear to it that the suit has been brought upon "Information of the Interior Department." See section 11, of the Act. It does not appear from the records that this suit was brought in conformity with the express provision of the Act. It must be observed that this case was brought under "summary proceedings," and the rule is that in such proceedings the statute authorizing them must be strictly followed.

It is a well settled rule, that the statute rule authorizing summary proceedings and by which extraordinary powers are given to courts and officers of justice, *is to be strictly construed,* and that

the powers conferred must be strictly pursued so far as regards all the steps and proceedings necessary to give jurisdiction or the proceedings will be void. (See Sedgwick on the Construction of Statutory and Constitutional Law, p. 299.)

But it was contended by the counsellor for the respondent that this point should have been formally pleaded in the answer of the petitioners, and he argued that their neglect so to do amounted to a waiver.

This court has repeatedly held that in summary proceedings, the ordinary formal procedure prevailing at trials of a case at law is dispensed with. (See *Peakeh v. Nimrod,* Lib. Semi Ann. Series, No. 1, p. 21.) The records show that petitioners in certiorari did make a general denial of all the allegations set forth in the complaint and this we hold was sufficient although informally pleaded.

The next point which we should consider involves the evidence adduced. It is contended by the counsellor for the respondent that this case being before us upon certiorari it is improper for this court to consider the evidence. Let us see if this contention is sound. And first we would point out that the power of this court, and of the individual justices thereof, to issue the writ of certiorari rests not only upon its common law authority, but upon express statutory provision as well. (Vide Act Leg. Lib., Approved 1875, sec. 5.)

The writ issues generally to have the record in a subordinate court sent up for the purpose of discovering some error in law which it is alleged the lower court has committed.

But the appellate court, if its authority and jurisdiction over such writs is conferred by statute, may look into the evidence also, and if palpable injustice is discovered, it may reverse or annul the judgment of the court below upon matters of fact as well as upon matters of law. In *Attia v. Rigby,* this court held that "when the writ of certiorari is authorized by the statute, the authority of the court is not limited to jurisdiction and regularity. It has power to examine upon the merits every decision of the court or officer upon questions of law, and to look into the evidence and affirm, reverse, or quash the proceedings as justice shall require." (Lib. Ann. Series, No. 1, p. 15 and authority therein cited.)

The wisdom of the rule is forcibly demonstrated by the facts in

the case at bar. Here palpable injustice would be done the subjects of a friendly State, and they subjected, perhaps, to substantial, material loss, if it were not permissible for us to look into the evidence with the object of ascertaining whether the allegation set forth in the complaint had been substantially proven.

Looking into the evidence, which we hold to be our right and duty to do, we have been unable to discover any evidence upon which the judgment of the court below is predicated. The evidence for both sides shows conclusively that the petitioners, or one of them, had been wrongfully and unlawfully dispossessed of certain property by certain of the Sasstown people, and that he appealed to the officer of the Liberian Police Force stationed in that section, for redress. That officer may, or may not, have had authority to act in the premises; or, granting that he had authority, he may have exceeded the bounds of law and justice in the amount of the fine imposed or the means adopted to enforce its payment. If he acted under color of his office and by virtue of authority growing out of his office, he would become responsible for any abuse of his authority and for an unlawful injury which arose from such act or acts. But by no process of reasoning can we see that petitioners could be held responsible for the misdoing of an arm of the public service.

The high-handedness of this arm of the public service and its maltreatment of the natives of this Republic, as is borne out in evidence adduced at the trial of the case at bar, have become matters of public notoriety and alarm, as insidiously undermining the liberties and security of the people, and demanding the energetic action of the proper authority to repress, and stamp out, such iniquitous and disgraceful conduct. The uncivilized portion of our population have the same rights before the law, and the inviolability of their property and persons is as much guaranteed by the organic law as is secured to the civilized element by that compact. Our courts must, therefore, look with a repressive frown upon all attempts to invade the sacred rights of that class as much as other classes of our citizenship, or, at the attempts to exploit them for personal and unlawful purposes.

The record in this case, discloses an attempt to fix the responsibility for the outrageous acts charged upon innocent shoulders

while apparently screening—certainly permitting—the actual wrongdoers to go unpunished. The court cannot countenance such an evasion of law and duty, nor lend its aid to punish in the least degree innocent persons for the wrongdoings of one of the arms of public service.

In view of the foregoing observations we are of the opinion that the judgment of the court below is erroneous and should be reversed, and it is hereby so ordered.

Arthur Barclay, for petitioners in certiorari.

Edwin Barclay, Attorney General, for respondents.

CASSIUS ERNEST, Appellant, *v.* J. J. McFOY, Appellee.

HEARD APRIL 8, 1918. DECIDED APRIL 24, 1918.

Dossen, C. J., and Johnson, J.

1. The statute law with respect to the payment of costs on the amendment and withdrawal of complaints, does not apply to the whole case; for by such withdrawal, the case being withdrawn from its jurisdiction, the court has no power to award costs.
2. When, however, a case is withdrawn and re-entered, the court may make the payment of the first costs a condition for hearing the case.
3. A failure to pay such costs, before re-entering the case is not legal ground for dismissing the action. The costs may be paid *nunc pro tunc.*
4. A mistake in the date or term is not legal ground for dismissing the case. The mistake may be corrected at any stage of the trial.

Judgment reversed.

Mr. Justice Johnson delivered the opinion of the court:

Debt. This was an action of debt brought in the Monthly and Probate Court of Montserrado County, by Cassius Ernest, plaintiff in the court below, now appellant against said appellee.

It appears from the records that appellant originally filed a complaint in said court, and obtained a writ of summons against said appellee who filed his formal appearance; whereupon appellant withdrew the case and entered a new action starting with writs of attachment and arrest.

The appellee in his answer raised several pleas in abatement, to wit:

1. That the appellant did not give him notice of the withdrawal of the original suit.