DECISIONS AND OPINIONS

OF THE

SUPREME COURT

OF THE

REPUBLIC OF LIBERIA.

NOVEMBER TERM, A. D. 1919.

In *re* J. K. P. BASSIL, Justice of the Peace for Sinoe County, and GEORGE HANSFORD, Constable for Sinoe County, Respondents.

HEARD NOVEMBER 25, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. A writ of mandamus may be issued against any person invested with judicial or ministerial functions.
2. In Liberia authority to issue the writ of mandamus is expressly confined to the Supreme Court or to a justice thereof.
3. When a remedial writ is issued in vacation by any one of the justices of the Supreme Court in person it is not necessary that the seal of the Supreme Court should be impressed thereon.
4. Nor can it be legally contended that such a writ can not lawfully be served by a county or deputy marshal.
5. All persons are bound to obey a restraining writ from the moment they have notice that such a writ will be issued.

Mr. Justice Witherspoon delivered the opinion of the court:

Contempt—Disobedience to Writ of Mandamus. This matter of contempt grows out of, and is connected with, a writ of mandamus issued by Justice Witherspoon out of his chambers on the application of Charles Hall, alias Cordrue, petitioner, on the fifth day of November, A. D. 1917. The said petitioner alleged in his petition praying for the writ that he had been adjudged guilty by the aforesaid J. K. P. Bassil, justice of the peace as aforesaid, in an action of detinue in which he was defendant and one Kigor was plaintiff. That he was dissatisfied with the judgment rendered against him,

and presented his bond for an appeal to the Circuit Court, third judicial circuit, Sinoe County, at its November term, A. D. 1917, as provided by law, and that the said J. K. P. Bassil, justice of the peace, refused to grant him said appeal. Whereupon, the said writ was issued commanding the said J. K. P. Bassil, justice of the peace, to proceed immediately to do all things necessary to effect the said appeal, or show cause for not so doing at the November term of the Supreme Court, A. D. 1917, in the City of Monrovia. On the 7th day of November the writ of mandamus was served on the defendant, and on the 8th, Constable Hansford aforesaid arrested Charles Hall under a writ of execution issued by J. K. P. Bassil, the justice of the peace aforesaid. This act having been committed in direct disobedience to the writ of mandamus issued out of chambers by a justice of this court, by force of which the said respondent was restrained from enforcing his judgment pending final action upon the said mandamus, the issuance of the said execution, in the face of the same mandamus, was held to be a contempt to the authority of this court and a citation was immediately issued out of chambers by the justice before whom the matter was pending requiring the said respondents to appear before him to show cause why they should not be punished for contempt. After hearing the defense of the respondents and the justice being satisfied that the disobedience to the said writ of mandamus was flagrant and intentional, an order was by him made requiring the said respondents to appear before this court *in banco* at its November term, A. D. 1917, to answer for contempt to its mandate. This the respondents failed to do, whereupon, an order was made by this court at its last session for a writ of arrest to issue against the respondents to compel their presence at the present session of the court. It is upon this writ of arrest that Bassil, one of the respondents, is now before us.

In the return made to the mandate by Justice of the Peace Bassil the legality of the proceedings before the justice in chambers is contested and the following objections raised thereto, namely:

> 1. "Respondent says that although judges of constitutional courts may issue remedial writs and hold parties in contempt for disobedience to same, yet said order granting any of the remedial writs should be filed in the office of the clerk of this court and the writ issued by him bearing the seal of this court which in this case was not done."

2. "That the marshal is the ministerial officer of the Honorable Supreme Court. That said writ should have been directed to him, and by him to the deputy marshal for service. Hence the service of the writ by the marshal of Sinoe County upon respondent is not in keeping with the principles of law," etc.

This contention was maintained by counsel for respondent in his argument before us, who further contended that the acts of justices of the peace are reviewable by the Circuit Court only, and not directly cognizable before this court so as to warrant the issuance of a mandamus by a justice of a court to compel a justice of the peace to do or not to do a particular thing. That these contentions are absolutely unsound in law, we feel no hesitancy in asserting, and we now proceed to consider them seriatim and pass upon their legal merits. "A mandamus," says Mr. Blackstone, "issues to the judges of *any inferior* court, commanding them to do justice according to the powers of their office whenever the same is delayed, for it is the peculiar business of the King's bench (which answers to the Supreme Court in Liberia), to supervise all inferior tribunals and therein to enforce the due exercise of those judicial or ministerial powers with which the crown or legislature has invested them, and this is not only by restraining their exercise but also by quickening their negligence and obviating the denial of justice." (See Bl. Com., p. 110.) The writ of mandamus may be issued against any person invested with judicial or ministerial functions. In Liberia the authority to issue this writ is expressly confined to the Supreme Court and the justices thereof during the recess of the court. No other court or judge has power to issue this prerogative writ and therefore the position assumed by the counsellor for respondent with respect to the power of the Circuit Court to award the relief prayed for in the petition of Charles Hall alias Cordrue, through the office of the writ of mandamus is at once untenable.

The Act of the Legislature of Liberia approved January, 1875, entitled "An Act reorganizing the Supreme Court of the Republic of Liberia" seems to have been passed for the purpose of relieving circumstances of the very nature which at common law the writ of mandamus and other remedial writs were instituted to meet. The Act referred to confers upon this court all the powers of the Supreme Court of the United States of America with respect to the

issuance of remedial writs and which are founded upon the common law. The fifth section of the Act reads: "Upon satisfactory application to the Chief Justice or either of the Associate Justices during the recess of the Supreme Court it shall be lawful for either of them to issue such writs or processes as are issued in the common law and practice of the Supreme Court of the United States of America or order the same to be issued from the clerk's office."

There can be no question as to whether a writ of mandamus is one known to the common law and comprehended by the statute above cited.

Bouvier defines it to be, "a high prerogative writ usually issuing out of the highest court of general jurisdiction in a state in the name of the sovereignty directed to any natural person or corporation, or inferior court of judicature within its jurisdiction requiring them to do some particular thing."

The writ says he, "is a common law writ with which equity has nothing to do." This definition is in harmony with that of Blackstone which we have cited, and other writers on the common law, and with the opinions handed down by this court of record; and, the contention that a mandamus is issuable only to courts of record will, from the above citations, be found to be without legal foundation. "This court has only to be satisfactorily informed that justice is improperly refused, withheld or neglected by one having jurisdiction and it is bound to issue its writs." (Shortt on Informations, p. 310.)

In the proceedings for contempt against Judge J. J. Cheeseman, decided by this court at its January term, 1887, this court in deciding the objection raised to the issuance of a remedial writ by a justice of this court, held that: "it is not necessary that any writ or process whatever, issued under the authority of law by either of the justices of the Supreme Court in the recess of the court and bearing the official signature of the justice who issued it should have the seal of the court on it to make it valid and of force in law, because it is reasonable to suppose that neither of the justices would, or could carry with him the seal of the court out of the clerk's office where it properly belongs so that the impress may be affixed upon writs and other processes issued by them." (I Lib. L. R. 209.) We confirm this opinion which completely over-

throws the objection of the respondents raised to the issuance of the aforesaid mandamus by a justice of this court.

We come now to consider the third and last objection to the process, as relates to the service of the mandamus by the deputy marshal of Sinoe County. There can be no question as to the legality of the service of a writ of mandamus or other process issued by a justice of this court out of term time by a county or deputy marshal. The Act approved January, 1875, cited above provides: "That all writs or processes issued under the provision of this law shall be directed to the marshal, but may be handed to or served by any county marshal or deputy in the Republic." We can not perceive any conflict between this statute and the decision of this court in the case of J. J. Cheeseman above cited on the question of the proper and legal service of writs and processes issued by justices of this court.

We have given our careful attention to the argument advanced by counsel for respondent in mitigation of the offense by endeavoring to persuade the court that it was not the intention of respondent Bassil to disobey the mandamus. But we have failed to discover the grounds on which said proposition is based. It is a maxim in law that a man is presumed to have intended the natural and probable consequences of his own acts. After comparing the return by the respondent to the mandamus with that made by the deputy marshal who served the writ, and the attempt to enforce the judgment which the mandamus was issued to restrain after notice of its issuance by an execution issued thereupon, we arrive at no other conclusion than that the disobedience was intentional and wilful, and done for the purpose of assailing the authority of the justice of this court who issued the mandamus.

In the case *In re Moore,* for contempt in disobeying a writ issued by a justice of this court decided at the January term, 1913, we went into an exhaustive exposition of the law relating to contempts to constitutional courts, and of the circumstances from which this court may infer that a contempt was flagrant and intentional.

We reaffirm our opinion handed down in that proceeding, "That obedience to a restraining writ, whether it is a writ of injunction or otherwise, commences from the time a party charged with contempt had knowledge that the writ would be issued." In this case

the respondent not only had knowledge that the writ would be issued, but in the face of its actual service upon him he sought to enforce his judgment by issuing and placing in the hands of Constable Hansford execution upon the judgment in question. This we hold was a flagrant contempt both to the authority, prerogative and power of this court as well as to the justice who issued the writ.

There is a tendency in certain quarters to ignore the power of the courts and to propagate the spirit of insubordination and contempt for the authority of the judicial arm of the Government. Such a tendency is a threat to the security of our political society and must be frowned upon by the courts and lovers of law and order. If the judicial power of the State is weakened, if there is no respect for the writs and precepts of the courts, if the mandates of the highest tribunal in the land may be ignored and treated with contempt by subordinates, then what, we ask, will become of the State or of our political society? That such disrespect on the part of an inferior court or person clothed with judicial powers may not go unpunished, courts of justice have inherent or statutory powers to punish all such offenders by fine or imprisonment or both, which power in the case of constitutional courts can not be restricted by statutory enactments.

The right to compel respect for, and obedience to, the mandates and authority of the court, and to punish those that offer contempt to that authority is inherent in this court as a constitutional court. Its actions in such cases are unreviewable and irrevocable by any other branch or department of the Government. If this was not the case its mandates would depend upon the sanction and approval of some other power to give them force and effect which would destroy the constitutional idea of this court, being the head of one of the co-ordinate branches of the Government. During its whole history there has never arisen any issue as to whether punishment for contempt to its authority is subjected to the pardoning power of the Executive, but on the contrary its authority in this respect has been always regarded as final and absolute. The impression therefore which seems to be gaining ground in certain localities, that the writs and mandates of this court or any justice thereof may be disobeyed and treated with contempt and the party so offending may escape punishment through the exercise of cer-

tain influence is erroneous and mischievous. Obviously respondents had had some such impression, and, this we are of opinion accounts for their attitude towards both Justice Witherspoon and the Bench.

Viewing the matter from every angle, the action of respondent Bassil appears to us to be contemptuous and glaringly reprehensible. But there are some extenuating circumstances surrounding the case which has influenced us not to both fine and imprison him, as we have power to do. He is therefore fined fifty dollars ($50.00), which fine he must pay within thirty days and the costs incurred in these proceedings which he must pay forthwith.

The appearance bond of Constable Hansford is ordered estreated, and execution ordered to issued thereupon, and the clerk is hereby ordered to issue forthwith another writ of arrest compelling his appearance before this court at its present session. The mandamus is hereby made absolute. And it is hereby so ordered.

C. B. Dunbar, for respondent.

E. A. L. McCAULEY, Appellant, *v.* Z. B. BROWN for his wife, Laura E. Brown, Appellee.

ARGUED NOVEMBER 26, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. This court will not dispose of cases on mere technicalities. In an action brought up on book account the plaintiff is not confined only to the books of the business to prove his case; he may resort to other legal evidence also.
2. Where a husband allows his wife to do business for another knowingly and permits same to be carried on in his house and he enjoys the fruits of same, he is estopped from setting up that the business is without his consent and contrary to law.
3. Where the demurrers raised in defendant's answer are ruled out by the trial judge, and it does not appear that the defendant denies the debt, the court should find for the plaintiff.

Mr. Justice Witherspoon delivered the opinion of the court:

Debt—Appeal from Judgment. This case is here on appeal from the Circuit Court, third judicial circuit, Sinoe County, where it was appealed from J. F. Russ, a justice of the peace for Sinoe County.

The appellee, defendant below, demurred to the complaint of