CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT THE

OCTOBER TERM, 1988

JAMES TOGBA, Appellant/Petitioner, *v.* REPUBLIC OF LIBERIA, Appellee/Respondent.

Heard: October 11, 1988. Decided: December 29, 1988.

1. It is necessary to a valid verdict that the findings be unanimous, and the conclusion voluntary.
2. The law prohibits anyone from outside the empaneled jury from assisting a jury to reach a verdict.
3. Where threats or other influences have been employed by one ground for awarding a new trial; where a new trial under such circumstances is refused by the trial court, the appellate court will correct the error of the lower court by reversing the judgment.
4. Prohibition will lie to give relief whenever a subordinate court proceeds with the hearing of a case in a manner which is contrary to known and accepted practice, and is a violation of proper and ethical procedures.
5. The law vests courts of justice with the authority to discharge a jury from giving any verdict, whenever in their opinion, taking all the circumstances into consideration, the ends of public justice would otherwise be defeated; however this authority must be exercised with great caution, especially in capital cases.
6. Prohibition addresses the reviewability of an order of a lower court.
7. Prohibition prevents the lower court from exercising jurisdiction over matters not within its purview; prohibition will be granted where great injustice and irreparable injury may result; prohibition is granted to perfect the administration of justice and for the control of subordinate functionaries and authorities; prohibition is granted to prevent arbitrariness, usurpation, or improper assumption

of jurisdiction on the part of an inferior tribunal.

8. Prohibition is granted to prevent some great outrage upon settled principles of law and procedure, where damages, wrong and injustice are likely to follow such action; prohibition is one of the chief media by which superior courts exercise the constitutional or statutory powers granted to such courts in superintending control over inferior courts.
9. It is important to the due and regular administration of justice that each tribunal should confine itself to those constitutional and statutory powers granted them.
10. Prohibition should not be governed by narrow technical rules. The scope of the remedy should not be abridged, as it is better to prevent the exercise of an unauthorized power than to be compelled by necessity to correct the error after it is committed.
11. Where it is apparent that the rights of a party litigant cannot be adequately protected by another remedy, a writ of prohibition will be granted.
12. Unless the availability of another remedy is plain, speedy and absolute under the circumstances of a particular case, the mere existence and availability of another remedy is not necessarily sufficient to warrant denial of a writ of prohibition.
13. Usurpation of power by the trial judge may be restrained by prohibition without regard to the nature or extent of the injury wrought by the illegal action of the judge; it is immaterial whether the injury is great or small or the right disturbed is constitutional or statutory or common law.
14. Where a person is found *not guilty*, the right to review by appeal or error may not be invoked.
15. The fact that the rights of the defendant to the action are involved may offer additional ground for issuing a writ of prohibition, even where a remedy by appeal might be prosecuted with success.
16. Imprisonment of jurors is a contravention of their constitutional rights.
17. A request for a new trial cannot ordinarily be granted on the application of the prosecution or upon the court's own initiative after jeopardy has attached and the accused has been tried and acquitted.
18. Under the statutes, the right to a new trial is reserved to a defendant who has been convicted of either a felony or misdemeanor.
19. Prohibition will lie to prevent the carrying out of a void order of an inferior tribunal.
20. Prohibition will issue and prevent a lower court from continuing to act after it or the trial judge has lost jurisdiction or been divested of jurisdiction by lapse of the time within which it is statutorily permitted d to act.
21. Where a petition for a writ of prohibition has unequivocally shown every fact required to justify its issuance, that the allegations contained therein are clear and distinct, that the facts are not presumed, and the petition is not defective, the writ will be granted.
22. Prohibition will lie to grant relief to a party by undoing that which has been unlawfully done.

The appellant was indicted and tried for murder. Following the trial, the jury brought a verdict of not guilty. The prosecutor excepted to the verdict on the grounds that the jurors were contaminated and tampered with. The trial judge set aside the verdict and ordered the imprisonment of the jurors and the

continued imprisonment of appellant. Appellant petitioned the Chambers Justice for a writ of prohibition, which the Justice denied on the grounds that the trial judge had acted properly in disbanding the jury accused of misconduct, even though the jury had rendered its verdict, as well as in ordering a new trial. On appeal to the Supreme Court *en banc*, the Court held that the trial judge had acted outside his jurisdictional authority and thus prohibition would lie to prevent injustice. The Court further ordered the appellant discharged from answering to the charge of murder. Accordingly, the ruling of the Chambers Justice was reversed.

S. Bona Sagbe for appellant/petitioner. *McDonald J. Krakue* for appellee/respondent.

MR. JUSTICE AZANGO delivered the opinion of the court.

The posture of this case is as follows:

Appellant/petitioner in the above entitled cause of action petitioned the Justice in Chambers for the issuance of an alternative writ of prohibition against the respondents and enumerated the following facts:

1. That he was charged with the heinous crime of murder.
2. That after trial of the case, the empaneled jurors brought in his favor a verdict of *not guilty*.
3. That the Bong County Attorney excepted to the verdict on grounds that the jurors were contaminated and tampered with.
4. That in consequence of this fact, the trial judge committed the defendant/petitioner and the twelve (12) jurors into the common jail at Gbarnga City, Bong County.
5. That the trial judge was not within the pale of the law and was against the rules and proceedings which ought to be followed at all times.
6. That the jurors were kept in the common jail at Gbarnga City, Bong County, from the 11th day of June, A. D. 1986. To the 14th day of June A. D. 1986
7. That the trial judge adopted rules and procedure quite

contrary to law and arbitrarily set aside the verdict of the empaneled jurors that the said petitioner was not guilty of the charge of murder.

8. That the act of the trial judge was not only out of his jurisdiction to do so, but was adopting rules and procedures absolutely strange to all trials in the jurisdiction, hence committed reversible errors.
9. That even though he (petitioner) was acquitted by the trial jurors upon valid verdict, yet the judge has him still languishing in the common jail at Gbarnga City in the foot, handcuffs and placed in close confinement.
10. That petitioner has not petitioned this Honorable Court for the mere purpose of delay baffling of justice, and trial of the case.
11. That in view of the urgency based upon the present condition of petitioner, as he is being continuously detained and starved in jail, he prayed for release pending the hearing of the petition. (*See* petition for writ of prohibition.)

Upon the service of the writ of prohibition and copy of the petition on respondents to appear before court to show cause why the peremptory writ should not be issued, the Republic appeared and submitted the following returns:

1. Respondents admit that petitioner was charged with the heinous crime of murder, upon presentment of a true bill and indictment by the grand jury of Bong County.
2. That the trial judge did not err when he imprisoned the jury as a punitive action taken against them for being contaminated in respect of the *not guilty* verdict in the favor of the defendant/petitioner.
3. That this act of the judge was in the pale of the law.
4. That the writ of prohibition will not be granted where the lower court and or the presiding judge neither exceeded his jurisdiction nor proceeded by wrong rules.
5. That the disbandment of the jury and the new trial of the case ordered by the judge was grounded upon manifest necessity, duly established through investigation by the court.
6. That a new trial of the cause of action having been ordered

by the presiding judge, petitioner was remanded to the common jail of Bong County pending the new trial affecting him.

7. That the fact a new trial had been ordered and the petitioner remanded to prison, a writ of prohibition will not lie to prohibit an act already completed.
8. That the averment made by the prisoner in court should not be entertained and his request for release from prison be denied.
9. Respondents denied all and singular the allegations of facts as are contained in the petitioner's petition together with the law which have not been made subjects of special traverse. (*See* minutes of court).

Hearing and arguments were held before our distinguished colleague, His Honour J. D. Baryogar Junius who, after careful consideration of the issues presented before him ruled, *inter alia*:

"From a careful perusal of the records, we see that the jury was disband the verdict set aside and new trial awarded. Moreover, the trial judge, His Honour J. Henrique Pearson is no longer in jurisdiction.

In support of their argument respondents cited us to *Republic* v. *Dillon,* 15 LLR 119 (1962), which held that if disbandment of jury in a criminal case is grounded upon *manifest necessity* duly established through investigation by the court, a new trial may be properly ordered. The records revealed that the empaneled jurors were warned from discussing the case on which they were sitting, outside of their deliberation room.

When the allegation was made by the county attorney of Bong County that the jury was contaminated and tampered with, His Honour Judge Pearson made the following inquiry:

"The Court: 'Madam Foreman, you have heard what the county attorney has said about your panel, that your verdict was influenced by someone, which is contrary to your oath. What do you have to say?'"

Jury Foreman: "If he can bring somebody to prove it then we are ready. "

The Court. "Are you speaking for all the members of the jury? "

Jury Foreman: "Yes".

An investigation was held and it was proven during the investigation by Jonathan F. Harris that the case was discussed outside of the jury's deliberation room and that he personally recognized the foreman as being one of the empaneled jurors who was discussing the case.

It is our candid view that the trial judge acted correctly by holding an investigation thereafter disbanding the empaneled jury, and awarding a new trial. There is absolutely no valid reason or ground for the writ prayed for to issue. Prohibition will not lie where it is not shown that the lower court has exceeded its jurisdiction or where nothing remains to be done. *Richards* v. *Parker et al.*, 11 LLR 396 (1954). Moreover, the jury has been disbanded and a new trial awarded based upon the investigation which found that the empaneled jury was guilty of misconduct. Criminal Procedure Law, Rev. Code 2:22.1(2)(e).

In view of the foregoing, the petition is hereby denied. The Clerk of this Court is ordered to send a mandate to the lower court in keeping with this ruling. And it is so ordered."

To this ruling, petitioner's counsel being dissatisfied, entered exceptions thereto, and has fled before us for review, final determination and relief.

When this case was called for hearing and determination thereof, the prosecution argued and maintained that there was no reversible error committed when the trial judge disbanded the jury and awarded a new trial, after having held an investigation into the alleged misconduct of the foreman of the jury. According to the prosecution, the fact that a new trial had been awarded and the trial judge had lost jurisdiction over the case, prohibition will not lie when nothing remained to be done. The government argued that this is the case even when it has been established that the lower court exceeded its jurisdiction.

The State relied on and cited this Court to *Richard* v. *Parker et al.* 11 LLR 396 (1954); *Republic* v. *Dillon*, 15 LLR 119 (1962); *Sinoe* v. *Nimley*, 16 LLR 152 (1965); *Coleman et al. v.*

Cooper et al., 12 LLR 226 (1955); *Jones et al. v. Dennis*, 8 LLR 342, 346 (1944); *Andrews et al.* v. *Gardner & Gardner*, 10 LLR 389 (1951).

The prosecution also argued and maintained that according to *Republic* v. *Dillon*, 15 LLR 119 (1962), "where manifest necessity for disbandment of a jury in a criminal case, consists of excuse of juror for illness, the trial court must establish the existence of such necessity by investigation, including consideration of medical evidence as to the nature of such illness." They contended that the trial judge in this case was right in granting the prosecution's motion for new trial because of *manifest necessity* duly established during the investigation by court, and therefore respondent judge did not exceed his jurisdiction or proceeded by "wrong rules" as petitioner claims.

The state maintained further, that if co-respondent judge had not closed the case and then went on with the investigation, then petitioner would have resorted to prohibition before this Honorable Court anyway; but the judge closed the matter and ordered an investigation to be conducted, and for this reason, prohibition will not lie. The prosecution re-emphasized that it had proven, through the investigation, that the jurors had discussed the case outside the courtroom, and that the facts from the investigation also proved that the jury was tampered with. The state further argued that the petitioner was being fed with the necessary "suitable food" daily as other inmates of the prison, and for these reasons, the petition should be dismissed.

The prosecution seemed to have been confused in applying the *Williams* v. *Lewis*, 1 LLR 229 (1890) to the facts in the instant case. For in that case , it is provided that where a jury allows one outside of its panel to assist in making up its verdict, it is an irregularity which is good ground for a new trial, and where a new trial is refused, and judgment is rendered on such verdict, it would be sufficient reason for reversal of said judgment. But in the instant case, an investigation was conducted by the trial judge as to the alleged misconduct of the twelve empaneled jury after the closing of the case, according to petitioner's counsel. This fact was substantiated on page 3 of the Court's minutes, where witness Johnson said: "I overheard a

group of people saying, 'beat the person, why should they hold one person, why should they hold one person'". In addition to this, he was able to identify the foreman of the jury as being among the persons involved. We hold that the issue is not how much influence such discussion may have had on the verdict; neither is it the extent of the influence and discussion on the verdict, but our concern is whether or not the jury had violated the law of the land which prohibits anyone outside of the panel from assist it in the making the verdict. There is no evidence showing that anyone assisted the jurors in arriving at their unanimous verdict of not guilty in favor of the defendant. Moreover, in the case *Johns* v. *Republic,* 1 LLR 240 (1992), this Court held that "until a verdict is rendered, the jury should be kept together and should not converse with any person except their fellows upon the case submitted to them."

It is necessary to a valid verdict that the findings be unanimous and the conclusion voluntary, as was in the instant case. It is true according to our law that where threats or other influences have been employed by one juryman to induce another to agree with him it is good ground for awarding a new trial and where a new trial under such circumstances has been refused, the appellate court will correct the error of the lower court by reversing judgment. But this happens not to be the case proven here. We feel, as earlier indicated, that the case of *Williams* v. *Republic* has been misapplied here. In that case, the investigation was held before the jury was disbanded, and no member of the jury was imprisoned. But in the instant case, the investigation was conducted after the jurors were disbanded. The two cases are incompatible and irreconcilable. We hold that prohibition will lie to give relief whenever a subordinate court proceeds with the hearing of a case in a manner which is contrary to known and accepted practices in violation of proper and ethical procedures.

Additionally, petitioner indicated that after the jury had presented their verdict of *not guilty* in favor of petitioner and were polled they asserted and confirmed that the verdict was their unanimous verdict, then and there the defense counsel requested the trial judge to record the verdict as brought by the jury but the judge erroneously refused to do so and, instead,

permitted the county attorney of Bong County to except to the verdict on the ground that the jury was tempered with. The petitioner therefore contends that the trial judge, intimidated, harassed and embarrassed the trial jury to change their verdict. He argued that because of their refusal to do so, the judge ordered the clerk of court to issue a commitment of the twelve (12) jurors to the common jail at Gbarnga City from the 11th day of June, A. D. 1986, to the 14th day of June, A.. D. 1986, and accordingly remanded the appellant/petitioner to prison without any prior investigation prior to their imprisonment, due to the fact they did not bring a verdict of guilty against the appellant, as he had expected. According to the defense counsel, prohibition will lie to undo the unlawful and illegal act of an inferior court. He also argued that the post trial motion for new trial is to be enjoyed by the defendant who loses the case and not the state. He asserted that the act of the trial judge should be declared unlawful and illegal for the reason that in the trial of a capital offense, petitioner was prejudiced by remanding him to prison after a unanimous verdict of *not guilty* was brought in his favor, and to jail the jury for their opinion was a flagrant disregard of the law and a mockery.

Appellant/petitioner's counsel argued that in spite of the submission of these legal contentions before the Chambers Justice, the petition for prohibition was denied. The counsel maintained that manifest necessity did not exist at the trial to have warranted the trial judge to grant a new trial. Additionally, petitioner's counsel contended and argued that when the trial was going on the prosecution (The county attorney for Bong County) assigned a police officer to the empaneled jurors just to intimidate them to change their minds about what they would deliberate. He further argued that during the investigation the prosecution brought one policeman by the name of Johnson F. Harris whom they said was present when the jurors were discussing the case outside the courtroom. He stated that in an attempt to answer a question posed to the said witness by the prosecution, petitioner's counsel objected to same, but said objection was overruled by the co-respondent trial judge.

Turning now away from the arguments to the issues as are

presented, we deem it expedient to pose the following questions and to obtain answers:

1. Was it legal and lawful for the county attorney for Bong County, after the jury had returned a verdict of *not guilty* in favor of petitioner, to move the court to set aside the verdict and award a new trial alleging that the jury had been contaminated and tampered with, and the trial judge thereafter ordering the detention of the entire panel of jurors, in jail from the 11th to the 14th day of June, A. D. 1986?
2. Was the alleged investigation into the misconduct of the jury conducted at the proper time? In other words, was it timely and was it conducted before the jurors were disbanded?
3. By granting a new trial and re-docketing the case to be retried at a subsequent term of the court below, did it not pre-suppose that there was yet something to be done?
4. At whose instance in a criminal case is a motion for new trial prayed for and under what law?
5. Was there a *manifest necessity* available in this case considering the prevailing circumstance?

As earlier stated in this opinion, our distinguished colleague must have been so persuaded and convinced by the eloquent argument of the prosecution on the question of *manifest necessity* and the conduct of investigation after disbandment of the empaneled jurors, that in his ruling, he concluded:

1. That because the jurors had been disbanded, the verdict was set aside and a new trial awarded;
2. That the empaneled jury was warned from discussing the case on which they were sitting outside of their deliberating room;
3. That His Honour J. Henrique Pearson was no longer in jurisdiction;
4. That the jury was contaminated and tampered with;
5. That an investigation was held and it was proven during the said investigation by Johnson F. Harris that the case was discussed outside of the jury deliberating room and that he (Johnson F. Harris) recognized the foreman as

one of those engaged in the discussion.

6. That the trial judge acted correctly by holding an investigation after the return of the verdict, and thereafter disbanding the empaneled jury and awarding a new trial;
7. That there was absolutely no valid reason to grant the writ prayed for;
8. That prohibition will not lie where it is shown that the lower court was not exceeding its jurisdiction, and wherein nothing remained to be done; and
9. That the jurors were disbanded and a new trial awarded based upon the investigation that was held after the jurors were disbanded, and that the jurors were guilty of misconduct.

Because we do not agree with the reasons and conclusions given in the Chamber Justice's ruling, we have decided to opine in the discussed manner herein after.

Apart from the inapplicability of the legal authorities on which the prosecution has relied in the instant case, we are aware that this Court held in the case *Republic v. Dillon,* 15 LLR 119 (1962), that in a criminal prosecution "where the trial court disbanded a jury which heard testimony of witnesses for the state, and *manifest necessity* for such disbandment was not duly established, the defendant cannot thereafter be tried for the same offense."

Speaking of *manifest necessity*, we cannot sustain that contention of the prosecution, neither can we confirm the position taken by the trial judge and our distinguished colleague, for no juror was sick or experienced other physical disqualifications which impaired or otherwise made such juror unfit to warrant application of the principle of manifest necessity. We would like to remark that the inhibition of our Constitution against subjecting a defendant to a second trial for the same offense demands the exercise of discretion by trial judges. In the instant case, the prosecution's position is that there was no reversible error committed when the trial judge disbanded the jury and awarded a new trial, after having held an investigation into the alleged misconduct of the foreman of the jury. The prosecution has also maintained the position that the trial judge

has lost jurisdiction over the case, therefore prohibition will not lie because nothing remains to be done. According to the prosecution, this position is also true even where the judges, still having jurisdiction, has not exceeded his jurisdiction.

We say that the interest and rights of the appellant/petitioner have not only been prejudiced and his acquittal frustrated, but the actions of the trial judge have served as infringements upon his constitutional rights and privileges.

Whilst we hold that in all cases of this nature, the law vests courts of justice with the authority to discharge a jury from giving any verdict, whenever in their opinion, taking all the circumstances into consideration, the ends of public justice would otherwise be defeated, judges are to exercise a sound discretion when acting on this authority. They must be sure they use such powers with the greatest caution, under urgent circumstances, and for very plain and obvious causes. In capital cases especially, judges of court should be extremely careful how they interfere with any chance of life in favor of the prisoners.

Speaking also of the prerogative of the writ of prohibition, we wish to remind judges that it is the weight of legal authorities that prohibition concerns itself with the reviewability of an order, as in the instant case where the trial judge remanded the prisoner to jail after investigation or judgment dismissing the petition for the writ. Prohibition prevents judicial powers from exercising jurisdiction over matters not within their purview; prohibition will also be granted where great injustice and irreparable injury may result. It is granted to perfect the administration of Justice, and for the control of subordinate functionaries and authorities. It is granted to prevent arbitrariness, usurpation, or improper assumption of jurisdiction on the part of an inferior tribunal.

Prohibition is granted to prevent some great outrage upon settled principles of law and procedure, in cases where wrong, damage, and injustice are likely to follow such action. It is one of the chief media by which superior courts exercise the constitutional or statutory powers granted to such courts in superintending control over inferior courts.

The weight of authority hold "in a proper case, such as the case at bar, the use of the writ of prohibition should be upheld

and encouraged, as it is important to the due and regular administration of justice that each tribunal should confine itself to the exercise of those powers with which it has been entrusted under the Constitution and laws of the Republic of Liberia". Prohibition should not be governed by narrow technical rules, but should be resorted to as a convenient means of exercising a wholesome control over inferior tribunals. The scope of the remedy of prohibition ought not to be abridged, as it is better to prevent the exercise of an unauthorized power than to be driven to the necessity of correcting the error after it is committed". 42 AM.. JUR., *Prohibition*, § 6. Furthermore, it has been held that "where an action or proceeding makes it apparent that the rights of a party litigant cannot be adequately protected by a remedy, other than through the exercise of this extraordinary jurisdiction, it is not only proper to grant the writ of prohibition, but that is should be granted". 42 AM. JUR., *Prohibition*, §8.

We are compelled to grant this writ of prohibition because the acts of the trial judge stand as a vexatious menace to the personal liberty of the petitioner who was acquitted by the empaneled jury of the charge of murder and, yet, remanded to jail together with the twelve (12) jurors.

The mere existence and availability of another remedy is not in itself necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy, and absolute in the circumstances of the particular case 42 AM. JUR., *Prohibition*, §9. None of the adequate remedies provided by law, such as the right to review by appeal or error, could not have been invoked under the circumstances when the prisoner was declared not guilty by the jurors. There was no appeal to perfect. The act of the trial judge was unauthorized and therefore void. Moreover, the fact that the rights of the defendant are involved may constitute an additional reason for issuing the writ of prohibition, although a remedy by appeal might be prosecuted with success. 42 AM. JUR., *Prohibition*, §10.

In the instant case, we wonder why the jurors were imprisoned in the common jail at Gbarnga City, Bong County, from the 11th of June to the 14th of June,1986. This was an infringement upon and a contravention of their constitutional rights

and privileges. In our view, the trial judge has transgressed the bounds prescribed to him by the law; and there was no adequate remedy available in the ordinary course of the law by which relief could be obtained. The act of the trial judge was an infraction of petitioner's personal rights. He assumed judicial power not authorized by law, and in excess of his jurisdiction. That is to say, he took judicial action without judicial power or authority for such action. This was a superficial authority the trial judge assumed when he imprisoned the defendant and the twelve (12) jurors. Therefore of this usurpation of power by the trial judge could be restrained by prohibition without regard to the nature or extent of the injury wrought by its exercise. Whether the infringement is great or small, or the right disturbed is constitutional, statutory, or common law, is immaterial.

We believe that prohibition will be the proper remedy against the lower court in this case because the court exceeded its power and acted in excess of its jurisdiction, and incidental to its action, it subjected appellant/petitioner to multitudinous prosecutions in such a way as to make its acts oppressive.

Morever, legal authorities have expressed the view that a request for a new trial cannot ordinarily be granted on the application of the prosecution, or upon the court's own initiative, after jeopardy has attached and the accused has been tried and acquitted. Statutes which authorized new trials under such circumstances on the application of the state have been held violative of the constitutional prohibition against the double jeopardy.

> "Subject to statutory provisions, one convicted of either a felony or a misdemeanor generally may make and have deter-mined a motion for a new trial. This is the right of the defendant. Where the accused is found not guilty, he has no right to a new trial". 23 C. J. S., §1420. We also wonder what error the prosecution was attempting to correct through its motion for new trial, when it had no right so to do.

Under to the Civil Procedure Law, Rev. Code 1:2.1, it is provided that:

"1. When a verdict has been rendered against the defendant, the

court on motion of the defendant may grant a new trial on any of the grounds specified in paragraph 2 of this section. When the defendant has been found guilty by the court, a motion for new trial may be granted only on the grounds of newly discovered evidence.

2. *Grounds*: The following shall constitute grounds for granting a new trial:
   a) That the jurors decided the verdict by lot or by any other means than a fair expression of opinion on the part of all the jurors.
   b) That the jurors received evidence out of court other than that resulting from a view of the premises.
   c) That a juror has been guilty of misconduct.
   d) That the verdict is contrary to the weight of the evidence.
   e) That the prosecuting attorney has been guilty of misconduct.
   f) That the court erred in the decision of any matter of law arising during the course of the trial.
   g) That the court misdirected the jury on a matter of law or refused to give a proper instruction which was requested by the defendant.
   h) That new and material evidence has been discovered which if introduced at the trial would probably have changed the verdict or finding of the court and which defendant could not with reasonable diligence have discovered and produced upon the trial.
   i) That for any cause not due to his own fault the defendant has not received a fair and impartial trial.

In the instant case, there was no motion by appellant/petitioner to dismiss the indictment against him, neither was there an order granting a motion for judgment by acquittal. One wonders, then, what could have justified the position taken by the trial judge to remand the prisoner to jail, after having been found *not guilty* of the charge of murder by the jury, and to permit the county attorney to enter exceptions to the verdict of the jury.

Petitioner has contended in counts 3 and 4 of his petition that the co-respondent judge adopted rules and procedures quite

contrary to law and arbitrarily set aside the unanimous verdict of the empaneled jury to the effect that he is not guilty. Petitioner maintains that it was not only out of the judge's jurisdiction to do so, but he was adopting rules and procedures absolutely strange to all trials in this jurisdiction, and would have caused him to languish in the common jail in Bong County in foot and handcuffs. Added to these acts, this Court says that the initiative of the trial judge to conduct an investigation after a verdict of *not guilty* was brought in favor of the appellant/petitioner, and to investigate alleged misconduct of the jury thereafter, was unlawful in that the court acted in excess of its jurisdiction. It was unlawful in the instant case because the investigation depended on the illegal insufficiency of the suggestion of the prosecuting attorney for Bong County. Hence, the writ of prohibition should issue to restrain the lower court. If something remained to be done under a void order prohibition will lie to prevent the doing of it. The writ will issue because the facts shown on the records disclosed that great and irreparable hardship has been sufficiently demonstrated in this case. The writ will issue because the illegal criminal misconduct contains only vague and general allegations that the jury were contaminated and tampered with, and tended to impeach the motives, purposes and good faith of the empaneled jury that brought in the verdict of not guilty in favor of appellant/petitioner. It is our view that the writ of prohibition will issue in the instant case because of its manifest, extreme, absolute, great unusual necessity, or great urgency and special emergency. The writ will issue and lie to prevent the lower court of Bong County from continuing to act after it, or the trial judge, had lost or been divested of jurisdiction as by lapse of the time within which it is permitted by statutes to act.

In as much as the petition for the writ of prohibition has unequivocally shown every requisite fact to justify its issuance, that the allegations are clear and distinct, and the facts are not presumed, and that the petition is not defective for failure to plead conclusions and unnecessary allegation to prejudice petitioner's right to relief, we hold that the ruling of the Chambers Justice, confirming and affirming the ruling of the trial judge, is

hereby reversed, and the writ of prohibition granted, and the appellant/petitioner ordered discharged from further custody, and from further answering to the charge of murder.

WHEREFORE, and in view of the facts, and in accordance with the law of prohibition, where something remains to be done by the court, prohibition will lie in such a case, not only to prevent what remains to be done by the court, but may give complete relief by undoing what has been done. And because the trial court exceeded its judicial authority, it is our holding that the petition has been properly applied for in consideration of the facts and circumstances apparent from the records. The said petition of prohibition should be and the same is hereby granted to all intents and purposes, and that the appellant/petitioner ordered discharged immediately from further answering the charge of murder.

The Clerk of this Court is hereby ordered to send a mandate to the Court below informing it of this judgment. And it is hereby so ordered.

Petitioner granted; defendant discharged.