BALLAH KARMO and WORHN-BEH, Appellants, *v.* JOHN L. MORRIS, Secretary of the Interior and Major John H. Anderson, Officer Commanding the Liberian Frontier Force, Appellees.

ARGUED APRIL 15, 1919. DECIDED MAY 2, 1919.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. Our membership in the family of nations imposes on the Government the duty of protecting the rights of citizens and aliens, and of promoting tranquility in the hinterland as much as any other part of the country whether such obligation has been formally assented to by the native tribes or not.
2. The Government of Liberia in extending its influence, and the right of sovereignty, over territories beyond the forty-mile limit as established in 1847 executed sundry conventions with the neighboring states which are regarded as evidence of the highest character of our extended jurisdiction, and impose on us the duty of extending our laws and policy over the hinterland tribes and of bringing the inhabitants under the influence of civilization.
3. Among other evidences of the extension of the sovereignty of this Republic over the hinterland are: the sending of political missions, and planting the flag in the hinterland; the taking of repressive military measures against refractory tribes; the suppression of the slave-trade and inter-tribal feuds; the appointment and commissioning of paramount, and sub-chiefs; the establishment of police authority and agencies under its patronage for the moral and educational betterment of the inhabitants.
4. Such acts as these destroy the proposition that there is a limitation put upon any of the three great departments of Government, or any of them, in exercising jurisdiction over the inhabitants of the Liberian hinterland.
5. The sovereign people of Liberia by one Act,—the Constitution, established at one and the same time the three great departments of Government which are not only co-ordinate and distinct but also as regards territorial jurisdiction, co-extensive.
6. The Legislature can only confer judicial power upon the courts, and whenever they attempt to transcend the limitations thus fixed by the Constitution such statute is not only voidable, but void *ab initio*.
7. According to the provisions of our Constitution the Supreme Court can have original jurisdiction in only three classes of cases, hence if the contention that the Circuit Courts hadn't original jurisdiction in crimes and misdemeanors arising within any part of our territorial domain and punishable under our laws the appellate jurisdiction of the Supreme Court could not reach those cases.
8. Even according to the wording of the Act of October 13, 1914 it is clear that it was not the intention of the Legislature to exclude from the jurisdiction of the courts those offenses occurring in the hinterland.
9. The whole of the judicial power of this Republic was vested in our courts and any attempt on the part of the Legislature to confer any of

said judicial power on any other department of Government is void because of its repugnance to the Constitution.

10. To arrest, take bail, imprison and hold in contempt are all judicial functions which no official of the executive department can legally exercise because of the constitutional inhibitions: "No person belonging to one of these great departments of the Government shall exercise any of the powers belonging to either of the others."

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

Habeas corpus—Appeal from Judgment. This case is before us upon an appeal from the judgment of the Circuit Court of the first judicial circuit, upon a petition in habeas corpus, adjudicated before said court in November, A. D. 1918.

The following is a synopsis of the facts disclosed by the records as constituting the grounds of the action:

On the 26th day of November, A. D. 1918, appellants who are native chiefs of the Todee and Ding sections of the Golah country, were by verbal orders emanating from the Interior Department of the Republic of Liberia, of which department John L. Morris, one of the appellees in this case was head, taken into custody of Major John H. Anderson, Officer Commanding the Liberian Frontier Force, the other appellee in the suit and imprisoned in the guard room of the Interior Department.

The ground for this proceeding was alleged to have been founded upon a theft committed in the settlement of White Plains by tribesmen of the said appellants, and, the stolen goods carried into the country of which they are chiefs. The record discloses no facts leading up to their complicity in the theft, but by force of what was termed "a policy established by the said Interior Department," said chiefs were held responsible to hand over to the department the culprits and stolen property, or the value thereof; it having been ascertained that the culprits were members of their tribe and that the stolen property had been carried into their country. It was alleged by appellees in their return that when the matter was first taken up before the Secretary of the Interior, appellants submitted to the rule of the department with respect to holding chiefs responsible for the acts of this character of their tribesmen, and executed a bond in favor of the department to pay the penalty for the theft charged. The said bond matured and upon appellants being required to fulfill its conditions they demurred to the legality of the procedure which had fixed the re-

sponsibility of the act charged upon their shoulders and refused to comply therewith. This information was conveyed to the Secretary of the Interior and, by force of a verbal order emanating from said official, appellants were arrested and taken into custody by the said Major John H. Anderson, one of the appellees, and imprisoned as aforesaid. A writ of habeas corpus was sued out against appellees in behalf of the said appellants, which directed that appellees should have the persons of the appellants before the court below on the day named in the said writ. Appellees failed to produce the appellants in court, as they were commanded to do and returned as their reason for such failure, that appellants were not "in their custody or control at the time of the service upon them of the said writ of habeas corpus, and, that they were unable to produce them in court as the writ commanded." Appellees made no denial of the fact of having actually held appellants in their custody and confinement, but sought to justify the imprisonment of one of the prisoners upon the ground that he acted contemptuously before the court "the court of the Secretary of the Interior," when called before it.

On the review of the writ of habeas corpus before the judge of the court below the constitutionality of the Act of the Legislature approved October 13th, 1914, which, it was contended, conferred judicial powers upon the Secretary of the Interior, who is a member of the executive department of Government, was questioned and the entire proceedings of that officer in the premises had under color, and by force of, said Act,—including the arrest of appellants, the taking of bail, the adjudication of the alleged contempt towards the so-called court of the Secretary of the Interior, and the punishment therefor, were attacked by the learned counsel for appellants on the ground, that these acts partook in their nature of judicial functions which the Legislature could not confer upon an official of the executive Government, because of the constitutional inhibition which separates the Government into three distinct coordinate branches, with functions separate and distinct from each other. The judge of the lower court was asked to recognize this fundamental principle in the Constitution, and, to declare the proceedings and the statute upon which they were founded, in conflict with the organic law. The judge of the court below in his decree went fully into the subject and in the first part of same

appears to have had no doubt as to the correctness of the principle, as insisted upon by the counsel for the appellants with respect to the constitutional prohibition to the exercise of judicial functions by an officer of the executive Government; but in his conclusions he upheld the Act in question which conferred such powers upon the Secretary of the Interior, who is a member of the said executive department of the Government, and held the proceedings in the premises to be legal and ordered the writ abated with costs for appellee. In his argument before us counsel for appellants suggested that undue and improper pressure may have been brought to bear upon the judge of the court below by means of threats emanating from a certain source, the determination of this case, being regarded in certain quarters as of vast importance to the power and prestige of the Interior Department, which fact seems also to be borne out by the strenuousness and marked ability which characterized the contention of the Attorney General in his arguments at this bar. We hesitate, however, to give credence to the suggestion that a judge of any of the courts of Liberia, could in this enlightened and progressive age of this Republic (when it is, we hope, recognized by statesmen and politicians alike, that the security and safety in a democracy rest in an independent, fearless and competent judiciary), be so weak, so recreant to duty, as to permit himself to be deterred from the plain path of duty in the determination of matters brought within his grasp.

To the decree and opinion of the judge of the court below, appellants excepted and have brought the cause before this judicature upon appeal for review.

The bill of exceptions brought up for our consideration presents three points which are laid as follows:

> "1. Because when on the 10th day of December, A. D. 1918, said case was taken up for trial, and during the pendency thereof attorney for petitioners asked defendant John L. Morris, Secretary of the Interior, upon cross-examination the following question, viz.: 'Is it not a fact that because of the service upon you of the writ of habeas corpus you have not yet proceeded further with the trial of the case for which Chief Varlie and Fahn Damini alias Blackey were held?' counsel for defendant objected to said question upon the ground of irrelevancy and after arguments *pro et con* Your Honor sustained the objections; to which petitioner excepted.
> "2. And also because on the said 10th day of December, A.D.

1918, Your Honor after hearing evidence on both sides, ruled that it was not within the power of the Secretary of the Interior and the Officer Commanding the Liberian Frontier Force, defendants in this suit, to produce the bodies of Chief Varlie and Fahn Damini alias Blackey at the time of the service upon them of the writ of habeas corpus, and ruled that the other points in the returns be proceeded with; to which ruling petitioners excepted.

"3. And also because when on the 13th day of December, A.D. 1918, Your Honor took up the second count in the returns, and petitioners submitted the questions, viz.: (a) 'In view of the fact that article I, section 14 of the Constitution of Liberia declares that the powers of the Government shall be divided into three distinct departments, * * and that no person belonging to one of these departments shall exercise any of the powers belonging to either of the other;' is not so much of the Act of the Legislature of Liberia approved October 13th, 1914, as purports to confer judicial power upon the Secretary of the Interior void, because in conflict with said constitutional provisions and if it is, can the Secretary of the Interior punish for contempt? (b) Can the Secretary of the Interior who is an official of the executive Government demand or enforce compliance with a bail bond, or a bond in which one is bound under penalty? Your Honor after hearing arguments *pro et con* on said propositions afterwards, to wit: on the 16th day of December 1918, overruled said question and gave final decree against said petitioners to the effect that their petition should be dismissed and they ruled to pay all costs; to which final decree petitioners excepted and have tendered this their bill of exceptions to Your Honor for your signature and pray an appeal to the Honorable the Supreme Court of Liberia at its April term, A. D. 1919."

In support of these contentions an exceedingly learned and comprehensive brief was submitted by counsel for appellants, which was combated by an equally learned and comprehensive brief filed by the Attorney General, who appeared for appellees, which have brought to our consideration questions vital — not only to the validity of the aforesaid Act and the legal merits of the decree predicated thereupon; but to the jurisdiction and the authority of the courts in certain parts of the Republic, and the force and effect of the Constitution which created them over those parts.

The question of efficacy and effect of the evidence adduced at the trial, the return, so far as it relates to the facts, having been settled by the judgment handed down by this court at its last term, we shall in this opinion notice those points in the bill of exceptions

and briefs filed on both sides as affect the validity of the said Act of 1914, and the constitutionality of the powers conferred by said Act upon the Secretary of the Interior, so far as they relate to the exercise of judicial functions by that official.

Counsel for appellants in the second point of his brief submits: "That the whole matter for which the chiefs were called down to Monrovia and which subsequently led to their imprisonment was one properly cognizable only before a court of justice." "The object of the inquiry," he contended, "was to settle whether or not any responsibility could legally attach to them as rulers of their respective districts, for the discovery and delivery up of persons charged as thieves, who, as appellees alleged, had carried the fruits of the crime into the territory governed by those chiefs." Appellants submitted: "That a proceeding to arrest and punish for a contempt is the highest exercise of judicial power, and belongs to judges of courts of record or of superior courts," and cited the case *Langenberg v. Decker* (16 L. R. A. 108) in support of his contention. "It is true," the counsel submitted, "that the Act of the Legislature of Liberia, approved October 13th, 1914, attempted to confer upon the Secretary of the Interior and other officers of his department the functions of a court of justice, but inasmuch as he is an official of the executive branch of the Government," he contended that "every provision of said Act tending to confer such power, should be declared inoperative, illegal and void because of its conflict with the Constitution." In support of this contention section 14 of article I of the Constitution of Liberia was cited.

In the third point of the brief submitted on the part of appellants the distinctive and exclusive character of the judiciary as a co-ordinate branch of the Government is insisted upon, and we are asked to reaffirm the opinions handed down by this court in the cases *Blahmo v. Ware* (Lib. Ann. Series, No. 3, p. 4) *Jedah, Boyah et al. v. Jeffrey B. Horace, Traveling Commissioner, Grand Bassa County,* decided April, 1916, and the matter *In re the Constitutionality of the Act of the Legislature, providing for Uniform Rules, etc.* (Lib. Semi Ann. Series, No. 4, p. 4) in which brief it is contended that the principles laid down in said decisons support the case for the appellants.

In the fourth point of the brief the learned counsel for the ap-

pellants submitted: "That if it be true as is set up in the return of appellees, that the persons held as prisoners in this case did give bond for the payment of the value of the goods alleged to have been stolen by the persons charged, and said bond subsequently became forfeited, an enforcement of the compliance with same could only have been legally done by suit brought in a court of justice," etc.

These contentions on behalf of the appellants were resisted by the learned Attorney General for the appellees, who in the copious brief handed up, presented for our consideration, as against the contentions of the appellants, the following points:

"1. The jurisdiction conferred upon the Secretary of the Interior in relation to matters of administration and justice in causes arising in the hinterland districts is not unconstitutional.

"(a) Because the rules of the Liberian Constitution apply only to territory defined in the municipal law of the Republic of Liberia and to such other territories appurtenant to Liberia over which the laws and Constitution of Liberia have been extended.

"(b) The territories acquired by the Republic outside the forty-mile zone fixed in the statutes as the boundaries of the Republic are governed only by such regulations as the Legislature may prescribe, which regulations furnish the character of their rights and Government.

"2. That the native territories outside the forty-mile zone not belonging to constitutional Government, no action of the Secretary of the Interior in relation to matters arising in the hinterland can be tested by constitutional rules," etc.

The statutes of Liberia, the Franco-Liberian Treaties of 1892 and 1907[1] and numerous citations from Taylor's International Law are cited in support of this position.

We propose to consider, firstly, the grave, momentous questions raised by the Attorney General, which attack the sovereignty of the Republic beyond the limits of forty miles from the Liberian littoral, and the limitation of the Constitution and the judicial power created thereunder to the territories embraced within the said

[1] In the Revised Statutes of Liberia, p. 198, the treaty referred to is dated September 18th, 1909, but reference to the original shows that it was really dated September 18th, 1907.

zone of forty miles. It would follow by analogy that if the powers of the Republic created by the Constitution did not extend over the territories contemplated by the Act conferring judicial powers upon the Secretary of the Interior, the provisions of which Act as far as they assume to confer such powers upon said official are contested upon the ground of being void on account of their conflict with the Constitution, then the case for the appellants in this suit must break down.

We propose in this connection to discuss the method and policy pursued by the several colonizing powers of Europe in the acquisition of territory from the natives of Africa, and, the founding and establishment of sovereignty and civilized government over such native territories by the said civilizing powers of Europe.

Treating the question historically, we shall confine our research neither to the date of the founding of this Republic nor to the methods pursued in the acquisition of territory by us, for it must be recognized that with regard to the latter, namely the manner of acquiring African territory and of extending civilized government over the undeveloped tribes of this continent, we are bound as an African state to recognize as paramount, and to give adherence to, the principles laid down by International conferences and by International treaties and precedents with respect to what act or acts are essential to establish political and governmental jurisdictions over African tribes.

Originally it was the Pope who claimed the right to grant to individuals or corporations of European descent, the right to acquire, hold and govern African territories; and this authority was exercisable independently of the assent of the natives over whom such powers were granted. (1 Westlake Int. Law, p. 92.) The Papal Bull of Nicholas V issued in 1454, granted to King Alfonso V of Portugal the discoveries made and to be made on the West Coast of Africa; and by the Papal Bull of 1493, Alexander VI granted to Ferdinand and Isabella and to their successors, Kings of Castile and Leon, all lands west of the Azores on the African Coast of which no Christian power had taken possession before Christmas Day, 1493. In 1494, Spain and Portugal by treaty divided between themselves the African Coast down to a line drawn 370 leagues off the Cape de Verde Islands. Here we have the earliest record of a foreign state acquiring and governing territory

on the West African Coast, the basis of which right was founded in discovery and Papal sanction. It is superfluous to remark that as soon as Protestant states arose the right of the Pope to confer such rights was ignored; but the right to acquire by discovery was adhered to and followed by all the powers which subsequently acquired territory in Africa and furnished the occasion for much dispute and in some instances conflict of arms between rival powers.

In support of the right to acquire territory by discovery and of extending over the tribes embraced in any such new territory civilized government, we need quote no higher authority than Chief Justice John Marshall of the United States Supreme Court, who in the celebrated case *Johnson v. McIntosh,* decided 1823, held that: "The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity in exchange for unlimited independence." * * "It was a right," he held, "which all asserted for themselves and in the assertion of which by others all assented. Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. * * In the establishment of these relations the rights of the original inhabitants were in no instance entirely disregarded; but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their own discretion;" but, he declared, "their rights to complete sovereignty as independent nations, were necessarily diminished." (8 Wheaton 543 [U. S. Sup. Ct.], 5 L. Ed. 688.)

The theory upon which a civilized state may extend its sovereignty and laws over uncivilized tribes who may not have previously come under the political and governmental control of some other civilized country, was developed and carried further at the African Conference of Berlin. When that conference was laying down conditions for the appropriation by the signatory powers of territory on the Coast of the African Continent, the plenipotentiary of the United States declared that: "His Government would gladly adhere to a more extended rule, to be based on a principle which should aim at the *voluntary consent of* the natives whose country is taken possession of in all cases where they had not provoked the

aggression." Protocol of 31 January, 1885. But the conference took no action on this invitation of the United States' plenipotentiary—it was merely recorded that in the unanimous opinion of the conference its Act did not limit the right which the powers possessed of causing the recognition of the occupations which might be notified to them to be preceded by such an examination, as they might consider necessary. It has been settled by International canons that whether the ideas of a native tribe permit soil occupied or claimed by them to be ceded or not, and by what tribal authorities the cession ought to be made if permitted at all, are obscure and immaterial questions. So also are the questions whether a proposed cession has been fully explained to the tribe and fair value given for it. (I Westlake Int. Law, p. 93.) The same author in his treatise on Internal Law declares that: "the rules which the African Conference of Berlin laid down in articles 34 and 35 of the General Act; though limited in their expression to the acquisition of territory on the Coast of Africa, embody the shape which the law as to the original acquisition of the title has taken under the influence of these views." Now let us inquire into the text of the Articles of the Berlin Conference referred to.

Article 34 declares that: "Any power which henceforth takes possession of a tract of land on the Coast of the African Continent outside of the present possessions, or which being hitherto without such possessions shall acquire them; as well as a power which assumes a protectorate there shall accompany the respective act with a notification thereof addressed to the other signatory powers of the present act, in order to enable them if need be to make good any claims of their own."

Article 35 of the General Act states that: "The signatory powers of the present act recognize the obligation to insure the establishment of authority in the regions occupied by them on the Coast of the African Continent, sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon."

Liberia must be presumed to give adherence to these articles, she being within their purview.

Commenting upon Article 35 above cited, Mr. Westlake in his treatise makes this observation that: "the establishment of an

authority which may protect the natives with whom contact has become inevitable and under which the civil rights essential to European and American life may be enjoyed in tranquility is the objective of this Article."

Says he,—"The exercising of the rights here mentioned *cannot include less than this.*"

No one will seriously contend that such a state of affairs as insures tranquility and the enjoyment of those civil rights which are guaranteed in civilized society, would be possible of attainment under the customary law and practice of the undeveloped native inhabitants of the Liberian hinterland any more than it would be possible in any other part of the hinterland of the African Continent not brought under the influence of civilization.

Our duty therefore to ensure the protection of such rights and to promote such tranquility in the hinterland, by the extension and enforcement of our laws and the polity of our Government, is an obligation which we are under as a member of the family of nations, having intercourse and relations with subjects and citizens of civilized communities, which obligation cannot be ignored by ourselves, nor destroyed by any failure of formal assent thereto by the native tribes inhabiting those interior parts.

Our citations of the modern international rules and precedents relative to the acquisition of territory in West Africa, and the rights to extend civilized government over the uncivilized native inhabitants whose countries have been taken under control, in our opinion completely dispose of the contention raised by the learned counsel for appellees to the effect that such acts are dependent upon the will and assent of the tribes over whom sovereignty is sought to be extended, which assent must be expressed in the form of written treaties and compacts between the two parties. It is true that in the original method of acquiring territory, the agents of Liberia treated the tribes whose territory was subsequently made a part of the Republic's domain as possessing sovereign rights over the territories they occupied, and, our title thereto was conveyed by deeds of cession and treaties. By this method our rights were established over a radius of about forty miles from the Atlantic littoral. This was regarded as the limit of our territory interiorward, when the Republic was erected in 1847. But subsequent to this date, we have in one or the other forms recognized

by modern international practice extended political influence, and with it the right of sovereignty and of governmental supervision, over territories beyond and which have been recognized to the Republic by conventions between this state and the neighboring countries the boundary of whose territories marches with our frontiers. These conventions, we hold, are not only evidence of the highest character, as to the recognized territorial *status quo* of the Republic by the states with whom they have been made; but they also by force of modern international rules and precedents noticed above, impose upon the inhabitants comprised within those prescribed limits the obligation of submitting to the sovereignty of the Republic of Liberia and the consequential right and duty on the part of the Government of extending its laws and polity over those parts and bringing the inhabitants under the influence of civilization. Upon the authority of these modern rules and precedents, we feel no hesitancy in declaring that our sovereignty over what is called the hinterland of Liberia, is perfect, complete and absolute and that the Constitution which created the Government and under which all political and governmental authority is derived, applies with equal force and effect over that section as it does over any part of the Liberian Republic.

If further evidence of the Republic's rights over what has been termed the hinterland is demanded, this can be supplied by the explorations made in those parts under the auspices of the Government, dating from those made by Governor Russworm in the forties (See Latrobe's Maryland in Liberia), and extending into the sixties and early seventies, where the hinterland as far back as the Mandingo plateau (now French) was scientifically explored by Anderson the Liberian explorer and cartographer, and, political and trade relations opened up between the tribes of the interior and the Government. (See Anderson's Journey to Musardu.) Although the relations established at the time did not in every case ripen into the form of written treaties, they nevertheless were sufficient for the purpose of laying the foundation of title to those districts which have since been acknowledged by the tribes themselves and confirmed by conventions between this Government and the Governments of France and Great Britain, as already mentioned.

These explorations have been followed from time to time by

political missions, and the planting of the flag in the hinterland by repressive military measures against refractory tribes. By the suppression of the slave-trade and inter-tribal feuds. By the appointment and commissioning of paramount, and sub-chiefs through whom the Government has for nearly a century set some form of government in those parts, and who in a greater or less degree derived their authority from the Government of the Republic, and were amenable to it for the supervision of their respective tribes. And finally by the establishment of police authority and of agencies under its patronage and protection for the moral and educational betterment of the inhabitants. Such acts, we solemnly declare, partake of duties and responsibilities growing out of sovereignty, and, we hold, destroy every vestige of the proposition, with regard to the limitation of the Constitution, or, the jurisdiction of the three great departments of the Government or any of them, set up and ordained by that instrument over the inhabitants of the Liberian hinterland.

It was contended by the learned Attorney General in his arguments at the bar, that the natives of what is called the hinterland of Liberia which stretches from a zone forty miles from the coast to the Anglo-Liberian and Franco-Liberian boundaries, not having by formal act in the form of treaties placed their territory under the political and governmental jurisdiction of the Republic of Liberia, that, therefore, while admitting this section of the Republic to be under the legislative and executive jurisdictions, in that the Act passed by the former and attempted to be executed by the latter was regarded proper; yet when it comes to the third great jurisdiction—namely the courts—the power of this department of Government, he insisted, is restricted to the forty-mile zone from the Atlantic littoral.

That such a contention is unsound, we feel no hesitancy in declaring. The sovereign people of Liberia in their majesty set up and established by *One Act,* which is called the Constitution—the three great departments of Government, which were called into being by the same instrument and at the same time and by the same method. Their powers therefore are not only co-ordinate, but co-extensive each with the other, so that the legislative powers do not run beyond those of the executive; nor, do the executive powers go beyond those of the judicial department, so far as relate

to the territorial jurisdiction of those three separate and co-ordinate branches of the Government nor vice versa. "The powers of this Government shall be divided into three distinct departments" declares the Constitution. "And no person belonging to one of these departments shall exercise any of the powers belonging to either of the others." (See Const. Lib., art. I, sec. 14.)

To hold, therefore, that the executive can exercise jurisdiction in any part of Liberia in which the functions of the judiciary is prohibited, is to lay down a proposition distinctly in conflict with the letter of the Constitution and with its obvious spirit and intent. But let us see if this proposition is unequivocally supported by the Liberian Constitution. Article IV of this instrument declares that: "the judicial power of the Government shall be vested in *One Supreme Court* and such subordinate courts as the Legislature shall from time to time establish." The query naturally arises—has the Legislature any discretion where to lodge this power? If the Legislature possessed any discretionary power on this subject it is obvious that the judiciary, as a co-ordinate department of the Government, may at the will and pleasure of the Legislature be annihilated or stripped of all its important jurisdictions for if the discretion exists, no one can say in what manner, or at what time or under what circumstances, it may, or ought to be exercised. The language of the said fourth article of the Constitution is manifestly designed to be *mandatory* upon the Legislature. Its obligatory force is so imperative, that the Legislature could not, without violation of its duty, withhold any part of the judicial power from the courts, or, confer it upon any other department or official. The object of the Constitution, we hold, was to establish three great departments of Government: the legislative, executive and the judicial. The first was to pass laws, the second to approve and execute them and the third is to expound and enforce them. Without the courts it would be impossible to carry into effect some of the express provisions of the Constitution. What other provision is there in the organic law for the punishment of crimes (if we except those arising in the army and navy, and for impeachment)? Neither of the other two departments is vested with this power. It is utterly inadmissible that the Legislature can confer judicial power upon any, but the courts; and whenever it is at-

tempted to transcend the limitations fixed by the Constitution, as the statute under construction contemplates, such statute must be declared as being not only voidable—but, *void ab initio*—because of its conflict with the Constitution which is, and must always be held, as the highest law.

Under the provisions of the Constitution the Supreme Court can have original jurisdiction in three classes of cases only, viz.: Cases affecting Ambassadors or other public Ministers and Consuls and those to which a county shall be a party. (See Const. Lib., art. IV.) We have already remarked that the Legislature cannot vest any portion of the judicial power of the Republic of Liberia in any except the courts ordained and established. If, however, in any of the cases of crimes and misdemeanors arising within the territorial jurisdiction of the Republic and punishable under our laws, the Circuit Courts are, as was contended, without jurisdiction, the appellate jurisdiction of the Supreme Court could not reach those cases; and consequently the injunction of the Constitution that the judicial power *shall be vested* in the courts would be disobeyed.

A close and careful study of the Act of October 13, 1914, under consideration will, we think, overturn the proposition set forth in the brief for the appellees with respect to the limitation of this department to a zone forty miles from the littoral. The object of this Act is obviously to provide for the administration of affairs in what is called the hinterland by the executive department of the Government through the Secretary of the Interior and his subordinates in that department and so far as its provisions relate to matters belonging properly to the executive department they may be recognized as valid. But quite apart from the executive administrative functions set up in this Act, it will be observed from a careful study, that its provisions extend beyond those functions and expressly recognize the jurisdiction of the courts over offenses arising in the hinterland districts. The latter clause of section 21 of said Act reads: "Cases leading to capital punishment shall be reported to the Secretary of the Interior and the Superintendent in the leeward counties and the territories, who shall transfer same to the judiciary." If the Constitution did not extend over those districts, and if the judicial power established by that instrument was intended to have no force in those parts, what then is the

meaning, we ask, of the clause of the Act just cited? It cannot be contended with any degree of logic that two of the co-ordinate departments set up by the Constitution could exercise functions to the exclusion of the third in any part of the territories of the Republic; nor, that the courts could have jurisdiction over one class of offenses arising in the hinterland, while as to others this power could be lodged in some other department. It is the *whole* judicial power of the Republic which the legislature must, under the Constitution, vest in the courts. Its duty in this connection is mandatory and not discretionary. It has only to be ascertained whether a question or a function partakes of a judicial character to decide whether such question or function appertains solely to the jurisdiction of the courts.

Section 28 of said Act further fortifies our opinion to the effect that it was not the intention of the Legislature as expressed in the language of said Act to exclude the jurisdiction of the courts over offenses occurring in what is called the hinterland. The language of this section is as follows: "Appeals shall be granted to litigants in each of the courts of the districts to the next higher court, and such cases shall be transferred to such courts of appeal with all costs; but, any person or persons dissatisfied with the decision of the Commissioner, or the decision of the Council of Chiefs may appeal to the Secretary of the Interior, or to the Circuit Court, who shall hear the case upon the merits and from the decision of either the Secretary of the Interior or the judge of the Circuit Court, an appeal may be granted to the Supreme Court of the Republic of Liberia," etc. The only sensible construction which, to our minds, can be placed upon the foregoing section of the Act under construction is, that in express language the Legislature has extended the jurisdiction of the statutory courts, whose jurisdiction is derived from that source, over offenses committed in the hinterland districts of the Republic. It was superfluous for the Act to have mentioned the appellate jurisdiction of the Supreme Court, since its appellate jurdiction is inherent and cannot be abridged or annulled by any means whatsoever except by the will of the sovereign people of this Republic expressed by amendment to the organic law.

We have already remarked that under the Constitution it is the *whole* judicial power of the Republic that is vested in our courts.

That the Constitution in this respect is *mandatory* and not merely discretionary. That the judicial power created thereunder is not only co-ordinate but co-extensive in its application with the jurisdiction of either that of the legislative or executive departments. It follows therefore that the Legislature cannot confer any part of the judicial power of the country upon any other department of the government without disobeying the injunction of the Constitution, and that whenever that has been attempted as is the case in the Act under construction, such an attempt becomes void because of its repugnance with the organic law.

The actions of the Secretary of the Interior in *arresting, taking bail, imprisoning* and *holding in contempt* the appellants, were acts which in their character partook of judicial functions; and, which no official of the executive department could legally exercise, because of the constitutional inhibition which declares that: "no person belonging to one of these great departments of the Government shall exercise any of the powers belonging to either of the other." (Const. Lib., art I, sec. 14.) It has been held that: "to arrest and punish for contempt is the highest exercise of judicial power and belongs to the judges of courts of record or superior courts." (*Langenberg v. Decker,* 16 L. R. A. 108.) No official belonging to the executive department of Government can legally arrest and punish any person for a contempt. The actions of the Secretary of the Interior in this regard, were a grave violation of law, in that the personal liberty of all classes of citizens and inhabitants of this Republic whether civilized or uncivilized, have been zealously protected by the Constitution.

The doctrine that none but the courts can exercise judicial functions in the Republic and that a statute is void which attempts to confer judicial power upon any but the courts and which infringes in the lowest degree the Constitution which is the highest law, was exhaustively treated in the cases *Jedah, Boyah v. Jeffrey B. Horace, Travelling Commissioner, Grand Bassa County* (Semi Ann. Series not heretofore printed) *supra;* and *In re the Constitutionality of the Act providing for Uniform Rules of Practice* (Lib. Semi Ann. Series, No. 4, p. 4.)

These decisions were successfully cited by counsel for the appellants in this case. We reaffirm the doctrine which they enunciated and uphold the principles upon which they rest.

After a very careful investigation of the said Act of the Legislature approved October 13, 1914, we have arrived at the deliberate conclusion that the Act in certain respects is in conflict with this doctrine of the Constitution in that it attempts to confer judicial powers upon the Secretary of the Interior, who is an official belonging to the executive department of Government. So much therefore of said Act which attempts to confer such powers upon said officer is repugnant to the provisions of the Constitution and should be declared void and inoperative; and it is hereby so held.

M. A. E. HARMON, and ASBURY HARMON, her husband, Appellants, *v.* W. D. WOODIN & COMPANY, Limited. Appellee.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. A plaintiff may once amend his complaint or withdraw it and file a new one at any time before the case is ready for trial.
2. The discharge of a defendant, or the dismissal of a suit, quashes all process then existing against him in said action, hence in either such case the court loses jurisdiction both of the person and subject matter.
3. Rights which neither of the parties had within the term of the court at which a case was docketed could not accrue to such party after the term in which the case was brought up to be heard.
4. The object of motions is to prevent what would work injustice to either one of the parties litigant. Courts of justice ought, therefore to be very cautious in entertaining them, and unless necessary to prevent injustice, should reject them.
5. When parties shall have already submitted to the jurisdiction of the court, and are in attendance thereon it is error to exclude their evidence on the ground that they had not been subpœnaed.
6. Account books when regularly kept are admissible in evidence but *semble* they must be books of original entry, and if the entrant can not be produced, his handwriting must be proved by someone acquainted with his handwriting.

Mr. Justice Johnson delivered the opinion of the court:

Debt—Appeal from Judgment. This was an action of debt brought in the law division of the Monthly and Probate Court of Maryland County, by W. D. Woodin and Company, Limited, of Cape Palmas, against M. A. E. Harmon and Asbury Harmon, her husband, and is brought up to this court for review by said defendants, now appellants, against whom judgment was rendered in the court below.