

THE EAST AFRICAN COMPANY, late Hendrik Muller & Co., Appellants, vs. **W. BRUMSKIN**, Judge of the Court of Common Pleas and Admiralty, Grand Bassa County, Appellee.

LRSC 5; 1 LLR 302

[January Term, A. D. 1897.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Mandamus.

This case has found its way to this court under the following circumstances: Some time in 1894 the Corporation of Buchanan instituted proceedings against the appellant (libellee in the court below) for violation of the license law. After investigating the facts as well as the law as presented in the Court of Quarter Sessions, Grand Bassa County, the judge rendered judgment in favor of the City of Buchanan, and from that decree the libellee (now appellant) took exceptions and tendered the necessary bill for the signature of the judge of said court. The judge denied, or refused to sign, the libellee's bill of exceptions, and upon a petition to this court a writ of mandamus was issued, requiring the judge of the court below to sign the bill of exceptions so that the libellee could obtain an appeal, or show legal cause 'for not doing so at the January term of the court, A. D. 1895. During the January term of this court, A. D. 1896, the judge of the court below made his return to the mandamus; but the same being unanimously declared unsatisfactory and insufficient, this court issued a peremptory mandamus on the judge of the court below, to which absolute demand no return has reached this court. In the month of November last the nation was startled by the information of the death of Hon. W. Brumskin, judge of the court below—the Court of Common Pleas and Quarter Sessions, Grand Bassa County. At the calling of the case on the fourth day's session of this court of the present term, the court discovers that no record of any description (save the petition for the writ of mandamus, the insufficient return of the judge of the court below, and the peremptory mandamus) is in the possession of the court.

This court has carefully examined the several decisions rendered by it from the foundation of the Republic and has discovered only one case bearing any affinity to the present, which decision was rendered in 1865, in the case of N. J. A. Maarschalk against the Republic of Liberia, and which reads as follows :

"This court decides that the record of the court below is incomplete, one or more essential

documents being absent. The Compiled Statutes, page 61, sec. 5, require that the entire record shall be forwarded to the court of appeal. In consequence of this omission this court rules that the case cannot be considered, and is therefore dismissed at the expense of the State. The court, however, notices that the omission is on the part of the State through the clerk of the court below, and not on the part of the said N. J. A. Maarschalk, appellant. The fact suggests to this court that the said N. J. A. Maarschalk, appellant, is deprived of an opportunity further to pursue his remedy sought for. This being a culminating point, in order, therefore, to render a speedy and complete justice in this case, it appears necessary that this court notice the matter on an equity principle, for we conceive it to be unjust to put the appellant to further inconvenience after having obtained a writ in error, as well as employed other measures in order to obtain a further hearing of this cause. The omission of the State through the court below ought not to operate to the detriment of the appellant. The equity, which in the opinion of this court should operate and apply in this case notwithstanding it is dismissed, is that the said N. J. A. Maarschalk, appellant, ought in justice to be discharged from any further penalties or liabilities whatever."

This court sees no reason why the doctrine enunciated by said decision should not remain inviolate and apply in this case. Therefore, the judgment of this court is that the case, The East African Company, late Hendrik Muller & Company, against W. Brumskin, Judge, be dismissed, and the appellant be discharged from any further penalties or liabilities whatsoever, growing out of said case.

Key Description: Appeal and Error (Decisions not otherwise reviewable; Effect of failure to make bill, case or statement, Dismissal of appeal; Dismissal of appeal for failure to transmit complete record within statutory time)