LAMCO J. V. OPERATING COMPANY, by and thru its General Manager, Plaintiff-In-Error/Informant, v. **HIS HONOUR J. KENNEDY BELLEH**, Assigned Circuit Judge, Sixth Judicial Circuit, June Term, A. D. 1985, **HIS HONOUR JESSE BANKS,** Assigned Circuit Judge, Sixth Judicial Circuit, September Term, A. D. 1985, **THE BOARD OF GENERAL APPEALS,** Ministry of Labour, and **JOSEPH HARRIS,** Defendants-In-Error/Respondents.

INFORMATION PROCEEDINGS.

Heard: November 20, 1987. Decided: January 25, 1988.

1. By a "day in court" is meant that no one shall be personally bound until he has been duly cited to appear and has been afforded an opportunity to be heard.

2. Any judgment without a citation and an opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is administered.

3. A party who is duly cited to appear in court for the hearing of his case, but who fails to appear at such hearing is regarded as having had his day in court, and any ruling rendered as a consequence of the party's failure to appear is not judicial usurpation and oppression.

4. While the Supreme Court cannot take original jurisdiction over an issue except conferred upon it by the Constitution and statutes, and that any rendition of judgment without such jurisdiction is a usurpation of power and renders the judgment ipso facto void, the Court's review and affirmance of a decision of the Board of General Appeals confirmed by the trial court, is not an assumption of original jurisdiction by the Court.

5. A lawyer deputized by a court to take the ruling of the court for and on behalf of an absent counsel who had been duly notified of the hearing of his cause, is not in Loco with the absent counsel, and therefore not the agent of said absent counsel.

6. While it is true that a person who holds himself out as agent of another and who acts on behalf of h is principal, which acts are ratified by the principal, is estopped from denying his agency and throwing off his responsibility, the principle is not applicable to a counsel designated by court to take the ruling of an absent counsel who had failed to appear in court although notified of the hearing of his cause. The act of the court in appointing such lawyer is only out of courtesy and had no legally binding effect, if the lawyer fails to take such steps as the absent counsel would have

taken had he been present.

7. In the absence of any showing of the existence of a contract between a counsel designated by the court to take a ruling for and on behalf of an absent counsel, or a showing that the designated lawyer was authorized to do anything on behalf of the absent lawyer or law firm, or a showing that the designated lawyer was a representative of the absent lawyer or law firm vested with authority to create an obligation to the absent lawyer or law firm, or a showing that he was otherwise employed with or by such absent lawyer or law firm, his designation by the court cannot be construed that the court had employed him as counsel for the absent lawyer or law firm.

8. As the appointment or designation of a lawyer by the court to take the ruling of an absent counsel has no binding force but only an act of courtesy, the appointed or designated lawyer has no responsibility to the absent lawyer to which punishment could be attached for his failure to take exceptions to the court's ruling or to announce an appeal therefrom.

Co-respondent Joseph Harris filed before the labour commissioner for Grant Bassa County a complaint for unfair labor practices against the informant, Lamco J. V. Operating Company. After a hearing, the hearing officer adjudged the informant liable and ordered it to pay compensation to the employee in the amount of $51,675.00, of which $36,160.00 was payment for insurance and $13,515.00 was severance pay. From this ruling, both parties appealed to the Board of General Appeals. In its decision, the Board affirmed the decision of the hearing officer, with the modification that the award be reduced to $39,006.00 comprising four years' salary at the rate of $795.00 per month and $846.00 constituting expenses under Skadia II insurance scheme. The Board also ordered LAMCO to retire the complainant and to calculate his retirement pay.

The informant thereafter filed an application for reconsideration by the board of its decision. The application was however denied by the Board on the ground that the same was filed eleven days after the decision, one day after the statutory period, and that accordingly, it had lost jurisdiction over the case. From this decision the informant noted exceptions and filed a petition before the Sixth Judicial Circuit Court, Montserrado County, praying for a judicial review.

When the informant failed to appear for the hearing, the trial court, on application by counsel for co-respondent Harris, proceeded with the case and rendered judgment

confirming and affirming the decision of the Board of general Appeals. Informant thereafter filed a petition for a writ of error stating that it had not had its day in court. However, although a notice of assignment was issued and served on the parties, counsel for informant failed to appear for the hearing. Again, on application of co-respondent Harris counsel, as in the trial court, the Justice in Chambers proceeded to hear the petition, and to deny the same. The counsel appointed by the Justice in Chambers to hear the case did not except thereto or announce an appeal therefrom. Hence, informant proceeded to the full Bench by a bill of information, stating that it had not had its day in court and that it could not be punished because of the failure of the designated counsel to appeal from the ruling of the Justice in Chambers. It argued that the person upon whom service of the assignment had been made, being only a receptionist in the office of informant's counsel law firm, was not authorized to receive the said assignment. The informant also argued that the Chambers Justice had assumed original jurisdiction of the matter, have taken evidence, and had calculated the amount of the award which the informant was to pay to co-respondent Harris, when in fact the Board and the Circuit Court had stipulated no such amount but had instead determined that the informant should calculate the same.

The Supreme Court rejected all of the informants contentions. It held, as to the informant's contention that it did not have its day in court, that the same was untrue since the records showed that service was made on counsel for the informant but that the informant and its counsel had failed to appear for the hearings, both before the Circuit Court and the Justice in Chambers. The Court opined that under such circumstances, the ruling of the Justice in Chambers was not a judicial usurpation or oppression.

Regarding the informant's contention that the Justice in Chambers had assumed original jurisdiction, the Court held that the Justice had not usurped power not granted by the Constitution or statutes since all that the Justice had done was to review and confirm the judgment of the trial judge who had earlier affirmed the decision of the Board of General Appeals.

Lastly, the court opined that the appointment of a counsellor to take the ruling for the absent lawyer who had failed to appear for the hearing although duly notified thereof, created no legally binding obligation on the appointed lawyer to do any act since he was not an agent of the informant or the informant's counsel. The Court observed that in the absence of a contract between the informant's counsel and the appointed lawyer, the latter had no obligation to the former, for which the Court could mete out punishment because of the failure of the appointed counsel to note

exceptions to the Chambers Justice's ruling or to take an appeal therefrom. Accordingly, the Court *dismissed* the information and *affirmed* the ruling of the Chambers Justice and the trial court.

The Steele & Steele Law Firm appeared for plaintiff-in- error. *J. Emmanuel Berry* appeared for defendants-in-error.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The facts in this case are as follows:

Joseph Harris filed a complaint against Lamco J. V. Operating Company for unfair labor practices before the Labour Commissioner in Buchanan, Grand Bassa County, in 1985.

After a hearing, the hearing officer ruled in favor of Joseph Harris, awarding him Fifty- One Thousand Six Hundred Seventy-Five ($51,675.00) Dollars, which included compensation for insurance in the amount of Thirty-Six Thousand, One Hundred Sixty ($36,160.00) Dollars and severance pay of Thirteen Thousand Five Hundred Fifteen ($13,515.00) Dollars. From this ruling, both Lamco and Joseph Harris appealed to the Board of General Appeals.

The Board of General Appeals heard the case and modified the ruling of the hearing officer, by reducing the award to Thirty-Nine Thousand Six ($39,006.00) Dollars comprising four (4) years salary at the rate of Seven Hundred Ninety-Five ($795.00) Dollars per month (equaling $38,160.00) and expenses tinder Skadia H (totaling $846.00). The Board also ordered Lamco to retire complainant Joseph Harris, with such retirement pay as shall be calculated by the Lamco management.

To this ruling of the Board, Lamco applied for reconsideration. The application was denied *sua sponte* on the ground that copies of the decision had been distributed and that the application was filed late when the Board had lost jurisdiction over the subject matter. The application was filed eleven (11) days after the Board had handed down its decision because management did not receive a copy of the decision until the following day, which the Lamco management claimed placed the application for reconsideration within the ten (10) days margin, especially as it did not have prior notice as to what the decision would be.

From the decision of the Board of General Appeals, the defendant/petitioner filed a

petition before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, praying for a judicial review. Arguments were heard and a ruling by the court reserved to another date. The informant claimed that on the 5th day of August, 1985, the trial court, without any notice to informant/defendant/petitioner, handed down its ruling denying the petition, sustaining the returns and upholding the decision of the Board of General Appeals. It was because of the *ex parte* handling of the case by the trial judge, without notice to the petitioner to appear to protect its interest that the defendant / petitioner applied to the Justice in Chambers His Honour Frederick K. Tulay, for a writ of error. The informant claimed further that without any notice of assignment being issued, served and returned served, the Justice in Chambers heard the argument on the side of the defendant-in-error, and, without any further notice, ruled denying the petition. The Justice, however, deputized Counsellor Boima K. Morris to take the ruling for plaintiff-in-error. Counsellor Morris neither excepted to the ruling nor announced an appeal therefrom, as the informant argued he ought to have done, being an old practitioner in this jurisdiction and a one-time Associate Justice of this Honourable Court. In his ruling, informant said, Justice Tulay awarded an amount which the Court below did not award, meaning effectively that the Supreme Court was exercising original jurisdiction in the case, entertaining and hearing evidence, and doing so in the absence of the plaintiff-in-error.

The plaintiff-in-error alleged that not being present in Court to announce an appeal to the Full Bench, and the deputized counsel having failed to do so, plaintiff-in-error was therefore constrained to file a bill of information to this Court on August 18, 1987. In the bill of information, the informant alleged:

1. That informant was the plaintiff-in-error in a remedial process proceeding - i.e. a petition for a writ of error, growing out of an action of unfair labor practices, judicial review.

2. That without a notice of assignment being issued for the hearing of the petition and without the service of a notice of assignment on counsel for plaintiff-in-error/informant, or on plaintiff-in-error/informant itself, for hearing of the petition for a writ of error, the co-respondent Justice in Chambers proceeded to hand down his ruling on the 12th day of June, A. D. 1987, appointing Counsellor Boima K. Morris to take the ruling on behalf of the counsel for plaintiff-in-error/informant as the records reveal.

3. That notwithstanding the fact that the Justice in Chambers ruled against plaintiff-in-error/informant, the designated counsel, Boima K. Morris, failed to except to the

ruling and to announce an appeal therefrom to the Full Bench as was incumbent upon him to do, thereby depriving plaintiff-in-error/informant of his day in court and of due process of law, which the Constitution guarantees to all alike.

4. That after the Justice in Chambers had handed down his ruling in the absence of counsel for informant, a copy of said ruling was never served on informant or its counsel, thus depriving the informant of notice as the law requires.

5. That to the uttermost surprise of counsel for plaintiff-in-error/informant, a notice of assignment was served on them to appear at the Second Judicial Circuit, Grand Bassa County, on the 17th day of August, 1987 at 10:00 o'clock a.m., for the reading of the mandate sent from the Honourable Supreme Court of Liberia, when in fact no argument into the said petition had been heard.

6. That to the best of plaintiff-in-error/informant knowledge, the principal amount awarded co-respondent Joseph Harris by the Sixth Judicial Circuit Court, sitting in its September Term, A. D. 1985 and presided over by the co-respondent judge, His Honour Jesse Banks, Jr. was $39,006.00 dollars. As a result of the act of the trial judge, the case found its way in the Chambers of the Justice on said petition for a writ of error.

7. That plaintiff-in-error/informant is at a total loss as to how the figure rose from $39,006.00 to the astronomical figure of, $318, 515.16 awarded by the Justice in Chambers, as per bill of costs issued by the Second Judicial Circuit Court, Grand Bassa County.

During the arguments before this Bench, the informant's counsel strenuously and forensically argued that His Honour, the Chambers Justice, erred when he failed to send out a notice of assignment for service on the plaintiff-in-error and it submitted that a notice of assignment should have been served on its counsel or on itself.

The plaintiff-in-error/informant also contended that there was no showing that any notice of assignment was served, and returned served on its counsel before the Chambers Justice proceeded to hear arguments *ex parte* in the case, and to dismiss the petition. It argued that according to a holding of this Court, "before a case is disposed of there must be a showing that an assignment signed by the counsel for the parties themselves, and returns made by the ministerial officer to the effect." The Chambers Justice, it said, had failed to do that, but instead had arbitrarily granted an *ex parte* hearing of the petition and denied the same, to the prejudice of the plaintiff-

in-error.

The informant also argued that the Chambers Justice erred further when he assumed original jurisdiction in a labour case, heard extrinsic evidence, and awarded the defendant-in-error $277,606.00, excluding cost. It contended that the said amount awarded by the Chambers Justice was not made mention of in the proceedings in the court below and that this showed that the Justice in Chambers assumed original jurisdiction in the case, when the law limits the original jurisdiction of the Supreme Court to constitutional matters.

The informant further argued that the Supreme Court could not assume original jurisdiction over issues except those granted to it by the Constitution. It concluded its arguments by asserting that the rendition of the judgment by the Chambers Justice, without first having acquired jurisdiction, was a usurpation of power which made the judgment said *"coram non judice"* and *"ipso facto* void".

The respondents, in their returns to the bill of information, advanced the argument that the plaintiff-in-error's counsel had knowledge of the assignment of the case because Madam Patricia E. Deoud, who signed the notice of assignment, worked as a secretary with plaintiff-in-error's counsel law firm. They characterized the allegations of the informant as a distortion of fact and as being legally untenable. The plaintiff-in-error however denied that Madam Patricia K. Deoud was a secretary at the Steele & Steele Law Firm. Counsel for informant asserted instead that the lady in question was a receptionist who was not authorized to sign a notice of assignment for and on behalf of the firm. The signing of a notice of assignment, the informant said, is done only by a counsel or by the party itself, as was said by Mr. Justice Horace in the case *Dollar v. Cole,* 25 LLR 67, 72 (1976). In that case, Mr. Justice Horace, speaking for the Court, said that before a case is disposed of there must be a showing that an assignment was made, notice of assignment signed by the counsel for the parties or the parties themselves, and returns to that effect made by the ministerial officer. Mr. Justice Horace concluded by saying that the Court would continued to adhere to that procedure.

In addition, the informant argued that the doctrine referred to in count 3 of defendant-in-error's returns was not applicable since Madam Patricia K. Deoud, a receptionist, was not a part of the law firm so as to constitute a part of "an aggregate of individuals" of the law firm in the true sense of the law. She was, a mere receptionist without authority to commit the firm. It contended that an aggregate of individuals may not include a receptionist, a messenger, or a *watchman,* none of whom

are members of that firm, but are mere employees unauthorized to execute acts which have the tendency to bind the firm.

Moreover, informant argued that count 5 of the returns showed irregularities during the proceedings before the Justice in Chambers, in that Counsellor Boima K. Morris, having been deputized by Court to take the ruling on behalf of the informant, was in "loco" and thus was regarded as an "agent" for counsel for plaintiff-in-error. The appointed counsel was therefore required, as a duty, to act accordingly, especially since the ruling was adverse to the interest of his principal. His failure to except to the ruling and to announce an appeal therefrom, informant said, not only indicated acquiescence in the said ruling and showed a wanton or wilful neglect which worked adversely to the interest of plaintiff-in-error, but they also provided a basis upon which information would lie, there being no avenue for an appeal.

The informant further argued that information will lie in as much as it was not notified to be present in court, and the deputized counsel did not exercise for plaintiff-in-error its legal rights of appeal, for which plaintiff-in-error could not be blamed. Count 6 of the returns, it said, was further proof that the designated counsel's attitude was adverse to plaintiff-in-error interest, for which information would lie to enable this Court to review the entire proceedings. It also argued that count 9 of the returns made false allegations when it said that Judge J. Kennedy Belleh awarded "early retirement benefit" to defendant-in-error. This statement, it said, dehors the ruling of Judge J. Kennedy Belleh, for the aforesaid ruling stated that "the decision of the Board of General Appeals is ordered enforced with the instruction that the Board orders management to calculate and deter-mine respondents retirement pension." Nowhere in said ruling, plaintiff-in-error maintained, did the trial judge award codefendant-in-error any amount as retirement pay. It therefore prayed that the Court would take judicial notice of the ruling of Judge Belleh.

It also contended that the decision of the Board of General Appeals did not state the retirement pay. Rather, that the decision stated as follows: "That because the said subsection does not specifically state how this retirement pension is arrived at, we hereby request management to calculate the appellee's pension in keeping with subsection 3 under general stipulations of the insurance certificate." This quoted portion of the Board's decision, the plaintiff-in-error argued, did not determine what the retirement pay was and that therefore it was erroneous for the Chambers Justice to do his own calculation, thereby departing from both the ruling of Judge Belleh and the decision of the Board of General Appeals respectively. It stated that its

management had not calculated the retirement pension for submission to the Board of General Appeals and from the Board to the Chambers Justice to enable the Chambers Justice to pass upon it as true or false. In the absence of this, the plaintiff-in-error argued, the award made by the Chambers Justice in his ruling is a reversible error for want of jurisdiction.

Opposing these arguments, the respondents stated that as to court 2 of the bill of information, the allegations therein contained were false and were purposely intended to mislead this Honourable Court and thwart the administration of justice. They asserted that this Court did notify the informant, through its counsel, of the hearing of this case, as evidenced by copy of the notice of assignment proferted with the returns, and marked exhibit "A", to form part of these returns. This exhibit, they argued, also bears evidence that the Steele & Steele Law Firm acknowledged the notice of assignment by signing the same, but that it wilfully refused and failed to appear for argument of the petition. Hence, they said, count 2 of the bill of information should be overruled for being false.

The respondents, further traversing count 2 of the bill of information, submitted that the Chambers Justice did not err when he appointed Counsellor Boima K. Morris, a counsel of standing of the Honourable Supreme Court of Liberia to take the ruling for and on behalf of the Steele & Steele Law Firm, which was counsel for the informant. It was without the purview of the Chambers Justice, they argued, to instruct the said counsel on what to say or do in respect of the ruling, or whether to announce an appeal therefrom. The informant could not therefore benefit from the neglect of the appointed counsel, having itself failed and refused to attend the hearing on the petition for the writ of
error after signing and receiving a copy thereof.

Further arguing against count 2 of the bill of information, the respondents reminded this Honourable Court that as recently as June 30, 1985, the Court held in the case *Cooper et. al. v. Parker* that ". . .A law firm is not a legal entity but an aggregate of individuals; and in ordinary circumstances any act authorized and executed in the name of the firm, binds the firm. Consequently, Madam Patricia K. Deoud having signed the notice of assignment in her capacity as secretary of the law firm, for and on behalf of the Steele & Steele Law Firm, her act was binding on the Steele & Steele Law Firm. Moreover, the respondents said, it was a settled principle of law that a plaintiff-in-error applying for a writ of error on the ground that he had been deprived of his day in court is properly denied the relief sought where the notice of assignment for the trial of his case was duly served upon his lawyer, but who had failed to appear

in court on the trial date, as in the instant case. In this case, they said, the informant had applied to this Honourable Court for writ of error but that when the said error petition was assigned for hearing, its counsel had failed to appear on the trial date, even though the informant had acknowledged receipt of the notice of assignment through the said law firm which represented it. Accordingly, they asserted that the Chambers Justice acted within the pale of the law when he denied the petition for the writ of error and upheld the ruling of the lower court. They prayed therefore that the ruling of the Chambers Justice and that of the lower court should not be disturbed but should instead be upheld by this Honourable Court.

As to counts 3 and 4 of the bill of information, the respondents submitted that the informant could not benefit from the failure of the designated counsel to except to the Chambers Justice's ruling and to announce an appeal therefrom, and that in any event, the said failure did not constitute a ground for information, especially so when the informant was furnished a copy of the ruling through its designated counsel.

Contesting count 4 of the bill of information, respondents denied that information would lie since a counsellor of the Supreme Court of Liberia was designated to take the ruling on behalf of the informant, and he provided the informant with due notice and thereby granted informant every opportunity to do whatever it desired as regards the announcement of an appeal. Where this was not done, they said, the informant could not benefit from its own laches.

In response to count 5 of the bill of information, the respondents submitted that in informant's usual discourteous behavior to the court and the usual failure of its counsel to appear, al-though notified, when the Second Judicial Circuit Court notified informant and its counsel to appear for the reading of the Supreme Court's mandate, the Steele & Steele Law Firm signed the notice of assignment but failed to appear for the reading of the Court's mandate. A copy of the notice of assignment substantiating the foregoing was annexed to the returns and marked exhibit "B", to form a part of thereof.

Further traversing count 5 of the bill of information, respondents denied that the petition for the writ of error was not argued as falsely contended by the informant in the bill of information. Respondents contended that contrarily, the petition was argued after counsel for informant signed and received the notice of assignment, but had failed to appear for the argument. They cited the Court to the minutes of June 5, 1987, of this Honourable Court, and prayed the Court to take judicial notice thereof to substantiate the foregoing assertion.

In contesting count six of the bill of information, the respondents submitted that counsel for the informant was neither *au courant* with the facts of the case, nor had he read the ruling that was entered against the informant by the Sixth Judicial Circuit Court; for had he read the said ruling, they said, he would have known that His Honour Jesse Banks had never made a ruling awarding co-respondent Harris Thirty-Nine Thousand Six ($39,006.00) Dollars. They argued that on the contrary, it was His Honour J. Kennedy Belleh, then Circuit Judge, who had heard the petition for judicial review and who had confirmed the ruling of the Board of General Appeals which had awarded corespondent Harris Thirty-Nine Thousand Six (139,006.00) Dollars, as provided in Skadia II Insurance Policy, together with the early retirement benefit provided for in clause 3 of the Skadia Insurance Policy. The respondents quoted verbatim the relevant provision of the said policy as follows: ". . . An insured who terminates his employment in advance is by rule entitled to a certain continuation of insurance. Compensation is paid in accordance with the general conditions but not longer than until the age of 67. . ." They annexed copies of the ruling of the Board of General Appeals and the Skadia II Insurance Policy, marked exhibits "C" and "D" respectively, to form a part of the returns.

The respondents also argued that the ruling of the Board of General Appeals, which was upheld by the Sixth Judicial Circuit Court, provided in part, to wit: ". . .Early retirement. Since the appellee Joseph Harris was declared incapacitated in 1981, evidenced by the medical report referred to *supra,* at the age of 42, management is liable to pension him for the rest of his life up to the age of 67 in keeping with subsection 3 of the insurance certificate under general stipulations. Because the said subsection does not specifically state how this retirement pension is arrived at, we hereby request management to calculate the appellee's pension in keeping with subsection 3 under general stipulations of the insurance certificate, . ." Consequently, they said, corespondent Harris' early retirement benefit was competed as follows to wit:

Ceiling age for retirement …….67 years
co-respondent Harris' age at the time of the
ruling…….42 years
When co-respondent Harris' age of 42 is deducted
from ceiling age, gives 25 years.

25 years multiplied by 12 months, multiplied by last salary of Seven Hundred Ninety-Five ($795.00) Dollars, gives a total early retirement benefit of Two Hundred Thirty-

Eight Thousand Five Hundred ($238,500.00) Dollars. e.g, 25 x 12 x 795.00 ...$238,500.00 which when added to 39 006.00 aggregates $277,506.00

In their response to count 7 of the bill of information, the respondents submitted that the total award to co-respondent Harris was not Thirty-Nine Thousand Six ($39,006.00) Dollars as erroneously construed by the informant, but rather that the award was Two Hundred Seventy-Seven Thousand Five Hundred Six ($277,506.00) Dollars and that when the costs of Court were added thereto, the same amounted to a grand total of three hundred eighteen thousand five hundred fifteen ($318,515.16) dollars and sixteen cents.

Out of all the contentions set forth above, there seems to emerge the following issues to aid in the determination of the case:

1. Whether or not the plaintiff-in-error/informant had its day in court.

2. Whether or not a notice of assignment was ordered issued by the chambers Justice and duly issued, served and returned served.

3. Did the chambers Justice exercise original jurisdiction in the labour case, and did he hear extrinsic evidence in arriving at the award of Two Hundred Seventy-Seven Thousand Five Hundred Six ($277,506.00) Dollars, so that when costs are added, the same would amount to a total of $318,515.16.

4. Can a bill of information lie in the instant case?

5. What are the construction and interpretation of the statutes relied on by the parties.

Reference to issue one (1) in which informant contended that before a case is disposed of there must be a showing that an assignment was made, that the notice of assignment was signed by the counsel for the parties or by the parties themselves, and returns were made thereto by the ministerial officer to that effect, we hold that principle of law has been misconstrued and misapplied in the instant case. In the case *Dollar v. Cole,* 25 LLR 67 (1976), relied on by informant, the Appellant Tom Dollar was the plaintiff in an action of ejectment. After substantial delays, as was in the instant case, the trial judge notified the appellant by letter that counsel was to be in court on a named date to provide the long awaited name of the surveyor. On that day, the counsel did not appear and the judge dismissed the action, taking the

position that the letter sufficed as a notice of assignment. Appellant then sought a writ of error, contending that he had been denied HIS DAY IN COURT. The Justice in Chambers denied the writ and an appeal was taken to the full Bench. This Court held that the letter was insufficient to constitute a formal notice of assignment which was always required as a basis for dismissal, if no appearance was made by a party or counsel. The ruling of the Justice in Chambers was reversed and the case was remanded.

But this is not so in the instant case. There was no letter written to any of the parties commanding them to appear in court for the hearing of the case. On the contrary, a regular notice of assignment duly issued by the Clerk of this Court on the 2nd day of June, A. D. 1987, placed in the hands of the Marshall of this Court for service, notifying the parties in the cause of action or their representatives, that the Supreme Court of the Republic of Liberia would proceed to hear arguments *pro et con* in the said cause on Friday, the 5th day of June, A. D. 1987 at the hour of in the morning, to which they were cited to be present. The returns of the marshall showed that the said notice was served on the respective Law Offices of Steele & Steele and J. Emmanuel Berry, that they were duly returned served with the aforesaid notice of assignment, and that the said Law Offices acknowledged the said notice of assignment.

According to numerous holdings of this Court and other legal authorities, a "day in court is a rule as old as the law and never more to be respected then now; that no one shall be personally bound until he has had his day in court; by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. According to authorities, judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression; and never can be upheld where justice is administered justly," BALLENTINE LAW DICTIONARY 307.

We hold that in as much as the informants were cited to appear for the hearing of the case on the day on which it was assigned, which notice of assignment it acknowledged but failed to appear or be present for the hearing of the case, they had their day in court. The ruling of the Justice in Chambers was therefore not a judicial usurpation and oppression. The Justice did not err in his ruling. Here is that ruling:

"When this case was called for arguments which was scheduled for 12:30 p. m. 5/06/87, Counsellor Berry appeared for respondent but no one appeared for petitioner. The Court ordered the Clerk to read the marshall's returns on the back of

the notice of assignment. It was then revealed that the Steele & Steele Law Firm signed and accepted copy of the assignment for petitioner. Counsel for respondent invoked Rule Seven of the Supreme Court Rules and we said we would give petitioner until 2 o'clock. Respondent thereafter called the attention of the Court that the time was 2:05 p.m., yet petitioner was not in Court. The Court then granted respondents' request and he argued respondents' returns traversing the petition.

Then it was brought out that petitioner who filed the petition in the Sixth Judicial Circuit for the review of the Board of General Appeals decision and had failed to attend the trial, which lead the court to confirm and affirm the Board's ruling. It is against the enforcement of the court's judgment that the petition was filed. Here again, in the presence of due notice, petitioner had failed to appear and argue their own petition. What a shrewd practice of delay tactics and an attempt to thwart justice.

As already stated, petitioner, according to the scanty records found in this case, filed his petition for judicial review of the decision of the Board of General Appeals. Their counsel then was Counsellor Alfred B. Curtis. After respondent's returns were filed, the hearing of the petition was assigned, and the notice served and returns served, but petitioner and its counsel did not appear to attend the trial. Upon proper application made by counsel for respondents, respondents were permitted to argue since petitioner had abandoned his cause. This judgment we cannot disturb. "A judgment rendered against a party whose counsel absented himself from the hearing of which he was duly notified is justifiable on the basis of abandonment of cause." *Mathelier v. Mathelier,* 17 LLR 472 (1966). There is no point in arguing that the petitioner was not notified when the court entered judgment in the absence of petitioner without appointing counsel to take the judgment for them. See the case *Cole v. Industrial Building Contractors,* 17 LLR 476 (1966). Also in *Elie J. Haj Brothers v. Dennis,* 20 LLR 294 (1971), this Court said: "However generally upon default of a party for failure to appear, no such obligation (serving of notice) results.

In passing, we wish to observe that petitioner dismissed co-respondent who then filed a complaint with the Ministry of Labour, where the Board of General Appeals, affirmed and confirmed the ruling of the hearing officer. Petitioner filed their petition for judicial review but failed to attend the trial, and upon proper application for the invocation of the rule under abandonment, the Sixth Judicial Circuit entertained the argument of co-respondent and entered judgment affirming and confirming the decision of the Board of General Appeals. Petitioner then filed this petition for error, alleging that they were not afforded their day in court. But as they defaulted in the court below, they also neglected to appear and argue their petition, even though we

allowed thirty-five minutes above and over the time set for the hearing. Again, petitioner having applied for the invocation of the rule under abandonment, we permitted him to argue.

Considering all that has been narrated herein above, and taking into consideration syllabus 1 in the case *Benson et. al. v. Findley et al.,* 18 LLR 285 (1968), which reads "Plaintiff-in-error applying for a writ of error on the contention that they have been deprived of their day in court, are properly denied the relief sought when a notice of assignment of their case for trial was duly served upon their lawyer, who failed to appear in court on the trial date", it is our holding that the judgment of the court below affirming and confirming the decision of the Board of General Appeals awarding respondent Joseph Harris the sum of Two Hundred Thirty-Eight Thousand Five Hundred ($238,500.00) Dollars plus Thirty-Nine Thousand Six ($39,006.00) Dollars be, and same is hereby affirmed and confirmed, with costs against petitioner.

Petitioner's petition for a writ of error is hereby denied, the peremptory writ quashed and alternative writ denied. The Clerk must send a mandate below instructing the trial court to resume jurisdiction over the case and enforce its judgment.
Costs against petitioner. And it is so ordered.

GIVEN UNDER MY HAND IN OPEN COURT
THIS 22TH DAY OF JUNE, A. D. 1987.
Frederick K. Tulay
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ASSOCIATE JUSTICE PRESIDING IN CHAMBERS"

Again, informant's contention that the Supreme Court cannot take original jurisdiction over an issue except those stated in the Constitution and that a rendition of judgment without jurisdiction is a usurpation of power and makes the judgment itself *corem non judice* and *ipso facto* voids. *Stubblefield v. Nassah,* 25 LLR 152 (1976); 46 AM. JUR. 2d., *Judgments, §* 22 (1969) are principles of law wholly misapplied in the instant case; for in the *Stubblefield case,* referred to *supra,* the appellant did not announce an appeal from the judgment against them in the cancellation proceedings. Instead, they made a motion for relief from judgment, alleging fraud and inadvertence as grounds. They also contended that an original document found by them, and which they offered into evidence at the end of the case, constituted new evidence. The trial judge had permitted a copy of the document to be introduced into evidence but he had declined accepting the original. The motion for relief from judgment was denied by the court. This Court held that an appeal should have been

taken in the regular manner to consider the points offered in the motion. The Court also said that the appellants were neglectful. Moreover, this Court held that the original document offered did not constitute new evidence.

In the instant case, the records show that the Chambers Justice was reviewing the judgment of His Honour James K. Belleh who had confirmed and affirmed the decision of the Board of General Appeals. He therefore was not assuming original jurisdiction in the labour matter. Thus, the two cases are not analogous.

We now turn to the issue that Counsellor Boima K. Morris, having been deputized by the Court to take the ruling on behalf of plaintiff-in-error he was in "LOCO" and was regarded as agent for counsel for plaintiff-in-error and, that it was a duty required of him to act accordingly, especially so since the ruling was adverse to the interest of his principal. The informant contended in that regard that the act of the designated counsel in not excepting to the ruling and announcing an appeal indicated his acquiescence in the said ruling, and that such a wanton or wilful neglect to appeal served adversely to the interest of plaintiff-in-error. It is our opinion that under the law of agency and principal "where a person holds himself out as agent of another and does acts on behalf of his principal, which are ratified and confirmed by him, and is in charge of the particular business or enterprise of the principal, and in his name and behalf conducts the same in transactions with third parties, the law will imply an agency and will fix a responsibility upon such person, as the agent for his principal in suits growing out of, or arising from the conduct of the particular business or enterprise in which he has held himself out as the ostensible agent; and such agent would be estopped from denying his agency and throwing off his responsibility as such in a suit brought against him as agent; and particularly so, if the suit originated from failure on his part to do an act on behalf of his principal required by law, the performance of which was not discretionary but positive and binding and necessary to the legitimate conduct of the particular business or enterprise . . .. *Miltenberg v. Republic,* 2 LLR 195, 197 (1915).

Further, this Court held in the case *C. F. Wilhelm Jantzen v. Coleman,* 2 LLR 208 (1915), that where the parties bind themselves under a written contract mutually to do business, the doctrine of principal and agent or factor is established.

In the instant case, there is no showing that a contract, either expressed or implied was executed between the Steele & Steele Law Firm and Counsellor Boima K. Morris by which one of the parties confided to the other to represent each other in all legal matters before any court and at any level, or by which he was to manage or transact

any legal matter in the name of the Steele & Steele Law Firm, or by which, on its account, Counsellor Morris would be authorised to assume to do anything on behalf of the said law firm.

Furthermore, there is no showing that Counsellor Boima K. Morris was a representative of the Steele & Steele Law Firm vested with authority, real or ostensible to create voluntary primary obligation for his would-be principal, the Steele & Steele Law Firm, by making promises or representation to third persons calculated to induce them to change their legal relations. There is also no showing that Counsellor Boima K. Morris was employed by the Steele & Steele Law Firm to render service or was delegated with authority to do something in its name or stead, and it cannot be construed that the court was employing Counsellor Morris as Counsel for the Steele & Steele Law Firm. We would like to remark here that it is the duty of every lawyer to be punctual in his attendance at court and to be prompt and faithful in answering assignments received by him, his office or law partner, or for that matter, anyone employed in his office or firm, when notified of the time for hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duty or he shall suffer for such neglect.

The act of the court, in appointing Counsellor Morris to take the ruling on behalf of the counsel for plaintiff-in-error, was only one of courtesy extended to him to do an act. It had no binding force to which responsibility or punishment could be attached.

The contention of plaintiff-in-error that it did not have its day in court cannot therefore be upheld by this Court.

In view of all that we have observed from the records and because we are in complete agreement with the ruling of the Chambers Justice, counts 1-11 of the respondent's returns are hereby sustained as against counts 1-6 of the bill of information. The said ruling of the Chambers Justice and that of the lower court, being sound in law, they are hereby confirmed and affirmed to all intents and purposes. The bill of information is hereby dismissed. The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment and instructing it to resume jurisdiction over the cause of action and enforce its judgment. Costs in this proceeding are ruled against the plaintiff-in-error. And it is hereby so ordered.

Information dismissed; ruling affirmed.