

**VINCENT SORSOR**, Informant, *v.* **HIS HONOUR JAMES KENNEDY BELLEH**,  
Assigned Circuit Judge, Sixth Judicial Circuit Court, sitting in its June Term, A. D. 1985, **HIS  
HONOUR NAPOLEON B. THORPE**, Assigned Circuit Judge presiding over the  
September Term of the Sixth Judicial Circuit Court, sitting in its September Term, A. D.  
1985, and **S. EDWARD PEAL**, Respondents.

#### INFORMATION PROCEEDINGS

Heard October 23, 1985. Decided December 18, 1985.

1. Where allegations in a bill of information, to the effect that a judgment by the court is void, since it was based on a matter no longer pending in the court, are shown by the court's records to be untrue, the information will be dismissed.
2. A lawyer who misrepresents a matter to the Court will be adjudged in contempt of court.

The informant, defendant in the trial court, filed a bill of information in the Supreme Court, contending that the trial court was attempting to enforce a void judgment. The informant, who had failed to perfect his appeal, taken from a judgment rendered against him by the trial court because of his failure to attend the trial of his case even though his counsel had received a notice of assignment for trial of the case, had also failed to contest a motion to dismiss the appeal or to attend upon the hearing of the motion. The Supreme Court, on application of the movant/ appellee, had therefore dismissed the appeal and ordered the enforcement of the trial court's judgment. It was thereafter that the appellant commenced these information proceedings.

The informant contended that the judgment of the trial court was void because the judge who presided in the trial court prior to the term presided over by the co-respondent judge herein had dismissed the plaintiff's action, leaving nothing before the lower court to be tried. Hence, he said, the judgment entered by the lower court, out of which the information grew, was invalid and void.

The Supreme Court disagreed with the contention, noting that the records, as brought to the court's attention by the respondents, showed, on the contrary, that following the dismissal of the plaintiff's action by the trial court, a new action was filed. It was this new action which had been assigned and which the informant and his counsel had failed to attend. The judgment was valid, and therefore rendered the information dismissible, the Court said.

The Court also held that as the assertions contained in the information were a misrepresentation of what had transpired in the trial court, counsel for the informant should be adjudged in contempt of the Court. The therefore *denied* the information and fined the counsel \$50.00.

*J. Emmanuel R. Berry* appeared for informant. *Joseph Findley* appeared for the respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Mr. S. Edward Peal instituted an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit of Montserrado County against Vincent Sorsor, the informant herein. Trial was had and a verdict unanimously brought in favor of S. Edward Peal, after the dismissal of the first complaint and the withdrawal of the second complaint. The jury stated in substance, in its verdict, that the plaintiff was entitled to his land. Although Counsellor J. Emmanuel R. Berry, counsel for informant/ defendant was absent, a court appointed counsel announced an appeal on behalf of the informant/defendant. Counsellor J. Emmanuel R. Berry accordingly filed his bill of exceptions and perfected said appeal. A motion to dismiss the appeal was filed by counsel for S. Edward Peal and resisted by counsel for Vincent Sorsor, Counsellor J. Emmanuel R. Berry. The motion was assigned for disposition but Counsellor J. Emmanuel R. Berry did not attend the hearing of the motion, even though he had received and signed the notice of the assignment. The movant, on application to the Court, was permitted to argue his motion. The motion being tenable, same was granted by the Court *en banc* and the appeal accordingly dismissed during the March 1985 Term.

Counsellor J. Emmanuel R. Berry thereafter filed a bill of information before the full bench, contending essentially that His Honour Napoleon B. Thorpe tried an action that was in fact dismissed by his colleague Emma Shannon Walser and which action was never refiled. Therefore, he said, the judgment of Judge Napoleon Thorpe was a void judgment since there was no action pending before the court. This Court, he argued, cannot therefore order the enforcement of a void judgment.

Counsellor Joseph Findley, counsel for respondents, on the other hand, proved by record that after the action was dismissed by Judge Emma Shannon Walser on December 11, 1978, the plaintiff re-instituted his action, and that this second action was withdrawn after the filing of defendant's answer on April 9, 1978 and re-instituted on the 20th of April, 1979. The summons and the complaint were served on the informant/defendant on the 25th day of April 1979. We quote the returns of the sheriff to the writ of summons:

"THE SHERIFF RETURNS

On the 25<sup>th</sup> day of April, A. D. 1979, Arthur K. Saye, CBCO, have served the within writ of summons on Vincent Sorsor, defendant, of Lamco, Buchanan, by serving him his copy for which he signed in the presence of witnesses. I now make this as my official returns before this Honour-able Court this 25th day of April, A. D. 1979.

Sgd. Signature not clear SHERIFF, MONTSERRADO COUNT,  
R. L."

We also quote the certificate from the clerk of the Civil Law Court:

"CERTIFICATE

THIS IS TO CERTIFY that from a careful inspection and perusal of the record in the above entitled cause of action a writ of summons was served on the defendant on the 25th day of April, A. D. 1979. Up to and including the issuance date of this certificate there is no answer filed. Hence, this CERTIFICATE.

Given under my hand and seal of this Honourable Court, this  
9th day of November, A.D. 1979.

Sgd. Victor G. D. Bohlen

ASST. CLERK, CIVIL LAW COURT,  
MO. CO., R. L."

The records show that there were several notices of assignment thereafter signed by Counsellor J. Emmanuel R. Berry for disposition of law issues and trial, but Counsellor Berry did not attend any of the assignments. Hence, the court proceeded with the trial. The informant contended that Judge Napoleon Thorpe's judgment was a void judgment, in that there was no action in court. The action of ejectment between the parties, he says, was dismissed by Judge Emma Walser when she was disposing of the law issues and no other action has been filed. This contention cannot stand and same is overruled in view of the documentary evidence mentioned *supra*. The Court views the misrepresentation of Counsellor J. Emmanuel R. Berry as highly contemptuous. He is therefore guilty of contempt and fined Fifty (\$50.00) Dollars to be paid within 48 hours from the handing down of this opinion.

In view of all we have narrated and the surrounded circumstances, the information is hereby dismissed with costs against informant. And it is hereby so ordered.

*Information dismissed.*