

A. WOERMAN, Appellant, vs. W. BRUMSKIN, Judge of the Court of Quarter Sessions, Grand Bassa County, Appellees.

LRSC 3; 1 LLR 300

[January Term, A. D. 1897.]

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

Mandamus.

This case was continued from the January term, A. D. 1896, to the present term, on a petition of appellant to grant a writ of mandamus against W. Brumskin, judge of the Court of Quarter Sessions, Grand Bassa County, to compel him, the said judge, to sign the bill of exceptions of the appellant, that the case might be within the legal grasp of this court, or on refusing so to do, to show cause at this term of the court. The court granted said petition; but during the interim of the term, the said judge below died and no return has been made to this court as to whether the said mandamus was obeyed or not.

This court therefore decides that the record of the said case is incomplete by reason of the said bill of exceptions not being signed by the said judge below according to law. (Lib. Stat. Bk. 1, p. 78, secs. 3 and 4; also Acts Leg. Liberia, 1894, p. I I, sec. 2.) Nor does the court attach any fault to appellant, he having done his duty to bring the case properly and lawfully before the court. This fact being established, it is the opinion of the court that the merits of the case cannot be considered, the case not being within the legal grasp of the court. It is also the opinion of the court that the case should not be remanded for a new trial, for the reason that it is not in such a state as to allow the court to know if there has been any breach of the law in the trial below. Nor would it be just to require the present judge below to sign the bill of exceptions, for this he could not do unless he try the case over and his opinion and rulings might not be the same as those of his predecessor.

The neglect of completing the record places both the appellant and the original appellee in awkward positions, and deprives appellant of the opportunity to seek further remedy. The court therefore is of opinion that to do justice in the premises the principle of equity must be brought to bear; for it would be unjust to subject the appellant to further inconvenience, nor is the fault to be attached to the original appellee.

Therefore, the court adjudges that the said case is dismissed, at the expense of the State, the neglect being on the part of the State, through the judge below, late deceased. The clerk is hereby commanded to issue a mandate to the judge below, to the effect of this judgment.

Key Description: Appeal (Dismissal of appeal for failure to transmit complete record within statutory time)