

LIBERIAN LAW REPORTS

ESTHER NELSON, ALBERTHA NELSON, Intervenors, and CATHERINE FRAZIER et. al., Plaintiffs-In-Error, *v.* **JOHN A. DENNIS**, Circuit Judge presiding, and SANDI BAI et al., Defendants-In-Error.

JUDGMENT WITHOUT OPINION

Decided: June 15, 1979.

When this case was called, the Perry Law Firm appeared for the plaintiffs-in-error, and Counsellor Nete Sie Brownell appeared for the defendants-in-error. Upon examination of the records before us, it was discovered that after the ruling of the Justice in Chambers handed December 1, 1978, denying the application for the writ-of-error from which ruling an appeal had been taken to the Bench *en banc*, and while the appeal was still pending, counsel for the defendants-in-error filed a motion to dismiss the appeal taken from the ruling of the Chambers Justice on the ground that accrued costs had not been paid in the court below.

Besides the novelty of the procedure, such a motion that brought into the error proceedings and issue that had not been raised on either side in the application for the writ or the returns, nor had been argued before the Justice in Chambers to make it subject to appellate review, could not be raised for the first time on appeal before the Full Bench. The Supreme Court has appellate jurisdiction over only those matters which had been passed upon by inferior tribunals and appealed for appellate review. We do not doubt that the motion is therefore tenable.

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However, this Court cannot overlook the flagrant disobedience the counsel for the plaintiffs-in-error, who after being notified by assignment of the hearing of the ejectment case, were absent when the case was called without excuse or leave, thereby depriving themselves of the right to have appealed from the adverse judgment. In order to justify the issuance of a writ of error in favor of a party, good cause must be shown as to why he was not present to announce an appeal from the judgment against him. If his absence was due to his own laches, neglect, or failure to obey assignment of the case, the writ will not issue to favour his own failure to appear in the interest of his case. In view of the foregoing, it is adjudged that the ruling of the Justice in Chambers should be and the same is hereby affirmed with costs against the plaintiffs-in-error.

The Clerk of this Court is ordered to send a mandate down to the court below commanding the judge therein to resume jurisdiction over the cause and enforce the judgment. And it is so ordered.

NOTE: The Chief Justice being absent when this case was heard, and Mrs. Justice Brooks-Randolph having heard the proceeding in Chambers did not take part, hence have not signed this judgment.