

AMOS JACKSON, Appellant, v. **ROBERT SATURDAY**, Appellee.

APPEAL FROM THE TERRITORIAL COURT OF THE TERRITORY OF
MARSHALL.

Argued May 9, 1957. Decided June 14, 1957.

1. All cases on appeal from Justice of the Peace Courts must be heard *de novo*.
2. A judgment of a Justice of the Peace Court may not be set aside for error in form alone.

On appeal from a judgment of the court below dismissing a judgment of a Justice of the Peace Court in an action of debt, judgment *reversed* and case *remanded* for new trial.

Albert D. Peabody for appellant. No appearance for appellee.

MR. CHIEF JUSTICE SHANNON delivered the opinion of the Court.

During this term of Court, we have heard cases on appeal from the Territorial Court of Marshall, each of which has been fraught with so much incongruity, misunderstanding and miscarriage of the law and its practice in our courts, that in this case we have decided to state substantially some of the facts apparent on the records certified to us in evidence thereof.

Appellant, Amos Jackson, entered an action of debt against the Appellee, Robert Saturday, before Justice of the Peace Samuel Z. Gbeto who, because of the failure of the defendant to appear, entered the following judgment:

"After observing the unnecessary delay of defendant, and failure of defendant to appear at the time mentioned by him, it is hereby ordered that plaintiff's motion demanding judgment by default is hereby granted, and that defendant pay the amount sued for and costs of this court."

There is no record or evidence that, in granting the judgment by default, the plaintiff moved for its perfection by proof of the genuineness of his claim, as is required by the provisions of the Justice of the Peace Code.

It is error to adjudge the plaintiff in any case entitled to recovery without his first having stated his case or complaint and proved it. Somehow, the defendant against whom this judgment was entered, even though absent, managed to secure an appeal to the Territorial Court of Marshall, and when the case came up for trial before said court, Robert Saturday, then appellant, through his counsel, filed a pleading entitled : "Motion to Dismiss Judgment," which was followed by an amended one. This seems to be strange practice, especially since, under our statutes, all cases on appeal from Justice of the Peace Courts should be heard by the appellate court anew; that is, as if such case had not been heard. Yet, despite this and the resistance filed by counsel for Amos Jackson, the trial Judge sustained same. Not only did he "dismiss the judgment" as prayed, which would leave the case still to be heard and determined, but he put finality to it by further adjudging that the "defendant be set free, his bond ordered returned and plaintiff ruled to pay all costs in the proceedings."

What an anomaly! How the trial Judge could have overlooked the provisions of the Justice of the Peace Code to the effect that no judgment of a Justice of the Peace should be set aside for error in form is beyond imagining; and the more so is it puzzling to understand how he, in passing upon a motion to dismiss judgment, which can be construed as meaning vacating it, discharged the defendant, ordered his bond returned, and ruled the plaintiff to pay all costs.

Judges should make themselves conversant with the law, so as to enable them to pass intelligently upon issues when presented before them.

Because of the glaring and flagrant irregularities and errors committed, some of which we have pointed out herein, the judgment is hereby set aside and declared null and void, and the case is ordered remanded to be heard anew, and with as little delay as is possible. The Judge of the court below is required to make returns to this Court showing how he executed this judgment. Costs to abide final determination of the case. And it is hereby so ordered.

Reversed and remanded.