

**J. DIO WILSON**, Assistant Minister of Education,  
Petitioner, *v.* **HIS HONOUR JUDGE BENJAMIN  
WARDSWORTH**, Resident Circuit Judge, Sixth Judicial  
Circuit Court, Assigned over the June Term, A. D. 1979,  
JIMMIE TEMBO et al., Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS  
JUSTICE DENYING A PETITION FOR A WRIT OF  
PROHIBITION.

Heard: November 4, 1979. Decided: December 20,  
1979.

1. Officers of court should maintain absolute neutrality in matters pending before court and should be impartial to the parties in the performance of their duties.
2. Prohibition will not lie to seek appellate redress after exception has been taken to final judgment based upon the verdict of a jury; the appropriate remedy in all such circumstances is an appeal.
3. Prohibition will not issue to correct a party's neglect to act in his own interest.

Petitioner was not present in court when final judgment in a jury trial for damages was rendered against him. The court-appointed counsel excepted to the judgment and announced that petitioner would take advantage of the statute provided in such cases. Thereafter none of the jurisdictional steps to perfect an appeal was taken; instead, petitioner filed a petition for the writ of prohibition. The Chambers Justice heard and denied the petition, and on appeal, the ruling was *affirmed*. The Supreme Court held that prohibition would not lie after exceptions had been taken to a final judgment based on a jury's verdict. The

appropriate remedy is an appeal.

*Lewis K. Free* appeared for petitioner. *M. Fabnbulleh Jones* appeared for respondents.

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

These prohibition proceedings grow out of an action of damages brought by Respondents Jimmie Tembo and Philip Toomey against Petitioner J. Dio Wilson, claiming that the petitioner had destroyed property belonging to them.

Trial of the case began in the June Term 1978 and on the 20th of July, same being the 28th day's session of the term, a jury was empanelled. The trial of the case continued until the 28<sup>th</sup> of August when final judgment was rendered. The petitioner being absent when judgment was entered against him, the court appointed counsel to take the judgment for him, and the said appointed counsel took exceptions and gave notice that the petitioner would take advantage of the statute in such cases provided.

But before judgment and whilst trial of the case was in progress, the petitioner in these proceedings, through his counsel, filed a motion for the trial court to refuse jurisdiction over the case after having taken part in the previous term of court when the law issues had been passed upon without challenge to the court's jurisdiction over the subject matter or the parties. The motion was filed on the 21st of July which was the second day of the trial, and the day after the jury had been empanelled. The court heard the motion, and on the 4<sup>th</sup> of August denied it on grounds stated herein. The case then continued to termination by judgment on the 28th of August as aforesaid.

In face of the fact that notice was given to take advantage of the statute after judgment was rendered on the verdict of the jury, no bill of exceptions, nor appeal bond, nor notice of the completion of the appeal were filed. Therefore, although the petitioner in the case of damages was dissatisfied with the judgment, his dissatisfaction with and exception taken to the said judgment cannot be reviewed by the Supreme Court. None of the four jurisdictional steps to complete an appeal was taken, so we would be without legal authority to open the records even had appeal been announced. Civil Procedure Law, Rev. Code 1:51.4

On the 26th of September, 1978, that is to say twenty nine days after judgment was rendered in the case of damages, the Clerk of the Supreme Court issued an alternative writ of prohibition purported to have been applied for by the petitioner, J. Dio Wilson, the losing party in the trial court. In the petition found in the file, Judge Benjamin Wardsworth, who had tried the case and rendered judgment twenty-nine days before, and the plaintiffs in damages, Jimmie Tembo and Philip Toomey were named as respondents. The writ was served and returned by the Marshal, and the respondents filed returns on the 9th of October. Mr. Justice Barnes heard and passed upon the petition and returns, and his ruling was appealed from, hence the matter is before us on appeal.

It is very strange that although the judgment in this case was rendered on the 28th of August, more than fifteen days after the legal term time had ended on the 7<sup>th</sup>, neither side raised this very important issue before the Justice in Chambers in the prohibition proceedings. However, it was argued on appeal before us, and we were therefore compelled by law to take judicial notice of it. But we shall come back to the issue later in this opinion.

When this case was being argued before us, Mrs. Justice Brooks-Randolph, out of whose Chambers the alternative writ is supposed to have been ordered issued, questioned the Clerk's authority for the issuance of the writ. There was nothing in the file to show that any stay order had been given by her which was legally necessary before any remedial writ could be issued. She could not remember having given any such order; so the absence in the file of her written order leaves us with the conclusion that the Clerk acted without authority and for which he should be punished.

Moreover an inspection of the petition showed that it was filed during the hearing of the case and before judgment was rendered. Filing date was shown to be August 11, 1978, and judgment was rendered seventeen days later, on the 28th of August. But what is strange is that the alternative writ was not issued until the 26<sup>th</sup> day of September, forty-six days after the petition was filed and twenty-nine days after judgment was rendered. If the writ had been served immediately after the petition was filed, judgment might not have been rendered, and much of the wasted time appearing in the action of damages might have been avoided.

Officers of court should maintain absolute neutrality in matters pending before court and should be impartial to the parties in the performance of their duties. Failure by court officers to observe strict neutrality in cases before court could hurt the interest of the parties and this cannot be tolerated. Any future recurrence of such behaviour on part of any court officer, will call forth the severest penalties. The Clerk is therefore fined in the sum of \$100.00 to be paid within 48 hours.

Prohibition will not lie to seek appellate redress after exception had been taken to final judgment based upon the

ver-dict of a jury; the appropriate remedy in all such circumstances is appeal. Exception taken by the losing party to a final judgment in such circumstances, followed with notice to take advantage of the statute, presupposes that regular appeal is intended to be taken and completed, to enable the Supreme Court to review the judgment to which exception had been taken. None of the remedial writs will avail to afford appellate review in the Supreme Court, after judgment based upon verdict, where the losing party took exception to the verdict and judgment. The rule is that prohibition will not issue to correct a party's neglect to act in his own interest. *Francis v. Pynches*, 15 LLR 224 (1963). Prohibition does extend to restraining a tribunal from usurpation of jurisdiction but it cannot be used to substitute for an appeal *Fazṣah v. National Economic Committee*, 8 LLR 85 (1943).

We come now to the important question in this case: did the trial judge have jurisdiction over the case of damages when he rendered judgment quite seventeen days after the legal term time had ended? We have said earlier on in this opinion that the point was not raised in the petition or the returns in these prohibition proceedings and so it was not passed upon by the Justice who presided over the proceedings in Chambers but it was argued before us when the ruling in Chambers was reviewed on appeal.

The case of damages out of which these proceedings grew was tried in the June Term 1978, which began on the third Monday in June of that year, and that was the 19th of June, 1978. According to the Judiciary Law, Rev. Code 17:8.1 and 17:8.2, the legal term time within which the jury session of that term of court was by statute authorized to sit extended from the said 19<sup>th</sup> of June for forty two days, excluding Sundays and holidays, up to and including the 7th day of August, 1978.

Therefore, according to computation of time, the judgment rendered in the case on the 28<sup>th</sup> day of August was rendered seventeen days beyond the legal term time. Such judgment under normal circumstances should be considered void, since there is no extension of term time requested, and ordered by the Chief Justice but the following statute allows for cases commenced within term to continue beyond the expiration of the term until it is completed and that statute also provides that although no jury might be empanelled beyond the forty-second day of the term, once empanelled within term they shall continue until the case in which they were empanelled is determined. Here are the two sections of that statute:

"Order of business at Quarterly session, duration of trial beyond session.

Except as otherwise provided in the Civil Procedure Law, jury cases shall have preference over all other cases and matters, and criminal cases shall be first in order notwithstanding the expiration of the session at which it was commenced a trial shall continue until it is completed.

Jury sessions time limitation on empanellment. No jury shall be empanelled after the forty-second day of any quarterly trial session, as provided in paragraph 2 of section 3.8, but a jury once empanelled in any case in accordance therewith shall continue until the case is determined." Judiciary Law, Rev. Code 17:3.11 & 17:3.12.

In the circumstances, it was unnecessary for the Chief Justice to extend the term time in a case commenced within the term time. It is our opinion that the trial of this case was regular and that the judge had jurisdiction over the subject matter and the parties. The motion to vacate the judgment filed by the petitioner in the midst of the trial was baseless and unmeritorious and therefore properly denied because *res judicata* upon which the motion was based could not obtain since the merits of the case of damages had never been litigated before. The case which came before the courts prior to the damages suit was summary ejection, in the course of which the defendants therein applied for prohibition and appealed from the ruling in Chambers. They withdrew the appeal in the March Term 1975, as can be seen from the Supreme Court Judgment, rendered on the 27<sup>th</sup> day of June, 1975.

As we have said earlier on in this opinion the alternative writ of prohibition was served twenty-nine days after judgment had been rendered in the case of damages. Therefore there was nothing for prohibition to prevent, since the respondent judge had violated no trial rules. We therefore affirm the ruling of the Justice in Chambers and refuse issuance of the

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peremptory writ, with costs against the petitioner. The Clerk of this Court is hereby instructed to send a mandate to the trial court commanding the judge therein presiding to resume jurisdiction over this case and proceed to enforce its judgment pursuant to this opinion. And it is hereby so ordered.

*Petition denied; ruling affirmed.*