CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

OCTOBER TERM, 1960.

KWRAH GBAE, *et al.*, Appellant, *v.* GBAE GEEBY, Appellee.

APPEAL FROM ORDER IN CHAMBERS ON PETITION FOR WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 17, 1960. Decided December 16, 1960.

1. A judgment is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard.
2. Technicalities which do not relate to the merits of a case will not be allowed to defeat the ends of justice.
3. A writ of error may be granted when an inferior tribunal has denied to a litigant his day in court.

Appellant Gbae obtained a judgment against appellee in an action of summary ejectment in a magisterial court. Appellee instituted injunction proceedings in the circuit court, seeking an order restraining enforcement of the judgment of the magisterial court. The circuit court dismissed the injunction proceedings. Appellee applied to the Justice presiding in Chambers for a writ of error to the circuit court. The writ of error was granted. On appeal from the order in Chambers granting the writ of error, *order affirmed.*

J. F. Dennis and *C. T. O. King* for appellants. *William N. Witherspoon* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

A concise history of the above-entitled cause is as follows:

In October, 1956, Kwrah Gbae, one of the appellants herein, instituted an action of summary ejectment in the Magisterial Court of Monrovia against Gbae Geeby, appellee herein. Although the said action was determined in favor of the aforesaid Kwrah Gbae, thereby evicting defendant Gbae Geeby, the refusal of Gbae Geeby to surrender the premises in question was made manifest and was brought to the attention of the trial court. Meanwhile Gbae Geeby fled to Circuit Court of the Sixth Judicial Circuit, Montserrado County and filed an action of injunction against Kwrah Gbae, *et al.*, alleging that Gbae Geeby and his family had been in occupancy of said premises since 1950, and that Kwrah Gbae was desirous of ousting him on the grounds that the premises were owned by her. There were several assignments of the injunction proceeding. When the last assignment was made, counsel for the present appellee appeared but the cause was not taken up at the time. In view of the fact that the said injunction case was not taken up as assigned, the judge informed said counsel that he would notify him when the case would be called for hearing. This the judge did not do, but instead disposed of the said injunction case without further notice. Hence it was not until a bill of costs in the said action of injunction was presented to the said counsel for taxing that he came to know that the injunction case had been disposed of without notice to him. Thereupon he refused to tax said bill of costs. The foregoing circumstances undoubtedly prompted the present appellee to apply as plaintiff-in-error for issuance of a writ of error in these proceedings. In his petition for the issuance of the writ of error, plaintiff-in-error in Count "1" thereof, alleged:

"1. Without giving plaintiff or his counsel notice of the assignment of the case for a hearing of the motion to dissolve the injunction, the judge took up the main case on July 1, 1959, in the absence of and without the knowledge of plaintiff; and although he promised plaintiff's counsel to notify him when the case was assigned, he dismissed plaintiff's case, ruling plaintiff to costs. In this there was manifest error."

Countering the petition of plaintiff-in-error, the present appellants, as defendants-in-error filed a five-count return. The fourth count thereof being the only one bearing on the issue raised by the plaintiff-in-error in respect of not being allowed his day in court, we shall pass on said Count "4" for the benefit of this opinion; it reads as follows:

"4. And also because defendants-in-error make returns and further maintain that plaintiff-in-error has simply brought this unmeritorious proceeding against them as a means of further delaying and baffling procedure and eventually defeating justice, as will more fully appear from the records of the entire proceedings in the trial court; and as will more fully appear from records which are procurable but not presently available; and as further appears from self-explanatory documents hereto attached, marked Exhibit 'A' of defendants-in-error. Defendants-in-error further say that each time the matter was assigned and reassigned, for nearly two years, counsel for plaintiff-in-error either sent in an excuse or absented himself without any legal color of right or justification, to the gross embarrassment of defendants-in-error."

In the above-mentioned Count "4" of the returns of defendants-in-error, they contend that, each time the matter was assigned and reassigned for nearly two years,

counsel for plaintiff-in-error either sent in an excuse or absented himself without any legal color of right. In considering this allegation of the defendants-in-error it can be readily observed that they have made no showing that plaintiff-in-error was actually notified of the time of the assignment for the disposition or determination of the injunction case at the time it was heard. Whether or not plaintiff-in-error made excuses or absented himself whenever the case was assigned or reassigned for two years had no bearing on the merits of the case under review. Defendants-in-error should have made a definite showing that plaintiff-in-error was duly notified to be present in court on a certain day, at a certain hour, for the hearing of the injunction case in which he was the plaintiff. Defendants-in-error having failed to make clear that plaintiff-in-error was given ample notice of the assignment of the injunction suit, the question of transmitting the certified records from the trial court to settle this particular issue was deemed immaterial.

Technicalities which do not go to the merits of a case will not be allowed to defeat the ends of justice.

> "Although as a general rule this Court will not grant an extraordinary writ in order to remove a cause from the trial court to this Court for review, yet whenever a party has been denied his day in court and by the illegal action of the trial judge deprived of the right of a regular appeal, this Court, or a Justice thereof, in the exercise of sound discretion may grant the appropriate remedial writ." *Marshall* v. *Blaine,* 6 L.L.R. 70 (1937), Syllabus 1.

It is obvious from the foregoing that plaintiff-in-error was not allowed his day in court. It is a settled rule that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard.

"*Day in court.* The time appointed for one whose

rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf. This phrase, as generally used, means not so much the time appointed for a hearing as the opportunity to present one's claims or rights in a proper forensic hearing before a competent tribunal. See *Ferry* v. *Car Wheel Co.*, 71 Vt. 457, 45 Atl. 1035, 76 Am St. Rep. 782." BLACK, LAW DICTIONARY 507 *Day* (3rd ed. 1933).

In view of the foregoing we are of the considered opinion that the ruling of the Justice presiding in Chambers should be affirmed with costs against defendants-in-error.

Affirmed.