

THOMAS F. HOWARD, Appellant, v. JOHN
DUNBAR, Appellee.

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

Argued November 21, 1961. Decided December 15, 1961.

1. The rules of the circuit courts, as approved by the Supreme Court, have the force and effect of statutory law.
2. It is improper for a lawyer without valid excuse to fail to appear at a hearing on assignment of a judge.

On appeal from an order in which the Justice presiding in Chambers refused to issue a writ of error for review of proceedings in an action of ejectment, *order affirmed*.

Peter Amos George for appellant. *T. Gyibli Collins* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is a case that took its birth in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. An inspection of the records shows that the present appellee, John Dunbar, plaintiff below, sued out an action of ejectment on March 7, 1960, and filed same for the June, 1960, term of the aforesaid court, against Thomas F. Howard, defendant, alleging that the said defendant was illegally withholding his land situated in Block Number 21 on Camp Johnson Road in the City of Monrovia, Montserrado County, for which land the said plaintiff holds legal title, and that defendant had encroached on the said premises, had erected a house on a portion of the land and had sold a portion thereof to a third party.

It appears that, by consent of both parties to the suit,

after pleadings had rested they resorted to arbitration so that competent surveyors would go on the spot and identify the common boundary between plaintiff and defendant. Upon this mutual understanding a board of arbitrators was appointed by the court, and they performed their duty on the spot.

After complying with the orders of the court, the arbitrators filed their award, indicating therein that some portion of the plaintiff's land was occupied by the defendant and that the fourth corner of plaintiff's lot fell on the inside of the house that defendant had built on the premises, and hence the usual mark for that corner could not be set in without damage to the house, which they were not authorized to do. This report motivated both plaintiff and defendant to agree again to file joint objections thereto for a second survey so that both lots would be marked off and plaintiff's fourth corner set in. When the matter was assigned for hearing by the court below, counsel for defendant, now appellant, failed to appear, although he had been notified of the court's assignment in the proper way; whereupon the court permitted the arbitrators to give evidence in proof of their findings, and thereafter affirmed the award by a final judgment. This final judgment of the court below ordered plaintiff below, appellee herein, placed in possession of his property which he complained had been withheld. Some time thereafter, the present appellee applied for the issuance of the writ of execution for the enforcement of the court's judgment since, although the court had of its own accord noted on its records an exception for the defendant, yet he had failed to avail himself of the right of an appeal; and as soon as the writ was issued and served appellant filed objections to stay the service of the execution.

When these objections were assigned for hearing, not only was defendant's counsel informed of the assignment, but he initialed the notice, certifying that he had been

notified. Still, he absented himself, as in the former cases, and according to his practice, he was absent without excuse. Hence there remained nothing for the court to do other than to proceed to pass upon the grounds of the objections, which was done; and they were denied; and the writ was ordered enforced.

At this stage of the proceedings, counsel for appellant fled to the Chambers of Mr. Justice Pierre, acting for Mr. Justice Harris, with a petition seeking the issuance of the writ of error, for a review of the proceedings. After respondents had filed their returns the matter was heard by the said Justice; and we quote herein his ruling thereon:

“From the records in the case in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, the action of ejectment out of which these proceedings have grown was assigned for hearing, and for the purpose of disposing of the report of arbitrators appointed to survey the land in dispute, on October 10, 1960. The notice of assignment shows that counsel for defendant was particularly asked to be notified, and he initialed the notice.

“Although the said counsel had ample and timely notice of this assignment, he was absent when the case was called, without having obtained excuse or showing cause why he should not attend upon the assignment of the case. Counsel for plaintiff being present, the court proceeded to hear the arbitrators' report read. It would appear that this report was not satisfactory, and counsel for the parties met later, and filed joint objections thereto.

“The case was then assigned a second time before the same judge, His Honor, Joseph Findley, for hearing at 9 o'clock in the morning of November 17, 1960, for an investigation into the report. Although counsel for both sides initialed this second notice of assignment, counsel for the defendant was again absent when

the court met, and for yet another time he had failed either to obtain an excuse or indicate why he could not attend upon the assignment of the case. It would seem that, at this hearing, judgment was rendered on the arbitrators' report, in favor of the plaintiff. Execution was applied for and granted, and Judge Findley went out of term. Defendant's counsel got to know of the execution, and filed a motion to stay the same for several grounds stated therein. This motion came before His Honor, Judge Morris, and was assigned to be heard on March 14, 1961, when the court met as per assignment, which had been acknowledged by counsel on both sides. Again, defendant's counsel was absent; the judge therefore rendered judgment denying the stay of execution; and, although defendant's counsel was absent, exceptions were ordered recorded for him. It is for the above reasons that the defendant in the court below has applied for the issuance of a writ of error for us to review what he claims to be errors committed by the trial judge below.

"According to the rules of the circuit courts, failure to file a motion for continuance, or to appear for trial after return by the sheriff of a written assignment, is sufficient indication of the party's abandonment of a defense in the said case, in which instance, the court may proceed to hear the plaintiff's side of the case and decide thereon. Petitioner's counsel contended that his reason for not having appeared in the lower court, was because, on the same days when he should have appeared there, he was busy in the Supreme Court. It is true that Supreme Court assignments take preference over those of the inferior courts; but it is also true that, in all instances of counsel having assignment in the lower court and also having to appear in the Supreme Court, this information has been brought to our attention, and the clerk of the Supreme Court has, in all such cases, been ordered to inform the

judge of the lower court of the reason why counsel should be excused from keeping his assignment.

“The rules of the courts of Liberia were approved by this Court, and they thus became, to all intents and purposes, law governing those courts. The Supreme Court itself is without authority to violate them. That being so, we cannot perceive of any error committed either by Judge Findley or by Judge Morris in proceeding with a case in which assignment had been regularly made and acknowledged by the parties, and where the said parties undertook to absent themselves from the hearing without excuse. Besides being in violation of the rules of court, it is contemptuous for a lawyer to ignore an assignment of a Judge, and it is a waste of public funds to have courts convened and the parties fail or refuse to take advantage of them in order that their causes might be heard. The Supreme Court will not and cannot encourage such behavior on part of counsel.

“This point was resisted in Count ‘3’ of the returns; and we not only had counsel on both sides to argue it, but we ordered the original records of the lower court brought up; and upon examination, we found that defendant’s counsel had deliberately absented himself from the three assignments shown in the records. This one point showing deliberate violation of the rules of court is sufficient to form the basis of our decision in this matter. We have not been able to find any irregularity in the conduct of the respondents; and we have no alternative therefore but to deny the petition. The clerk of this Court is ordered to send a mandate to the court below, and instruct the judge to resume jurisdiction and enforce his judgment.”

The appellant, being dissatisfied with the ruling made by the Justice, presiding in Chambers, sought an appeal before the full bench, which privilege was granted; and it is this appeal which we have sat patiently and heard.

In the argument of appellant's counsel before us, he contended that since the objections to the report of the arbitrators were made jointly by counsel representing both sides in the case, the court below should not have disposed of the proceedings in his absence, and that it was irregular for the judge below to have disposed of the matter without a jury. Answering questions put to him by this Court, he soon admitted his misconception of the law with respect to proving of an award and the final judgment thereon.

In accordance with the rule of court cited by the Justice presiding in Chambers, the court below had no alternative other than to have proceeded to hear the matter, especially when, in the absence of counsel without excuse, he was regularly served with legal notice of the aforesaid assignment—and this cannot be deemed a fault attachable to the opposite party or misconduct of the trial judge.

The rules which control our court procedure must be closely observed and guarded with all diligence by those who are authorized to enforce them; and this Court will not countenance their deliberate disregard.

It is therefore our opinion that the ruling of Mr. Justice Pierre, acting for the Justice, presiding in Chambers, is sound in the sight of the law and should be upheld. The aforesaid ruling is therefore affirmed with the instruction that, in the enforcement of the final judgment of the lower court, the fourth corner of appellee's lot must be set by the surveyors who constituted the arbitration board. And it is hereby so ordered. Costs in these proceedings are hereby ruled against appellant.

Affirmed.