# LOUI S P I COUT, A ppellant, e. WILLIAM DI

GRADO, Appellee.

APPEAk FROM THR CIRCUIT COURT OF THB SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 2, 1962. Decided June 1, 1962.

The Supreme Court will not consider the brief of an appellant who was absent when his case on appeal was called for hearing, and the Court will grant the appellee’s motion to dismiss such an appellant's case on appeal.

Appellee, as plaintiff in the court below, instituted an action of debt against appellant, who thereupon appeared only to the extent of contesting the court’s jurisdiction over his person. Judgment having been rendered against the defendant, he perfected an appeal, but f ailed to ap- pear, either by counsel or in person, at the hearing before the Supreme Court. Upon appellee’s motion, the judg- *ment* was *affrmed* and the *a p peal dismissed.*

No appearance for ap pellant. fncdonnfd If. *Perry*

for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the

## Court.

William Di Grado sued out an action of debt in the March, '9s 6, term against Louis Picout, defendant below, now appellant. Judgment was rendered against the said

defendant; and it is from this judgment that the appellant has appealed to this Court on a bill of exceptions con- taining eleven counts.

The records disclose that, when summoned, the said defendant neither filed a formal appearance nor answered as the law requires, but sat supinely until the expiration of the time prescribed by law within which to file the

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same, then undertook to file a special appearance, as he termed it, contesting the jurisdiction of the court below over his person—a very strange and interesting issue to be expatiated upon in this opinion if we enjoyed the right to do so.

When the case was reached on our assignment bulletin, the Court ordered the clerk to issue written assignment for hearing. Counsel were formally notified ; but at the call of the case at the specified time, neither appellant nor his counsel appeared. Thereupon, appellee’s counsel, being present, proceeded to argue his side of the case, and cited a rule of this Court, from which we quote in perti- nent part:

“When a case which has been bulletined is reached for argument and neither party appears, it may be dismissed at the cost of the appellant. If the appel- lant Iails to appear when the case is called for hearing, the Court may, on motion of appellee or on its own motion, dismiss the appeal.... Appellee’s failure to appear after assignment will be sufficient cause for the Court to proceed to hear the argument of the appellant and rule thereon.” R. Sup. Ct. IV (6) . 3 L.L.R.

6gy-6g8.

This rule is mandatory and positive ; and it leaves this Court with no option to exercise discretion when it is invoked by either of the contending parties ; therefore, although it is shown by the records that both of the parties filed briefs, yet in strict adherence to the rule quoted, which governs and controls our practice, we have no choice other than to dismiss the appeal and affirm the judgment of the court below with costs against the appel- lant. And it is hereby so ordered.

*H p p eal dismissed.*