# GERTRUDE C. POTTER, Appellant, r. J. DANIEL

POTTER, Appellee.

APPEAL FROM TH E CIRCUIT COURT OF TH E STXTH J UDICIAL CIRCUIT, MO2'fTSERRADO CO U 2 tTY.

Argued October 25, 1962. Decided February 8, 1963.

1. Because of the tripartite nature of a divorce action, the trial court has an affirmative responsibility to determine that the defendant has been accorded an adequate hearing as a basis for rendition of a decree.
2. It is error for a trial court to render a decree of divorce without inquiring into charges by the defendant that her counsel was guilty of professional miscon- duct in withdrawing appearance and abandoning defenses to the action.

On appeal from a judgment granting a decree of di-

vorce, *reversed and remanded.*

Jacob *lW'illis* for appellant. *Be ysolo w* arid Coo#er has Ftrm for appellee.

MR. CHIEF JUSTICE WILSoN delivered the opinion of

# the Court.

On February 2i, 9S9. appellee, as plaintifl in the court below, filed an action of divorce against his wife in the March, '9f9. term of the Circuit Court of the Sixth Ju-

dicial Circuit, Montserrado County.

Within the four days allowed, appellant, as defendant in the court below, filed a formal appearance, which ordinarily indicates an intention to contest the charge complained of by plaintiff.

Strangely, however, no answer was filed after the lapse of the ten days allowed for the filing of this pleading. Strange, also, is the fact that, with the defendant placed on a bare denial for failing to file an answer, the plaintiff did not insist on the assignment and disposition of this

269

270 LIBERIAN LAW REPORTS

case until two years after the filing of defendant’s appear- ance.

On December zz. 9°' , and on application of plaintiff, assignment for the trial of the case was made by the court. Plaintiff appeared through counsel, and Counsellor Wil-

liam Cisco appeared for the defendant. At the call of the case, counsel for the defendant announced withdrawal of the appearance, and filed an abandonment of all de- fenses against plaintiff’s complaint.

Because of the abandonment by counsel of defendant’s defenses, followed by withdrawal of the appearance filed by the defendant, the case took on an *ex part e* character ; hence defendant, having been called three times at the door and no answer made ( though it did appear strange that the defendant could be expected to answer when her counsel, who appeared on her behalf, had announced an abandonment of her defense) , the plaintiff was called upon, together with his witnesses, to testify in proof of the allegation contained in his complaint. The jury, there- fore, had no alternative but to retire to their room of deliberation and bring in a verdict in favor of the plaintiff. After the jury’s verdict was rendered, and before final judgment, a legally untenable motion was filed by the defendant through Counsellor Jacob Willis, praying the court to arrest judgment in said case, a procedure which is applicable only in a criminal, and not a civil case ; hence, said motion was correctly denied by the court.

In this motion, however, it was brought to the attention of the court that the defendant had no knowledge, nor had she been informed of the assignment of the case, and that the court, in proceeding to the trial of said case without notice to her of said assignment, had prejudiced her inter- est, as she had not had her day in court.

This motion, though irregularly and illegally sub- mitted, and therefore correctly denied, did bring to the attention of the court a situation which the court should have heeded before rendition of final judgment against defendant, by inquiring into the truthfulness or falsity of

LIBERIAN LAW REPORTS 271

the charge, since it put into question the authority of de- fendant’s counsel to withdraw her appearance and aban- don her defense, which she denied having given her counsel any authority to do.

Actions of divorce being of a tripartite nature, the court, as the third party, must be hesitant in decreeing a divorce when the means of defense have not been proved to be made available to both parties, as in the instant case. On the point of no notice of assignment of the tri a1 of the case having been served on the defendant, the Iact that her counsel appeared at the trial and participated in the proceeding by withdrawing her formal appearance and abandoning her defense indicates that his client had notice of said assignment. Hence, the trial court could not have known that the defendant was unaware of the assignment o1 the case for trial. Nevertheless, after the jury’s verdict was entered against her, and she learned that the case had been assigned and her interest abandoned by her counsel without her knowledge and consent (a circumstance which was brought to the attention of the court, even though by an irregular pleading) , it was error for the court to render final judgment on the verdict of the jury granting plaintiff’s prayer for divorce without first inquiring into the charge of breach of I aith by de- fendant’s counsel, which charge defendant instituted and has followed up by appeal from said final judgment to

this Court.

Because of this illegal and erroneous action of the trial judge, the final judgment, and the verdict which it confirms are hereby set aside ; and the case is ordered re- manded with instructions that it be redocketed and the defendant given the right to file an answer, if she so de- sires, within ten days after the reading of the mandate from this Court, at which time she must be summoned to be present so that she may have notice of the time when she is to file said answer. Costs to abide final disposition of the matter. And it is so ordered.

*R encased and remanded.*