

ISAAC BENSON, and for his wife, MARY BENSON,
Appellants, v. HON. JOSEPH P. FINDLEY, Assigned
Circuit Court Judge of the Sixth Judicial Circuit, and
SHAFI BROTHERS, Appellees.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS DENYING
ISSUANCE OF A WRIT OF ERROR TO THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT.

Argued November 14, 1967. Decided January 19, 1968.

1. Plaintiffs in error applying for a writ of error on the contention that they have been deprived of their day in court, are properly denied the relief sought when a notice of assignment of their case for trial was duly served upon their lawyer, who failed to appear in court on the trial date.
2. Acknowledgment of receipt of notice of assignment of a case for trial by a lawyer's clerk, binds the lawyer, especially where such acknowledgment was made in the lawyer's presence and at his request.

An action for specific performance of a contract to lease realty resulted in judgment by default upon failure of defendants to appear after service of notice of assignment of trial date had been made upon their lawyer and acknowledged by his clerk. The defendants thereafter sought to obtain a writ of error, denied by the ruling of the Justice in chambers, the *ruling* of the Justice being *affirmed* on appeal.

J. Dossen Richards for appellants. *Albert D. Peabody* for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Parties litigant in various suits have from time immemorial appealed to this Court of ultimate resort not only from rulings, decrees and judgments of lower courts, but have also freely and unretardedly exercised their statutory rights in appealing from rulings of components of

this bench presiding in Chambers, which seem to them not within the pale of law and as such against their best interest. Even with the mark of confidence we have in the proficiency of each other, the profound sense of respect for the integrity of one another, and the feeling of impartiality that coexists among us, we at all times have carefully examined the issues passed upon by each of us.

And so this case comes up on appeal from the Chambers of Mr. Justice Simpson, before whom an application for the issuance of a writ of error was filed by petitioner Isaac Benson, for his wife, Mary Benson. From the record certified by petitioner Isaac Benson and Mary Benson of the Township of Charlesville, Marshall Territory, Montserrado County, on September 1, 1963, they entered and concluded a lease agreement with Shafi Brothers, by and through their agent, Z. A. Shafi, a Lebanese trader transacting mercantile business in Liberia, stationed in Charlesville, Marshall Territory, for the lease of a parcel of land containing one half lot in Charlesville and a building already constructed thereon, for a period of one calendar year, commencing from September 1, 1963, to September 1, 1964, with an option of three years. According to the provision of this lease agreement, the amount of \$300.00, which was agreed upon to be paid annually, was paid to the lessors on September 30, 1963, the very day this agreement was signed. The lease agreement was probated, registered, and recorded in the archives of said County, in volume 90-E, pp. 310-313, and is marked by court, "P 2." After signing the agreement and receiving the benefit thereof, petitioners repeatedly refused to turn over the property to the respondents, which prompted them to enter an action for specific performance before Hon. D. W. B. Morris, Circuit Court Judge, Sixth Judicial Circuit, during the September Term of the same year. Notices of assignment began issuing for the hearing of the case. According to the record before us, it was not until September 15, 1965,

that the last notice was issued for the hearing on September 17. According to the notation on the notice and the return thereto, the assignment was duly served upon counsel for both parties. The notice for counsellor Edward N. Wollor was signed on his behalf by one Michael Sieh on November 17, the same being the 39th day's session of the aforesaid Circuit Court. The case was gone into by the trial judge after he had noted for the record that three assignments had been issued for the hearing of the case, but counsel for the defendants had failed to appear in answer to the assignments. After the rendition of the final decree by the judge against the defendants, and an attempt to execute the same, defendants, now appellants, hurriedly proceeded to apply to this Court for the issuance of an alternative writ of error, essentially averring that they had been deprived of their day in court by the lower court. Appellants also contended that they were not notified of the trial of the case, nor present when the court gave its ruling. In the circumstances, they contended that they were entitled to a writ of error. In response to this petition, the defendants in error filed a return attacking the truthfulness of the allegations contained in the petition in respect to nonservice of the notice of assignment upon counsellor Wollor. It was contended that he actually received the notice in the presence of the bailiff, and then asked one of the clerks in the office at his place of business at the Mensah Transport Company, Bushrod Island, to sign the assignment on his behalf. Although the return contained five counts, only count four needs consideration by this Court, which focuses upon the one material issue involved in this case, which has to do with whether or not the plaintiffs in error were deprived of their day in court as alleged in the petition. The Justice in Chambers having carefully examined this point of law, and closely scrutinized the record certified to this Court, was satisfied that the plaintiffs in error were afforded their day in court, but flagrantly neg-

lected to take opportunity of same and, therefore, ordered the alternative writ quashed and the peremptory writ denied. Recourse to the notice of assignment and the return of the Sheriff clearly evince that service was made on counsellor Wollor, requiring him to be in court on November 17. It is also clear that the notice discloses that one Michael Sieh signed the same in behalf of counsellor Wollor. Such acknowledgment of service accords with Rule 15 of the Revised Rules of the Circuit Court.

“The lawyer upon whom the document is served should be required to acknowledge such service by receipt under his hand, or that of his clerk, indicating in said receipt the date and/or hour of the receipt of the said document.”

Besides the above-quoted provision, there is before this Court no rebutter filed by plaintiffs in error denying the fact that Michael Sieh was properly clothed with authority to sign the notice on behalf of counsellor Wollor. In the circumstances, the act of Sieh must be considered the act of counsellor Wollor. Predicated upon this provision, it is the opinion of this Court that the ruling of the Justice in Chambers, quashing the alternative writ and denying the peremptory writ, is sound and legal and it is upheld by this Court. Costs in these proceedings are ruled against appellants.

And the clerk of this Court is hereby ordered to send a mandate to the court below commanding it to resume jurisdiction and enforce its judgment. And it is so ordered.

Affirmed.