MARY GEORGE, CECELIA GEORGE and SOBO-NYENOR GEORGE, heirs of GEORGE NEAHDO, Petitioners, *v.* HON. SEBRON J. HALL, Judge of the Debt Court, Montserrado County, and SOLOMON BAKY, Respondents.

PETITION FOR WRIT OF CERTIORARI.

Decided September 8, 1971.

1. A judge may not arbitrarily set aside a judgment rendered by him upon default after notice of assignment of the trial date to all parties, especially where counsel for party in default sought to be served with notice of the assignment has failed to offer an explanation for declining service or attending the trial.

A notice of assignment in a debt action was issued out of the Debt Court, but one of the lawyers for the defendant refused to accept service of a copy, on the ground that his co-counsel could not be located. It subsequently developed that co-counsel had been confined to bed by orders of his doctor. On the day of hearing, judgment by default was taken by the plaintiffs, in accordance with evidence three weeks before presented. A motion to rescind the judgment was made by defendant's counsel at the hearing, advancing the illness of co-counsel as the basis. Three days later the lower court granted the motion, rescinded his judgment and assigned a new trial date. Plaintiffs thereupon applied for a writ of certiorari to the Chief Justice in his chambers. The *petition* was *granted* and the *judgment* for plaintiffs *reinstated.*

T. Gyibli Collins for petitioners. *S. Raymond Horace* for respondents.

PIERRE, C. J., presiding in chambers.

The petition in this case alleges that on August 6 last, respondent Solomon Baky and his two lawyers failed to attend the hearing of a case of debt before the Debt Court, although written notice of assignment had been sent out, and had been served on the lawyers on both sides. The petition also states that counsellor J. Gbarflehn Davies, one of counsel for the defendant in debt, upon whom the assignment was served by the ministerial officer of the Court, refused to accept his copy of the assignment, on the ground that his colleague, counsellor S. Raymond Horace could not be found. It might be necessary for this opinion that it be stated that filed with the returns is a medical certificate showing that on the day on which the case was assigned, counsellor Horace had the day before been confined to bed for two days by his doctor.

The petition states further that counsel for the plaintiffs was present on the date of assignment and having already presented their side three weeks before, the respondent judge of the Debt Court proceeded to render judgment against the defendant. At this point the defendant's counsel filed a motion for the court to rescind its judgment, on the ground that counsellor Horace had been absent from the hearing due to illness and, therefore, could not be present to represent his client. Three days later the judge granted the motion, rescinded his judgment and reassigned the case for hearing. Plaintiffs have, therefore, applied for a writ of certiorari.

In the returns filed by the respondents, there are only two issues we deem necessary to pass upon in determining this case; those are contained in counts three and four:

> "1. That the petition should be denied because of the petitioner's failure to profert the final judgment and the court's ruling on the motion;
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> "2. That the judge did not err in granting the motion to rescind his judgment, because the statute has provided for such a contingency in the interest of

justice, where the judgment has not been satisfied or appeal perfected."

In passing upon the first of these two issues, we would like to observe that neither of the two decisions alleged to have been taken by the judge has been denied by the respondents. That is to say, it is not denied that the judge did render final judgment during the absence of the defendant and his counsel; nor is it denied that a motion to rescind his judgment was filed, and was granted by the judge. On the contrary, the returns of the respondents admit both of these decisions made by the judge. Therefore, we do not think that this count shows any reason for us to deny the petition.

The second issue which we think necessary to pass upon in this case is the matter of the motion to recind the judgment three days after final judgment in the absence of the defendant and his lawyers. Respondents have relied upon sections 4106 and 4107, Civil Procedure Law, L. 1963–64, ch. III.

Section 4106 is not relevant to this issue, since there has been no claim of mistake, defect, or irregularity in the proceedings out of which the judgment grew. Section 4107 abolishes certain common law writs, and upon such terms as are considered just, provides for relief from judgments for the following reasons: (a) Mistake, inadvertence, surprise, or excusable neglect; (b) Newly discovered evidence; (c) Fraud, misrepresentation, or other misconduct of an adverse party; (d) Voidness of the judgment; or (e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is based, or inequitableness.

Under which of these five headings the motion to rescind was based is not apparent. No explanation has been given to the fact that J. Gbarflehn Davies, also one of the counsel whose representation was announced in the case, and who was notified of the assignment by service of precept, refused to accept the notice of assignment,

or attend the hearing. The fact that one of the lawyers for the defendant was notified of the hearing has not been denied in the returns, or in the argument before us. We must conclude, therefore, that counsellor Davies' refusal to attend the hearing after having been notified of it was indicative of a lack of further interest in the case.

It is surprising that in the face of such utter disregard by defendant's counsel of the court's assignment, the judge rescinded his judgment in such circumstances, in view of the necessity to protect and preserve the dignity to which the courts of Liberia have aspired. I also fail to see the grounds which the judge relied on in granting the motion to rescind his judgment in this case. Therefore, without doubt, the reassignment of the case three days after final judgment and in the face of counsellor Davies' deliberate affront shown the court is ethically improper and judicially wrong, and certainly prejudices the interest of the opposing party. The petition is, therefore, very well taken.

The right of judges to take such disciplinary action as would protect the dignity of the courts, and enforce respect for their orders, is not discretionary with them, but is mandatory upon every judge, whether he be of a court of first instance or of a superior court. We would like to remind all judges that it is imperative that the strictest rules of discipline be enforced in all cases where open disregard is shown for their orders.

In view of the foregoing, the Clerk of this Court is ordered to send a mandate to the judge of the Debt Court in Monrovia, and command him to immediately vacate the ruling on the motion to rescind the judgment and to allow the defendant to take an appeal *nunc pro tunc* from the final judgment which he rendered in the case, if the defendant so desires. Costs of these proceedings are ruled against the respondents.

Petition granted. Judgment for plaintiff reinstated.