

KAMAL HABRE, Petitioner, v. HON. PETER B. JALLAH, Stipendiary Magistrate, Commonwealth District of Monrovia, and ABDUL KAMARA, Respondents.

APPLICATION FOR WRIT OF ERROR TO THE STIPENDIARY MAGISTRATE COURT, COMMONWEALTH DISTRICT OF MONROVIA.

Argued April 20, 1971. Decided May 27, 1971.

1. To deny a defendant his day in court, as in the circumstances herein, is to deprive him of constitutional rights.
2. Stipendiary Magistrate courts may not exercise jurisdiction in a case where an action of debt is sued upon resulting in a judgment of \$2,000.00, for jurisdiction in such a case is properly in the Debt Court.
3. A complaint filed by a person acting as counsel, who has not paid his lawyer's license fee, ought not be accepted by the court to which it is proffered.

On August 7, 1970, the plaintiff-in-error in these proceedings, was served with a summons and complaint in an action of debt brought in the Stipendiary Magistrate Court, together with a writ of attachment. In lieu of a bond he posted a Peugeot automobile as security, but it was deemed unsatisfactory by the magistrate and he was imprisoned on August 7, by order of the magistrate. He languished in prison until the latter part of October, 1970. In the meantime, on August 10, 1970, judgment by default was entered against him in the Stipendiary Magistrate Court, in the amount of \$2,000.00, plus costs, and a writ of execution was issued therefor. On August 8, before the judgment was entered, an officer of the court attached the Peugeot automobile and six cows owned by defendant.

On August 14, the plaintiff acknowledged receipt of the summons, and on September 11, it appears that defendant's property was sold at public auction. The defendant first had knowledge of the default judgment and the subsequent judicial events in November, 1970, after

being released from prison. A writ of error was sought by him, based on the foregoing. The Supreme Court characterized the record in the court below as replete with error. It ordered the judgment vacated and restitution made to the petitioner of the property appropriated, or in the amount of its value.

M. Fahnbullah Jones for petitioner. *Desseline T. Harris* for respondents.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

Kamal Habre, a Lebanese national residing in Monrovia, filed a petition in the chambers of Mr. Justice C. L. Simpson, for the issuance of a writ of error against Stipendiary Magistrate Peter Bonner Jallah and Abdul Kamara. The petition was filed on February 19, 1971. The Justice was not able to hear and dispose of the petition before the opening of the Court *en banc*, hence, he directed that the application be made to the Court.

The petition substantially alleges that a writ of attachment and summons and complaint were served on August 7, 1970, and that on August 10 default judgment was taken against him without notice of assignment given him. He alleges he was imprisoned on August 7 for failure to adequately post a bond and was kept imprisoned until October, 1970, and never learned of the default taken or execution thereof on his property until November, 1970. The respondent disputes his conclusions.

During the hearing before us, plaintiff-in-error's counsel argued that the imprisonment of his client was illegal with restrictions imposed against his liberty, and he was incommunicado. Consequently, he could not do what might have been necessary in his own behalf. Aside from the officer of the court who went to the prison com-

pound the first day of his incarceration, no one else went to see him.

Included in the record are the writ of attachment, which required the appearance of plaintiff-in-error before the stipendiary magistrate or any other magistrate, at the Municipal Court room on August 10, 1970, at 10 A.M., to answer to the complaint. This complaint was signed on behalf of Abdul Kamara and filed by Mr. Ernest Watkins, who is not a lawyer, but gave himself the title "Attorney-at-Law," affixed under his signature. The return of the officer of the court, dated August 8, 1970, shows service of the writ of attachment on the defendant and the officer's attachment of six cows and one Peugeot.

The court proceedings indicate that on August 10, 1970, defendant was called on three occasions, and thereafter the court entered judgment by default in the sum of \$2,000.00 plus costs, after taking testimony of plaintiff's witnesses, and granted a writ of execution therefor.

A certificate of auction dated December 3, 1970, also appears in the record indicating that the property attached by the officer on August 8 was exposed to public auction on September 11, 1970.

It is incumbent on courts when property is to be exposed to public auction that publication thereof should be made thirty days prior to the sale. This procedure is not merely a formality, but is intended to give notice to the public in general. There is no showing in the record that this was done. Another disturbing discrepancy the documents unfold is that police officer James Larshal's return shows that he attached along with one Peugeot car, six cows. These goods were auctioned on September 11, 1970, to an unnamed highest bidder, notwithstanding plaintiff himself signed a receipt that he had taken possession of the six cows on August 14, just about a month previous to the purported auction.

This sort of variance is not only a misstatement of fact, constituting as well a miscarriage of justice to the prejudice of a party, but shows the temerity of an effort to deceive this Court, for these are all documents certified to us from the Magistrate Court. Pronouncement has been made by this Court that judges ought never be hasty to dispose of a matter if so doing would be prejudicial to the interests of the party.

Moreover there is still a salient issue raised by the handling of this case. Was the stipendiary magistrate clothed with authority to hear and determine an action of debt in which the amount sought to be recovered was \$2,000.00? The Legislature, in its 1966-67 session, established Debt Courts by statute and provided in section two thereof its jurisdiction:

“The Debt Court shall have *exclusive* (emphasis supplied) original jurisdiction in all debt cases in which the amount of the debt is \$2,000.00 or more.”

Concluding this opinion, we adjudge the following:

(a) The magistrate should have rejected the complaint filed by counsel parading as a lawyer. Here, there is no excuse that the magistrate had no knowledge of the disability of Mr. Watkins, for the rule requires that no court should permit lawyers to practice before it who have not paid their lawyer's license fee.

(b) The magistrate erred by denying plaintiff in error the rights guaranteed him under our Constitution by not affording him his day in court.

(c) The proceedings in the court below as certified to us with regards to the disposition of the properties seized are false and misleading.

(d) The magistrate had no jurisdiction to hear and determine the action. Again we say, “Jurisdiction is not conferred by consent of parties but by law.” The legal forum should have been the Debt Court.

Consequent of the above, the judgment of the court below is hereby reversed and is ordered vacated. Plaintiff

in error is entitled to recovery of his property or the value thereof, with costs against defendants in error. The Clerk of this Court is ordered to send a mandate to the court below to effect this judgment.

Judgment vacated; restitution ordered.