DWALUBOR, alias LARSANNAH, Appellant, *v.* JESTINA GOOD-WESLEY, by and through her husband, REGINALD A. WESLEY, and CHARLES ALEXANDER GOOD, sole surviving heirs of JULIA CLARKE-GOOD, daughter of THOMAS HENRY CLARKE deceased, Appellees.

SUBMISSION IN CONTEMPT.

Argued March 14, 1972. Decided April 21, 1972.

1. The Supreme Court will take cognizance only of the matter contained in the record certified to it, as in the case at bar, where proof of service of a writ of possession and due service thereof foreclosed contrary argument.
2. Although a bill of costs receipted by the sheriff is the best evidence of payment, an innocent party will not be made to suffer for the negligence of an officer of the court.
3. A person entitled to intervene in an action for the protection of his rights, may elect to institute his own action in lieu thereof.
4. A person who is not a party to an action nor claims to derive title from a party, nor is privy to a party, is not bound by a final judgment against such other party merely because the right to intervene was available in the decided suit.
5. A judge of a lower court who has issued a writ of possession pursuant to the mandate of the Supreme Court is not in contempt of Court when he entertains a subsequent suit in ejectment concerning the same property.
6. An application for reargument made more than a year after the opinion was rendered will be denied, for the Supreme Court does not sit in review of its own judgments, which reargument under such circumstances would constitute.

The appellees in a case decided in their favor during the October 1970 term of the Supreme Court, charged in a submission that the order in the case issued pursuant to the Court's opinion had been disobeyed by the lower court and the lawyer for the appellant, who had instituted with another attorney ejectment proceedings before the same court for the selfsame property on behalf of another party not involved in the prior suit in ejectment. Submission *denied.*

Momo F. Jones and *Joseph Findley* for appellant. *Nete-Sie Brownell* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

This case was decided in favor of the appellees by this court during its October 1970 Term. Now it has come before us again as a result of a submission made by the appellees that the mandate emanating from this Court on February 5, 1971, has not been executed by the lower court in that the appellees have not been put in possession of their property; that the bills of cost of both this Court and the lower court have not been paid by appellant or his sureties; that counsellor Momo Jones, counsel for appellant, has joined with counsellor S. Raymond Horace to institute actions of ejectment and injunction on behalf of one Nellie Johnson-Biggers for the same property which was the subject matter of the action that has been determined during the aforesaid October 1970 Term of this Court, to prevent the enforcement of the mandate; that the said Nellie Johnson-Biggers knew of the pendency of the suit and did not intervene and, therefore, it was improper for the trial judge to refuse to execute the mandate and for the lawyers to bring injunction proceedings after the rendition of final judgment.

The issues raised shall be dealt with in the order in which they appeared above.

1. A careful check of the record shows that, in keeping with the mandate of the Supreme Court, the writ of possession was issued on February 9, 1971, by Judge Roderick N. Lewis, served on February 10, 1971, by the sheriff, who made his return on March 16, 1971.

The Civil Procedure Law, L. 1963–64, ch. III, § 6223, governs writs of possession.

> "Upon rendering a final judgment for petitioner, the court shall issue a writ of possession directed to

the sheriff of the county in which the property is situated, describing the property and commanding the officer to remove all persons and to put the petitioner into full possession. The officer to whom the writ is directed and delivered shall execute it between the hours of sunrise and sunset."

Section 336 states that the ministerial officer of the court shall serve all process. In view of the record certified to us this Court must regard the writ of possession as having been issued and served. This Court has consistently held that it will take cognizance of matters only upon the face of certified copies of the proceedings in the lower court. *Hulsmann* v. *Johnson,* 2 LLR 20 (1909); *Franco-Liberian Transport Co.* v. *Bettie,* 13 LLR 318 (1958). Section 5115(2) of the Civil Procedure Law, *supra,* also provides that an appellate court shall examine a case upon the record only and shall hear no additional evidence.

In an attempt to prove that the mandate had been executed, the appellant also pointed out in his brief and argument before this Court that the Bong Mining Company had been withholding compensation for a right of way through the property which was in litigation between the appellant and appellees on the one hand, and appellant and Nellie Johnson-Biggers on the other hand and that upon the determination of the matter by this Court, sitting in its October 1970 Term, the appellees had applied for and received from the Company the amount of $8,000.00 as compensation for the right of way. The appellant contended that if the mandate of this Court had not been executed, appellees would not have been able to receive this amount. Appellees did not deny or rebut this averment and, therefore, it must be accepted as being true and as further proof of the execution of the mandate.

2. The certified record of the trial court also reveals that a bill of costs against the appellant was prepared on

February 10, 1971. The Civil Procedure Law is clear on taxation and enforcement of costs.

> "After final judgment, the clerk of court shall prepare a bill of costs which he shall transmit to the attorneys for all the parties. The judge shall approve the bill of costs agreed upon by the attorneys, or, if they cannot agree, he shall settle the disputed items and approve the bill as settled." L. 1963–64, ch. III, § 4505.
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> "Execution may be issued by the court in an amount to cover the costs in addition to the amount of the judgment. Other means available to the judgment creditor under chapter 44 to enforce a money judgment may be employed to secure payment of costs." *Id.*, § 4506.

There is no evidence that the costs have been paid. This Court has held that a certificate or a bill of costs receipted by the sheriff is the best evidence of the payment of costs. *East Africa Co.* v. *McCalla,* 1 LLR 292 (1896); *Richards* v. *Coleman,* 3 LLR 401 (1933). Nevertheless, a party should not suffer for the negligence of an officer of the court. *Jantzen* v. *Freeman,* 2 LLR 167 (1914).

3. With respect to instituting ejectment and injunction suits on behalf of Nellie Johnson-Biggers, two questions arise: (a) whether she was barred from bringing these actions because she did not intervene in the action between appellant and appellees; and (b) whether the issuance of a writ of injunction can be regarded as an attempt to prevent the enforcement of the mandate emanating from this Court. As to the first question, the certified record of the lower court shows that an action of ejectment between Nellie Johnson-Biggers and appellant is still pending in the Sixth Judicial Circuit Court, even though it was instituted prior to the instant case. In other words, there were two ejectment actions against appellant for the same property, one by appellees, which is the instant case, and

the other by Nellie Johnson-Biggers. Under the circumstances there was no need for Nellie Johnson-Biggers to intervene in the action at bar. Indeed, all the evidence tends to show that she asserted her claim to the premises promptly.

> "Persons who are not parties of record to a suit have no standing therein which will enable them to take part in or control the proceedings. If they have occasion to ask relief in relation to the matters involved, they must either contrive to obtain the status of parties in such suit or they must institute an independent suit." 39 AM. JUR., *Parties,* § 55.

One who is normally entitled to intervene to protect his property and rights is not barred from protecting his interest by bringing a separate action. The converse is also true, in that an intervener may protect his interests by bringing a separate action without defeating his right to intervene. 39 AM. JUR., *Parties,* § 77.

Moreover, since Nellie Johnson-Biggers was neither a party to the case at bar nor privy to appellant, and since there is no indication that she claims to derive title from appellant, she is not bound by the final judgment and, therefore, cannot be barred from bringing an action against the appellees, whom the court had put in possession of the property. *Tubman* v. *Murdoch,* 4 LLR 179 (1934); *Schilling & Co.* v. *Tirait,* 16 LLR 164 (1965). As a matter of fact, it is the mind of this Court that this issue was raised prematurely.

As regards the issue of whether the issuance of a writ of injunction by the judge of the lower court was improper as an attempt to prevent the execution of the mandate of this Court, the record shows that the writ of injunction was issued on March 16, 1971, after the writ of possession had been issued and served, the appellees placed in possession of the property, and the return to the writ made. The mandate of this Court having already been executed, prior to the inception of ejectment

proceedings, this Court is of the opinion that the bringing of these proceedings by Nellie Johnson-Biggers and the issuance of the writ by the judge were not contumacious. A judge of an inferior court may be held in contempt where he fails to execute a mandate of the Supreme Court. *Richardson* v. *Perry,* 14 LLR 7 (1960). Where the evidence is clear that the execution of a mandate of the Supreme Court to a lower court is being impeded by the institution of injunction proceedings designed to prevent the execution of the mandate, this Court will not hesitate to hold the parties instituting such proceedings, as well as the judge, guilty of contempt. *In re Coleman and Brownell,* 11 LLR 350 (1953). Likewise, a submission in contempt proceedings will be dismissed where it appears to have been instituted for the purpose of delaying and impeding the administration of justice. *Richards* v. *Republic,* 12 LLR 161 (1954).

Before concluding this opinion, it should be mentioned here that in opening his argument, the appellant sought to have the ejectment action, out of which these proceedings grew, reheard by this Court on the ground that the case was not heard on its merits, but was decided by applying Rule IV, Part 6, of the Revised Rules of the Supreme Court, which deals with dismissal for failure of counsel or party to appear. This Court rendered final judgment in this matter during its October 1970 Term, and appellant did not petition the Court to rehear the case in accordance with Rule IX, Part 2, of the Revised Rules which provides that: "a petition for rehearing shall be presented within three days after the filing of the opinion, unless in case of special leave granted by the court." The attempt to seek reargument in these proceedings, after more than a year and two terms of this Court have elapsed, is against the Rule and numerous decisions of this Court on the question of reargument. This Court can review the judgment of subordinate courts only, and not decisions already given by itself, except in

another trial where the principle enunciated is found to be untenable in law and, therefore, a necessity might arise for overruling the former opinion. The fact that a change in the membership of the Court has occurred is not in itself sufficient for granting a rehearing, nor will a reargument be ordered should the decision of one term of Court not meet the approval of the Justices comprising a second term of Court. *Daniel* v. *Compania Transmediterranea,* 4 LLR 97 (1934); *Ex parte E. W. Williams,* 4 LLR 189 (1934).

In view of the foregoing, the submission of appellees is hereby dismissed with costs against the appellees, and the Clerk of Court is ordered to send a mandate to the lower court commanding it to have the bill of costs paid.

Submission dismissed.