

LABIB NASSAR, a Lebanese Trader Transacting Mercantile Business in Liberia, and His Honor, MONROE PHELPS, Assigned Judge Presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellants-Respondents, v. W. H. DENNIS, Appellee-Petitioner.

APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 17, 1959. Decided April 24, 1959.

When an appellant fails to appear for hearing of a case on appeal, the appellate court may dismiss the appeal.

Appellee-petitioner applied for, and was granted, a writ of prohibition by the Justice presiding in Chambers, prohibiting appellants-respondents from continuing litigation against appellee-petitioner. On appeal from the ruling granting the writ of prohibition, appellants-petitioners failed to appear for hearing before the Supreme Court, *en banc*, and the *appeal was dismissed*.

No appearance for appellants-respondents. *Momolu S. Cooper* for appellee-petitioner.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.\*

In his petition for the issuance of a writ of prohibition, petitioner presented, for the judicial consideration of the Justice then presiding in Chambers, several cogent reasons, a few of which, in passing, we deem expedient to summarize in manner following.

In the year 1946, respondent Labib Nassar entered an

\* Mr. Justice Pierre was absent because of illness and took no part in this case.

action of damages for slander against petitioner by means of attachment and arrest. Intending to put petitioner to great expense, mental suffering, annoyance and trouble, but with no intent to have said cause tried and determined, respondents filed a bond for \$5,000 for the purpose of obtaining the attachment and arrest hereinabove referred to. Petitioner not being able to show property to the value of \$7,500, was arrested and imprisoned in the common jail for 40 days from November 9, to December 19, 1946.

After this release on bail from prison, several assignments for trial of said case of damages for slander were made by His Honor, Edward J. Summerville, the last of which assignments was made upon request of Attorney Carney Johnson, counsel for Labib Nassar, for 2 o'clock in the afternoon of March 27, 1947. But without any excuse or justifiable reason, respondent, Labib Nassar, failed and neglected to appear either in person or by counsel to prosecute his said action of damages for slander. Thereupon judgment for nonsuit, upon motion of defendant W. H. Dennis through his counsel, was entered in favor of petitioner. In keeping with law, he was discharged from further answering said action of damages for slander; and the attachment was dissolved, his bond ordered returned to him, and the case ordered stricken from the docket with costs against the plaintiff.

Labib Nassar, plaintiff, excepting to the ruling of His Honor, Edward J. Summerville, nonsuiting the aforesaid action of damages for slander, tendered a bill of exceptions, thereby indicating his intention to prosecute an appeal in said matter, which he failed to do.

During the March, 1947, term of the Circuit Court, of the Sixth Judicial Circuit, Montserrado County, petitioner instituted an action of damages for the breach of a bond against respondent. During the pendency of the said case against respondent, and after the pleadings had rested, it came to the knowledge of petitioner that respondent, with the view of further harassing, annoying, and injuring petitioner, and causing mental imprisonment

and suffering, was about to enter another action of damages for slander by means of a writ of attachment and arrest, undoubtedly designed to restrain petitioner's liberty. Realizing petitioner's inability to show property to the value of \$7,500, which action respondent Nassar intended entering against petitioner without fully paying costs in the first case and complying with the terms of the bond which he and his sureties, T. V. A. Smith and J. H. Deputie, had violated; respondent did not even await the final determination of the action of damages for the breach of a bond instituted against respondent and his sureties by petitioner.

Upon the false, vicious and malicious misrepresentations of respondent, Labib Nassar, the petitioner was twice indicted for the crime of embezzlement. The latter of these indictments was brought to trial before a jury, at the May, 1947, term of the Circuit Court of the First Judicial Circuit, Montserrado County, terminating in a verdict of acquittal in favor of petitioner. A copy of said verdict was made profert to form a part of petitioner's petition.

Respondent Labib Nassar is in a position to use his strong financial status and the machinery of the courts as a means of harassing, annoying, injuring and distressing the peaceful life of petitioner. Permitting the said respondent to institute another suit of damages for slander by means of attachment and arrest without first having respondents and his sureties answer for the violation of the terms of the bond would be illegal, unjust, inequitable, oppressive, and greatly damaging to petitioner.

As a result of the multiplicity of suits instituted by respondent, Labib Nassar, against petitioner, his imprisonment for 40 days, having to attend the Circuit Courts of the First and Sixth Judicial Circuits, Montserrado County, for every term since November, 1946, retaining counsel, and travelling to and from his home at Kingsville, petitioner asserts that he has spent his entire

earnings, and is left completely without means of support for himself, wife and six children; and if he be further harassed, injured and imprisoned through the vicious and malicious designs of respondent, the petitioner and his family would be greatly distressed, and the tribunal of justice would be converted into a forum of oppression.

The foregoing reveals a graphic picture of the impending perilous and grievous circumstances, as gathered from the face of petitioner's petition, which motivated petitioner's flight with his petition for a writ of prohibition, for refuge and relief, to the Chambers of His Honor, Anthony Barclay, then Associate Justice of this Honorable Court, presiding in Chambers. The writ having been ordered, issued, and served, respondents filed returns countering petitioner's petition. Thereupon the matter was assigned for hearing and determination on September 1, 1947, and on said date was argued and submitted. On December 30, 1947, Mr. Justice Barclay handed down the following memorandum:

"The case of W. H. Dennis, petitioner, *v.* Labib Nassar, *et al.* (respondent's petition for a writ of prohibition), was called. Counsellors Benjamin G. Freeman and O. Natty B. Davis appeared for petitioner; but counsel for respondents was not present. The Court then waited for a few minutes before rendering the following ruling, expecting the arrival of respondents' counsel. *Ruling:* 'In this case, the Court has decided, after reviewing the records and hearing arguments, *pro et con*, to grant the writ of prohibition prayed for by petitioner, and hereby orders the issuance of the preemptory writ with costs against respondent Nassar. And, as counsel representing the respondent is absent, in case he desires to appeal to the Court, *en banc*, the Court has no objections thereto, and it is hereby so ordered.' The matter was therefore suspended. At 10:45 a.m., counsel for respondents came into court, and the clerk read to him the above ruling, to which he excepted and

prayed an appeal to the full bench; same granted and made a part of the record.”

The respondents having excepted to the ruling, and having prayed an appeal to the bench, *en banc*, which was granted, had failed to appear, either in person or by counsel, to prosecute their said appeal, despite repeated assignments since the granting of the appeal as of December 30, 1947 up to and including the current March term of this Honorable Court. Observing the assignment of this case for hearing during the present March term of this Honorable Court, bulletined and published among the many other cases assigned, counsel for petitioner, at the call of said case, submitted on the records of this Court a motion which in its body, reads thus:

- “1. That, on the aforesaid 30th day of December, 1947, when the Justice then presiding in Chambers ruled, granting the writ of prohibition as prayed for by petitioner, W. H. Dennis, the said Labib Nassar, respondent, appealed from the said ruling to the full bench as will more fully appear from said minutes of court of that date.
- “2. That, although the said appeal case has been appearing on the docket of this Honorable Court from the said 30th day of December, 1947, and the petitioner has been in attendance of this Court during each term since then, yet the respondents have failed and neglected to appear and prosecute said appeal either in person or by counsel.”

This Court has passed upon and has carefully digested the merits of the motion to dismiss the appeal in the above entitled cause, and hereby grants same. Respondents-appellants having failed to appear at the call of this case for hearing, and the motion to dismiss the appeal being in strict harmony with the rules of this Court, the appeal is hereby dismissed, and the ruling affirmed, with costs against respondent. And it is hereby so ordered.

*Appeal dismissed.*