

GEORGE PARKER, Appellant, v. DAVID K.
LEWIS, Appellee.

JUDGMENT WITHOUT OPINION.

Decided April 23, 1976.*

When this case was called, Counsellor *Joseph P. H. Findley* appeared for the appellant, and Counsellor *Neta-Sie Brownell* appeared for the appellee and filed a motion to dismiss the appeal on the grounds:

(1) that the appeal bond is fatally defective in that it is not signed by the affiant; nor are the names of the principal and sureties contained in the body of the bond, nor did any of them sign it;

(2) that the bond is still further defective because no amount to indemnify the appellee against loss is named in the body of the bond as the law requires;

(3) and also because the notice of completion of the appeal was filed one day later than the time required by statute after rendition of judgment, and that it was not served on appellee until three days after the required time;

(4) and also because the bill of exceptions does not state the basis of any specific rulings on any point of law or fact excepted to during the trial.

These four salient points of the motion to dismiss are well taken, having always been insisted upon by this Court; and as much as we would have liked to dismiss this case on these grounds, we find ourselves bound to consider other important issues of gross irregularity apparent on the face of the record, which are not the responsibility of the parties. As for instance:

(a) Although the record in this case shows George Parker to be plaintiff/appellant, the judgment from which an appeal was taken in the Court below was rendered

* Mr. Justice Azanga did not participate in this decision.

against P. C. Parker and George S. Parker in an action of ejection, and there was no such case filed.

(b) The case of P. G. Parker and George S. Parker which was filed in the trial court, was for injunction and not ejection; and that case has not been decided.

(c) At the trial in the court below, counsel for P. G. Parker stated in the minutes that his name appearing on the pleadings of these cases is a forgery, since he had never himself signed any such pleadings; nor had he ever authorized anyone to sue for him in any case then pending before the court. Although the judge then presiding held an investigation, yet the judge next assigned to that circuit rendered judgment against the said P. G. Parker in the face of the record he had made, and also the face of the fact that what he had put on record was never denied.

From the record in the case, brought to our attention during the argument before us, we could not dismiss on the grounds stated in the motion, as cogent as they are. Therefore it is adjudged that the case should be and the same is hereby remanded to the trial court, with instruction that the parties replead from the complaints in the two cases and separate the pleadings so as not to get the ejection confused with the motion of injunction, as seems to be the case in the record certified from the clerk's office in the court below.

That the judge next assigned to preside in the Second Judicial Circuit Court will investigate the charges made by P. G. Parker, to the effect that he had not signed any pleadings nor sued anyone, nor had he authorized anyone to sue in his name. Findings from this investigation should be made the subject of special returns before the Supreme Court, as soon after the investigation as possible. And the Clerk of this Court is ordered to send a mandate to the court below, to the effect that this case should be given trial priority on the civil docket, when pleadings are rested. Costs are disallowed. And it is so ordered.