GRACE THOMPSON, et al., Appellants, *v.* NASSAN M. HASSAN, et al., Appellees.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS DENYING A WRIT OF ERROR.

Argued May 4, 1976. Decided June 17, 1976.

1. A lawyer must faithfully, honestly, and consistently represent the interests and protect the rights of his client.
2. It is improper for a lawyer without a valid excuse to fail to appear on the date set forth in a notice of assignment for trial.

A judgment by default in an action of debt was rendered against appellants who were the defendants. It had been made clear that on the date set forth in the notice of assignment, a proposed compromise would be effected or the case would proceed to trial. Counsel for appellants said he was otherwise engaged on the day of trial and that he thought only issues of law would be disposed of. A writ of error was sought and denied, and an appeal was taken.

The Court examined the record and found that the judge below was correct in granting judgment by default. The ruling of the Justice in chambers denying the writ of error was *affirmed*.

MacDonald Acolatse for appellants. *Daniel Draper* for appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

After judgment had been rendered against defendants upon default in an action of debt, a writ of error was prayed for, and a hearing was held by the Justice in chambers who ruled quashing the alternative writ as well as

denying the peremptory writ, to which ruling an appeal was taken and is now before us for consideration.

Appellant contends that although a notice of assignment was served upon counsel, he believed it to be for the purpose only of ruling on issues of law.

Confronted with the record, we are at a loss as to how plaintiffs in error could have expected the aid of this Court to remedy a situation which does not arise from error in the trial but from the careless and negligent behavior of their counsel. According to the record, plaintiffs in error asked the court to proceed with the trial if a proposed understanding between the parties proved unsuccessful. By requesting an understanding or stipulation for the settlement of the debt, which was going into the very core of the case, it appears to us that plaintiffs in error waived whatever legal contentions they may have had. This view is reinforced by the very language of their request to the trial judge to proceed with the trial if they failed in the proposed understanding. We, therefore, perceive no merit in the contention of plaintiffs in error that the issues of law should have been disposed of before trial. Counsel for plaintiffs in error signed the notice of assignment which plainly stated that the case was assigned for trial; he should not have labored under an assumption that the court should first proceed with the disposition of issues of law and absented himself from court. His duty to his client and to the court demanded his compliance with the notice of assignment, to protect the interest of his clients against any possible miscarriage of justice, which we must say was not present in this case from the record before us.

Plaintiffs in error also contend that a motion to vacate an attachment also should have been disposed of before proceeding to trial. From count 2 of the return of the defendants in error which the plaintiffs in error did not deny, not only was an understanding reached, but the goods attached were released to the plaintiffs in error

as a result of the said understanding. The motion to vacate the attachment could do no more than the understanding reached and what was accomplished by the release of the attached goods. We hold that the plaintiffs in error waived both the disposition of their motion to vacate and the disposition of issues of law.

Stating our views on these points in other terms, we wish to observe that plaintiffs in error having agreed to a compromise with a view to terminate the litigation, and accepting a benefit thereby, they are barred from complaining of any error which has been committed against them. 3 AM. JUR., *Appeal and Error,* § 875 (1936).

According to authorities, a party cannot allege error where to do so would involve a contradiction of an admission or concession made by him in his pleadings or at the trial, or the repudiation of a stipulation, agreement, or consent which has been acted upon. Again, admission and agreements made in open court by the parties to the cause and acted upon by the court are binding and a decree founded thereon will not be reversed. *Id.,* § 874. It is settled that where there was an agreed statement of facts, the appellate court's consideration and discussion of questions presented must necessarily be circumscribed thereby. No point of law which does not arise from the facts stated can be examined nor can the allegation of any fact not found in such statement receive attention. *Id.,* § 818. Moreover, while it is true that the party aggrieved by a judgment, order, or decree cannot be deprived of a right of review, given him by constitutional or statutory provision, by any act or restriction of the court, or by the irregularity of acts of a public officer, his right may be waived, however, by his own acts or conduct, if such acts or conduct are voluntary and intentional. This may be done both expressly and impliedly, and it has been broadly asserted that any act on the part of a party by which he impliedly recognizes the validity of the judgment against

him operates as a waiver of his right to appeal therefrom or to bring error to review.

Additionally, it is well settled that failure of the injured party to call the attention of the trial court to an alleged error at the time when it occurs, or at least while it is within the power of the trial court to correct it, amounts ordinarily to a waiver of the error, or creates an estoppel against bringing it to the attention of the appellate court.

Before we proceed to conclude this opinion, we find ourselves again compelled to deprecate the careless manner in which counsel for appellants has handled the interest of his clients in this case and the pre-eminence he has given to his personal benefit. For example, he argues that at the date of the trial set forth in the notice of assignment, he was otherwise engaged.

Mr. Justice Davis in *Brooks* v. *Republic,* 11 LLR 3, 5, 6 (1951), addressed himself to the point.

> "It is indeed regrettable to observe that lawyers, members of our much esteemed and exalted profession, will permit helpless clients to fall into such a dilemma as this, clients charged with the highest offense in the catalogue of crimes, forgetting to realize that, when a client is distressed or in trouble, and seeks legal aid, he throws himself unreservedly upon the confidence, integrity, and ability of his lawyer, and undoubtedly esteems him as a superman, a god. A note of warning is therefore sounded to lawyers, the country over, to see well to it that their clients' matters are attended and handled by them with that degree of precision and fidelity that will insure the protection of their interest, whether it be interest in respect to property, liberty or life. Only then can they hope to justify the 'silk' they took and which they wear, and the oath to which they subscribed."

Added to this, we would like to re-emphasize that it is

the duty of the lawyer to be punctual in his attendance at court, and to be prompt and faithful in answering assignments received by him, notifying him of the time for hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duty. A lawyer should refrain from any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client. Counsel for appellants should have remembered that the relationship between him and his client was of a very delicate, exacting, and confidential character, requiring a very high degree of fidelity and good faith. It was purely a personal relation, involving the highest personal trust and confidence, which could not be delegated without consent. A lawyer must faithfully, honestly, and consistently represent the interests and protect the rights of his client. He is bound to discharge his duties to his client with the strictest fidelity, to observe the highest and utmost good faith toward him, and to obey his lawful directions.

The usual office and duty of a lawyer is the representation of parties litigant in courts of justice. In the discharge of this duty he should make an effective presentation of the rights of his client, take proper exceptions to erroneous rulings of the court and remain there in attendance until the whole subject of litigation is disposed of. Counsel for petitioner should have known that he owed to his client the duty of exercising that knowledge, skill, and ability ordinarily possessed and exercised by members of his profession. He is impliedly bound to act diligently and skillfully in the conduct of his client's case, and to possess such reasonable knowledge of well-settled rules of law as will enable him to perform the duties he undertakes. But how could have Counsellor Acolatse observed these requirements when he had subordinated the interest of his client to that of his own personal gain?

Perhaps he needs to be reminded that his act is unpro-

fessional and surrounds him with a cloud of suspicion; consequently, he has not only irreparably injured his client but has depreciated the standard of the office of a lawyer, which is absolutely incompatible with the duty that devolves upon a lawyer to faithfully and punctually attend the business entrusted to him by his client from time to time and could be censurable. Moreover, this Court has said that it is improper for a lawyer without a valid excuse to fail to appear at a hearing on assignment of a judge. *Howard* v. *Dunbar,* 14 LLR 515 (1961).

Further, in *Mathelier* v. *Mathelier,* 17 LLR 472 (1966), this Court held that judgment rendered against a party whose counsel absented himself from the hearing of which he was duly notified is justified on the basis of abandonment of the cause.

In view of the foregoing, we hold that the trial judge committed no error in proceeding with the trial of the case and rendering judgment against the plaintiffs in error. The judgment of the Justice quashing the alternative writ of error and denying the peremptory writ of error is hereby affirmed. The Clerk of this Court is ordered to send a mandate to the court below to enforce its judgment. Appellants are ruled to all costs. It is so ordered.

Ruling affirmed.