

CASES ADJUDGED
IN THE
SUPREME COURT OF THE
REPUBLIC OF LIBERIA

AT THE
MARCH TERM, 1971.

MABEL WASHINGTON, Appellant, *v.*
HON. JOHN A. DENNIS, Assigned Circuit Court
Judge presiding over the June Term, 1970, of the Sixth
Judicial Circuit, Montserrado County, and
FRANKLIN N. BORBOR, Attorney-in-fact for
Teetee Borbor, Appellees.

Argued March 29, 1971. Decided May 27, 1971.

1. In actions of ejectment, before default judgment can be obtained on defendant's failure to appear, the summons must first be reserved.
2. A circuit court judge has no authority to extend the term of court to which he has been assigned, and any judgment of his court based on such illegal extensions will be reversed by the appellate tribunal and a new trial ordered.

This appeal was heard on a writ of error.

In an action of ejectment begun in July, 1970, plaintiff served and filed his complaint. His written directions noticed the case for the September Term, 1970. Subsequently, on August 14, 1970, the third day of the chambers session, after the jury session had ended, the judge empowered to preside over the June Term that year, upon application of the plaintiff, ordered a jury to be selected and the plaintiff's case submitted to it *ex parte*, resulting in a verdict for plaintiff, awarding him possession of the land at issue and damages. It also appeared that no

notice of assignment had ever been served on defendant, who first obtained knowledge of the proceedings when the sheriff served her with a writ of possession. Defendant appealed from the judgment on a writ of error. *Judgment reversed, case remanded.*

John W. Stewart, Sr., for appellant. *Alfred L. Weeks, Sr.*, for appellees.

MR. JUSTICE ROBERTS delivered the opinion of the Court.

According to assignment, the June Term, 1970, of the Sixth Judicial Circuit Court was presided over by Hon. John A. Dennis. During this Term of Court and in the month of July, Teete Borbor, alias Kruman, of Bushrod Island, Monrovia, filed a complaint in an action of ejectment against Mabel Washington, also of Bushrod Island, Monrovia. The case though filed during this Term, was docketed for the September Term. For some unexplained reason, the case was heard in the June Term, contrary to statute as well as the plaintiff's written directions.

In accord with directions, the writ of summons was accordingly issued, served and returned, and on July 20 defendant/plaintiff in error filed her formal appearance.

Searching carefully through the record, we fail to discover what led to the abrupt change in the proceedings in the court below. The record reveals that on August 14, the third day of the chamber session, obviously after the jury session had ended, the case was called and plaintiff/defendant in error stated for the record:

"Plaintiff says that because of the absence of the defendant and her counsel who only filed a formal appearance and the assignment having been made and served on defendant, and the both of them not having appeared, nor answered, plaintiff prays for the appli-

cation of Rule 7 of the Circuit Court Rules and submits.”

The application was granted and upon the request of plaintiff a jury was empanelled. After a brief *ex parte* hearing, the jury returned a verdict in favor of the plaintiff, awarding him possession of the land in litigation, together with \$27,500.00 damages.

Apart from other irregularities during the trial, we are at a loss to know what authority the judge had to try a jury case when, in fact, the jury session had been closed. There is no indication in the record that he received authority from the Chief Justice empowering him to hold a special trial or extending his jurisdiction. Perusal of the judgment affirming the verdict of the jury discloses no explanation.

In the assignment of errors, various irregularities have been complained of, the case docketed for September Term and tried in the expired June Term, being thus denied a day in court, nor having notice of the assignment until after the writ of possession had been served on her.

In addition, we find in the record a certification from the court clerk that no notice of assignment appears in the lower court's file.

In ejectment actions, the sheriff's return of service should show that the statutory procedure for service of process was completed. For this Court in *Karnga v. Williams et al.*, 10 LLR 114 (1949), held that since the Constitution of the Republic guarantees to each citizen the right to acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded. Therefore, the statutes also provide that there shall be placed upon the property, the subject of the action, copies of the summons and resummons as further assurance that the defendant or defendants will have due notice of the pending action. For this reason where a defendant in an

action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default.

The striking aspect of the case is the injudicious conduct of the judge in exercising jurisdiction that was not conferred on him. It is a well-known principle of law, that "jurisdiction is given by law and cannot be conferred by consent of the parties," so that after a circuit court judge's assignment has expired, the judge lacks capacity to try an action in the assigned circuit unless the assignment has been extended.

"When the jurisdiction of a circuit judge assigned to preside within a given circuit shall have expired either by his adjournment before the term normally expires, or by effluxion of time, he loses trial jurisdiction except for the purpose of hearing motions arising out of cases already determined and giving judgments thereon, or approving bills of exceptions, all of which should be concluded within ten days." *Sherman v. Clarke*, 16 LLR 242, 247 (1965); *Thomas v. Dennis* 5 LLR 92 (1936).

It is our opinion that the trial was a complete denial of justice. Judges ought never to hurry nor be overanxious to dispose of causes, if so doing will be prejudicial to the interest of the parties. It is expected that a judge learned in the law is dedicated and consecrated to the adjudication of the rights of litigants, and, hence, will avoid any course of conduct which would cause his impartiality to be questioned. The principles of impartiality, disinterestedness, and fairness on the part of the judge are as old as a history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle; the learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. The honor, liberty and lives of the citizens and inhabitants of this Republic should be secure in the hands

of its judges and they should see to it that the scales in which the rights of parties are weighed are nicely balanced.

The judgment of the court below is hereby reversed, and the case remanded for a new trial. Costs against defendant in error.

Reversed and remanded.