CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

APRIL TERM, 1934.

ABRAHAM A. DANIEL, for himself and his Wife SOPHIA DANIEL, and His Honor AARON J. GEORGE, Resident Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, Petitioners, *v.* COMPANIA TRASMEDITERRANEA, a Spanish Steamship Company of Barcelona, represented in Monrovia, Liberia, by RICHARD GRUNER, Agent of the WOERMANN LINE, a German Steamship Company of Hamburg, Germany, Respondents.

APPLICATION FOR RE-ARGUMENT.

Argued April 10, 1934. Decided April 20, 1934.

1. That a change in the membership of the Court is about to take place, or has already occurred, is not in itself sufficient for granting a rehearing.
2. A re-argument will not be ordered merely because the decision of one general term does not meet the approval of the judges composing a second general term.
3. It is not necessary to present to the full bench a petition for a remedial writ, as such writ may be issued by any of the Justices of this Court.
4. A remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable, or without which the ordinary method of appeal may not give an adequate remedy.
5. An application for a remedial writ should be heard and disposed of as expeditiously as possible.
6. When a Justice of this Court shall have affixed his signature to an order of this Court, and the authenticity of said signature is not questioned, it is not necessary that he should be actually present when the order is read in open court so as to indicate his concurrence therewith.
7. A rehearing should only be granted when by inadvertently overlooking some fact, or point of law, a palpable mistake has been made.

This Court issued a writ of prohibition forbidding the Circuit Court of the First Judicial Circuit of Montserrado County to proceed further with the trial of an action of libel. On application for reargument of the order issuing such writ, *application denied.*

S. David Coleman and *P. Gbe Wolo* for petitioners. *H. Lafayette Harmon* for respondents.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

On the 21st day of February, 1933, the Supreme Court of Liberia entered a judgment ordering the issuance of a writ of prohibition, forbidding the Circuit Court of the First Judicial Circuit of Montserrado County to proceed further with the trial of the above entitled cause, presumably for the reasons set out in the application upon which the writ was issued. Thereafter, on the 24th day of February, 1933, Messrs. Simpson, Coleman, Reeves and Summerville filed a petition for a rehearing in which they neglected to point out any material point of law or fact alleged to have been overlooked in the previous hearing, and made no reference to any of the points raised in the petition for the writ of prohibition, but only attacked the regularity of procedure as is more fully hereinafter dealt with.

It will be observed that in said petition emphasis was laid upon the desire of petitioners that their application for a rehearing should be considered by the full bench. Before, however, said matter could come on for hearing, the entire personnel of the bench was changed with the sole exception of Mr. Justice Grigsby. In spite of this, the present bench has to consider the application in the same manner as its predecessors would have done had they not been retired, for the principle of law is:

> "That a change in the membership of the court is about to take place, or has already occurred, is not in

itself sufficient reason for granting a rehearing." 18 Ency. of Pleading and Practice 50.

"A reargument will not be ordered for the mere reason that the decision of one general term does not meet the approval of the judges composing a second general term." *Id.* note 1.

This brings us to the consideration of the points raised in the motion for rehearing.

We have not been able to find any law in support of the contention of petitioners that a petition for a remedial writ should be presented to, or considered by, the full bench. Both in the several statutes on the subject as well as in the rules of this Court, reference is made to a Justice of this Court in the singular number rather than to the Justices collectively; and it has been the practice, followed even since the installation of the present bench,* to permit appeals from the order of an individual Justice who may have granted or refused a writ, to his colleagues *en banc.*

A remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable, or at all events may not give an adequate remedy if the ordinary methods of bringing up a case for review are pursued. It follows, then, that an application for such a writ should be heard and disposed of as expeditiously as possible, without awaiting the time for the convening of a regular term.

Having thus disposed of the first and second counts in the motion for rehearing, we will now consider together the third and fourth. It is true that Mr. Justice Grigsby was not present when the opinion was read in open court; but his concurrence therewith was indicated by his signature in his own handwriting which he had thereunto affixed, in accordance with a procedure set when, during the incumbency of the late Chief Justice Roberts, he, being ill, directed his colleagues Justices Richardson and

* See *C. F. Wilhelm Jantzen* v. *Frank Williams*, page 110, *infra.*

James J. Dossen to affix his signature in his behalf and give decisions in his absence.

This Court regrets that in view of the foregoing, counsel for petitioners should have endeavored to cast an aspersion upon the propriety of conduct of the late ex-Chief Justice Johnson of blessed memory,—aspersions not justified either by the principles of law we have been able to find nor by the practice and procedure of our courts as heretofore followed.

Having thus disposed of the points raised, the question remaining for our consideration is: have we or have we not the legal authority to grant a re-argument of this cause? We have no statute on the subject; but there is a provision therefor in the rules of this Court; first adopted and published at the January term of this Court, 1913. Said rule provides that:

> "For good cause shown to the court by the petitioner, a rehearing of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact, or point of law.
>
> "The petition shall contain a brief and distinct statement of the ground upon which it is based, and shall not be heard unless a justice concurring in the judgment shall desire it." Rules of the Supreme Court of Liberia, published in 1913, and subsequently, number IX, pp. 69–70, subsections 1, 2.

This principle is substantially that laid down in several common law authorities, as for example:

> "A rehearing may be had for a clear mistake of law in the decision, or where it appears that the appellate court misapprehended the record, and was mistaken as to facts occurring on the trial of the cause in the court below. But in order to be available such error or misapprehension must be in a matter materially affecting the correctness of the decision." 18 Ency. of Pleading and Practice 31, 32.

In the application before us petitioners have not in

their petition set out with sufficient precision any point of law or of fact which they claim that the Court overlooked in reaching its decision; none of the concurring Justices had expressed a desire to have the re-argument; and hence, no matter what may be the personal opinion of the present bench, we are without legal authority to grant the petition for rehearing now applied for.

Distinction must be made between this case, and that of *Cavalla River Company, Limited,* v. *E. S. Prince Pepple,* pp. 39–53 *supra;* for in said case the Court had actually entered upon the rehearing of the cause, and given an opinion on one of the counts in the motion, suspending judgment on the other, while in this case the petition had never been taken into the embrace of this Court.

Moreover, the point upon which the rehearing was asked was that the Court had not settled the principle of law whether or not an action of damages to personal property will lie for the recovery of a sum of money certain due upon a written obligation. This point had been raised and argued in the answer of the defendant, and twice upon motions to dismiss for want of jurisdiction before two distinct circuit judges, and was clearly presented for the consideration of this Court. As this Court did not definitely settle the point, it was obviously one upon which a petition for a re-argument could be based, and that was the reason why the Court could not but grant the re-argument. No such overlooking of any point properly raised at any stage of the proceedings was made the ground of the application for a rehearing in this case now under consideration.

It is therefore the opinion of this Court that the application for rehearing should be denied; and it is so ordered.

Application denied.