HENRY N. DESHIELDS, Petitioner, *v.* ALFRED D. J. KING, Respondent.

APPLICATION FOR A MANDATE ENFORCING A JUDGMENT.

Argued June 20, 29, and July 4, 1934. Decided July 9, 1934.

This is an application for a mandate to enforce a judgment in a suit brought by the petitioner, plaintiff-in-error in the court below, against the respondent, defendant-in-error in the court below, objecting to the probation of a deed. *Application denied.*

H. Lafayette Harmon for petitioner. *Edwin A. Morgan* for respondent.

On the 29th day of January, 1934, H. Lafayette Harmon, Esquire, counsellor at law for Henry N. DeShields, petitioner, applied by letter to us in our chambers for the issuance of a mandate to the court below to enforce the judgment that had been rendered in favor of petitioner in the case just decided * and another case in which he then in his said letter alleged was "Cavalla River Company, limited, plaintiffs and appellants versus Alfred D. J. King, defendant and appellee, in an action of debt," alleged to have been tried and determined against the said King at the November term, 1933, of this Court.

He was then told that the Court could not act upon a mere letter, nor would it permit more than one cause to be blended in one single application. He was then given permission within forty-eight hours to file *nunc pro tunc* separate applications in each case in proper form.

Instead of filing the said separate applications within

* See *supra*, p. 161.

forty-eight hours as permitted, Mr. Harmon waited until March 26th, and then filed a separate application in each cause which he claimed was a substantial compliance with the orders of the Chief Justice; but this was returned to him with the information that he could not file on March 26th an application *nunc pro tunc* dated January 29th when the Court had extended the privilege for forty-eight hours only. Again, on May 18th, Mr. Harmon wrote a letter complaining that the Clerk had not acted upon orders he assumed we had given to issue mandates in the several causes which he had blended in his original letter of January 29th. A letter dated May 19th was ordered sent him from our chambers recapitulating the orders we had previously given with which he had not complied, and emphasizing our legal inability to act until proper applications had been filed in each distinct cause, and also reminding him of the reason why his applications filed on March 29th had been taken off the files as noted above.

On the 21st day of May, 1934, Mr. Harmon filed an application in proper form for the enforcement of a judgment in the supposed case, *Cavalla River Company, Ltd.* v. *King,* action of debt; but after careful search he was informed by letter dated May 23rd that no action had ever been brought to this Court in which the Cavalla River Company, Ltd., were plaintiffs and appellants, and Alfred D. J. King, defendant and appellee, in an action of debt.

He subsequently admitted having made a mistake in his application, and averred that the case that really had been pending in this Court against Alfred D. J. King, the judgment which he now desired to be enforced, was the one in which Henry N. DeShields was plaintiff-in-error and Alfred D. J. King, defendant-in-error, involving objections to the probation of a deed. He was thereupon permitted to file an amended application properly entitled, which is the subject of these proceedings.

Reviewing the records we find that final judgment was entered on the 6th day of May, 1932, and a writ of execution issued thereon out of this Court on the 20th day of May of said year 1932.

We have already, in an opinion filed this day in the case *W. D. Woodin & Company, Ltd.* v. *Logan,** explained the views of the present Bench on the issuance of writs of execution by this Court on matters brought up here for review.

On the 17th of June, 1932, Counsellor Harmon, attorney of record for Henry N. DeShields, wrote a letter to His Honor, the late ex-Chief Justice Johnson, requesting him to have the writ of execution amended by inserting: (1) A clause cancelling the deed of King's on the ground of fraud; and (2) Ordering his client, the said Henry N. DeShields, put into possession of the said premises. The late ex-Chief Justice did not order the writ of execution amended as Mr. Harmon had petitioned, but allowed, in lieu, a writ of possession to issue ancillary to the writ of execution, which, dated the 30th day of June, was issued out of the office of the Clerk of this Court, and sent by L. P. Miller, special Deputy Marshal, to Grand Bassa for service.

To the service of this additional precept Alfred D. J. King protested by a letter to the then Chief Justice dated July 18th, 1932, on the ground that it was only legally possible to issue a writ of possession after an action of ejectment had been decided in favor of the plaintiff in such an action, and such writ could not legally issue following a suit upon which the only issue was whether or not his opponent's deed should be admitted to probate. It was subsequently pointed out to the Court in addition to the above that the Court's decision that plaintiff-in-error's deed should be admitted to probate did not necessarily operate as a cancellation of his own, at least not under the form of action then pending.

* See *supra*, p. 161, sub nom. *James* v. *Logan*.

This protest of King's was unanimously upheld by the Supreme Court, and on the 8th day of December, 1932, an order was issued tantamount to the revoking of the second precept ordering DeShields put in possession of the premises and that ordering King's deed cancelled.

In the interval Alfred D. J. King, respondent in these proceedings, had deposited with the Deputy Marshal title deeds for 215 acres of land and five acres of land respectively in Little Bassa which he claimed at this bar should be valued at five dollars per acre, and hence that he had overpaid. After having given our interlocutory ruling that the value of the land would be only what it realized at the Marshal's sale, he asked permission to withdraw his land from the hands of the Marshal, and to pay in cash. Leave having been granted, this was done by written application filed on the 6th instant.

The bill of costs was then ordered taxed, and same has been presented with an amount of forty-three dollars agreed to by the parties as legitimate and seventy-seven dollars and ninety-five cents claimed by the plaintiff-in-error to be repayable to them, but disputed by the defendant-in-error.

It is our opinion therefore: (1) That the sum of forty-three dollars agreed upon should be immediately paid by defendant-in-error to the Marshal of this Court;

(2) That the defendant-in-error should give a bond in a sum of one hundred fifty dollars to appear before the Supreme Court at its November term, 1934, to comply with such judgment as the Court may give, after hearing evidence on the several items totalling seventy-seven dollars and ninety-five cents, the correctness of which is now in dispute.

(3) That inasmuch as Counsellor Harmon has not, during the course of these proceedings, acted with that circumspection and uprightness which should characterize the conduct of a member of the bar of this Court, as a result of which the parties appear to have been misled

and the Court itself has been made to appear ineffective and ridiculous, the Clerk of this Court is hereby ordered to issue a writ of summons directed to the Marshal, commanding him to summon H. Lafayette Harmon, Esquire, counsellor at law, to appear before the Supreme Court at its November term, 1934, to show cause why he should not be attached for contempt because of his conduct during the course of these proceedings,* and it is hereby so ordered.

Application denied.

* See *infra*, p. 314.