

S. ALFRED P. HARRIS, Petitioner, v. SARAH V. HARRIS and His Honor EMMANUEL W. WILLIAMS, Resident Circuit Judge of the Sixth Judicial Circuit, Montserrado County, Respondents.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE REEVES.

Argued March 13, 1947. Decided May 9, 1947.

1. Ordinarily, the presumption is that one who fails to take an appeal from an order, judgment, or decree is satisfied therewith, and in the absence of an appeal or writ of error no question is presented for review.
2. Rulings as to taxation or retaxation of costs in an action are not, as a rule, appealable of themselves unless they fall within some special statutory provision, but are reviewable, if at all, only on appeal from the final judgment.

Petitioner sued Sarah V. Harris, co-respondent, for a divorce on the ground of desertion. Sarah V. Harris did not appear or file an answer. Petitioner was absent from the hearing and Judge Williams, co-respondent, granted co-respondent Harris' motion to dismiss. On petitioner's return he prayed for a rescision of the judgment or, if said prayer were refused, an appeal. Judge Williams ordered the prayers deleted from the record. Petitioner petitioned Mr. Justice Shannon in Chambers for a writ of mandamus to have petitioner's divorce action redocketed. Mr. Justice Shannon granted the writ with costs against respondents who neither took exceptions thereto nor appealed to the Court *en banc*. When execution was issued on the costs, co-respondent Harris obtained from Chief Justice Grimes a stay until the Justice presiding in Chambers, Mr. Justice Reeves, disposed of the issue of the execution. The Justice ordered the execution enforced. On appeal to this Court *en banc*, execution enforced and granting of writ of mandamus upheld.

*B. G. Freeman* for petitioner. *A. B. Ricks* for respondents.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

In the Chambers of Mr. Justice Shannon, then presiding, a petition for a writ of mandamus, the subject of these proceedings, to have his case of divorce redocketed was filed by S. Alfred P. Harris, petitioner, against His Honor Emmanuel W. Williams, Judge of the Sixth Judicial Circuit, Montserrado County, then presiding over the March term of the aforesaid court, and Sarah V. Harris, respondents. After hearing the matter *pro et con*, the Justice considered it conclusive with costs against respondents. His conclusions were based upon the following reasons as stated in the opinion then handed down, from which we quote hereunder:

“S. Alfred P. Harris, petitioner, entered an action of divorce against his wife—Sarah V. Harris, one of the respondents in these proceedings; but when the Writ of Summons was served on the said Sarah V. Harris, as such defendant, she refrained from either appearing or filing an answer against the complaint of her husband. Notwithstanding these facts, when the case was called for hearing before His Honour Judge Williams, respondent, Judge of the Civil Law Court for the sixth judicial circuit, Montserrado County, upon the complaint of the said S. Alfred P. Harris only, the records before us disclose that the said Sarah V. Harris appeared before said Judge and, in the absence of the said S. Alfred P. Harris who claims not to have had any notice of the assignment of his case but had gone out of town because of both the implied and expressed disinclination of the said Judge to hear and determine said case, verbally moved the said Judge to dismiss the action and rule petitioner

plaintiff to all costs for the reason that since the filing of said case she and her husband had been together as husband and wife as an evidence of the renewal of the covenant and because of which her husband had failed and refused to come to court to prosecute his action of divorce against her.

“The records further disclose that the said Judge, without affording plaintiff petitioner an opportunity to deny, rebut, or admit this statement of his wife, spontaneously accepted its truthfulness and dismissed said action with costs against plaintiff petitioner; and that when this was brought to the notice of the said plaintiff petitioner, who had just returned to the City, he and his Counsel appeared before the said Judge on the following day and prayed him to rescind his judgment of the previous day dismissing the action because of their not having been notified, nor had even a notice been placarded on the outside of the court in the usual way; or, upon his, the Judge’s, refusal to rescind his judgment, to grant plaintiff petitioner an appeal. The record of these alternative prayers was ordered deleted by the Judge from the record.

“To say the least, the construction of the Returns of respondent Sarah V. Harris and His Honour Judge Williams (the latter having been submitted after the submission of the matter) are so notoriously lacking in decency as to the manner of submitting the issues allegedly involved, that we are constrained to sound a warning, especially to the Judge, against its repetition.”

To this opinion and consequent judgment, respondents took no exceptions and did not appeal therefrom to the Court *en banc*. But when execution was issued against respondent Sarah V. Harris for the collection and payment of costs, she then thought it in her interest, in an endeavor to complicate and delay the collection and payment of the costs, to adroitly and cleverly apply to His

Honor the Chief Justice for a temporary stay as follows:

“YOUR HONOUR:

“I beg most respectfully to submit the following in the matter of Writ of Execution issued against me out of the Honourable Supreme Court.

“In *re* a petition for Mandamus filed in the Honourable Supreme Court by S. Alfred P. Harris, my husband, petitioner against the Judge of the Sixth Judicial Circuit Court, Montserrado County, respondent, a Writ of Execution has been issued against me to pay the costs of said proceedings in the sum of \$64.87. This being remedial process of a Civil nature, and one in which the plaintiff petitioner is S. Alfred P. Harris, my husband. I fail to see how any liability for costs or other expenses thereof should be made of the fact [*sic*] payable against me.

“In view of the fact that the Justice of the Supreme Court in Chambers is away from Monrovia, I am most respectfully asking Your Honour’s intervention for temporary stay of the Writ of Execution until I can more fully place my side of the matter before the said Justice now in Chambers.

“The Writ of Execution now issued against me was sprung on me, as it were, without any previous notice or demand from the Court for payment of said costs.

“Respectfully submitted,

[Sgd.] SARAH V. HARRIS.”

This application resulted in the issuance of the following order:

“THE CHIEF CLERK, SUPREME COURT OF LIBERIA,  
THE MARSHAL, SUPREME COURT OF LIBERIA AND  
MRS. SARAH V. HARRIS, MONROVIA.

“GREETINGS:—

“Whereas Mrs. Sarah V. Harris had filed a complaint to the undersigned alleging that a Writ of Execution has been issued against her for costs and other charges growing out of an application of a Writ of

Mandamus in which her husband S. Alfred P. Harris is the adverse party; and

“Whereas she alleges that she has good reasons to show to the Justice presiding in Chambers why such Execution should not be granted and prays for a temporary stay of said proceedings as is evidenced by her said petition herewith;

“Now therefore, it is hereby ordered:

“1) That the said Execution be stayed until same and any other documents relating thereto shall have been brought before Mr. Justice Reeves, the Justice Presiding in our Chambers and he shall have indicated by his Orders what disposition shall be made thereof.

“Witness our hand and Official Signature in triplicate, this 9th day of September, A.D. 1946.

[Sgd.] L. A. GRIMES,

*Chief Justice, Supreme Court of Liberia.”*

It is obvious that respondent, Sarah V. Harris, misled His Honor the Chief Justice when she stated in the last paragraph of her letter that “the Writ of Execution now issued against me was sprung on me, as it were, without any previous notice or demand from the Court for payment of said costs.”

Nevertheless, Mr. Justice Reeves, then presiding in Chambers on December 6, 1946, heard the matter, denied the submissions which were without legal merit and partly a repetition of statements made in her returns referred to in the opinion of His Honor Mr. Justice Shannon, and ordered the execution enforced, to which Counsellor Ricks for his client, Mrs. Sarah V. Harris, excepted and prayed an appeal to the full Bench.

It is to be noted that these proceedings grew out of an action for divorce on the ground of desertion brought by the petitioner against his wife, one of the respondents, and that no exceptions were taken and no appeal was prayed

for to the full Bench from the opinion and judgment of Mr. Justice Shannon. "Ordinarily one who fails to take an appeal from an order, judgment, or decree will be presumed to be satisfied therewith, and in the absence of appeal or writ of error no question is presented for review." 5 C.J.S. § 1516, at 970 (1948). Under the circumstances, no question was really presented for review and no particular item of the bill of costs was attacked. We are therefore in accord with the ruling of Mr. Justice Reeves denying the submission and ordering the execution enforced.

But respondent, Sarah V. Harris through her counsel, with a desire to still fruitlessly delay the payment of the costs and the enforcement of the execution, prayed an appeal from the Chambers of Mr. Justice Reeves to the Court *en banc*. It is now sufficient to say that "rulings as to taxation or retaxation of costs in an action are not, as a rule, appealable of themselves, unless they fall within some special statutory provision; but are reviewable if at all, only on appeal from the final judgment." 4 C.J.S. § 136(b), at 442. In this instance respondents neglected to do so.

We are therefore upholding the opinion and judgment of Mr. Justice Shannon and the ruling of Mr. Justice Reeves from whose ruling particularly this appeal was made, with additional costs against Sarah V. Harris, respondent; and it is hereby so ordered.

*Execution enforced.*