THOMAS F. HOWARD, W. H. KETTER, and M. DIMMERSON, Executors and Executrix of the Estate of the late G. H. VANJAH DIMMERSON, Appellants, *v.* JAMES W. DENNIS, for his wife MARIA L. DENNIS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided January 22, 1937.

1. Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge.
2. Where a judge is satisfied that he is legally disqualified to act in a case, he should not await an objection, but should enter on the docket that because of his disqualification he refuses to sit.
3. It is of the most vital importance that courts should be free from reproach or the suspicion of unfairness as the judiciary should enjoy an elevated rank in the estimation of mankind.
4. Hence if a judge has been interested in a cause, the consent of parties cannot remove his incapacity nor restore his competency.

Appellees brought an earlier action for injunction against trespass committed by the appellants on property which both parties claimed, and this Court advised the present action of specific performance to determine title. 3 L.L.R. 62. On appeal from the decision in the action thereupon brought for specific performance, *judgment reversed and case remanded* for new trial.

L. G. Freeman for appellants. No appearance for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case is before this Court on an appeal from the Circuit Court of the First Judicial Circuit, in the Equity Division of its February term, 1936. The records in the case show that the late George H. Vanjah Dimmerson entered into a verbal contract with Maria L. Dennis, the

wife of James W. Dennis of Careysburg, for the purchase of a certain town lot situated on Crown Hill, Commonwealth District of Monrovia, for an amount of two hundred twenty-seven dollars and eighty-eight cents; and that although the said Dimmerson tendered the two hundred twenty-seven dollars eighty-eight cents, yet the said Maria L. Dennis, after receiving the sum of one hundred eighty-seven dollars and eighteen cents of the purchase money, refused to accept the balance of forty dollars which would have completed the sale of the said tract of land.

The respondents in answering the petitioners' bill set out in the answer, (1) that the petitioners were barred from bringing this action, because the Statute of Limitations had run against them; and (2) that the contract between them and the late George H. Vanjah Dimmerson called for one hundred pounds sterling instead of two hundred and twenty-seven dollars and eighty-eight cents as set out in the petitioners' bill.

Prior to the institution of this action of specific performance by the executors and executrix of the late George H. Vanjah Dimmerson, James W. Dennis for his wife Maria L. Dennis entered an action of injunction against the late George H. Vanjah Dimmerson, enjoining him from cutting grass or cleaning said lot in question. The case was tried in the Circuit Court of the First Judicial Circuit on the 3rd day of July 1927, and decided against the late Dimmerson, to which ruling he excepted, and appealed to this Court at its April term, 1928.

Upon hearing the appeal of the said appellant Dimmerson, deceased, this Court pointed out that certain equitable claims advanced during the trial by the said Dimmerson to the land in question had not been settled, and suggested that an action of specific performance should be brought by him to settle his title to said piece of land.

The records in this case clearly show that at that time, the said Mr. Dimmerson represented himself in this Court and that Counsellor Nete Sie Brownell, who was the trial judge in the case now before us for review, was the coun-

sel for James W. Dennis for his wife Maria L. Dennis. See opinion and judgment in the Record Book of this Court in the case *Dennis* v. *Dimmerson,* 3 L.L.R. 62.

While admitting that there are important questions of law raised in the pleadings in this case by both petitioners and respondents, which ought to be settled for the future guidance of our courts, yet it having been made clear from the records of this Court that his Honor Nete Sie Brownell, the trial judge in this case, was the retained lawyer for Mr. James Dennis and his wife, we cannot do otherwise than repeat the principle enunciated in *Ware* v. *Republic,* 5 L.L.R. 50, 3 Lib. New Ann. Ser. 36, heard at the November term, 1935, the portion of which relevant to this matter reads as follows:

> " 'Every litigant, including the state in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and therefore if the judge before whom a cause is to be tried is prejudiced or otherwise disqualified, he may be challenged, and if the challenge is sustained the cause may be moved to another court or tried before another judge. . . .' 15 R.C.L. pp. 539–40, § 27.
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> " 'Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should refuse to hear the cause by an entry on the docket that he does not sit in the case. This indeed is the usual practice, and the judge's decision in such cases that he is incompetent through interest is not reversible except for manifest error.' 11 Ency. of Pl. and Prac. 781–82, § III (1).
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> " '. . . It is of great importance that the courts should be free from reproach or the suspicion of unfairness. The party may be interested only that his particular suit should be justly determined; but the state, the community is concerned not only for that, but that the judiciary should enjoy an elevated rank in the estimation of mankind.

" 'The party who desired it might be permitted to take the hazard of a biased decision, if he alone were to suffer for his folly—but the state cannot endure the scandal and reproach which would be visited upon its judiciary in consequence. Although the party consent, he will invariably murmur if he do not gain his cause; and the very man who induced the judge to act when he should have forborne, will be the first to arraign his decision as biased and unjust. . . .' *Oakley* v. *Aspinwall,* 3 N. Y. 547, 552 (1850), cited in 11 Ency. of Pl. and Prac. 784, note 3.

" 'We conclude, that the presiding judge being interested, was absolutely incapacitated to take cognizance of, or sit in the case. The consent of parties could not remove his incapacity, or restore his competency against the prohibition of the law; which was designed not merely for the protection of the party to the suit, but for the general interests of justice. And, consequently, the judgment rendered by him was nullity, and left the case remaining undisposed of, as completely as if the judge had not been present at the court.' *Chambers* v. *Hodges,* 23 Tex. 104, 112 (1859), cited in 11 Ency. of Pl. and Prac. 784, note 3."

Because of the foregoing reasons, we cannot but express surprise that a judge of the intelligence and legal ability of His Honor Judge Brownell should have presumed to preside over the trial of a cause in which, as to its essential features, he had been the retained counsel of one of the parties before his elevation to the bench; and hence, because of his patent disqualification to try same, and his neglect to recuse himself, the decree in this case should be reversed and the case remanded to the Circuit Court of the First Judicial Circuit, to be tried by any other Circuit Judge except His Honor Nete-Sie Brownell with costs against appellees; and it is hereby so ordered.

Reversed.