

In re O. NATTY B. DAVIS, Counsellor-at-law, and
MARY E. ANDERSON, Appellants.

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

Argued April 13, 1948. Decided April 30, 1948.

1. The Court will protect and defend judges of the lower courts in their efforts to maintain their prestige and dignity, but for them to be entitled to this protection they must allow no situation to arise which would embarrass the appellate court in so doing.
2. The Court will discharge respondents-appellants in a contempt proceeding where on appeal their returns are missing and the clerk cannot provide a copy since the lower court judge still has them.

Respondents-appellants are appealing from a ruling of the circuit court adjudging them in contempt of court. On motion to this Court to discharge respondents-appellants on the ground that their returns are missing from the record, through no fault of theirs, and are unobtainable, *motion granted*.

O. Natty B. Davis for respondents-appellants. T. Gyibli Collins for the Republic.

MR. JUSTICE SHANNON delivered the opinion of the Court.

These proceedings were commenced against appellants before the civil law court for the Sixth Judicial Circuit, Montserratado County, His Honor Monroe Phelps, Circuit Judge, presiding. It would appear that growing out of a suit for alimony determined against B. J. K. Anderson, brother of Mary Anderson, one of the appellants, a commitment was ordered issued for the said B. J. K. Anderson since he failed to satisfy an execution founded upon the decree in said proceedings; that, upon efforts by the sheriff to have said B. J. K. Anderson com-

mitted, the records reveal that appellants interposed and definitely resisted the sheriff in the execution of the orders given by the court; that this fact was reported to the judge who accordingly entered an order for a writ of summons to be issued for the appearance of respondents, now appellants, to appear before the court on a day named to show cause why they should not be held in contempt; that these appellants appeared and filed returns wherein they set out causes why, in their opinion, they should not be held in contempt; and that upon proceedings resulting in a pronouncement of guilt against them, they excepted to the ruling and prosecuted an appeal to this Court.

When the case was called here, appellants, discovering that there was a defect in the records certified to us in that their returns to the writ of summons in which they made their entire formal defense were not in the records, filed a motion for diminution of records. Since the motion was not resisted and it appeared that there were legal grounds for granting same, the Court with a view to dispensing justice granted the motion and, since there were other appeal cases in contempt of court emanating from rulings of the same Judge Phelps, gave a general order including the sending up of the entire records in the other two appeal cases involving contempt of court decided by the said Judge Phelps.

Accompanying the returns of the clerk of the civil law court was a letter which he addressed to the clerk of the Court wherein he showed his inability to make a copy of the returns of these appellants for the simple reason that same were not in his possession but rather were with the trial judge who had not yet returned them to his office. There were other imputations made against the trial judge which we superficially considered not best suited to the clear and fair administration of justice; but since we deem them not relevant to this particular case we have decided, especially in the absence of an opportunity for the judge to defend himself against these imputations, not

to pass upon them in the decision of this matter, reserving, however, the right to consider them. At any rate, the situation created an obstacle to the full hearing of the appeal upon its merits, and appellants, considering this, moved that the Court, because of this situation, discharge them from further answering the charge of contempt of court.

From the entire records before us there appears to be a tendency of certain parties, especially lawyers, to fail to show respect for the lower courts or their judges, but these alleged contemnors have declared that they deprecate the idea that such an impression can be gathered since it is far from their minds to lay themselves open to such a record being made against them. They declare that it is this particular judge who, indifferent to their rights, privileges, and positions, places them in a situation where they seem unable to take positions other than those which eventually are characterized by the same judge as contemptuous. This allegation seems to be supported by the records we are reviewing in the several appeals before us. Whilst we are prepared to protect and defend judges of the lower courts in efforts to maintain their prestige and dignity, we also say that for them to be entitled to this protection and defense they must allow no situation to arise which would embarrass the appellate court in offering them this protection.

The wording of the motion under consideration in some of its parts is discourteous and disrespectful despite what might have been the irregularities committed by the trial judge, and we must deprecate them, especially where a counsellor of this Court allows himself to be associated with their presentation.

However, in view of the missing returns from the records through no fault of the appellants and since we are unable to secure a copy which can be verified as such and eventually admitted as a substitute, a regrettable situation in which we are unable to judicially pass upon the merits

of the cause, we find ourselves with no alternative but to grant the motion and direct the discharge of the appellants without day from further answering for contempt of court; and it is hereby so ordered.

Motion granted.