

SHADRACH P. NATHAN, Petitioner, v. WEST &  
COMPANY, LTD., Respondents.

PETITION FOR MANDAMUS.

Argued November 27-28, 1934. Decided December 7, 1934.

1. When one or more persons give notice of an appeal, the Court will as far as possible refrain from making any expression on those issues raised by such parties as have failed to complete their appeals.
2. This Court should pass upon only such issues as are appealed to us for review.
3. In all cases where the assets of the petitioner are more than his liabilities, the application for insolvency should be denied.

*Petition for mandamus to compel lower court to administer oath of insolvency denied.*

*Douba Carmo Caranda* for petitioner. *William E. Dennis* for respondents.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case originated in the Monthly and Probate Court of the Territory of Marshall, where judgment was rendered against the petitioner in these mandamus proceedings who was defendant in the court below, in an action of debt brought by West & Company, Ltd., plaintiffs. A writ of execution was thereupon ordered issued against said defendant upon which the defendant was taken by the ministerial officer of the aforesaid court, who proceeded to conduct defendant to the office of the Sheriff of Grand Bassa, J. S. Dickerson, where said execution was to have been transferred by the Sheriff of the Territory of Marshall to him on account of territorial jurisdiction; but while en route he, defendant, escaped from the officer and ran away to Monrovia.

On his arrival, he procured the services of counsel who filed a petition with the presiding judge at the November

term, 1932, of the Circuit Court of the First Judicial Circuit, in which petition he prayed for the administration of the oath of insolvency. This petition was denied, because the presiding judge was of opinion that he had no jurisdiction over the matter, emanating as it did from the Territorial Monthly and Probate Court of Marshall. The defendant thereupon petitioned this Court at its November term of the aforesaid year, for a writ of mandamus to be issued, commanding the presiding judge of the Circuit Court aforesaid, to grant his petition for the oath of insolvency to be administered unto him.

The late ex-Chief Justice Johnson to whom the said application was presented did not order the mandamus issued, but, instead, sent a mandate to the Judge of the Territorial Monthly and Probate Court of Marshall, directing him to ascertain how far the allegations contained in the petition of petitioner could be supported, what assets he had, and where located.

During the investigation before His Honor, Judge Blaine, in the proceedings for misconduct of the ex-Sheriff and ex-Deputy Sheriff of Grand Bassa County, in whose hands the Sheriff of the Territory of Marshall had placed the aforesaid execution for enforcement on account of territorial jurisdiction, because the property of the defendant, now petitioner, which was levied upon was in Grand Bassa County, it was brought out by the list filed by the aforesaid petitioner that his assets taken by the aforesaid Sheriffs were more than the debt he owed. The report of the Judge of the Territorial Monthly and Probate Court aforesaid further shows that the ministerial officers of the court, J. S. Dickerson, Sheriff for Grand Bassa County, and L. P. Miller, Deputy Sheriff of the County aforesaid, had, under color of the writ of execution, committed sundry acts injurious to petitioner, for which reason he, the aforesaid Judge, rendered an individual judgment against each of them. Inasmuch as they have not completed their appeals to this Court it would

be improper for us to give a ruling or make any expression upon the merits of the aforesaid judgment of the trial judge, or of the procedure he followed; as this Court can legally pass upon only such issues as are legally appealed for our review.

“Insolvency” is defined by our statute to be: “The condition of a man, whose property is not sufficient to pay his debts” and “It shall be presumed that every man is insolvent, for ninety days before he applies for permission to assign his property, for the general benefit of his creditors.” Statutes of Liberia (Old Blue Book), ch. XIX, §§ 1, 2.

It having been brought out during the aforesaid investigation before His Honor, Judge Blaine, by the defendant, now petitioner, that his assets were more than his liabilities up to the time of the filing of his petition for insolvency, this Court is therefore of opinion that the privilege prayed for by the petitioner in this case cannot be legally granted him. The petition should therefore be denied with costs against petitioner; and it is so ordered.

*Petition denied.*