

CARL THEUME, Agent for MESSRS. WEST AND COMPANY, LTD., Plaintiff-in-Error, v. WILLIAM N. ROSS, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 9, 1933.

It is error for the appellate court to affirm the judgment of the magistrate court because of few minutes' lateness of a party and thereupon enter perfect judgment. On appeal from the Municipal Court Monrovia, the procedure of the justice of the peace court is ordinarily followed, i.e., the absent party must be called three times at the door of the court house and upon failure to answer, imperfect judgment must be entered and the records certified from the municipal court on appeal read before perfect judgment can be rendered.

In an action for damages brought in the Municipal Court of Monrovia, judgment was granted for plaintiff. Defendant, now plaintiff-in-error, appealed to the Circuit Court, which affirmed and entered a perfect judgment. On appeal to this Court by writ of error, *reversed and remanded*.

*Barclay & Barclay* for plaintiff-in-error. *Simpson and Coleman* for defendant-in-error.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

In the month of September, 1931, whilst defendant-in-error was on his way to Paynesville, an accident occurred which resulted in the smashing up of some parts of his motorcycle by a Reo truck belonging to plaintiff-in-error.

Defendant-in-error met a wrecked truck standing on the left of the road, at the curve near Oldest Congo Town, laden with planks packed in an X formation. He stopped his motorcycle and stood in the road near the

ditch at a distance of about ten feet from the said loaded truck on the opposite side of the road.

A Reo truck owned by the plaintiff-in-error, coming from Oldest Congo Town direction, appeared suddenly a few yards in sight of said wrecked truck, which was occupying a position on the road, at such close proximity that it had to stop; for there was no other way to pass except on the left side (or Oldest Congo Town direction) of the same object.

The driver, in avoiding a possible collision with the loaded truck, made a curve by driving near the ditch where unfortunately the defendant-in-error was standing near his motorcycle, from which motorcycle he suddenly jumped to avoid a greater calamity; the cycle was run over by the Reo truck, damaging the exhaust pipe and parts of the front wheel. Action was brought in the Municipal Court of the Commonwealth District of Monrovia which rendered judgment in favor of plaintiff. From this judgment, the company appealed to the Circuit Court for the First Judicial Circuit, Montserrado County, and it is in this appeal that certain irregularities and errors occurred which have forced plaintiff-in-error to bring this case before this Honorable Supreme Court by writ of error for review mainly upon two points as revealed in the following counts, to wit:

- "1. That plaintiff-in-error, having appealed from the judgment of the Municipal Court of Monrovia, requested His Honour Aaron J. George, Judge of the First Judicial Circuit, Montserrado County, to assign said case for hearing, which His Honour the Judge did, assigning said case among other cases for hearing, on the 30th day of June, 1932, at the hour of 2 o'clock p.m. But because the counsels for the plaintiff-in-error were some minutes late, His Honour Aaron J. George acted hurriedly upon the oral application of the counsels for appellee, without first calling the appellant,

now plaintiff-in-error, at the door to ascertain whether, being in the precincts of the court, they would answer or not.

- “2. And also because His Honour the Judge of the Circuit Court aforesaid did not act upon a motion for judgment by default, but upon a mere verbal request of the appellant’s counsels that the judgment of the Municipal Court be confirmed. His Honour the Judge immediately acted thereupon, and confirmed the judgment of the court below without reading the records of witnesses and the papers filed in said case from the court below as is required by law governing appeals from the said Municipal Court.”

As to counts 1 and 2 of the assignment of errors, this Court observes from the records that on the day assigned for the hearing of the case, Counsellor Simpson gave notice that Counsellor Coleman and himself represented appellee; he asked that since the case had been assigned for the afternoon and appellants were not present, he prayed that the judgment of the lower court be affirmed and the judge acted accordingly and ordered the issuance of the execution. We are of opinion that it does not stand to reason that plaintiff-in-error, being dissatisfied with the judgment of the Municipal Court and appealing his cause to the Circuit Court incurring expenses, and subsequently praying for the assignment of the cause for hearing, would be considered as intentionally abandoning the trial because of a few minutes’ delay which may have resulted from the variation of the time piece, without giving a verbal or written notice; but the facts reveal that the judge was precipitate in his ruling, which destroyed the sense of a fair and impartial trial. It matters not how clear and logical the law and facts may appear to litigants, yet if the cause is not conducted according to law, the same becomes void and of no legal effect. Courts are bound strictly by the law controlling the issues

before them, and are not to act upon their own impulse or upon solicitations made by practitioners not founded in law. The Act of 1922 (L. 1921-22, ch. IX, § 11) creating the Municipal Court of Monrovia made it a quasi court of record, and provides *inter alia*: that in case of appeal the clerk should forward a correct transcript of the records of the case to the Circuit Court, Montserrado County, within thirty days after adjournment, duly certified under his official signature and approved by the Magistrate. The Judge of the Circuit Court shall thereupon hear and determine the same upon the certified records without the aid of a jury.

This procedure appears not to have been followed and it therefore constitutes a violation of the statute thus made and provided. In order that substantial justice might be given, if it comes to the knowledge of the trial judge that any of the parties to the cause are absent when the case is called for hearing, it is incumbent upon him to order the sheriff to call the parties at the door in a public manner, as they or their counsel may be within the precincts of the court; if this is not done, it works injustice to practitioners and litigants.

In the case before us for review, if the call was made as outlined, and defendant failed to answer, which fact alone would warrant plaintiff to apply for judgment by default, the judge could only enter an interlocutory ruling or imperfect judgment and proceed with the reading of the records forwarded from the Municipal Court so as to enable him to pass upon them and assess the damages sued for defendant-in-error, thereby perfecting the judgment; not having done this, the court below erred. This case is therefore remanded to the court below for rehearing; and the Clerk of this Court is ordered to notify the court below as to the effect of this judgment. And it is hereby so ordered.

*Reversed and remanded.*