

H. W. WHITE, Clerk of the Monthly and Probate Court, Grand Cape Mount County, Plaintiff-in-Error, v. His Honor M. N. RUSSELL, Judge of the Fifth Judicial Circuit, and A. DONDO WARE, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Decided May 15, 1930.

1. An appeal court has power to examine upon its merits, both as to law and facts, every proceeding or decision of an inferior tribunal.
2. To constitute a contempt there must be improper conduct in the presence of the court, or so near as to interrupt or interfere with its proceedings, or some act must be done not necessarily in the presence of the court which tends to adversely affect the administration of justice.
3. It is error for a trial court having once given a judgment to which exception was taken and notice of appeal from said judgment given to resume jurisdiction over said cause and parties.

A default judgment was rendered by a justice of the peace in an action of debt, although the defendant in that action was not summoned. Execution was returned to the Monthly and Probate Court, which dismissed the execution and discharged said defendant, with costs against the plaintiff. On appeal to the Circuit Court by plaintiff, costs were disallowed to both parties from the institution of the action in the justice court. On writ of error to this Court, judgment amended so far as it concerned fees of clerk of Monthly and Probate Court for copies of records, and *affirmed*.

*A. B. Ricks* for plaintiff-in-error. *N. H. Sie Brownell* for defendant-in-error.

MR. JUSTICE PAGE delivered the opinion of the Court.

Before advancing into a review of the many irregularities entering in the trial of this case in the court below,

we deem it necessary to give briefly a history of the same leading to the exercise of jurisdiction of the Circuit Court as we gather from the records:

One Dondo Ware entered an action of debt against Thomas Saku Freeman, defendant, before J. S. B. Taylor, justice of the peace for the County of Grand Cape Mount, who after issuing the necessary papers in the case wrote a letter to Freeman, the defendant, offering him the privilege of compromising the action by enclosing the amount of the debt, and cost of the action as far as the case had gone, which, if settled, would put a final end to the action. Defendant, without being even summoned, took advantage of the offered privilege, paid to the constable the amount of the debt and cost and he receipted defendant for the entire amount thus paid.

The constable, having received the amount, failed to serve out the writ or make any returns thereto but returned to the justice of peace with same; this ended the jurisdiction of the justice over the action and the defendant.

The justice, instead of paying over to the plaintiff the amount of the debt thus collected, divided the amount of the debt between himself and the constable thereby defrauding the plaintiff. Subsequently, the plaintiff not hearing anything further from the case applied to the justice, who pretended to take further jurisdiction over the case and the person of the defendant and made an illegal return to the writ. The justice further held a mock trial and rendered judgment by default against said defendant, granting execution to the plaintiff and placing same in the hands of the constable for enforcement.

The execution was served and returned with the defendant before the Monthly and Probate Court, which Court refused to dismiss the execution and discharge the defendant, ruling him to the cost of same. To this ruling the defendant took exceptions and appealed to the Judge of the Circuit Court.

His Honor the Judge of the Circuit Court reversed the ruling and judgment of the Judge of the Monthly Court upon the following grounds: First, there can be no legal cause which stems from an illegal procedure or the want of jurisdiction over the person and subject matter of the action. Second, no writ of execution can be enforceable where no regular action was had; i.e., where the writ of summons was not served with returns made thereto as to its service. Third, no execution is legal and enforceable when not founded upon a legal judgment.

The Monthly and Probate Court therefore could not order or take legal jurisdiction and order payment on this execution. These facts being apparent and established, the Judge therefore dissolved the execution, discharged the defendant from further custody, disallowed cost to any of the parties beginning from the justice and constable throughout to the Circuit Court and further ruled that all the illegal amounts that had already been paid be refunded to parties paying same upon the established maxim: "That which is not legally done is not done at all." In this ruling we say the Circuit Court committed no error. Courts must not always talk justice but must administer justice; courts must not simply declare: "Let justice be done though the heavens fall," and when brought to face the situation in the administration of justice, they themselves fall instead of the heavens. We must declare and do justice as it demands that it should be done. As we have said, the Judge of the Circuit Court committed no error and was right in abating the corrupt speculation of the various officers beginning with the justice of the peace and constable.

From the records we find that all of the parties acquiesced in the Circuit Court's ruling and refunded the amount each had received, save H. M. White, the clerk of the Monthly and Probate Court, who excepted to the Court's ruling and prayed an appeal therefrom to this Court. Notwithstanding this exception taken and notice

given of his intention to appeal, the Judge did enforce his orders and incarcerated the plaintiff-in-error until the amount was paid as set out in the plaintiff-in-error's petition for a writ of error.

An exception taken to any ruling or judgment of a court amounts to an objection made to the decision of the court in the course of a trial; the exception is then embodied in a bill of exceptions, presented within the time prescribed by statute and, except under extraordinary circumstances, must be allowed; and where it is presented for signature within legal time, one must not be prejudiced by the refusal or neglect of the judge to sign it.

Exception having been taken, the court simultaneously lost jurisdiction and should not have enforced payment of the amount. Courts cannot deny nor refuse the exercise of this privilege preserved by statute and the common law to parties to suits; in this respect the court committed a gross error and took advantage of a free citizen.

The court may however during its sitting resume jurisdiction over causes in which judgment has been given or rendered where no exception to said judgment is taken and notice of appeal given, but not after its adjournment.

We find from the records that previous to the commitment and payment of the amount by the plaintiff-in-error he, in an improper manner, set himself up against the Court's order and said that he was not going to pay a cent; that the Court was taking advantage of him. Upon being brought into Court on information of Attorney Ware, and being qualified he supported the statement of Attorney Ware in the presence of the Court in session, to wit, that: "The Court was taking advantage of him and that he was not going to pay a cent." This statement the Court considered to be a contempt of the Court's authority upon which the Court committed him. While this Court will not support enforcement of the judgment or any ruling of a subordinate court after exceptions taken, yet this Court cannot and will not lend aid to or give license to

persons disobeying or disregarding public authority or the courts. This Court is of opinion from the records certified to it that the fine imposed and punishment inflicted grows out of the conduct of disobedience on the part of the plaintiff-in-error to the Court's order when he was ordered to refund the amount he had also received; to have told the Judge abruptly that he was taking advantage of him and that he was not going to pay a cent, this the Court correctly construed to be contempt offered in its presence. To constitute a contempt there must be improper conduct in the presence of the court or so near as to interrupt or interfere with its proceedings, or some act must be done not necessarily in the presence of the court but which tends to adversely affect the administration of justice. *King v. Moore*, 2 L.L.R. 35 (1911).

Contempts of court are of two kinds: such as are committed in the presence of the court, and which interrupt its proceedings, which may be summarily punished by the presiding judge; and constructive contempts, arising from a refusal to comply with an order of court. B.L.D., "Contempt."

It has become a common practice of late for persons, even lawyers, to stand before a court and speak in terms of censure of the court; this is a contempt and should be severely punished. Such conduct has a tendency to bring disrespect upon the court and lessen its influence in the administration of public justice and should in no case be tolerated whether the court is sitting *en banc* or in chambers.

Judges are the arms of the law and must be respected.

This Court therefore finds no reason to disturb the judgment of the court below with the exception of the amount paid the plaintiff-in-error as clerk of the Monthly and Probate Court for copies of records furnished parties and which amount was to be paid plaintiff below and which the court below ordered refunded by him; this

amount this Court regards as his legal fees which he is entitled to and should have; in all other respects the judgment of the court below is affirmed; cost disallowed to all parties; and this is so ordered.

*Amended and affirmed.*