

as Collector of Customs, legally confiscate and cause them to be sold independent of a decree of a court of admiralty?

Having previously answered this query in the negative, we will quote the statute upon which our opinion is based which is in the following language: "Said court," referring to the Court of Quarter Sessions and Common Pleas now styled the Circuit Court, "shall have original jurisdiction in all cases of admiralty, and marine jurisdiction, of seizures made under the Navigation, Commerce and Revenue Laws of this Republic, and seizures made under any laws of this Republic." (See Lib. Stat., Book 3, art. 4, p. 121, sec. 1.)

We are of the opinion that the judgment of the court below should be affirmed and it is hereby so ordered.

*County Attorney, Mo. Co.*, for appellant.

*E. J. S. Worrell*, for appellee.

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S. A. LIBERTY, Petitioner in Certiorari, *v.* JAMES HORRIDGE, Manager for the Anglo Tropical Traders, Limited, of Grand Bassa County, Respondents  
in Certiorari.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

1. Courts of justice will avoid the refusal to hear litigants because of immaterial technicalities.
2. The minutes of any day's session of a court are not approved until the following day so as to give attorneys conducting cases an opportunity to have the facts of a trial correctly recorded. Should they fail to follow up the cases and see to the necessary corrections being made before the minutes are approved, they must suffer the consequences.

Mr. Justice Witherspoon delivered the opinion of the court:

Debt. The records in this case show that respondents, plaintiffs in the court below, sued out an action of debt against petitioner, defendant in the court below, and that at the call of the case plaintiff, now respondent, arose in open court and announced withdrawal of the said case and asked that the same be noted upon the court's records, which was then ordered noted by the judge; without plaintiffs reserving to themselves the right to renew same. That subsequently said respondent, plaintiff in the court below, renewed the action and at the call of this second action defendant offered a mo-

tion to dismiss. The trial judge after hearing the arguments of the counsellors on both sides sustained the motion, dismissed the case and ruled the cost against the plaintiff now respondent. On the twenty-third day of November, A. D. 1921, the next day, a motion to reconsider was offered by the plaintiff in the court below, now respondent.

This motion contains but one point which we feel is necessary that the court should consider. It reads as follows: "Because by the records of this court the plaintiff verbally gave notice to this Honorable Court that he intends to withdraw said case by filing a written withdrawal of same which the said Honorable Court ordered recorded pending the filing of said withdrawal formally by the said plaintiff which if not recorded the plaintiff considers it a clerical error or an act of the court which should not prejudice anyone."

The trial judge in his ruling on the motion to reconsider said that the court is of the opinion that the matter submitted in the motion having been considered is found in order that upon reliable information emanating from the first hearing, the matter in chambers by His Honor Martin N. Russell it is discovered that the record upon which defendant based his contention was irregular and incomplete as plaintiff at the time of giving notice of withdrawal did expressly reserve his right to renew, and he further notified the court that he would file a written withdrawal which was accordingly done.

The object of courts of justice is to avoid the turning out of litigants upon immaterial technicalities. If, however, the plaintiff withdrew his case without expressly reserving his right to renew it, he is by statute debarred from renewing the same and the court felt itself bound to have so ruled. It appearing however that the record upon which the court based its former ruling was incorrect, therefore said former ruling is vacated and the case restored to its former position and cost to abide final adjudication. This court after considering the rulings for and against the motion of the defendant as that appeared in the records, takes occasion here to express that the grounds as set up by the trial judge, in his ruling upon the motion to reconsider, in this court's opinion is erroneous. It seems that the judge overlooked the fact that every party alleging the existence of a fact is bound to prove it. We hold that the best evidence in this case would have been found in the records of

the court especially when the minutes of one day's session of court are not approved until the next succeeding day. This is to give attorneys opportunity to have such matters as pertain to their cases correctly placed upon the records of the court. And where they fail to follow up their cases as stated, they must suffer the consequences. It is familiarly known by all the legal profession that this court is bound by the records in all matters sent up to it on appeal. The records in this case as appear in the minutes of the court below show that verbal motion was made without reservation and the judge ordered the same recorded which was done.

The private knowledge gathered by the trial judge from Judge Russell who was not brought before the court in a legal manner was not sufficient to overturn the former ruling given. It further appears that the costs in the withdrawn case had not been fully paid by the plaintiff respondent. This is also made by the statute a ground for dismissing the case. (Lib. Stat., ch. 4, sec. 23: ch. 20, sec. 10.)

The judgment of the lower court is reversed and made of no effect and the clerk is commanded to send a mandate to the court below to the effect of this decision.

*Arthur Barclay*, for petitioner in certiorari.

*H. L. Harmon*, for respondent in certiorari.

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W. H. WARNER, Appellant, *v.* A. K. SODJIE, Appellee.

HEARD NOVEMBER 4, 1922. DECIDED JANUARY 29, 1923.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

If the costs shall not have been fully paid, and the appeal completed within sixty days after the rendition of final judgment the appeal will be dismissed.

*Judgment affirmed.*

Mr. Justice Witherspoon delivered the opinion of the court:

Action of Damages for Violation of a Contract. This case is before this court upon an appeal from the Circuit Court first judicial circuit at its February term, A. D. 1922. When the case was called for trial the appellant failed to answer either in person or by counsel. The appellee rose and by request offered the following motion: "A. K. Sodjie, appellee in the above entitled cause, most respectfully prays and moves this Honorable court to dismiss the said case and rule the appellant to pay all costs for the following reasons to wit: