EDWIN J. GABBIDON, Appellant, *v.* ALFRED B. FLOMO, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, F. JALLAH, et al., Appellees.

APPEAL FROM RULING OF JUSTICE DENYING ISSUANCE OF WRIT OF ERROR TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 18, 1977. Decided July 8, 1977.

1. No court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it is rendered.
2. It is reversible error for a judge to render judgment against a party to the litigation, including an intervenor, who with his counsel is absent from court and who has not been notified to be present for the hearing, unless a lawyer is appointed to deputize for him in order to announce an appeal from the judgment.

This was an action of ejectment in which the party now plaintiff in error intervened. Defendant neither appeared nor answered the complaint. Judgment was rendered by default, and a jury empanelled to hear evidence for the plaintiffs returned a verdict against defendants. The record shows no notification to the intervenor of the time of trial, nor any appointment of a deputy for his absent counsel to announce an appeal. The intervenor applied to the Justice in chambers for a writ of error, and from his denial of the application, appealed to the bench *en banc.*

The Supreme Court held that the intervenor, who was a party to the action and whose rights in the property were affected by the judgment, was by statute entitled to representation to appeal from the judgment, and the denial of that right rendered the judgment void and was ground for issuance of a writ of error. The *judgment* was therefore *reversed* and the case remanded for a new trial.

John A. Dennis and *James Doe Gibson* for appellant.
Daniel P. Draper for appellees.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

From an adverse ruling in chambers the petitioner appealed to the bench *en banc* for review. The history of the case, as found in the record, is as follows:

F. Jallah and J. Deline, plaintiffs in ejectment, brought action in the Sixth Judicial Circuit against Beh Wreh, for whom his next of kin, Madam Boyennoe by and through her husband, Anthony Johnson, was later substituted, with Edwin Gabbidon intervening on the defendant's side. According to the records certified to us, when the case was called on February 19, 1976, although the intervenor had answered, the defendant had neither appeared nor filed an answer to the complaint. The defendant therefore was not represented at the hearing in person nor by counsel, and the court dismissed the intervenor's answer, which was the only one in court, and ruled the complaint to trial by jury.

The record shows that on January 13, 1975, the intervenor by and through Counsellor James Doe Gibson had filed a motion to dismiss the plaintiff's case for several reasons laid in the motion. Four days later, on January 17, 1975, the intervenor's lawyer, Counsellor James Doe Gibson, is shown by the record to have withdrawn the motion to dismiss; no reason for this withdrawal is given in the certified record, and we have not been able to find—although we have searched diligently—any resistance to this motion from plaintiff's counsel.

On this point, it is interesting to note here that in one of the counts in the petition for this writ of error filed on March 1, 1976, the same Counsellor James Doe Gibson, of counsel for the intervenor who is alleged to have withdrawn the motion, made issue of the fact that the judge had not passed on the motion, because he proceeded to

trial of the case in which the motion to dismiss had been filed.

Still further with reference to the motion to dismiss the case recorded in court by intervenor's lawyer, Counsellor James Doe Gibson, on January 17, 1975, as this record relates to Counsellor Gibson's position taken in count 2 of the petition for a writ of error filed in the Supreme Court more than thirteen months later on March 1, 1976, we make the following comments. In the first place, it is very strange that after Counsellor Gibson is supposed to have voluntarily withdrawn his client's motion to dismiss the action of ejectment, he would complain later in the Supreme Court that the said motion had not been passed upon by the trial judge before determining the case against his client.

The questions which seem to arise from these circumstances are: (1) Did Counsellor Gibson indeed make the record in the lower court, withdrawing his client's motion to dismiss? (2) If he did, and then later complained that the judge had not passed upon the said motion, was his action of withdrawing the motion in his client's interest, or, was his conduct in harmony with the ethics of the profession? These are questions which will have to be examined carefully when this case is heard again in the Sixth Judicial Circuit Court, to which we are returning it for new trial.

Another strange thing about this withdrawal of the motion in the Civil Law Court is that although in the error proceedings both sides have referred to this motion and its alleged withdrawal, neither side has shown any document evidencing the fact that this case was actually assigned for hearing and was called on January 17, the day on which withdrawal is supposed to have been recorded in the minutes. Instead, respondents in count 1 of their return have said that

"your respondents say that the averments laid in counts

1 and 2 in respect of the motion being pending and undetermined is untrue, because while it is true that said motion was filed and resisted, yet same was determined at the withdrawal by the movent, namely, the petitioner, as can be more clearly shown by a certified copy of the minutes of court, 25th day's session, Friday, January 17, 1975, over the seal of the Clerk of Court, Sixth Judicial Circuit, December Term, 1974, hereto attached and marked respondents' exhibit 'P.' "

No notice of assignment was made profert with this return to show that the intervenor's side of the case was represented at this claimed hearing of January 17, 1975. For two reasons this is important.

1. It has been contended that Counsellor Gibson recorded withdrawal of the motion on behalf of intervenor Edwin Gabbidon; yet in not a single one of the several notices of assignment made profert with the certified records in this case is Edwin Gabbidon mentioned as codefendant or intervenor. One of the notices of assignment made profert in the record cites Counsellor J. Emmanuel Berry as counsel for defendant, but no mention is made of Counsellor Gibson. The record shows that Counsellor Gibson is of counsel for the intervenor, not the defendant. Is it possible then that Counsellor Berry had been cited to represent the defendant when it is known that the defendant had failed to either appear or answer, and therefore must have to be regarded as having abandoned his side of the case? On the question of Counsellor Berry being served with notice of assignment, we shall say more later.

2. Exhibit "P" referred to in count 1 of respondents' return which was previously quoted is the certificate of the Clerk of the Civil Law Court, reciting the minutes made in court on January 17, showing Counsellor Gibson's alleged withdrawal of his client's motion. We quote a part of the exhibit:

"25th Day's Session, Friday, January 17, 1975.

"The case: F. Jallah and J. Deline, Plaintiffs, versus Beh Wreh, Defendant, Action of Ejectment. Counsellor J. Daniel Draper, Respondent; Counsellor James Doe Gibson for Applicant Edwin J. Gabbidon.

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"At this stage, counsel for intervenor-movent respectfully begs leave of court to withdraw his motion to dismiss with reservation. There being no objection, the application is granted."

Intervenor Edwin Gabbidon has contended in his answering affidavit that he was never cited to appear at hearings of the ejectment case in the court below; and he has said so in the most definite terms in count 2 of that affidavit, which reads as follows:

"And also because petitioner further says that from an inspection of the notices of assignment dated 5th day of September, 1975; 27th of December, 1976; and 17th day of February, 1976, respectively, petitioner was not joined as a party in the ejectment suit, nor was he summoned to appear for the trial; therefore the judgment rendered on the 23rd of February, 1976, by His Honor Alfred B. Flomo cannot affect petitioner since he was not served with process commanding his appearance."

He supported this position by reliance on this Court's decision in *Tubman* v. *Murdoch,* 4 LLR 179 (1934), that no court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared and submitted to the court's jurisdiction. Any judgment rendered contrary to this rule is void as to the party against whom it is rendered. There is no showing in the record that either the intervenor or his counsel was cited to appear at the January 17, 1975, hearing, or for any of the other hearings noted by the assignments made profert in the record certified to us in this case.

Under our Civil Procedure Law, a lawyer who has been disbarred or suspended from practice and who represents the interest of a party in a court litigation, is to be replaced only upon leave of court after thirty days' notice of the appointment of another counsel. Rev. Code 1:1.8(3). In this case there has been much contention that notice of assignment was served on Counsellor Emmanuel Berry for the defendant's side of the case, and that although Counsellor Berry was in court when judgment was rendered, he did not announce an appeal from the adverse judgment rendered against the defendant and intervenor.

We have said previously that the defendant neither appeared nor answered, so that only the intervenor, who had been granted leave to file an answer, was defending against the complaint. We have said also that according to the record the intervenor's lawyer in this case was Counsellor James Doe Gibson, and not Counsellor Berry. The only legal way in which Counsellor Berry or any other lawyer could have been brought into the case for the intervenor would have had to be by leave of court. The records before us do not show that Counsellor Emmanuel Berry had ever been retained by the intervenor, or granted leave of court to in any manner represent his interest. We are of the firm opinion therefore that the intervenor did not have legal representation in court when judgment was rendered against him.

The ejectment case out of which these error proceedings grow was tried in February 1976 in the Civil Law Court, with Judge Alfred B. Flomo presiding. The judgment which was rendered on February 23, 1976, states that when the case was called the defendant did not appear and judgment was rendered by default. A jury was thereafter empanelled, heard evidence of the plaintiffs, and returned a verdict against the defendant awarding the plaintiffs $12,000 and possession of the property in question.

Nowhere in the judgment is any reference made to the intervenor, who had by permission of court been allowed to intervene, and who had accordingly filed answer, thereby joining issue with the plaintiff. The dismissal of the intervenor's answer by the court merely placed him on a bare denial of the facts of the complaint, but did not deprive him of his right to defend the property, the subject of the ejectment suit in which he had been allowed to intervene. Any judgment involving such property must have affected his rights with regard to it, since he was a party to the litigation. It is important therefore that there is no notice of assignment in the record for February 23, the day on which judgment was rendered in favor of the plaintiff, showing that the intervenor had been notified of the trial.

Another phase of this matter which we would like to dwell upon is the rendition of judgment against a party who had no representation at the trial table. In the recent case of *B. F. Goodrich, Inc.* v. *Bsaibes.* 23 LLR 251, 256 (1974), our distinguished colleague Mr. Justice Henries speaking on this point under the similar circumstances in that case, said: "It is our opinion that the trial judge should have complied with the Civil Procedure Law on appeals which requires the court to appoint a deputy when the party or his counsel is absent, for the purpose of taking an appeal at the time of rendition of judgment."

The section of the Civil Procedure Law relied upon in that opinion reads as follows: "An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Rev. Code 1:51.6. It was therefore reversible error for the judge to have rendered judgment against the intervenor who with his counsel was absent from

court, and who had not been notified to be present for the hearing, without appointing a lawyer to deputize for him and thereby enable him to enjoy the legal opportunity to announce appeal from the adverse judgment.

The right to appeal from the judgment or decision of every court in the country except the Supreme Court is an inherent right of every party litigant, of which he may not be deprived without doing him the gravest injustice. Whenever he is unable to appeal from a judgment of any of the subordinate courts due to no fault of his own, the law has given him the right to apply to the chambers of the Supreme Court for a writ of error within six months of rendition of the said judgment. Rev. Code 1:16.24. This right plaintiff in error has sought to exercise by applying for this writ of error.

In the circumstances of the case recited hereinabove, and according to the law which we have relied upon and quoted herein, we are of the opinion that the peremptory writ of error should be granted. Judgment in this case out of which these proceedings have grown is therefore reversed, and the case remanded to the court below with instruction that a new trial be held whereat the intervenor plaintiff in error or his counsel is to be notified to attend, in order that he may be able to benefit by his day in court and exercise the right of appeal from any judgment which may be rendered against him.

Reversed and remanded.