

J. W. TOLES, Appellant, vs. I. C. DICKINSON, Appellee.

LRSC 5; 1 LLR 527

Fraud.

[January Term, A. D. 1892.]

Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.

MOTION TO DISMISS APPEAL.

The appellee, I. C. Dickinson, respectfully motions the honorable the Supreme Court to dismiss the above entitled cause and rule the appellant to costs, because the appellant has not brought up his appeal in the manner and form required by law and the rule and practice of this honorable court, in this, that at the last term of this honorable court, when this case was called for trial, upon the report of the marshal it appeared that the appellant had neglected to have appellee summoned into this court, nor was the appellee so summoned until the 28th day of December in the year 1891, more than one year after the case had been docketed, as will appear by the record of this honorable court and by the said summons. Wherefore appellee prays that this case be dismissed and the appellant ordered to pay the costs. Respectfully submitted,

I. C. DICKINSON, Appellee, By ARTHUR BARCLAY, Attorney and Counsellor at Law.

COURT'S RULING.

When an appeal has been taken, nothing ought to prevent the investigation of the same but the want of proper jurisdiction. The case being an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, when it was called up Counsellor

Haynes, for the appellant, requested the court to assign the case to some other day. Counsellor Barclay, for the appellee, informed the court that he was the attorney for the appellee in the court below and had not been duly summoned, neither had his client, and he requested the court to lay it over until the next session. After some remarks, it being a case of equity, the court ordered the case to be continued.

The court, however, says that rights which neither of the parties had within the term of the court at which the case was docketed to be tried, could upon any principle of law or method of reasoning accrue to him after the term in which the case was brought up to be heard, because of the continuation of the same. For it is very obvious that if the appellant neglected to summon the appellee to appear at the court in the term in which the case was to be reviewed, the court could take no jurisdiction over the person of the appellee, for it is the notice that gives the court jurisdiction. Therefore, the court says that no notice served after the term of which the case was brought up for hearing could be substituted for the one which ought to have been given in the legal term of the court in which it was entered to be examined, nor could such a notice have any legal effect.

Therefore, the court says the case is hereby dismissed, and the clerk of this court ordered to send down to the court below, in which the case was originally tried, a notice of the doings of this court.

Supreme Court, January Term, 1892.

Key Description: Appeal and Error (Certificate as to grounds; Effect of subsequent proceeding in court below; Statutory provisions and remedies)