

**VELDKAMP, Appellant, vs. BEN COFFEE, Appellee.**

**LRSC 4; 1 LLR 232**

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

1. Motions, except to the jurisdiction, which may be made any time before final judgment, should be made before the pleadings are read, failure to do which amounts to laches.

2. Where a suit is commenced by a writ of attachment the order of the judge allowing the same to be issued should appear in the record; in this respect he is subject to no special form.

This is an appeal case from the ruling of the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1889. The exception is taken to the ruling of the court dismissing the case, and for the following reasons: Because the court entertained and sustained a motion of the defendant after the pleadings were read, and on said motion dismissed the case; the defendant maintaining in said motion that the order of the judge authorizing and directing the issue of the writ was defective in form.

The exceptions have had the careful consideration of this court, and we remark that all motions, except one to the jurisdiction, which may be entertained at any time before final judgment, should be made before the pleadings are read, and a defendant would be guilty of laches to allow the pleadings in a case to be read before offering for the consideration of the court any matter which would work injustice to his cause. Such neglect amounts to a waiver of the right.

We remark further, that actions are ordinarily commenced by a writ of summons, which can only be issued upon the written direction of the party or his agent; such direction must be in conformity to the requirements of the statute or standing rules of the court. But where a plaintiff wishes to proceed by a writ of attachment or arrest, the statute provides that upon application made to the judge, he, the judge, shall order the issue of the required writ. By statute this order is not restricted to any form, but should appear in the record of the proceedings in the case, which in this case it does.

Therefore, the court below did err in sustaining at that stage the motion to abate the action for a defect in form of its own orders. For if the objection was legally founded the same should have been placed in the defendant's formal answer, because the fundamental principles upon which all pleadings are allowed is that of giving notice to the opposite party

of all new facts intended to be proved. Therefore, it was error in the court below to dismiss the case on said motion.

For the reasons herein stated this court adjudges that this case is remanded to the Court of Quarter Sessions, Montserrado County, to be tried de novo; costs to follow the suit.