

**S. ATTIA, Appellant, vs. E. A. PAYNE, Appellee.**

**LRSC 5; 1 LLR 205**

[January Term, A. D. 1886.]

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

Debt.

1. The word "balance" is a technical term used in accounts, and refers to accounts previously rendered; it is a statement specific and distinct, within the meaning of the statute An account charging "amount paid to bearer as per your order," is also a distinct charge.

2. Where a general answer is filed the defendant will not be allowed to raise questions of law upon any fact stated in the complaint, but he may do so in respect to facts not laid in the declaration, as where a bond is insufficient, or an appeal has been illegally taken, etc.

3. In venue cases the clerk is bound, by the order of the judge of the court in which the case was entered, to transmit the entire record to the venue court. The law will not allow records to be sent up in detached parts, unless for certain causes made apparent on motion.

4. Where in a change of venue the bond required by law is not filed until after the time allowed by statute for the removal of the cause, the omission amounts to an irregularity which is fatal, and it is error in the venue court, where such irregularity appears, to admit the cause to its jurisdiction.

On examination of the record of this case we find only one assignment of error or objection raised to the ruling 206 of the court below. This we will briefly notice. When the case was called in the court below, defendant motioned that the case be dismissed on the ground of alleged defects in account filed with the declaration or complaint; which defects, the said defendant below (now appellee) was bound by the rules of pleadings, if he intended to take advantage of them, to point out in his answer. Appellee having failed to do so he has waived all legal objections to the said account. Here we deem it important to remark that the legal pleadings are mutual altercations between the parties to the suit, on the alleged cause of the action. The pleadings must be written and laid in the clerk's office. When the pleadings are ended the issues presented in them are to be submitted to the court for its determination.

In this, as in other cases, we have to repeat our opinion that the word "balance" is but a technical name or term, when set out in accounts due upon an account rendered, and it is regarded as a specific and distinct article in the account properly chargeable; hence it is a sufficient notice to the defendant of what the plaintiff intends to prove within the meaning of the statute. (Chap. IV, sec. 8.)

The court is of the same opinion in respect to an order drawn for a certain amount in favor of the bearer. We are of opinion that an order made payable to bearer is an article properly chargeable in an account, and that when it is set out in the account, the statement is specific and distinct, and is sufficient to show the defendant the article with which the plaintiff intends to charge him, as well as to give the defendant notice of the fact the plaintiff intends to prove. In this connection we say that a question repeatedly argued and decided must be considered as no longer open for discussion, whatever difference of opinion may have existed on the subject in this court. This court will follow as its obligation its decision on questions respecting the construction of our statute laws.

A defendant who files a general answer denying the law and the facts, is not allowed to raise questions of law, upon any fact stated in the complaint of the plaintiff. In order to secure the right of raising

question of law the defendant must follow the rules of pleadings. He must set up his objection in his answer, to the facts stated, or to the defects apparent. Defendant under a general answer may raise questions of law respecting any fact not stated in the plaintiffs complaint subsequent to the determination of the pleadings, as, for example, to the illegal securing of a bill of exceptions, to the insufficiency of a bond, to the unlawful securing of an appeal, etc., all of which are proper matters to be laid in a motion to dismiss a case. Having thus commented on the issues of importance, and in view of the justice which the case demands, this court will repeat its opinion expressed in the case of Attia, agent, against Tuning (1880): "The judgment of a court which has no jurisdiction over the case is a nullity."

Where want of jurisdiction appears on the record of the court of general jurisdiction, the record is a nullity, and no rights can be acquired under it. "Upon a change of venue in any case the order of the judge of the court in which said case is entered binds the clerk thereof to turn over the entire record—all and every kind of paper and document appertaining to said case." The law will not allow records to be turned over, or sent up in detached parts, unless for certain causes made apparent on motion.

It is apparent in the record of this case that after the oath required, the most essential requisite was neglected, namely, the bond. This instrument was received in the clerk's office exactly one month from the date of the receipt of the record of the case, and according to the date of the bond, it was not executed until 208 twenty-two days after the 10th of September, 1885, when the venue was changed, which fact the court is bound to notice. The irregularity in the cause is too obvious not to be noticed by any intelligent mind; hence, after the inspection of the record of the judge of the Court of Quarter Sessions, Montserrado County, he erred in assuming jurisdiction over the case, and therefore all the doings of said court below, which had no jurisdiction of the cause, must fall.

Therefore, it is adjudged that the judgment in this case of the Court of Pleas and Quarter Sessions, Montserrado County, is reversed and the case is left in the same state it was in before a change of venue was taken. The Court of Quarter Sessions, Montserrado County, is hereby commanded to return the case to the court from whence the venue was changed ; and the Court of Quarter Sessions, Grand Bassa County, is hereby commanded to resume jurisdiction over said case of hearing according to law; appellee to pay costs of his appeal.

Key Description: Accounts and Accounting (Balance; Nature and grounds of action)