

**SIMON ATTIA, General Agent in Liberia for J. Piza and co., Appellant, vs. JAMES
A. TUNING, Appellee.
LRSC 5; 1 LLR 512 (1880)**

[January Term, A. D. 1880.]

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

Change of venue—Jurisdiction of courts in venue cases.

1. The act requiring defendant to "make oath" ten days preceding the day set aside by law for the opening of the court from whose jurisdiction a change of venue is sought, is not to be construed as meaning that the venue may be changed at any subsequent time after the lapse of the said ten days.
2. Where a defendant has failed to make his change of venue within the statutory time, the court to which the case has been removed cannot take jurisdiction over it; if it does, the proceedings are a nullity.

This case comes up on appeal from the Court of Quarter Sessions, Sinoe County. The original complaint was filed June 18th, 1879, for the August term of the Court of Quarter Sessions, Maryland County. On the 13th August an amended answer was filed, and an amended complaint on August 28th; and on 2nd October a change of venue from that court to that in Sinoe County was applied for and granted. The case having been called up in the court to which it had been removed, the plaintiff motioned the court to refuse jurisdiction on account of the laches and default of defendant in neglecting to remove the cause within the lawful time. The judge ruled he had jurisdiction over the cause, and the objection to this ruling forms that part of the bill of exceptions to which we have deemed it necessary to give our attention.

The act authorizing a change of venue from one court to another has been carefully considered, and while we discover that the privilege is granted to anyone to procure a change of venue, the manner and condition upon which this privilege may be enjoyed is prescribed. An oath must be taken, and that within a limited time. It has been urged that the statute is a remedial one, and as such should be construed so as to give the defendant in an action the benefits that the Legislature intended him to have, by allowing a change of venue. But it must be remarked that while the Legislature by said act places within reach of a defendant the power to acquire or receive certain benefits, it has made them attainable upon certain conditions, and the defendant to be entitled to the privilege must comply with the provisions of the statute.

The act requires that the "oath shall be taken ten days preceding the day set aside by law for the opening of said court from which a change of the venue is desired." We do not feel warranted in so liberally construing this as to mean ten days preceding any term of the court, but to us the more reasonable and definite construction is, ten days preceding the day set aside by law for the opening of the court for which the cause is docketed.

The case having been docketed for the August term of the court, the defendant was not entitled to the privilege of a change of venue in October, and the judge of the Court of Quarter Sessions, Maryland County, erred in granting him a change of venue.

The judge of the Court of Quarter Sessions, Sinoe County, had not and could acquire no jurisdiction over a cause docketed in the Court of Maryland County, except as given by law, and

the change of venue not having been granted in conformity with the law as the record transmitted from the Maryland to the Sinoe Court would show, it was not the "imperative duty" of the judge of the latter court to assume jurisdiction over a case not brought before him in keeping with the statute, and he should have refused to do so.

The doings of the Court of Sinoe, which had no legal jurisdiction over the cause, are without a proper foundation and must therefore fall. "Any act of a tribunal beyond its jurisdiction is null and void, and of no effect 133 whatever, whether without its territorial jurisdiction or beyond its power." (Bouvier Law Dict. p. 770, sec. 5.) "The judgment of a court in a case of which it has not jurisdiction is a nullity." (U. S. Digest, first series, Vol. VI II, p. 1, sec. 1.) "Where want of jurisdiction appears on the record of a court of general jurisdiction, the record is a nullity and no rights can be acquired under it." (Idem, p. 1, sec. 7.)

The court therefore adjudges that the acts and judgments in said case in the Court of Quarter Sessions, Sinoe County, are annulled and set aside, and the case is left in the state it was before the change of venue was taken. Appellee is ruled to pay costs.