

FIRESTONE PLANTATIONS COMPANY, Appellant, v. BENTON KOLLIE,
Appellee.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR THE
THIRTEENTH JUDICIAL CIRCUIT, MARGIBI COUNTY.

Heard: May 5, 2004. Decided: August 16, 2004

1. The laws of Liberia forbid the unauthorized practice of law by anyone.
2. The law imposes upon all judges a duty to conduct investigation into complaints alleging the unauthorized practice of law.
3. In order to qualify as an attorney-at-law, one must have acquired a license to practice law except upon completion of a prescribed course of studies at a recognized law school and admission to the Bar.
4. Proceedings instituted by a person not qualified to practice law are abated.
5. A pleading of a lawyer whose license has expired is declared to be of no legal effect.
6. Where it is established that a person who verified a complaint, purporting to be an attorney and participated in the trial, is not a lawyer and therefore not qualified to practice law in Liberia, all pleading filed by him and any judgment rendered thereon are of no legal validity and effect.
7. Any pleading filed by a person who is not a lawyer or a party has no legal validity and is void ab initio.
8. Generally, a trial court or judge, on the announcement of an appeal and the filing of a bill of exceptions, loses jurisdiction to enforce the final judgment, except appellant does not pursue the appeal to its completion.
9. A trial judge must approve an appeal bond which may be filed by an appellant up to sixty days after the announcement of an appeal, following which, on application of the appellant, the clerk of the trial court must issue a notice of completion of appeal, which notice must be served by the appellant on the appellee and then filed in the office of the clerk of the trial court.
10. An appeal bond can only be filed after one has filed a bill of exceptions, and the bond may be amended.
11. If a party does not file a bill of exceptions within ten days after the rendering of a final judgment and the announcement of an appeal from a trial court, the trial court may dismiss the appeal and enforce the judgment.
12. A trial judge has continuing jurisdiction to investigate any attorney who practices law before him as well as over his person, not being an attorney, who comes before court purporting to be an attorney-at-law.

13. A court jurisdiction over an attorney is such that when questions are raised as to their qualification or competence or conduct, the investigation should proceed forthwith and continue to conclusion, whether or not a bill of exceptions be filed in a matter.
14. The injunction against the practice of law by persons who have not duly gained admission to the Bar is too strong to set aside upon the filing of a bill of exceptions.
15. A verdict is bad if it varies from the issue in a substantial matter, and if it appears to the trial court, or to the appellate court, that the finding of the jury is different from the issue, or is confined to a part only of a matter in issue, no judgment can be rendered upon the verdict.
16. An incorrect verdict needs to be corrected prior to the time the jury is discharged.
17. Where the jury awards special damages in a matter where special damages was not in issue and the jury was never instructed to award such damages, the trial judge is under a duty to give the jury an opportunity to correct the verdict or to find a new one before such verdict is recorded and made part of the judgment.
18. A failure by the trial judge to have the jury correct a wrong verdict or to bring in a new verdict where error is noticed in the verdict is reversible error.
19. The rule that surplusage does not render a jury verdict invalid does not apply to a case where the facts found in the verdict are substantially variant from those which are in issue. In such case, no judgment can be rendered on the verdict.
20. A court may not proceed to hear a matter until after it has acquired jurisdiction over the parties.
21. A court is duty bound to give more scrutiny to charges of improper service of the writ of summons.
22. The law requires that the officer of court who serves a writ of summons must do so by reading and delivering the writ to the party to be served.
23. When a party in court challenges the returns of the sheriff or bailiff as to whether a writ of summons was properly served and the court officer admits that he/she cannot read or write English, the court must not presume that the returns of the sheriff or bailiff must be accepted as correct, when there is any doubt.
24. A civil action is commenced by filing a complaint.
25. On the filing of a complaint, a writ of summons is issued.
26. Written directions are filed with the complaint fulfilling, amongst others, requirement as to when an appearance must be made by the defendant.
27. An appearance is required to be made within ten days after the service of summons.
28. A written directions which meets the substantive requirements of the statute is acceptable although the form may appear faulty.
29. A written directions should set forth every instruction of the plaintiff to the clerk of the particular court in which the case is entered, as the legal existence of the writ of summons depends upon proper written directions.

30. Where a written directions substantially fulfills all of the requirements set forth by the statute to enable the clerk to issue a summons, a formal technical defect in the written directions is not a jurisdictional ground for dismissal of the case once it is not grave as to misdirect the clerk of the court.
31. If the period stated in the written directions is shorter than the time provided for by statute, it is insignificant if the party appears or does not challenge the jurisdiction of the court.

This appeal is from a default judgment entered by the Circuit Court for the Thirteenth Judicial Circuit, Margibi County, against the appellant, Firestone Plantations Company. The judgment was in confirmation of an award by the trial jury of special damages in the amount of US\$15,000 and general damages in the amount of US\$75,000.00. The appellee had complained that officers of the Firestone Protection Department had arrested, imprisoned and tortured him until he confessed to the commission of the crime of theft of property, based upon which confession he was dismissed by the management of Firestone. As a result of this incident the appellee filed an action of damages with the Thirteenth Judicial Circuit Court, seeking general damages to the value of US\$75,000.00.

Firestone did not file an answer to the complaint and did not appear at the call of the case for trial. A jury trial was held and a verdict was returned awarding the appellee US\$15,000.00 as special damages and US\$75,000.00 as general damages. The trial judge reserved ruling on the verdict and discharged the jury. However, before final judgment was entered by the trial court, counsel for Firestone filed a motion to vacate and grant relief from the default judgment which had been entered against Firestone. The motion noted a number of alleged irregularities, including the allegation that Firestone had not been served with summons or the complaint; that the dates on the complaint and summons were different and contradictory; that the date on the affidavit was earlier than the date on the complaint; that the bailiff who purportedly served the summons could not read or write, amongst others.

The trial judge denied the motion and entered final judgment against Firestone. Shortly thereafter, counsel for appellant Firestone filed a motion for relief from judgment, alleging therein that one of counsels for appellee who had signed the affidavit that verified the complaint was not a practicing lawyer. The motion stated that the person named had not graduated from a recognized law school and was not duly admitted to the practice of law in Liberia; and that as such the complaint was a nullity. This motion was resisted in a motion to dismiss filed by counsel for appellee.

On hearing of the motions, at which the counsel for appellee was absent, the trial judge denied the appellant's motion on ground that the appellant had already filed a bill of exceptions and that as such the trial court had lost jurisdiction over the case.

On appeal to the Supreme Court, the trial court's judgment was reversed. The Supreme Court held that the jury's verdict was irregular in that an award had been made of special damages when the appellee had never requested special damages and the jury had not been instructed by the trial judge to make any determination as to special damages, and that as such the verdict varied substantially from the issue before the court; that the trial judge had erred in altering the verdict rather than giving the trial jury the opportunity to correct the verdict or return a new verdict, which the trial judge had a duty to do prior to the jury being discharged by the court; that the trial court had erred in not investigating the allegations that one of counsel for appellee, who had signed the affidavit verifying the complaint, was not a legal practicing lawyer; and that error had also been made by the trial judge in assuming that the returns of the bailiff was true when facts had been presented that service not only was not possible or probable but also that the bailiff who purportedly made the service could not read or write and that therefore the returns had to have been made by another person.

Accordingly, the Supreme Court *reversed* the trial court's judgment and dismissed the case without prejudice to the appellee to commence a new suit if he so desired, noting that the case was consumed with too many irregularities and inconsistencies, and that the appellant was not given its day in court and the opportunity to defend itself.

G. Moses Paegar and *J. Johnny Momoh* of Sherman and Sherman Law Firm appeared for the appellant. *Francis Y. S. Garlawulo* of the Garlawulo Law Associates appeared for the appellee.

MR CHIEF JUSTICE COOPER delivered the opinion of the Court.

This matter is on appeal from the final judgment of the Circuit Court for the 13th Judicial Circuit, Margibi County, in favor of appellee Benton Kollie (hereinafter referred to as "Kollie"). The final judgment was a default judgment rendered on December 22, 2000, based on a verdict of the jury for special damages of Fifteen Thousand United States Dollars (US\$15,000.00) and general damages of Seventy-Five Thousand United States Dollars (US\$75,000.00). The judge disregarded the special damages by way of amendment of the verdict and awarded the general damages. Counsel for Kollie filed a motion to dismiss the appeal. The regular appeal and motion to dismiss the appeal were ordered consolidated by our predecessor Supreme Court Bench and argued before this Bench.

On October 2, 2000, Kollie complained substantially that he had been an employee of appellant Firestone Plantations Company (hereinafter referred to as "Firestone"), when on December 6, 1999, Firestone's Plant Protection Department (PPD) officers illegally arrested, imprisoned and tortured him until he confessed to the commission of the crime of theft, which he denied committing. Firestone then dismissed him. The appellee claimed that he

suffered injuries which would be proved at the trial, and for which he claimed general damages of Seventy-Five Thousand United States Dollars (US\$75,000.00).

A writ of summons was issued by the clerk of court. The sheriff returns on the back of the writ, dated October 2, 2000 stated, as follows:

Sheriff's Returns Oct. 2, 2000

I have served the written writ of summons this 2nd day of October, A. D. 2000, on the management of the Firestone Plantations Company, in person of John S. Samuels, Manager, Labor Relations, but that management refused to be served with copy of said writ of summons, thereby refusing to accept same. And I make this as my official returns.

Served by: MASSAVA Bailiff,
13th Judicial Circuit Court,
Kakata”

At the call of the case on November 25, 2000, Firestone had filed no answer and did not appear. A jury trial was held and, as mentioned above, the jury verdict was for special damages of Fifteen Thousand United States Dollars (US\$15,000.00) and general damages of Seventy-Five Thousand United States Dollars (US\$75,000.00). The judge then reserved ruling on the judgment and the jury was discharged.

On December 2, 2000, counsel for Firestone filed a “motion to vacate and grant relief from default judgment”. Firestone claimed in that motion that it had not been served any writ of summons and therefore challenged the jurisdiction of the court. Firestone pointed out several alleged irregularities and inconsistencies concerning the written directions, the complaint and the writ of summons. The dates on the complaint and the summons were different. The complaint is dated June 28, 2000 and the summons is dated October 2, 2000. The clerk who filed the complaint on October 2, 2000 was the same person who acted as justice of the peace for verification of the plaintiff's affidavit, but the affidavit is dated June 28, 2000. The written directions is dated September 25, 2000. The written directions directed that Defendant Firestone should appear and file its answer on or before the 10th day of October. Firestone claimed that these irregularities and inconsistencies, together with what it considered to be false returns of the sheriff, rendered the process of service defective and a fit subject for dismissal. Firestone further claimed that Mr. John Samuels, its Labor Relations Supervisor, who, according to the returns, had refused to accept service of the writ of summons, had not in fact been served nor had any attempt been made by any officer of the court to serve him the writ. Attached to the motion to vacate was an affidavit of Mr. Samuels to that effect. Firestone claimed that the bailiff who allegedly served the summons could not write and had not in fact made the returns as the law required. Finally Firestone charged that the process of service showed an intent to perpetrate a fraud against Firestone.

Counsel for appellee Kollie filed a resistance to Firestone's motion in which he alleged, amongst other things, (a) that no final judgment had been rendered in the case and none of

the statutory grounds for granting a motion for relief from judgment was stated in Firestone's motion; (b) that the writ of summons had been duly served and that Firestone was constructively under the court's jurisdiction, the summons not having been accepted by Firestone; (c) that the affidavit of John Samuels to the effect that he was never served for Firestone is of no effect since it "does not contain the caption of the case and is venued before a justice of the peace in Montserrado County; and (d) that John Samuels did not appear before the said justice of the peace on December 2, 2000, a Saturday, as sworn to in the affidavit.

The motion filed by Firestone and the resistance were argued and the court conducted an investigation into allegations by counsel for Firestone concerning fraud in the process of service of the summons. According to the records, the investigation brought out the fact that certain ministerial personnel of the court could not even read or write, and that the bailiff who allegedly served the summons could not read or write but could only sign her name to returns admitted to have been written up by the sheriff. Counsel for Firestone also introduced evidence in the form of records from the Labour Commissioner of Margibi County to show that on October 2, 2000, at or during the time when service of the summons was alleged to have been effected at Firestone's Labour Relations Office, the legal counsel of Firestone, as well as appellee's counsel, were present together before the said Labour Commissioner attending to another matter, so that appellee's counsel could not have been in two places at the same time or was not present when the bailiff allegedly attempted to serve the writ of summons, as had been reported to court.

Circuit Court Judge Yussif D. Kaba denied Firestone's motion to vacate and grant relief from default judgment. Final judgment was rendered on December 22, 2000, when Judge Kaba disregarded the jury's verdict of Fifteen Thousand United States Dollars (US\$15,000.00) for special damages and awarded to appellee general damages of Seventy-Five Thousand United States Dollars (US\$75,000.00). Appellant announced exception to the judgment and an appeal, which was granted.

On December 27, 2000, counsel for appellant Firestone filed a motion for relief from judgment by which the court was informed that one of counsels for appellee Kollie was not a lawyer, in that he had never graduated from any recognized law school and was never duly admitted to the practice of law, as the statutes require. Appellant Firestone also contended that since this alleged non-lawyer had signed the affidavit that verified the complaint, the said complaint was a nullity and therefore void *ab initio*. The motion for relief from judgment was resisted by counsel for appellee Kollie in a motion to dismiss on grounds of *estoppel, res judicata*, and that the attorney in question was a *bona fide* member of the Bar and not a party to the action of damages. When these two motions were called for argument on December 30, 2000, appellant Firestone asked the court to exclude the attorney in question and its objection was over-ruled by the trial judge. The court however ordered service of a *subpoena duces tecum* on the clerk of the 14th Judicial Circuit Court to produce on January 3, 2001

documents pertaining to the admission of the alleged non-lawyer to the Bar, and the court granted an application to consolidate the two motions for argument on the same day.

On January 3, 2001, Firestone filed a resistance to appellee's motion to dismiss, alleging in turn that the said motion stated none of the statutory grounds for dismissal; asserted that the doctrines of *res judicata* and *estoppel* were inapplicable to the matter at bar; and reconfirmed its allegation that the attorney who verified the complaint and was participating in the trial was not a lawyer according to the law, etc. At the call of the case, in the unexcused absence of counsel for appellee and on consideration of appellant's motion to proceed with the matter, trial judge Kaba refused to do so on ground that appellant had filed a bill of exceptions and therefore the trial court had lost jurisdiction over the case. Appellant Firestone duly excepted to the ruling and announced another appeal to the Supreme Court.

This matter raises several important issues, as follows: (1) Whether the trial court ever acquired jurisdiction over the appellant; (2) Whether the trial judge's amendment of the verdict was proper; (3) Whether the filing of a bill of exceptions divested the trial judge of jurisdiction to continue investigation of a reported alleged illegal and unauthorized practice of law; and (4) Whether a complaint can be properly filed and/or verified by one who is not, but purports to be a lawyer. We will take up these issues in the reverse order.

All authorities or laws governing the practice of law in this jurisdiction forbid the unauthorized practice of law by anyone. The law imposes upon all judges a duty to conduct investigation into complaints alleging the unauthorized practice of law. Judiciary Law, Rev. Code 17:17.8. It is also the law that in order to qualify as an attorney-at-law, one must have acquired a license authorizing him to practice law, and that a person cannot obtain a license to practice law except upon completion of the prescribed course of studies at a recognized law school and admission to the Bar. *Ibid.*, 17.9.

This Court has ruled that proceedings instituted by a person not qualified to practice law are abated. *Kanna v. Smith et al.*, 24 LLR 359, 364 (1975). Even a pleading of a lawyer whose license had expired has been declared by this Court to be of no legal effect. *Sesay v. Badio and Roberts*, 37 LLR 359 (1994). Where it is established that the person who verified the complaint, purporting to be an attorney and participated in the trial, is not a lawyer and therefore not qualified to practice law in Liberia, it would appear to us that all pleadings filed by him and any judgment rendered thereon are of no legal validity and effect. *Sesay v. Badio, Roberts et al, supra*. Therefore, we hold that any pleading filed by a person who is not a lawyer or a party has no legal validity and is declared void ab initio.

We will now consider the issue of whether or not the filing of a bill of exceptions divest a trial judge of jurisdiction to continue his investigation of a charge of alleged illegal and unauthorized practice of law. We think not for reasons stated herein. There are authorities to the effect that a trial court loses jurisdiction in a matter upon the announcement of an appeal and the filing of a bill of exceptions within statutory time. *Horace v. Howard*, 13 LLR 200 (1958); *Ballab v. Thorpe*, 29 LLR 286 (1981); *Kunakey v. Smith et al.*, 31 LLR 256 (1983).

Another holding is that the trial court loses jurisdiction upon the service and filing of the notice of completion of appeal. *Standard Motor Corp. v. Pratt*, 21 LLR 381 (1972). Our statute also provides that the trial judge must approve the appeal bond which may be filed by appellant up to sixty days after the announcement of an appeal, following which on application of appellant, the clerk of the trial court must issue a notice of completion of appeal, which notice must be served by appellant on appellee and then filed in the office of the clerk of the trial court. Civil Procedure Law, Rev. Code 1: 51.8. An appeal bond can only be filed after one has filed a bill of exceptions, and the bond may be amended, all matters involving the exercise of jurisdiction by the trial judge or involving the clerk of the trial court. If a party does not file a bill of exceptions within ten days after the rendering of a final judgment and the announcement of an appeal from a trial court, the trial court may dismiss the appeal and enforce the judgment. Civil Procedure Law, Rev. Code 1: 51.16. It therefore appears that the correct rule is that generally a trial court or judge, on the announcement of an appeal and the filing of a bill of exceptions, loses jurisdiction to enforce the final judgment, except appellant does not pursue the appeal to its completion.

We believe that a trial judge has continuing jurisdiction to investigate any attorney who practices law before him as well as over any person, not being an attorney, who comes before court purporting to be an attorney-at-law. We also believe that the court's jurisdiction over attorneys is such that when questions are raised as to their qualification or competence or conduct, the investigation should proceed forthwith and continue to conclusion, whether or not a bill of exceptions be filed in a matter. We therefore hold that the trial judge should have continued with his investigation, once started, on the question of whether appellee's attorney who filed the complaint and signed the affidavit attached thereto had been regularly admitted to the practice of law, as required by law. The injunction against the practice of law by persons who have not duly gained admission to the Bar is too strong to be set aside upon the filing of a bill of exceptions. If in this matter the trial judge had continued with his investigation, this Court would be in a better position to now consider this appeal. The judge of the 13th Judicial Circuit is hereby directed to continue with the investigation and report to this Court his findings and conclusions.

On the question of the amending of the verdict, it appears to us that the jury returned a verdict contrary to the issue presented to them for consideration. According to the records, on sheet seven thereof, thirty-two days jury session, Friday, December 22, 2000, the court, in rendering its final judgment on the action of damages for wrong, observed that the plaintiff's complaint neither pleaded specifically nor prayed for special damages, contrary to the finding of the petit jury. The court also noted that nowhere in plaintiffs pleading or in the various motions was any plea for special damages mentioned. The judge's charge and instruction to the jury is not recorded since the trial judge decided to orally charge the jury. Nevertheless, we assume that the judge properly and correctly charged and instructed the jury concerning the plea for general and not special damages. But the jury awarded general and special

damage and the trial court proceeded to render judgment on the verdict by deleting the special damages awarded. The trial judge relied on the case *American Life Insurance Company v. Sandy*, 32 LLR 338 (1984) when he altered or changed the jury's verdict, allegedly to record the jury's true intention. We are of the view that the intention of the jury in the verdict is clear, and that it is contrary to the issue under consideration. The issue under consideration happens to do with whether defendant Firestone is liable to plaintiff in general damages amounting to US\$75,000.00 and nothing more or less. A verdict is bad if it varies from the issue in a substantial matter, and if it appears to the trial court, or to the appellate court, that the finding of the jury is different from the issue, or is confined to a part only of a matter in issue, no judgment can be rendered upon the verdict. *Patterson v. United States*, 15 U.S. 221, 4 L.Ed 224. (1809).

Additionally, an incorrect verdict needs to be corrected prior to the time the jury is discharged. 75B AM JUR 2d, *Trials*, §1894. This was not done. It is therefore our view that where the trial court noted that the jury awarded special damages when indeed special damages was never in issue and the jury was never instructed to do so, he was under duty to give the jury an opportunity to correct the verdict or to find a new one before such verdict could be recorded and made part of the judgment. Failure to have so done is a reversible error. "The rule that surplusage does not render a jury verdict invalid does not apply to a case where the facts found in the verdict are substantially variant from those which are in issue. In such a case, no judgment can be rendered on the verdict." 75B AM JUR 2d, *Trial*, §1792.

We now come to the matter of the court's jurisdiction over Appellant Firestone. We have chosen to consider this question last because of the grave implications raised on the records by counsel for appellant. Our law is clear that a court may not proceed to hear a matter until after it has acquired jurisdiction over the parties. In this action on appeal, counsel for appellant has alleged that the writ of summons was never properly served on the defendant, now appellant before us. He alleged further that the entire process of bringing the appellant under the court's jurisdiction was tainted with fraud. We consider these to be very grave charges, especially since the trial resulted in a default judgment. A court is duty bound to give more scrutiny to charges of this type in a case such as this one. Although the court conducted an investigation, much weight was given to the presumption of the correctness of the sheriff's returns, when the court concluded that the summons had been properly served on Firestone. The irregularities and inconsistencies shown in the filing of the complaint, the written directions, the summons and the sheriff's returns cannot be explained away and will be considered later. However they raise questions concerning the competence and qualifications of the attorneys, the clerk of court, the sheriff, and the bailiff that we will now consider.

Our law provides that the officer of court who serves a writ of summons must do so by "reading and delivering" the writ to the party to be served. Civil Procedure Law, Rev. Code

1: 3.38. In this case, the bailiff who allegedly served the improperly prepared writ of summons admitted that she could not read or write English, but that she could recognize her name when it was written. Our review of the records showed that the bailiff could barely write and spell her own name. We know that the practice in vogue is for the sheriff or bailiff to merely deliver the writ of summons to the party in most cases. We also know that in many instances our bailiffs may not be “lettered”. On sheet 12, December 7, 2000, 21st day jury session, on the cross-examination, the bailiff answered that she cannot read and write. She stated that the practice in the 13th Judicial Circuit Court is for the sheriff to write out the returns as to service and for the bailiff who actually served same to sign it. In the face of the legal requirement for the same officer who serves a writ to make the returns (Civil Procedure Law, Rev. Code 1: 3.42), one wonders whether a server in the 13th Judicial Circuit who cannot read or write will truly know whether what he is signing is the correct returns. It is our opinion that when a party in court challenges the returns of the sheriff or bailiff as to whether a writ of summons has been properly served and the court officer admits that he or she cannot read or write English, the court must not rest on any presumption that the returns of the sheriff or bailiff must be accepted as correct, when there is any doubt as in this case.

It should be noted at this point that a civil action such as this one is commenced by filing a complaint (Civil Procedure Law, Rev. Code 1:3.31); that on the filing of a complaint, a writ of summons shall be issued (*Ibid.*, section 3.32); written directions shall be filed with the complaint fulfilling, amongst others, requirement as to when an appearance must be made by the defendant (*Ibid.*, section 3.34); and an appearance is required to be made within ten (10) days after the service of the summons (*Ibid.*, section 3.62). In practice, a complaint, the affidavit and the directions are usually dated on or about the same date of filing, stating the requirements for making an appearance or filing an answer on or before ten days after the date of the summons.

This Court has held that a written directions which meets the substantive requirements of the statute is acceptable although the form may appear faulty. The law requires that written directions should set forth every instruction of the plaintiff to the clerk of the particular court in which the case is entered, as the legal existence of the writ of summons depends upon proper written directions. *Ross v. Arrivets*, 6 LLR 364, 365 (1939); *Attia v. Summerville*, 1 LLR 215 (1888). And where written directions substantially fulfills all of the requirements as set forth by the statute to enable a clerk to issue a summons, a formal or technical defect in said written directions is not a jurisdictional ground for dismissal of the case, once it is not so grave as to misdirect the clerk of the court. *Mitchell v. Fawaz*, 15 LLR 541, 546 (1964).

Our review of the record shows that the written directions in this case substantially meet the statutory requirement except for the variation of the days for the defendant to make his appearance which is two days short. In this connection again, the Supreme Court decided in

the case *C. F. Wilhelm Jantzen v. Burney*, 4 LLR 119, 122 (1934) that if the period in the written directions is shorter than the time provided for by statute, it is insignificant if the party appears and does not challenge the jurisdiction of the court. In this case, however, the defendant did appear in court when Firestone filed a motion, but Firestone immediately challenged the jurisdiction of the court and raised questions suggesting fraud, which have not been fully investigated to our satisfaction by the trial judge, coupled with these allegations: the variation of the dates in the pleading; the manner of service; and the question of unauthorized practice of law by a layman, among other things.

The irregularities and inconsistencies in this case are such that we must conclude that appellant was never properly served and duly brought under the court's jurisdiction. We deem it important to give to appellant Firestone a fair chance to defend itself against the very grave charges filed against it by appellee Kollie. We therefore hold that it was error for the trial court to have found and ruled that appellant Firestone was duly and regularly before the court when counsel for appellant challenged the court's jurisdiction, under the facts and circumstances of this case.

Wherefore and in view of the above, and for all of the reasons stated, this action is dismissed without prejudice. The clerk of this court is ordered to send a mandate to the judge presiding in the trial court to resume jurisdiction and give effect to this ruling. Costs are disallowed.

Judgment reversed; case dismissed without prejudice.