

**SAMUEL F. DENNIS**, Appellant, v. **T. J. O. GOODING**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued November 16, 1948. Decided January 6, 1949.

Mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice.

Plaintiff, now appellant, sued defendant, now appellee, for damages for personal injuries. The court dismissed the case on the pleadings on the ground that the sheriff summoned J. C. Gooding, and not the defendant. During the hearing on appeal, counsel for appellee asked that the case be remanded for trial because the ground for dismissal was technical and not substantive. Submission of counsel sustained, *judgment reversed and case remanded*.

*Richard A. Henries* for appellant. *Momolu. S. Cooper* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

As a result of injuries suffered by appellant in an accident in a motor truck owned by appellee the said appellant instituted an action of damages for personal injuries against the appellee before the civil law court for the Sixth Judicial Circuit, Montserrado County, at its June term, 1947. Accordingly, a writ of summons was issued to the sheriff of the county commanding him to summon the said appellee, defendant below, to appear before said court on a day named to answer the complaint of plaintiff, now appellant.

The said defendant appeared and filed an answer, plea one of which reads as follows :

"Because defendant says that this action should be dismissed and he so prays, in that defendant T. J. O. Gooding has not been brought under the jurisdiction of this Honourable Court for him to be affected by any judgment that may be rendered in this case against him for the fact that one J. C. Gooding has been returned summoned and not the defendant, as will more fully be verified by the return of the Sheriff to the writ in this action, and he respectfully asks that judicial notice be taken of this incurable blunder. Wherefore defendant prays the dismissal of this action for such a blunder and the plaintiff ruled to all costs."

Resisting this plea, plaintiff argued in count one of his reply:

"Samuel F. Dennis, plaintiff in the above entitled cause of action, denies that the answer of the defendant is sufficient to prevent his recovery in the action for the following legal reasons to wit :

"1. That because plaintiff submits that count one of defendant's answer should be dismissed and he made to rest on bare denial of the fact and plaintiff so prays, because under the law of pleading, defendant having filed a general appearance has thereby placed himself under the jurisdiction of this Honourable Court, and is therefore barred from raising a jurisdictional question at this time. And this plaintiff is ready to prove."

It would appear that despite the fact that other issues were raised in the answer of the defendant, only this point of jurisdiction was disposed of by the trial judge. He sustained plea one of the defendant's answer as against count one of plaintiff's reply and dismissed the action of the plaintiff with costs against him. It is from this ruling that the case is before us on appeal.

During the hearing of the appeal here, Momolu Songu Cooper, Esquire, counsel for appellee, submitted to us the following which we considered honorable and ethical :

"Momolu Songu Cooper, Counsellor-at-law, counsel for appellee in the above entitled cause of action, most respectfully submits that having consulted all the available legal authorities bearing upon the point [upon] which this case was dismissed in the court below, that as a matter of professional integrity, he has come to the conclusion that the ground of dismissal is one of only academic interest and not substantive law and justice ;

"And further that since this Honourable Court has repeatedly held that mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice, counsel is of the opinion that it is but honourable and befitting the dignity of a member of this bar under the circumstances to request most respectfully that your Honours will be gracious enough to remand the case so as to afford the parties the opportunity of establishing their respective contentions as made in their pleadings."

Counsel for appellant indicated his agreement with the terms of the submission.

Let us now see how the returns, the subject of this issue, were made by the sheriff :

"On the 3rd day of April A. D. 1947, I duly served the within writ of summons, on the within named defendant J. C. Gooding and I gave him a copy of the within attached complaint. I further notified him to file his formal appearance at the Clerk's Office on or before the 5th day of April, A.D. 1947. I now submit this as my official returns to the Clerk's Office, dated this 4th day of April, A.D. 1947.

"URIAS DIXON

*Sheriff."*

It is inexplicable how the sheriff could have summoned the "within named defendant" and called him "J. C. Gooding" when in deed and in truth he was commanded to summon "T. J. O. Gooding, defendant." There appears to be carelessness creeping into the office of the sheriff for Montserrado County with respect to his making returns, etc., as another case to be decided today will reveal. This office is admonished to use a little more diligence in this respect and counsel are also cautioned to supervise this particular function so as to save repeated trials.

However, this error, since it is merely technical, is, in our opinion, not sufficient in law to overturn the entire case, especially in face of the fact that the defendant does not deny having been actually summoned but rather declares that the name given in the returns of the sheriff does not correspond with his actual and real name as shown in the body of the writ of summons.

The sportsmanlike submission of appellee's counsel is hereby sustained, and the case is ordered remanded with instructions that the trial court resume jurisdiction and cause the rights of the parties as presented in the pleadings to be fully heard and disposed of, barring plea one of the answer and count one of the reply which have been decided by this opinion in a reversal of the trial court's ruling thereon. Costs are to abide final determination of the case ; and it is hereby so ordered.

*Reversed.*