GBAE GEEBY, Appellant, c. KWRAH GBAE, and CAPTAIN MCCAB E, Magisterial Officer, Magisterial District of Monrovia, Appellees.

APPEAL FROM TH E CIRC UIT CO URT OF THE SIXTH *5* < DI CIAL CIRC UIT, MO NTSERRADO CO U NTY.

Argued April 9, 1962. Decided June 1, 1962.

Where a trial court has adjudged issues of law at a hearing conducted in the absence of plaintiff’s counsel and at a time not regularly assigned, a ruling rendered after such a hearing will be set aside and the case remanded for new trial.

On appeal from a ruling dismissing an injunction for failure to comply with statutory requirements as to notice of venue, the proceeding was *remanded.*

*William N. Withers poon* for appellant. *Jose ph F. Denn is* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

The appellant in this case became dissatisfied with the ruling of the trial judge in the court below, which ruling was rendered against the said appellant in his absence on July i . '9f9. without service of notice of the assignment for hearing.

Desiring to have the aforesaid ruling reviewed by this Court, appellant fled to the Chambers of Mr. Justice Harris with a petition in assignment of errors, to prose- cute a regular appeal.

Upon the hearing of the said petition, the grounds thereof being considered sufficient, the same was granted ; and upon appeal by the defendant-in-error to the Court sitting *en banc,* the ruling of the Justice presiding in

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Chambers was affirmed during the October term of this Court on December i6, 1960 . Thereupon, a mandate was sent from this Court ordering appellant’s bill of

exceptions and appeal bond approved ntinc Pro ftinc. This being done, the case was regularly appealed before this Court for further adjudication on a bill of exceptions containing two counts.

Upon inspection of the records, it is apparent that on December z3, I 9f› , appellant Gbae Geeby, plaintiff below, sued out an action of injuction against Kwrah

Gbae and Captain McCabe, Magisterial Officer, District of Monrovia, and all deputies acting under them. The preliminary writ was ordered issued on the same date by Judge Joseph Findley, presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County; and on January zo, '9f , a writ of injunction was issued and

served on the parties restraining and prohibiting them,

thei r agents, and all persons acting directly or indirectly under their authority, from molesting and/or evicting the plaintiff from certain premises pending the final determination of the cause of action.

Defendants appeared on January zf. 9f 8, and subse- quently filed their answer. Immediately thereafter, they

moved the court for dissolution of the injunction. In their answer, they attacked the legal sufficiency of the plaintiff’s complaint; and in their motion to dissolve, they sought to have the main suit in summary ejectment en- forced, and to be placed in possession of the premises in question on the ground that the plaintiff was occupying said premises to their utter prejudice and in violation of the spirit and intent of the law.

Examining the records further, as is incumbent upon us to do, it is observed that there were several notices of assignment made ordering the parties to appear for a hearing, the last of which notices was dated May zy, 939. making assignment for hearing of the case on June i,

\*939 But very strangely, and in harmony, with the

appellant’s contention, the minutes of the court show that the case was called and heard on July i, I php, during the sitting of the June term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, on which the said last notice of assignment required the parties to appear. Neither the plaintiff nor his representative was present when the judge heard the case and rendered his ruling which we quote hereunder as follows:

“Against the petition in this case, the defense filed an answer requesting the court to deny the injunction on the grounds that:

“i. The case was not venued in any division of the court.

“z. The complaint was not venued in keeping with statutes.

*“$.* The case was baseless for want of a title deed. “4. The defendants were not properly joined.

“3. The writ of injunction did not lie against the court, but rather a writ of error.

“6. The court had no jurisdiction over Kwrah Gbae who had never been a party to the original action against which the injunction sought.

“It is strange that, against such a strong and weighty attack upon the petition, the plaintiff neglected to rebut same by reply or otherwise. Even as to the motion to dissolve the injunction upon the basis of points set forth in the first three counts of the answer, he also elected to be silent.

“The court would like to pass upon the other issues raised in the answer and motion to dissolve which were not resisted; yet in our opinion, where jurisdictional questions are raised, the mandatory requirements of the statutes must have priority.

“Upon inspection of the records in this case, the court finds the contentions on issues of law in Counts i and z of the defendants’ answer to be supported ; and since several rulings of our Supreme Court to the

effect that all cases must be venued in their respective divisions, terms, etc., apply to equity cases, and to injunctions in particular, the complaint must be venued upon the oath of the plaintiff or petitioner himself.

“Upon the foregoing grounds, the court must dis- miss said injunction with costs against the petitioner ; and it is hereby so ordered.”

In support of the entry of the above ruling against the plaintiff, now appellant, in the absence of both himself and his counsel, the trial judge ordered his clerk to note exceptions on the records in favor of plaintiff. Still, plaintiff had no notice of this unfair deal by the court until the statutory time within which plaintiff should have filed his bill of exceptions had expired. Plaintiff thus stood at a disadvantage unless he moved by error, as he did ; and his grounds for the issuance of the writ having been held to be sufficient, the writ was granted, and the records in the case were ordered before this Court for review of the same.

At the October, I96o, term of this Court, the case was heard, and the judge of the lower court was ordered to approve the plaintiff’s bill of exceptions and appeal bond, following which the case regularly reached this forum for review.

The two counts of the bill of exceptions read as follows:

I. Because the judge erred in taking up the case without notifying plaintiff’s counsel of the assign- ment, especially so when Counsellor Witherspoon was present on the day actually assigned ; but the case was not taken up, and the judge promised to notify him, which he failed to do, thereby depriv- ing the plaintiff, now appellant, of a hearing of his side of the cause.

“z. Plaintiff, now appellant, submits that in this action of injunction, where a motion was filed to dissolve the injunction, the judge erred in calling and hear-

ing the main suit before disposing of the said motion, particularly since it was done in the absence of the plaintiff, now appellant, and his lawyer, who were not notified that the case was being heard that day.”

We cannot understand the strange practice introduced by the trial judge below in undertaking to go into the hearing of the issues of law raised in the pleadings in the injunction before first hearing the motion to dissolve the writ which, to all intents and purposes, was supersedeas. Nor can we entertain the belief that the judge below was conversant with the law controlling in the premises ; how- ever, he did proceed in such a manner ; and this Court must review such acts and correct the errors in conformity with the following statute:

“Upon reasonable notice to the plaintiff, the de-

fendant may file a motion to dissolve or modify the writ ; and the court shall hear the motion as expedi- tiously as the ends of justice permit. The court may dissolve the writ outright at such hearing or may condition dissolution of the writ pending final hearing of the issues on the giving of a bond by the defendant for any damage caused the plaintiff by the defendant’s actions after dissolution of the writ if on final hearing a permanent injunction is granted ; provided, how- ever, that the court shall not dissolve a writ upon motion unless the defendant files a sufficient answer, and it shall not be a sufficient answer merely to deny knowledge of the facts alleged by the plaintiff and put the plaintiff upon proof thereof.” I 9s6 Code, tit. 6, § io84.

The issue as to jurisdiction of the court over the person of one of the defendants was a fit subject to be heard at any time during the trial ; and the court erred in omitting to hold a hearing on the motion to dissolve before ruling on the issues of law raised in the answer.

“The hearing to determine whether an injunction

shall issue shall be held on the date set therefor in the writ of injunction or on such other date as may be set by the court upon motions for an extension or dissolu- tion of the writ, as set forth in section io84 above.”

\*9s6 Code, tit. 6, § io8 .

When this case was called and heard by this Court,

counsel for appellee, in his argument, conceded the in- consistency of the procedure adopted by the trial judge below; and since it has been established that the trial was i rregular, it is our opinion that both counts of appellant’s bill of exceptions are well taken ; therefore they are sus- tained, and the case is hereby remanded to be tried anew in harmony with the law and without delay. And it is hereby so ordered.

*R emanded.*