

NELLIE JOHNSON BIGGERS, Appellant, v.
JESTINA GOOD WESLEY, by and through her
husband, REGINALD A. WESLEY, et al., Appellees.

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

Argued April 7, 1975. Decided May 2, 1975.

1. A circuit court judge may not exclude from the computation of the time allowed by statute for a given session those days which, for one reason or another, the judge did not sit. Only legal holidays and Sundays are to be excluded from said computation of forty-two consecutive days.

A judgment was obtained by appellee after trial of the action in the Circuit Court which began on the forty-fifth day of the court's trial session and ended on the fifty-first day. Appellant contended in the appeal taken therefrom that the court was in error when it excluded the days it did not sit from the computation of forty-two consecutive days allowed by statute for the Circuit Court's trial session.

The Supreme Court upheld appellant's contention and reasserted its position, that the forty-two days allowed for the trial session shall include all days except Sundays and legal holidays. The trial was set aside and declared void, the judgment *reversed* and the case *remanded* for a new trial.

Samuel Pelham for appellant. *Nete-Sie Brownell* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.

This case came up on an appeal from the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its September 1973 Term, presided over by Hon.

John A. Dennis, Assigned Circuit Judge. The appellant filed a bill of exceptions containing twelve counts. Although the issues raised in these counts are interesting, we find that count nine raised an issue of paramount importance because it calls into question the trial judge's authority to empanel a jury and hear and determine a matter after the expiration of the forty-two day jury session allowed by statute. We observe from the record certified to this Court that the appellant, the plaintiff in the lower court, filed a motion to vacate the proceedings because of the court's lack of jurisdiction, but the trial judge did not pass on the motion, and went on to render judgment in favor of the appellees, the defendants in the case, in accordance with the jury's verdict.

The relevant law governing this jurisdictional issue is found in the Judiciary Law.

"Duration. Ten days before the opening of each quarterly session, there shall be a pre-trial chamber session to be held by the circuit judge assigned to sit during the quarterly session, which shall immediately be followed by a trial session beginning with the opening of each quarterly session and continuing for forty-two consecutive days not including Sundays and legal holidays, unless sooner terminated because all business before the court is disposed of before the expiration of that period. Immediately following the close of the trial session there shall be a ten-day closing chamber session to be held by the judge assigned to sit for the quarterly session and any judge concurrently assigned to the circuit." Rev. Code 17:3.8.

"Jury sessions; time limitations on empanellment. No jury shall be empanelled after the forty-second day of any quarterly trial session, as provided in paragraph 2 of section 3.8, but a jury once empanelled in any case in accordance therewith shall continue until the case is determined." *Id.* § 3.12.

The appellant contends that the judge's trial session

began on September 17, 1973, and should have ended on November 5, the 42nd day, not taking into consideration Sundays and one holiday, Thanksgiving Day, which fell on November 1; that instead, the judge began the trial of the matter now on appeal on November 8, which was the 45th day and rendered judgment on November 15, the 51st day; and that since the judge's trial session had not been extended, he lacked authority to commence the trial of this cause after the expiration of his term time.

The appellee countered this argument by asserting that the jury was empanelled on November 8, 1973, which, according to the minutes of the trial court, was the 39th "consecutive" day of the sitting of the court; that the appellant erred in her computation because she did not take into account the number of days on which the court did not sit; and that the appellant was barred from raising this jurisdictional issue because she participated in the trial and did not call the judge's attention to this irregularity and, therefore, she was guilty of laches.

Recourse to a calendar of 1973 shows that November 8, was the 45th day of the trial session; and according to a certificate of the clerk of the trial court, which was filed by appellee, the judge did not hold court for a period of six working days because of the illness of his son who was out of the circuit. Counsel for appellee conceded that the judge did not sit on those days, but he argued that they should not be taken into consideration in computing the statutory forty-two days of trial session.

It is clear that section 3.8(2) of the Judiciary Law, cited before, excludes only Sundays and holidays from being computed in the forty-two day period. Furthermore, the literal meaning of the word "consecutive" is following continuously or following in uninterrupted succession. From this meaning it is clear that a break of six days or even one day cannot be regarded as being continuous or in uninterrupted succession. A judge could stay in a circuit indefinitely if he is allowed to exclude

as many days within the 42 days as he may not be disposed to hold court. The legal working days of the circuit courts are Mondays to Saturdays and, therefore, they must be computed within the forty-two days of the trial session allowed the judge by statute; and when a legal holiday falls on one of these days, it is excluded from the computation.

In *Sherman v. Clarke*, 16 LLR 242 (1965), this Court held that in computing the statutory forty-two day period of a quarterly session of a circuit court during which a jury may be empanelled, only Sundays and holidays may be excluded; any other days on which the court is adjourned or for any reason fails to convene may not be excluded.

The appellee cited *Morris v. Johnson*, 21 LLR 93 (1972), as supporting his contention, but the situations in that case and the one at bar are not on all fours. In the earlier case, the trial judge began the trial of the case within the term time allowed by law, whereas, in the instant case, trial was begun several days after term time. Therefore, our holding in that case is not applicable in this case.

In *Thomas v. Dennis*, 5 LLR 92 (1936), this Court held that after a circuit judge's assignment has expired, he lacks jurisdiction to try an action in the circuit unless the assignment has been renewed; and where the assignment has not been renewed, and he proceeds to dispose of a cause over the objections of a party, the judgment will be reversed and a new trial granted. *Benwein v. Whea*, 14 LLR 445 (1961). This holding applies even when objections were raised to this overstepping of jurisdiction, the objections were overruled or ignored and the objecting party failed to seek remedial process from the Justice presiding in chambers. *Sherman v. Clarke, supra*; *Union National Bank v. Monrovia Construction Company*, 22 LLR 32 (1973).

In view of the foregoing, we must hold that the judge

exceeded his jurisdiction when he proceeded to try this action by empanelling a jury after the expiration of the statutory 42 days of trial session, which we hereby declare to include all days except Sundays and legal holidays. Therefore, the trial, from the time of empanelling of the jury to the rendition of judgment, was illegal and is hereby set aside and declared void. The judgment is reversed and the case remanded for a new trial, costs to abide final determination of the case. It is so ordered.

Reversed and remanded.