P. JANTZEN, Agent for C. F. W. Jantzen, Appellant, v. **W. H. FREEMAN**, Appellee.

SUBMITTED APRIL 5, 1914. DECIDED APRIL 12, 1914.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. It is reversible error to dismiss an action because in the writ of summons the letter "h" was left out of the word "eighteenth."

2. A party should not suffer from the mistake or negligence of an officer of the court where the party has no duty to perform in connection with the record; but such mistake or negligence should be remedied by amendment, or otherwise, so as to promote justice.

Mr. Justice McCants-Stewart delivered the opinion of the court

Debt—Appeal from Judgment. This is an appeal from a final judgment of dismissal rendered by the Monthly and Probate Court of Montserrado County. The facts are as follows : On September 13, last, plaintiff (now appellant) by his attorney, L. A. Grimes, Esq., filed in the office of the clerk of said court a written paper directing said clerk to issue a writ of summons requiring defendant (now appellee) to appear before said court on "the eighteenth" day of September to answer a complaint in an action in debt.

On September 18th, defendant by his attorney, T. W. Haynes, Esq., filed in the clerk's office a general appearance; and on September 25th, filed his answer in which he denies the right of plaintiff to recover on the ground, among other defenses, that "the writ of summons upon which said defendant was summoned to appear before this Honorable Court, is fatally defective and bad, and is not issued in accordance with law,—in this: that said writ directed said defendant to make his appearance at the clerk's office of this Honorable Court on the "eigteenth" day of September, A. D. 1913,—by which said "eigteenth" day, the defendant is not informed as to what day of September he should make his appearance. Wherefore, for this fatal defect as aforesaid the

said defendant respectfully motions this Honorable Court to quash said writ, dismiss this case, and rule said plaintiff to pay all costs. And this the said defendant is ready to prove."

After exhausting all the pleadings provided for in the statute, the cause came before the court for trial. Defendant moved for dismissal of the action on the ground above set forth. After argument on both sides, the court took the matter under consideration, and thereafter rendered the following judgment :
"In carefully examining the law the court finds that the writ is the foundation upon which all actions are commenced. Now we find in close observation of the written directions, that it requires the clerk to issue a writ against the defendant W. H. Freeman in an action of debt, and also commanding the said defendant to put in his appearance on a certain day named in said written directions, which was the 18th day of September of this present year. The clerk on his part issued said writ commanding defendant to put in his appearance on the "eighteenth" day of September of the present year. Now this court is of opinion that there is no such day as the "eighteenth" to be found in any modern dictionary, for there is no such word as "eighteenth" and therefore such day "eighteenth" is impossible. Hence a material variance between the writ and written directions. The court then is of opinion that the writ being defective, the defendant is not in court as per law. The court therefore, not having jurisdiction in this matter, dismiss this case and rule plaintiff to all cost of this action."

Appellant (plaintiff below) comes here on appeal from said judgment; and his appeal is so meritorious and the error of the trial court so plain, that we could well give judgment without an opinion. But we deem it important to point out certain principles of law, although they may be primary principles, in order to endeavor to save litigants in the future from the expense of an appeal of this character.

Counsel having filed briefs, and the record having been read here, and it appearing that the judgment dismissing the action was based solely upon the ground that the clerk of the trial court left the letter "h" out of the word "eighteenth" in the writ of summons, this court declined to hear argument upon the point.

Appellate courts sometimes stop an argument, when convinced; and again they sometimes decline to hear any argument, when they find the issue controlling the case so simple or primary that it would be a waste of time to do so. This course was pursued by the Supreme Court of the United States in *City of Chicago v. Sturges* (222 U. S. 313). After appellant had opened the case, the law seemed so clear in favor of the affirmation of the judgment appealed from, that court declined to hear appellee, and affirmed the judgment.

Our trial courts should catch the spirit of this court in our determination not to dispose of causes on mere technicalities. This appeal would doubtless not be here if the trial court had read *Moore v. Gross; Page v. Jackson* (both reported in Lib. Ann. Series, No. 2), and *Kruger v. Johns* (Lib. Semi Ann. Series, No. 1, p. 4). In *Page v. Jackson* the language is clear and positive: "This court," it is there held, "is not inclined to look favorably upon technical points, which do not go to the merits of a controversy. A court of last resort should deal with the principles underlying every issue brought before it. Causes properly on the calendar of this court should be heard speedily and fully, and should be disposed of upon their merits. No suitor should be turned away until this is done."

If our trial courts would keep this point before them there would not come up here for review such trivial technicalities as the one at bar. It has been repeatedly held that courts will not notice bad spelling when it appears with sufficient certainty what is meant. For example, "threty" has been held to mean "thirty ;" and "sevteen" has been held to mean "seventeen." (Bouv. L. D. under title Spelling.)

In *Cutting v. Conklin* (28 Ill. 506) advantage was sought to be taken of the fact that "February" appeared "Feb'y ;" but objection was overruled on the ground that the merits of the case were not involved, and it was clear what was meant.

In *Bushnell v. Allen* (48 Wis. 460) it was held immaterial error because of the letter "s" in action against "John Allen & Bros.," the summons containing the

name as "John Allen & Bro."

The sheriff was directed to issue a writ of summons against a certain "railway" company. The summons ran against the , company as a "railroad" company. Error held to be immaterial. *(Central Railway Co. v. Morris,* 68 Tex. 49; and *Alabama Railway Co. v. Bolding,* 69 Miss. 255.)

The time has passed when there could be a miscarriage of justice by throwing cases out of court on technicalities not affecting the merits.

There is greater strictness on the criminal side of court where life and personal liberty are involved than on the civil side where property rights mainly are at stake ; yet for centuries there has been the greatest liberality allowed dealing with indictments and judgments of conviction, the concensus of juridicial opinion, in at least the English speaking world, favoring the principle, that the substance is more important then the shadow.

Even under the common law, despite the ease with which lawyers secured dismissals upon technicalities, some noted cases stand out where courts set their faces against a practice, which often made a travesty of justice. They held that in matters of form, where a defect is pointed out that does not affect the merits of the case, or the evidence necessary to be given to maintain the indictment, the indictment should be corrected so as to prevent a defeat of justice.

The administration of justice over two centuries ago became so scandalous in miscarriages through technical loop-holes, that statutes were passed providing remedies against this evil ; and we point out a few errors, which are now treated as immaterial technicalities, with the view of showing some analogies to the judgment appealed from, and with the further view of eliminating from the practice of our courts the resort to technical objections.

It has been repeatedly held, that the name of the owner of stolen property may be inserted in the indictment even at the trial. Where an indictment stated that a prisoner had committed perjury at the hearing of a summons before a committing magistrate who, held the examination of a prisoner charged with

"being drunk," whereas the summons was really for. "being drunk and disorderly," the omitted words "and disorderly," were properly inserted in the indictment. A party was indicted for stealing "nineteen shillings and sixpence." The proof was, that he had stolen a pound piece. whereupon a correction of the indictment was sustained.

An indictment was laid for obstructing a "carriage way." The proof ,showed that the obstructed road was a "foot way." The indictment was corrected, and the trial court was sustained. An indictment, ending with the words "against the peace of the State," was corrected by inserting "and dignity."

It appears then that in both civil and criminal proceedings less attention is now paid to technicalities than in the generations past. The reversal of this judgment should emphasize the necessity of our trial courts following in the path of progressive judicial reform.

A great step in advance will be made when both bench and bar realize that this court will not dispose of causes on technicalities not affecting the merits.

Again, it should be pointed out that the slight and immaterial error sought to be taken advantage of in the cause at the bar was committed by the clerk of the trial court. Now, a party should not suffer from the 'mistake or negligence of an officer of the court in cases where the party has no duty to perform in connection with the record ; but such mistake or negligence should be remedied by amendment, or otherwise, so as to promote justice.

This case must be distinguished from Adai v. *Jackson* just decided. In that case, as Mr. Justice Johnson points out, there was no such technicality as brings it within the principle laid down in *Moore v. Gross; Page v. Jackson; Kruger v. Johns,* as in the attempt to perfect the appeal in *Adai v. Jackson* neither the statute nor the general practice relating to service of papers was complied with ; and the cause was not, therefore properly upon the docket of this court.

The judgment appealed from should be reversed and the cause remanded to the court below for trial; and it is so ordered, costs to abide the event.

L. A. Grimes, for appellant.

Arthur Barclay, for appellee.