R. W. KENNEDY of the Settlement of Farmersville, Sinoe County, Plaintiff in Error, v**. WESLEY MORRIS** of the same place, Defendant in Error.

ARGUED JUNE 9, 1913. DECIDED JUNE 13, 1913.

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

1. The place where an affidavit is taken must be stated to show that it was taken within the officer's jurisdiction.

2. Where the motion contains only questions of laws and refers to matters which appear on the records of the court, an affidavit is unnecessary.

3. In actions of slander, *where* the words alleged to have been uttered by defendant are not actionable *per se* and the plaintiff fails to aver some special damage, the case should be dismissed.

Mr. Justice Johnson delivered the opinion of the court :

Damages for Personal Injury—Writ of Error. The plaintiff in error entered an action of damages for personal injury against the defendant in error, in the Circuit Court of the third judicial circuit, Sinoe County, at its February term, A. D. 1913.

In his answer defendant denies the right of the plaintiff to recover against him; because the complaint is unintelligible, uncertain, vague and evasive, averring, in substance, that the form of action is not stated in accordance with the provisions of the statute laws of Liberia; and, also, because the words charged to have been uttered by defendant are not actionable.

When the case was called for trial, defendant submitted a motion to dismiss the case, on the ground first above stated, which the court granted, and this is now assigned as error.

The main points in the assignment of errors which are submitted for the consideration of this court are as follows:

1. Because the court did not allow plaintiff in error to first offer his motion for judgment by default, and

2. Because the court sustained defendant's motion to dismiss, when it was shown that said motion was without a legal affidavit, as the affidavit thereto attached does not bear the name of the place where it was taken.

From the records of the case, it appears that after the complaint, answer and reply had been filed, defendant withdrew his answer and filed an amended answer. Plaintiff in error holds that this was contrary to the provisions of the statutes relating to pleadings, as defendant should have filed his amended answer, if he wished to amend, within the ten days allowed for the answer and before the reply was filed. He contended, therefore, that there is no legal answer in the records.

As to the first point, we are of the opinion that the court below did not err in permitting defendant to offer his motion before that of the plaintiff, as the defendant had filed the last pleading in the case, the amended answer. By the statute laws of Liberia every answer may be once amended or withdrawn and a new one filed, but this must be done so as to cause no delay in the trial of the cause. The defendant having filed his amended answer before the case was ready for trial, plaintiff had a right to file a new reply as his reply had been nullified by the filing of said amended answer, but failed to so do. The defendant having therefore filed the last pleading in the case was entitled to first motion the court on account of any legal defect in the pleading of his adversary. *(Gould et al. v. Gould,* I Lib. L. R. 389.)

With regards to the last point raised, respecting the affidavit, we are of the opinion that the affidavit attached to the motion to dismiss was not in harmony with the rules of the common law governing affidavits, which require that the place where the affidavit is taken should be stated, to show that it was taken within the officer's jurisdiction. *(Horace v. Johnson,* I Lib. L. R. 516.)

Generally a motion which is defective in this respect will not be sustained; in this case, however, the motion merely contains questions of law which were raised in the answer and refers to matters which appear upon the records of the court below. Hence the affidavit being unnecessary, under the circumstances, was a surplusage. The court below, therefore, did not err in

refusing to sustain plaintiff's objection.

As to the question raised in the defendant's motion to dismiss we are of the opinion that this point is not well taken.

On inspecting the writ of summons issued in the case, we find that the form of action under which the case is brought is an action of damages for personal injury. Such injuries the statutes declare are either to the person, reputation or domestic relations of another. (Lib. Stat., under injuries, sec. 7.)

As actions of slander, therefore, fall under this head, we regard the objection as being too technical to demand the consideration of this court.

We are of the opinion, however, that the court did not err in dismissing the case, as the words alleged to have been uttered by defendant are not actionable *per se* and that plaintiff failed to set up some particular damage sustained by him. Blackstone says, "with regard to words that do not apparently and upon the face of them import such defamation as will of course be injurious, it is necessary that the plaintiff should aver some particular damage," (3 Bl. Com. * 124). In the case *Dennis v. Bowser* (I Lib. L. R. 5) it was held that words not actionable *per se* cannot support an action for slander without proof of damage special or general. Where special damage is relied on, it must be stated in the complaint and proven.

We are therefore, of the opinion that the judgment of the court below should be affirmed, with costs against plaintiff in error.

J. H. Green and *P.0. Gray,* for plaintiff in error.

C. B. Dunbar, for defendant in error.