

MELVILLE H. MAURICE, and **ELLA E. MAURICE**, his wife, Appellants, v. **W. S. DIGGS**, represented by her husband, **W. H. DIGGS** and **A. B. PADMORE**, represented by her husband, **J. R. D. PADMORE**, Appellees.

1. A judgment or decree of the court rendered where there is want of jurisdiction over parties and subject matter is void.
2. Where parties in interest are not summoned to attend the time and place of trial, a judgment which affects their interest is void as to them.
3. Parties attempting to enforce void judgment or decree may be held responsible as trespassers.
4. The right of parties to procure valid judgment or decree by further proceedings upon the same cause not barred by void judgment previously rendered.

Petition for Partition. On appeal for error from the Court of Quarter Sessions and Common Pleas for Montserrado County.

The parties hereto are all interested in a petition filed in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its March term, A. D. 1907, in which the appellees prayed for a decree ordering the partition of the premises in the City of Monrovia known as the residence of the late A. M. Worrel-Stuart, the same homesteaded under statute provisions, A. D. 1906. The cause was tried by the beforementioned court and a decree obtained to the effect that said premises be partitioned, to which decree the appellants took exceptions, and brings said cause before this court for review.

The records sent up to this court support the facts that at the call of this case for trial in the court below the appellants offered a motion that the petition be dismissed and that the court refuse jurisdiction for the following legal causes :

1st. That they had not been served with process or summoned to attend the trial and therefore urged that the court had no jurisdiction over them.

2nd. That the court did err in overruling this motion, the records supporting it, and in its further decree by ordering a partition of the property herein referred to.

These constitute the special points submitted to this court for its ruling and decision.

These points have our careful consideration in connection with the law of the land. (See Lib. Stat., 1st Blue Book, p. 11, sec. 1; also p. 14, sec. 1. See also Bouv. L. D., vol. I, p. 111, The words "Action in Practice.")

This is purely a question of jurisdiction and in no way determines the question of legal possession. Jurisdiction in legal parlance means the power and authority given by law to courts over persons or things in question before it.

It is the law which confers jurisdiction on courts by which persons and things are brought within its embrace. It is strongly laid down in the statutes of the land that all actions except injunction and replevin shall commence by writ of summons. This is notice to the defendant of the suit instituted against him. This is an absolute necessity and legal requirement. If the judgment or decree of a court were rendered against one without summons or warning of the suit, both personal and real property would truly be insecure and innumerable evils created in communities. For this reason a judgment or decree is not only voidable but void where there is want of jurisdiction over subject matter or over the parties to the action or some of them. A court in pronouncing a judgment or decree in such cases acts without jurisdiction if there is want of jurisdiction over the parties, in that regular process has not been served upon them thereby bringing them within the jurisdiction of the court. There is no doubt such judgment or decree is void for want of jurisdiction, especially where the records uphold the fact that parties interested in a decree had not been summoned to attend the time and place of the trial. To maintain otherwise would be to impeach rather than to sustain the verity of the records. A void judgment or decree is in legal effect no judgment or decree. By it no rights are divested. From it no rights can be obtained. It neither binds nor can bind any one. All acts performed under it and all claims following out of it are void. The parties attempting to enforce it may be held responsible as trespassers. Such void judgment or decree does not, however, determine the right of subsequent action between the parties, and therefore cannot prevent the plaintiff from proceeding to obtain a valid judgment or decree upon the same cause. (See Freeman on Judgments.) The record sent up from the court below is wanting for notice, or in other words, summons served upon the defendants below. For this reason the motion to dismiss for want of jurisdiction was founded in law, and should have been sustained by the court below.

The court having no legal jurisdiction over the parties complaining did err in its decree binding them to its terms. Therefore by this court said decree is vacated, the appellees paying legal cost.

Given under our hands the 12th of February, A. D. 1908.
By the Court.