

E. A. L. McAULEY, Appellant, vs. **S. LALAND**, Agent for the business firm known as the Norwegian African Trading Co. of Sinoe, Appellee.

[January Term, A. D. 1894.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

1. In appeals it is the writ of summons or notice to appellee which gives the court jurisdiction over the case.
2. The statute relating to the time within which appeals must be taken is imperative and includes everything necessary to be done to bring the appellee properly before the appellate court. An appeal is not complete until the appellee has been summoned or notified, which must be done within the time allowed for the completion of the appeal or the court will refuse jurisdiction.

This is a case tried in the Court of Quarter Sessions and Common Pleas, Sinoe County, at its February term, A. D. 1893, and brought up from said court on appeal to this court, upon a bill of exceptions. Upon the call of the parties in the case, the appellee announced to the court that he had a motion to offer in the case, and asked that the same be heard, to which the court consented, and heard the arguments both in support of and against said motion.

With reference to the motion the court says that in all appeal cases it is the writ of summons or notice served upon the appellee and the returns thereto made, which give the court jurisdiction over the case. The statute regulating appeals is imperative in directing that all appeals shall be taken within sixty days after the rendition of the final judgment of the court from which the appeal is prayed: this implying that the appellant do or cause to be done all that is necessary to bring the appeal and the appellee properly before the appeal court.

It is needless for this court to enter into extensive arguments to establish the well-known requirements of the law, as it should be obvious to every reflecting mind that an appeal is not complete until the appellee is duly summoned, which summons places him under the jurisdiction of the court to which the appeal is taken; therefore the summons or notice forms a very integral part of an appeal and should be served within the time allowed for the completion of the appeal. And while we must admit the binding force of the legal maxim that "the acts of the court should prejudice no man," we are of the opinion that the acts of the court should be carefully distinguished from the unauthorized, unlawful or neglectful actions of its officers or of the parties to the suit. The neglect or omission of one of the said parties to do, or to cause to be done, any act essential to the progress of a case must be taken as a waiver of his rights, and it would be decidedly prejudicial to the lawful rights of the opposite party for the court to allow such waiver to be made and withdrawn at the pleasure of his opponent.

The next point submitted for the court's consideration is, "That the bill of exceptions

shows no special questions of law specially relied upon in support of the appeal, as is required by law and the standing rules of this court. As to this point the court, after inspecting the bill of exceptions, is of the opinion that several questions of law are specially raised in the same and specially relied on in support of the appeal, which questions this court would have been bound, in consonance with the law, to decide, had the appeal been brought before it lawfully. The appellee's not having been summoned within the lawful time is in the opinion of the court fatal to the appeal.

Therefore the court sustains the motion to dismiss, and adjudges that the appeal is dismissed, and that the clerk of this court make known the same to the court from which the appeal is taken.