JOSEPH F. DENNIS, Appellant, *v.* HELEN REFFELL, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 26, 1942. Decided February 6, 1942.

1. Illness of counsel is good ground for continuance.
2. A plaintiff is not barred from filing an action during one term of court for an ensuing term when the action so desired to be filed will not give the defendant fifteen days' notice in the former term.
3. The trial judge may at any time during the progress of the examination ask the witness such questions as he deems necessary to elicit the whole truth for the benefit of himself and the jury, and in so doing he is not bound by the rule excluding leading questions. But if, against objections, he asks improper questions, it is the duty of the appellate court to correct the error.

On appeal from a decision of the Circuit Court of the First Judicial Circuit, *judgment reversed and case dismissed without prejudice.*

Joseph F. Dennis for himself. *William E. Dennis* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

The review of this case in this Court began, as has very frequently happened, with the reading and consideration of the bill of exceptions certified to us from the trial court; and it was while the clerk of our Court was reading said document that it gradually became clear in our minds that we should, for the time being at least, confine our attention to complaints of irregularity made in counts one, two, five, ten, and eleven. However, we are limiting this review to counts one, two, and five. The gist of said complaints, culled from the said bill of exceptions, is:

(1) That, without the case having previously been assigned and notwithstanding the absence of both defendant and his counsel, the trial judge ruled on the points of law raised in the pleadings without hearing arguments from either side, dismissed defendant's answer and rejoinder, and requested Counsellor Ricks, a stranger to the record, to enter exceptions for said defendant and his lawyer, being both absent at the time of rendering such decision;

(2) That during the trial Counsellor S. David Coleman, leading lawyer for the defendant, was taken ill, whereupon the court excused him from further attendance during the trial, and ordered defendant himself to proceed therewith, in spite of his vigorous objection, to which order an exception was taken;

(3) That thereafter, the trial judge himself having on his own initiative undertaken to conduct the direct examination of defendant when his counsel having as aforesaid been excused because of illness, it became necessary for defendant to take the stand in his own behalf, as he had foreseen in the objection he had made to proceeding without his counsel, and there was no one else to conduct the examination-in-chief of defendant.

The second of these complaints has so recently been settled by this Court that we need only reiterate here what was said by Mr. Justice Russell, speaking for this Court, in the case *Burney* v. *Jantzen,* 4 L.L.R. 322, 2 New Ann. Ser. 166 (1935).

"The records further show that after this, counsel for appellant refused to go any further with the trial of the case because Counsellor Wolo the leading counsel was ill, and asked that the case be postponed for at least a day, or until he regained his health. This request the court denied and urged that Counsellor Wil-

liams, the junior counsel, should proceed with the case.

. . . . .

"The counsel for the defense having given notice to the court that he was sick and therefore prayed for the continuance of the trial until the following day; under these uncontrollable circumstances, being the act of God, it is our opinion that the trial judge, in view of the law and of the fraternal feelings which should always exist between the bench and bar, should have granted the application and continued said case. *State of Rhode Island* v. *State of Massachusetts,* 11 Peters (U.S.) 226, 9 L. Ed. 697 (1837)." *Id.* at 324–326.

Before dealing with the complaint raised in count one of the bill of exceptions, we must not fail to notice the representations frequently advanced in several cases recently, and argued with great emphasis in this, that there are counsel practicing in the Circuit Court of the First Judicial Circuit who seem disposed to flout the authority of the said court by disregarding the notice given of the assignment of a cause and by remaining away from a trial, resulting in vexatious delays. In order to obviate too many postponements of a trial by those adopting such Fabian tactics, the court is justified, some contend, in disregarding their absence and proceeding to dispose of a cause without giving counsel an opportunity to be heard. In our opinion either extreme is pernicious and may sooner or later lead to dire consequences, and hence we have decided to express ourselves in this case where the evil consequences are quite marked, as our further observations will show, so as to prevent greater mischiefs.

And first of all every lawyer should make it his duty to pay the utmost respect to every judge of every court regardless of whether the court over which a judge presides is one of greater or lesser authority. With the

development of that attitude he will automatically treat with due deference all orders, summonses, and notices emanating from a judge or issued by his authority. Should he treat any order of any judge with contumely or contumacy he should be attached for contempt of court and punished. On the other hand, judges of courts should deal with members of the bar as gentlemen and should accord them due courtesy and reasonable periods of time to meet their engagements. In a country like ours where, at present, communication is so primitive, one or two hours' notice that a case will be called is inadequate. In many instances the records before us show lack of appreciation of the fact that lawyers having business in different courts situated in parts of the city far remote from the seat of other courts are not given sufficient opportunity to so readjust their previous engagements as to show adequate deference to all the courts in which they are engaged. But, if an attorney has received ample notice of the time and place of trial and then neglects or refuses to appear at the time previously advertised, it is far more just to discipline him than to deprive one whom he represents of that adequate opportunity of being heard which the Constitution and laws of the country guarantee to everyone.

How has the disregard of these plain principles of social courtesy and propriety adversely affected the case now on review? According to the record certified to us, the trial judge, without as aforesaid hearing arguments on the pleadings, decided that although the answer of defendant set up several issues that were necessary for the court to pass upon, nevertheless since the court below upon inspection of plaintiff's reply decided that the answer was entitled in the May term when on said date, *viz.*, the nineteenth of June, the May term had been adjourned *sine die, viz.*, on June 7, he dismissed both the answer and rejoinder.

Perhaps had the judge allowed the argument he would

have been convinced that even the petition was entitled out of the correct term, for said petition was not filed until June 2 and was entitled in the May term. The statutes of Liberia provide not only that a defendant must be summoned at least fifteen days before the first day of the meeting of the court, but also that the complaint must be filed at least fifteen days before the first day of the term, a rule to which the courts of this Republic have hitherto strictly adhered. In the case of *Blacklidge* v. *Blacklidge,* 1 L.L.R. 371, decided by this Court at its January term, 1901, the late Counsellor Arthur Barclay argued with great earnestness and eloquence that an exception to the said rule should be made in favor of cases of injunction as, should a plaintiff be compelled to wait until the end of a term before commencing a suit of injunction, irreparable injury might be done in the interval. This Court, nevertheless, adhered to the strict letter of the law and dismissed the complaint on appeal, with the following holding:

> "Now, then, this court, after carefully considering and digesting the laws just quoted, fails to see wherein the law referring to the time of fifteen days' notice given to the defendant does not apply in cases of injunction. . . ." *Id.* at 373.

Counsellor Barclay seemed to have so strongly envisaged the possibility of irreparable injury growing out of the said decision that, when exalted to the position of President of the Republic, he initiated and had passed a special statute remedying the evil which he foresaw; but note that that statute is limited only to cases of injunction, the first section of which reads:

> "That actions of Injunction may be commenced and defendants summoned to appear in Court in such cases at any time whenever the cause of action occurs or becomes known to the plaintiff without respect to the number of days preceeding [*sic*] the first day of the session of the term of Court at which the action is filed." L. 1908–09, 31, § 1.

The second section of said act permits such cases to be filed even during a session of the court, and the third section provides that the said action shall not be heard until such time shall have elapsed as to give all parties ample time to complete their pleadings. *Id.* at 31, §§ 2–3.

For many years thereafter it was an open question in what term pleadings in actions so filed should be entitled. The question was settled by this Court in two cases decided at our November term, 1919. In the one, *Sodjie* v. *Tartimeh,* 2 L.L.R. 362, Mr. Justice Witherspoon, delivering the opinion of the Court, said *inter alia:*

> "This assignment also refers to the judge not sustaining the motion offered to dismiss the action it being filed during the May term for the August term of the court.
>
> "We are of the opinion that a plaintiff is not debarred from filing an action during one term of court for an ensuing term when the action so desired to be filed will not give the defendant fifteen days notice in the former term. . . ." *Id.* at 363.

In the other case, *Couwenhoven* v. *Beck,* 2 L.L.R. 364 (1920), the late Chief Justice Dossen was more explicit.

> "The second exception in the bill of exceptions is taken to the court's denying the motion of the defendant, now appellant, to the jurisdiction of the court. The grounds relied upon in this motion for dismissal for alleged want of jurisdiction are, substantially, that the case was commenced in the August term of court, before the expiration of the preceding May term. We have carefully examined the statutes relating to the jurisdiction of the Circuit Courts and the Rules of Practice of these courts and have failed to discover any legal merit in the contention either expressly or impliedly. The Act of the Legislature of Liberia, approved January 11, 1913, declared the terms of the Circuit Courts of this Republic in the following language: 'That from and after the passage of this Act

the Circuit Courts now established in this Republic in accordance with the said referred to Act, shall open sessions in the County of Montserrado, Grand Bassa, Sinoe and Maryland on the second Monday in February, May, August and November in each year.' A subsequent Act provides: 'that ten days after the adjournment of any regular session of the Circuit Court, shall commence the next session of said court and all matters not requiring a jury may be heard and disposed of upon application as provided for in this Act before the meeting of the regular jury session.' The statutes cited constitute the law relating to the terms or sessions of said courts and was the law relied upon in the contention by counsel for defendant, now appellant. But it will be observed that they in no wise support the contention. They cannot be construed as implying that a plaintiff is disallowed from entering suit in one term of court before the expiration of the preceding term and they confer no power upon the courts to dismiss actions brought under such circumstances on the ground of want of jurisdiction.

"The statutes prescribing the time-limit for filing complaints and written directions and for summoning defendants are to be understood as fixing the time-limit in which these acts must be legally performed, the object and intention of which is obviously to allow the defendants ample time in which to make their defense and to prevent surprise, but by no process of reasoning are we able to apply those provisions in the sense in which we are asked to apply them in the exception under review. We hold that a plaintiff is entitled to bring his action immediately after the cause of action accrues if he elects so to do. It furnishes no ground for dismissal if he elects not to wait until the expiration of a term before bringing his suit. And his course would be free from all implication of injustice towards the defendant, if, as in the case at bar,

he seeks redress at the earliest opportunity opened to him under the rules of pleadings. Cases sometimes arise when in order to secure the appearance of a defendant and to protect the interest of the plaintiff it becomes necessary that he should act speedily and without delay. To hold that he is debarred from exercising his right of action during the intervening period between the duration of one term and the commencement of the next ensuing term would operate as a suspension of the office and operation of the courts and of his right to the free and full enjoyment of the benefits of the judicial power established to safeguard and protect and enforce those rights. This we hold is not contemplated by the statutes of the country relating to the commencement of actions, and we refuse to uphold the contention as sound." *Id.* at 366–67.

Had these decisions been otherwise and had that decision given by the trial judge in the case under review been accepted as the law controlling in such cases, we fail to see how parties summoned in the middle of a term could avoid the anomaly of having some of the pleadings entitled in one term and other pleadings in the same series entitled in a subsequent term.

The last point in the bill of exceptions which we shall presently consider is that of the trial judge conducting the direct examination of defendant.

It is unfortunate that the record before us presents the spectacle of a presiding judge stepping down from the lofty pedestal upon which the law of the land has placed him to assume the role of an examining counsel. In *Gartargar* v. *Republic,* 4 L.L.R. 70 (1934), the Court, in considering the role of a trial judge, quoted with approval from 8 *Encyclopedia of Pleading and Practice,* page 71:

"'The trial judge may, at any time during the progress of the examination, ask the witness such questions as he deems necessary to elicit the whole truth for the benefit of himself and the jury, and in so doing he is

not bound by the rule excluding leading questions.' " (at p. 76.)

The Court then, at page 77, considered the question further:

"In the case *People* v. *Lacoste,* 37 N.Y. 1912 (1867), it appeared that the trial judge asked a question which was improper and should have been asked by counsel. The Court of Appeals said:

" 'It was argued by the appellants' counsel that, inasmuch as the question was asked by the court, no objection or exception could be taken to it. We do not understand that the court has any greater right to ask, against the objections of counsel, improper questions, than counsel have. And if, against objection, he asks improper questions, it is the duty of the appellate court to correct the error.' "

When, then, the law so circumscribes the orbit within which a trial judge should be governed in any questions he might ask during a trial and he himself begins interrogating a witness on behalf of a party, to whom would an improper question be referred for allowance or rejection under such circumstances?

"Every litigant is entitled to nothing less than the cold neutrality of an impartial judge, who must possess the disinterestedness of a total stranger to the interests of the parties involved in the litigation, . . ." *Yazog & Miss. Valley Ry. Co.* v. *Kirk,* 102 Miss. 41, 54, 58 So. 710, 42 L.R.A. (n.s) 1173 (1912); *Republic* v. *Harmon and Brownell,* 5 L.L.R. 300, 4 New Ann. Ser. 33 (1936).

Hence, it follows from the foregoing that the judgment of the court below should be reversed, and the case dismissed with permission to appellee to file her suit after the payment of all costs; and it is hereby so ordered.

Reversed.