

ANNA E. HAWKINS, by and through her next best
Friend, T. J. BROOKS, Appellant, v. MESSRS. C. F.
A. O., a French Firm doing business in Monrovia and
elsewhere in Liberia, represented by H. ARRIVETS,
Appellee;
And
GIPLAH BROWN, Appellant, v. GEORGE G. TAR-
PEH, Appellee.

APPEALS FROM JUDGMENTS IN ACTIONS FOR DAMAGES FOR
INJURIES TO PERSONAL PROPERTY (CASE NUMBER 1)
AND FOR SLANDER (CASE NUMBER 2).

Case number one argued December 29, 1938, and January 4, 1939; case number
two argued January 11, 1939. Decided January 13, 1939.

1. 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 in the former term.
2. This does not, however, prevent commencing a suit and requiring the ap-
pearance and answer of a defendant at the term immediately following.

In case number one plaintiff appealed from the judg-
ment for defendant in an action for damages for injuries
to personal property, and in case number two plaintiff
appealed from the judgment for defendant in an action
for damages for slander. This Court heard both cases
together on appeal to determine a common question of
law and *affirmed* the judgments therein.

L. G. Freeman for appellants. *T. G. Collins of Bar-
clay & Barclay* for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the
Court.

On the thirteenth day of August, 1937, while the afore-
said court was holding its regular jury session for the

August term of the aforesaid year, appellant in the first of the two above entitled causes filed her written directions and complaint laying them in the venue of the August term of the aforesaid year; whereupon the clerk of said court issued a writ of summons directed to the sheriff of Montserrado County commanding him to summon the defendant, now appellee, to appear before the Law Division of the Circuit Court for the County aforesaid at its November term to answer her complaint. Before the service of this writ, the plaintiff having on the second day of September served or furnished the appellee with a copy of her complaint, the defendant filed a special appearance and answer. Eight days after the filing of the defendant's special appearance and answer the sheriff served the writ of summons on the defendant in the first above entitled cause directing him to appear and answer the plaintiff's complaint and to file his appearance within four days after he had been summoned. The defendant or appellee in his aforesaid answer raised the following jurisdictional issues in counts 1 and 3 of his said answer, which read as follows:

"1. Because defendant says that this Honourable Court is without jurisdiction over the defendant's authorized representative in the person of H. Arrivets, in that no legal process has been served upon said agent by way of notifying him of the filing of this suit, and requiring him to file his appearance at a specific time and place as the law required to answer to complaint of the plaintiff. Since the first institution of the filing of this suit was conveyed to said defendant's agent by a copy of the complaint to the office of said defendant's attorneys on the thirty-first day of August A.D. 1937. Wherefore defendant prays the dismissal of this case.

"2. And also because defendant says, that this Honorable Court is without trial jurisdiction of this cause, in that, the venue of the complaint filed in said case

has been laid in the August Term A.D. 1937 of said court during the regular jury sessions of said term of court, and that the said suit is filed in the said August Term contrary to the letter of the statute prohibiting the filing of causes (except Injunctions) in fifteen days previous to the first day of any session of the court as has been done in this suit. Said complaint should have been filed and entitled in the ensuing November Term of court in which a trial of said case is likely to be had, but not in the August Term which has commenced and during which a trial of this case is impossible.

“Wherefore defendant prays the dismissal of this suit.”

Plaintiff-appellant filed her reply and said in count three thereof, that the trial court has no jurisdiction over the aforesaid answer of the defendant because the venue in said answer is laid in the November term and not in the August term which was sitting already up to the ninth day of September when said answer was filed, and further prays for the dismissal of said answer.

The defendant filed his rejoinder to the reply of the plaintiff fortifying his answer on all the law issues therein contained.

On the 13th day of April, 1938, when the case was called for hearing the said trial judge made the following ruling on the issues of law raised in the pleadings as follows:

“The Court says that the pleadings in the case have gone as far as the Rejoinder of the defendant and the principal issues raised by the Answer of defendant are: 1. The point of jurisdiction of the court over the defendant, in that he was not summoned at the time he filed his special appearance and answer in the case, in that he appeared on the Second day of September A.D. 1937; answered on the seventh of September, and was not summoned as per returns of the Sheriff

until the tenth of the same month, that is to say seven days after the special appearance and three days after the filing of the answer; 2. That the case was filed in the August Term of court, when it should have been filed for the November Term A.D. 1937, in that the August Term of court has long commenced in its Jury Sessions before the said cause or action was filed; 3. Because there is a non-joinder of parties, in that the plaintiff Anna E. Hawkins, did not enter her action by and through her husband, but rather by and 'through her next best friend, T. J. Brooks,' which procedure has no warranty under our statutes, as claimed by the defendant in his Answer.

"As to point one above which is raised in count one of the defendant's Answer, the court says that, in its Opinion, said point is well founded and should be sustained because it is not expected of the defendant after having been served with a copy of the plaintiff's complaint to have sat supinely by and not answer or attack the complaint just because for reasons not quite obvious to the court and which cannot be traceable and attributed to the said defendant, he the said defendant had not been duly summoned by the sheriff so as to have placed him under the jurisdiction of the court. The course adopted to have filed a special appearance and then raise the issue of jurisdiction over his person is proper on the part of the defendant. Count one of the defendant's Answer is therefore sustained.

"Coming to the point of the case having been filed before the August Term instead of the November term, the said August term having then long since commenced, which has been conceded by both parties; the court says, that in its opinion this issue is also supported in point of law and ought to be also sustained for according to the opinion in *Sodjie v. Tartimeh*, 2 L.L.R. 362 (1920), delivered by His Honour Jus-

tice Witherspoon, and in contemplation of the Statutes, an action intended to be filed during the sitting of the court in any particular term, should be filed before and for the ensuing term of court so as to give the defendant the usual statutory time of at least fifteen days before the opening of the term before which the cause of action is filed and before which the defendant is required to appear and defend himself. Count 2 of the defendant's answer which raises this issue is therefore sustained. In view of the above ruling on counts 1 and 2 of the defendant's answer which attack the validity of the action and the jurisdiction of the court; the necessity of going further into the other issues raised in said answer is not appealing. The plaintiff's action is therefore dismissed with cost against her and it is so ordered."

To this ruling the appellant excepted and brings this case before this Court for review.

In the second of the two above entitled causes appellant, plaintiff in the court below, filed his written directions and complaint on the 10th day of May, 1938, commanding the sheriff to summon the defendant to appear on the second Monday in August of said year. But instead of the venue in said written directions and complaint having been laid in the August term, said venue was laid in the May term of court, as pointed out in the first plea of the answer of defendant, now appellee. His honor the trial judge having dismissed said case on the first count of said answer, the gist of which is hereinbefore set out, exceptions were taken, and said case brought by appeal to this Court for review.

As the principle involved in both cases is the same, they have been considered and are being decided in this one opinion.

Upon a careful inspection of the records in the two cases as well as the ruling of the respective trial judges on the issues of law raised in the pleadings of the plain-

tiffs and defendants, we have no alternative but to affirm the rulings of the trial judges given in each of said cases, because in our opinion they are supported by law. In the case *Sodjie v. Tartimeh*, as cited by His Honor Judge Shannon, who presided over the former of the two causes, Mr. Justice Witherspoon, speaking for this Court, said:

“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. The court therefore did not err in overruling the said motion.”

And also His Honor Chief Justice Dossen in the case *Couwenhoven v. Beck and Beck*, 2 L.L.R. 364 (1920), speaking for this Court, said as follows:

“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 to 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 ad-

jourment 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." (p. 366.)

We therefore feel no hesitancy in saying that the rulings of the trial judges in each of the above cases should be affirmed with costs against appellants in each of the said cases; and it is hereby so ordered.

Affirmed.