

and identified as some of those which had been contained in the case marked A. T., the subject of this prosecution. When the theft was discovered and the cartridges recovered, prisoner begged the collector not to expose him. See evidence of Collector Manly. It seems that if after the panel is qualified, one of the jurors is found to be totally incompetent, it is not too late to set him aside and call another, without discharging the panel; See the *People v. Damon* (13 Wend. Rep. 355). See also *Tooles Case* (11 Leigh 714 [Va.]). Referring to the action of the court in re the jury, it appears that the jury had been empanelled before the judge informed the parties that in keeping with the statute relating to jurors, Luther Scott who is related to prisoner and Thomas Dillon who is not twenty-one years of age had been excused from the panel at the time the jury was being empanelled. No exception was taken by prisoner to this action of the court.

The question is therefore not properly before this court.

The judgment of the court below is therefore affirmed.

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ALFRED D. J. KING, Plaintiff in Error, *v.* HIS HONOR H. B. WILLIAMS, Judge of the Monthly and Probate Court, Grand Bassa County, Eddie G. W. King and Clavender V. King, his wife, Defendants in Error.

ARGUED DECEMBER 23, 1924. DECIDED JANUARY 6, 1925.

*Johnson, C. J., Witherspoon and Bey-Solow, JJ.*

1. If a defendant, though not served with process, takes such a step in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process.
2. Likewise if a defendant has been served with process, any objection he may have to the irregularity of the service must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so.
3. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formally taken.
4. The court which is competent to decide on its own jurisdiction in a given case, may determine that question at any time in the proceed-

ing of the case whenever that fact is made to appear to its satisfaction, either before or after judgment.

Mr. Justice Bey-Solow delivered the opinion of the court:

Application for Writ of Error. This case is brought before this court upon a writ of error sued out by the plaintiff in error to have the records of the case in the court below brought before this court, and the rulings and judgment of the judge thereof reviewed, and the errors alleged to have been committed in the premises corrected.

The assignment of errors filed embraces two points upon which it is contended by the plaintiff in error that the court below committed manifest error.

This is a case in which the plaintiff in error petitioned the Monthly and Probate Court, Grand Bassa County, at its August term, A. D. 1922 for the appointment of a special administrator to execute a deed for lot number 2 from a two acre tract of land situated in the City of Edina in the County of Grand Bassa, known as lot number 3 and commonly described as 2 in 3, whereupon the court appointed Thomas M. Moore as the said special administrator who instead of executing the deed for the lot number 2 for which the plaintiff had petitioned the court, administrator Moore unauthorizedly and illegally executed a deed to the said petitioner for lot number 3 in 3 from a part of the same tract of land commonly known as number 3 in 3, to which said lot the deceased had no title. When this said deed for lot number 3 in 3 was offered for probation the same was duly objected to by Clavendar V. King, one of the defendants in error, and who held title deed to said piece of land which had been duly probated and registered. While said objection was under consideration by the Monthly and Probate Court for Grand Bassa County and pending its decision, the said plaintiff in error adroitly, at the October term of said court, A. D. 1923, submitted a further petition to the court asking that his former petition which had been granted, be amended so as to read and include lot number 3 in 3, the property of the said defendant in error. The said defendant in error being in court at the time, through her counsel, laid certain objections upon the record of the court, objecting to the court's granting the petition of the petitioner, now plaintiff in error. Plaintiff in error contended in the court below that the defendant in error could not come into court and object to his illegal acts, which acts would have a tend-

ency to affect her title to the said property, without leave of court or permission to do so.

The general rule is that if a defendant, though not served with process, takes such a step in an action, or seeks such relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process. Likewise if a defendant has been served with process, any objection he may have to the irregularity of the service, must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formerly taken. A court which is competent to decide on its own jurisdiction in a given case may determine that question at anytime in the proceedings of the cause, whenever that fact is made to appear to its satisfaction, either before or after judgment.

Therefore the judge of the court below, in absence of all legal technicalities, did not commit material error, when he sustained the petition of the defendants in error.

The plaintiff in error should follow the statutory procedure to acquire his property, if his claim be valid. The judgment of the court below is affirmed, with costs in favor of defendant in error.

*R. E. Dixon* and *Anthony Barclay*, for plaintiff in error.

*H. L. Harmon*, for defendants in error.

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MANSFIELD F. PARKER, Petitioner, v. HIS HONOR E. J. S. WORRELL, Judge of the second judicial circuit, Grand Bassa County, Respondent.

HEARD DECEMBER 29, 1924. DECIDED JANUARY 6, 1925.

*Johnson, C. J., Witherspoon and Bey-Solow, JJ.*

1. A writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction; or having jurisdiction the court has attempted to proceed by rule different from those which ought to be observed at all times.