J. J. MASSAQUOI, for and on behalf of his minor Children, LULU GBESSIE MASSAQUOI and CARL LAHAI MASSAQUOI, Petitioner, *v.* ISAAC A. DAVID, Assigned Circuit Judge, First Judicial Circuit, and REGINALD SHERMAN, Respondents.

CERTIORARI TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided December 16, 1938.

1. Statutes are to be construed according to the intent and spirit rather than according to the mere letter.
2. In legal proceedings of a civil nature notice ought to be given of acts or things done at the commencement of or during the progress of a trial.
3. It is proper for a judge to suspend action on a motion for a change of venue, even though by complying with the statute the moving party has an absolute right to a change, until notice had been given to the opposite party.
4. The effect of a change of venue is to remove the cause absolutely from the jurisdiction of the court awarding the change so that such court can no longer issue any orders in the cause, and any steps subsequently taken by it in the cause are of no effect.
5. A change of venue is based on objections to the jury and not to the court.
6. A change of venue cannot be awarded until the issues of law raised by the pleadings have been decided by the court or judge thereof, and it is error to grant a change of venue prior to such time.

Plaintiff-petitioner brought an action of debt against the second respondent, and respondent obtained a change of venue to the Circuit Court of the Fifth Judicial Circuit. Petitioner sought a writ of certiorari to invalidate the order for the change of venue, but the application was denied by the Justice in Chambers. On appeal to the full Court *en banc, reversed* and *application for writ granted.*

L. G. Freeman and *A. B. Ricks* for petitioner. *Anthony Barclay* for respondents.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

This cause is brought before this Court by appeal from the chambers of Mr. Justice Dossen, by J. J. Massaquoi, for and on behalf of his minor children, Lulu Gbessie Massaquoi and Carl Lahai Massaquoi, petitioners, in a matter of petition for a writ of certiorari against Reginald A. Sherman, and His Honor Isaac A. David, assigned Judge for the Circuit Court of the First Judicial Circuit, respondents. It grew out of an application filed by the said petitioners, in the Circuit Court of the First Judicial Circuit at its November term, 1936, before His Honor Isaac A. David, praying for a change of venue to the Circuit Court for the Fifth Judicial Circuit, Grand Cape Mount County, which application for change of venue was granted by the said assigned judge presiding over the November term of the Circuit Court for the First Judicial Circuit, 1936.

Petitioner being dissatisfied with the granting of the change of venue, and feeling that same was granted contrary to the statutes of this country regulating how and for what cause a change of venue from one county to another shall be allowed in a civil cause before a court of record, applied to His Honor Mr. Justice Dossen, a Justice of this Court, then presiding in chambers, by a verified petition, for a writ of certiorari, alleging *inter alia* in said application as cause for the prayer for its issuance, the following:

(a) That said change of venue was granted by said judge before written pleadings had been rested.
(b) That the said change of venue was granted contrary to the provision of the statute relating to same and the practice of the Circuit Court.
(c) That said change of venue was applied for and granted without notice to petitioners of such application or proceeding for change of venue.

Our colleague, then in chambers as aforesaid, to whom the said application for the remedial writ was made, denied same and held that the trial judge was correct in

his proceedings and therefore sustained his ruling or order granting said change of venue.

Petitioners still believing that the change of venue had been illegally granted, and that he was entitled to a review of the matter under rule of this Court allowing appeals to the full Bench from the decision of any Justice in chambers excepted to this ruling of our learned colleague in chambers, and consequently we have this matter before us, to decide whether we find it legally possible to agree with the decision given by our said colleague in chambers or not.

We are now to enter into an inquiry on the facts alleged in the change of venue from courts of record in civil causes, and the ruling of the Justice in chambers denying the writ of certiorari and determine in the light of the letter, spirit and intent of the law whether in our opinion the petitioner is or is not legally entitled to this remedial process; for statutes have to be construed according to the intent and spirit rather than according to the mere letter.

In 36 *Cyclopedia of Law and Procedure,* pages 1108–1111, we have the following in support:

> "Closely allied to the doctrine of the equitable construction of statutes, and in pursuance of the general object of enforcing the intention of the legislature, is the rule that the spirit or reason of the law will prevail over its letter. Especially is this applicable where the literal meaning is absurd, or, if given effect, would work injustice, or where the provision was inserted through inadvertence. Words may accordingly be rejected and others substituted, even though the effect is to make portions of the statute entirely inoperative. So the meaning of general terms may be restrained by the spirit or reason of the statute, and general language may be construed to admit implied exceptions. . . .
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> ". . . If the purpose and well ascertained object of a statute are inconsistent with the precise words, the

latter must yield to the controlling influence of the legislative will resulting from the whole act." (¶¶ VII, A, 2, c, d.)

We find from the documents made profert of, filed with the petition and the admissions of counsels for the parties in their arguments, that the change of venue was applied for without notice to petitioner of the hearing and disposition of the same. It is further apparent from the records, that after the assigned judge had heard the application and granted it, he then ordered notice to be given petitioner that a change of venue had been granted, removing his cause out of the Circuit Court of the First Judicial Circuit into the Circuit Court of the Fifth Judicial Circuit.

Questioning the counsels for both parties who argued the matter at this bar, we discovered that neither petitioner nor his counsel was present in court when the application for the said change of venue was offered, nor were they cited to be present; nor yet were they present or notified to be present when his honor the judge took up and disposed of the same.

Against this procedure, petitioner complains as a first reason why he should have the benefit of the writ of certiorari to inquire into the legality of the change of venue, which had been granted by the trial judge and sustained by the Justice of this Court then presiding in chambers.

It is a fundamental principle in legal proceedings of a civil nature under our statute that in fairness to the opposite party notice ought to be given of all acts or things necessary to be done, or that are done at the commencement of a suit or other civil proceedings or during its progress.

The statute providing for a change of venue provides how and for what cause a change of venue shall be granted and indicates the procedure to be followed and the formalities to be observed.

The general provisions of the statute and Rule VIII of the Circuit Court provide that not only notice of all pleadings shall be given to the opposite party; but also that a copy thereof shall be served on such other party.

The question logically posed by respondent is how the plaintiff could object to granting the change of venue unless the application was made less than ten days before the first day of the term in which the case was set down for trial or unless some other requisite of the statute was not followed, since by statute the granting of the change of venue is not, as in some countries, left entirely to the discretion of the judge.

Again, the common law suggests that it is proper that the judge should suspend action on a motion for a change of venue, even though by complying with the statute the moving party has an absolute right to such a change.

To more fully emphasize this principle we quote from 27 *Ruling Case Law,* pages 821–822, section 42, under the title "Procedure on Application" the following:

> "When a motion for a change of venue is filed, it is undoubtedly proper for the court to suspend action thereon, even though by complying with the statute the moving party has an absolute right to a change. Whether there has in fact been a compliance is a question involving legal investigation for which time is required. This suspension may continue until after the issues are closed, at least where the causes alleged for a change have no reference to the presiding judge. One reason for this is, that the parties may be apprised of the issues to be tried in the case, and not be compelled to act in the dark in preparing evidence for the trial, and thus, perhaps, burden themselves with unnecessary witnesses, to be taken to another county. Another reason is that the case may be disposed of without trial."

We are therefore of opinion that his honor the judge erred in this respect by granting the change of venue

without notice to the plaintiff until after the same had been done; as under the law above recited, immediately a change of venue has been allowed, the court allowing the same at once loses jurisdiction over the cause and can issue no order or notice in relation thereto as jurisdiction at the very moment vests in the court to which venue has been changed.

This principle of law was succinctly laid down by this Court in the case *Batam* v. *Liles,* decided at its January term, 1873, and is reported in 1 L.L.R. 64, where the Court held that:

> "This is a ruling upon the returns of the judge, D. F. Smith, setting forth his reasons for not proceeding to the trial of the case of Charles Batam *vs.* Edward Liles.
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> "The court is of the opinion that the plaintiff in the court below was rather precipitate in the entering of his case *de novo* before he had secured the judgment of the court of Maryland County, to which the case was removed. And he was in error when he assumed to have had the right to withdraw the original action, by giving such notice to the court of Grand Bassa County, after it had been removed upon a change of venue, and when really, or rather legally, there was no case of Charles Batam *vs.* Edward Liles then existing in said court of Grand Bassa County. For it is very obvious when a case has been removed upon a change of venue, the court from which the case is removed loses its jurisdiction over the same by the very act itself."

Our opinion on this score is borne out by the common law of America printed in 27 *Ruling Case Law,* pages 825–826, section 46, the relevant portion of which reads as follows:

> "The effect of a change of venue is to remove the cause absolutely from the jurisdiction of the court awarding the change. Thereafter, such court can issue no fur-

ther orders, and any steps taken by it in the case are of no effect. . . ."

The petitioner submitted further for our consideration the contention that the change of venue was granted contrary to statute.

This brings us to consider and decide, at what stage of a civil cause a change of venue may be applied for and granted.

By the authorities bearing on the point, this would seem to be controlled by the cause assigned as a reason for the change. Under our statute a change of venue may be granted only where prejudice or other adverse local causes are alleged, upon verified petition, to exist which would prevent a party from obtaining a just verdict in the county court in which the action is brought. Acts 1865–66, 46; 1 Rev. Stat., § 266.

We have been satisfied by the record and the Counsellors who argued before us here that the change of venue was granted after the pleadings had been rested, but before the issues of law raised by them had been disposed of by the court.

The Liberian statute requires that all questions of mere law shall be decided by the court, all mixed questions of law and fact shall be decided by the jury with the assistance and under the direction of the court, and that all questions of mere fact shall be decided by the jury. 1 Rev. Stat. §§ 374, 375.

It is obvious, then, that when a change of venue is applied for on grounds that, because of local prejudice, a defendant believes he will not be able to obtain a just verdict, such an allegation involves objections to the jury, not to the court in which the action is filed, and goes against the partiality or bias of the jury and not of the judge. In that case it would appear logically and legally conclusive that the object of a change of venue is for the purpose of having the facts of the case tried by a jury of another vicinity for the benefit of securing to the defend-

ant an impartial trial by that jury since he fears and believes that the jury of the locality in which the action is brought will not decide impartially his rights in the particular case; therefore, the statute provides that in such a case he shall have the benefit of a change of venue if he applies for it within ten days preceding the day set by law for the opening of the court.

By deducing from the legal premises just laid, we reasonably obtain the conclusion that a change of venue on grounds of local prejudice that will prevent a defendant from obtaining a just verdict, which is the only cause allowed by our statute for such a change of venue in civil causes before courts of record, no such change of venue can be awarded or granted until the issues of law raised by the pleadings shall have been decided by the court or judge of the court in which the cause was originally filed; and not even then until the cause shall have been ruled to trial on the facts.

At this stage, a defendant desiring a change of venue for the cause mentioned in the statute may apply for same within ten days preceding the first day of the meeting of the court after the judge of the court in which the action is filed has ruled it to trial on the facts.

We find our position in this regard upheld by 27 *Ruling Case Law,* page 825, section 45, under the title "Time and Manner of Change":

> "Ordinarily, where a change of venue is sought on the ground that a fair trial is impossible on account of local prejudice, a cause cannot be removed for trial before it is at issue, since the object of removal is to have an impartial jury, and before an issue of fact it cannot be known that the trial will be by a jury."

It was therefore, in our opinion, error for the judge to have granted the change of venue at the stage of the case at which he did.

Mr. Justice Dossen who was presiding in our chambers when the writ was applied for, and who denied same,

has, after hearing more fully the contentions of both parties, upon a further hearing of the matter on appeal from his chambers to the full Bench, agreed with our opinion, as the hearing in chambers by him was not as exhaustive as it has been here before the Court *en banc*.

Because of the foregoing, we are compelled to express the opinion that the change of venue was illegally granted or allowed. The order granting same should therefore be reversed and annulled; and the Judge of the Circuit Court for the First Judicial Circuit should be ordered to resume jurisdiction, and to proceed with the trial of the cause as though no change of venue had been awarded; and costs should be ruled against respondents; and it is hereby so ordered.

Application granted.