tain influence is erroneous and mischievous. Obviously respondents had had some such impression, and, this we are of opinion accounts for their attitude towards both Justice Witherspoon and the Bench.

Viewing the matter from every angle, the action of respondent Bassil appears to us to be contemptuous and glaringly reprehensible. But there are some extenuating circumstances surrounding the case which has influenced us not to both fine and imprison him, as we have power to do. He is therefore fined fifty dollars ($50.00), which fine he must pay within thirty days and the costs incurred in these proceedings which he must pay forthwith.

The appearance bond of Constable Hansford is ordered estreated, and execution ordered to issued thereupon, and the clerk is hereby ordered to issue forthwith another writ of arrest compelling his appearance before this court at its present session. The mandamus is hereby made absolute. And it is hereby so ordered.

C. B. Dunbar, for respondent.

E. A. L. McCAULEY, Appellant, *v.* Z. B. BROWN for his wife, Laura E. Brown, Appellee.

ARGUED NOVEMBER 26, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. This court will not dispose of cases on mere technicalities. In an action brought up on book account the plaintiff is not confined only to the books of the business to prove his case; he may resort to other legal evidence also.
2. Where a husband allows his wife to do business for another knowingly and permits same to be carried on in his house and he enjoys the fruits of same, he is estopped from setting up that the business is without his consent and contrary to law.
3. Where the demurrers raised in defendant's answer are ruled out by the trial judge, and it does not appear that the defendant denies the debt, the court should find for the plaintiff.

Mr. Justice Witherspoon delivered the opinion of the court:

Debt—Appeal from Judgment. This case is here on appeal from the Circuit Court, third judicial circuit, Sinoe County, where it was appealed from J. F. Russ, a justice of the peace for Sinoe County.

The appellee, defendant below, demurred to the complaint of

appellant, plaintiff below, setting up in said demurrers first, that the said action was insufficiently described; secondly, that a bill of particulars can not be proved except by account books; and thirdly, that he had no knowledge of his wife's doing business for, nor being indebted to, appellant, plaintiff below, in the sum sued for.

The trial judge was of the opinion that the plea was insufficiently raised in appellee's answer, and was too technical to claim the court's consideration, this court having repeatedly held in its decisions handed down from time to time that it will not dispose of causes on mere technicalities. (See *Jantzen v. Freeman,* Lib. Semi Ann. Series, No. 4, p. 17; and cases there cited.)

The judge of the court below after considering the merits of the case and the evidence produced was however of the opinion that the allegations of the appellant, plaintiff below, were not substantially proven; he therefore dismissed the action and ruled appellant, plaintiff below, to pay the costs of the action, to which judgment appellant excepted and took out this appeal.

We shall now apply ourselves to the consideration of the bill of exceptions which reads thus:

"Because appellant is of the opinion that Your Honor erred in ruling that the debt or balance due was not substantially proved in your opinion; yet, says the evidence or oral testimony, discovers some transaction. Appellant says: there was no rebutting evidence of appellee at the trial to disprove the transaction of balance of appellant's account; except appellee in person, who even did not deny the debt or transaction; but denied having knowledge. Appellant says and felt that there should have been some denial of the correctness or truthfulness of the account," etc.

This brings us to the consideration of the evidence in the case in order to ascertain whether the court is legally correct.

Mr. B. P. Johnson said on a certain day, Mr. McCauley, plaintiff, called him and handed him a bill of particulars against Z. B. Brown's wife, defendant, and said he wanted him (Johnson) to issue a writ against Mr. Brown defendant for his wife; that he took the bill, but before issuing the writ wrote the said Mr. Brown to acquaint him of the fact. That evening Mrs. Brown came and said that she saw his note, but her husband was not at home and

as the note referred to some transaction of debt between herself and Mr. McCauley, plaintiff, she asked him to go and beg the said Mr. McCauley to wait on her a little longer. He promised to do so, but said it would be good if she would see him also. Several weeks afterwards the said Mr. McCauley told him he had not gotten his money from Mrs. Brown and the time would soon run out; so he must proceed against him at once so as to prevent him from pleading the statute of limitations. He returned home and wrote Mr. Brown again; Brown then sent word to him saying: he doesn't know book, and his wife was about to leave for Monrovia. He therefore issued the writ and it was served; but the case was removed on change of venue from before him.

Witness J. R. Crayton said he knew nothing except by the admission of the defendant; that the defendant said notwithstanding the entire action the proper respect had not been given him before the suit went to issue; that Mrs. Brown said she would have settled up with Mr. McCauley, plaintiff, had not her husband prevented her by running her from place to place, thereby causing her to lose what she really did have; furthermore the defendant has knowingly taken into his possession some of the articles received by his wife from the plaintiff. On being cross-examined he said he saw Mr. Brown take from the house where his wife was living kerosene and other articles packed in bundles and boxes. Witness McCauley in his statement did not claim that he did a regular bookkeeping business, but that he did an ordinary business, debiting and crediting Mrs. Brown with such small articles from time to time as she would ask for.

This court does not feel warranted in establishing the principle that where a person is kind enough to allow another a credit of a few articles and a note is made of same, and in case an action is brought thereon, such transaction should bear all of the characteristics of a book account. This, in our opinion, would operate with great hardship to both creditor and debtor in business relations. We are rather of the opinion that in an action on book account the plaintiff is not confined to prove by book account only, but may prove his action by other legal evidence also. (Lib. Stat., ch. X, secs. 13 and 14.)

Where the husband knowingly allows his wife to do business for another, and permits said business to be carried on in his

house, and enjoys the fruits of it, he is estopped from setting up that the business is without his consent and contrary to the law.

The appellee, defendant below, not having denied the debt and the court below finding the defendant's demurrers defective or groundless should have found for the plaintiff now defendant (Bouv. L. D., Demurrer; Lib. Stat., ch. V, sec. 3.)

Carefully considering the evidence we hold that the case was proven in the court below. The judgment of the court below should therefore be reversed and made null and void, with costs for appellant; and it is hereby so ordered.

Arthur Barclay, for appellant.

C. B. Dunbar, for appellee.

ALFRED K. SODJIE, Plaintiff in Error, *v.* HERMAN D. TARTIMEH, Defendant in Error.

ARGUED NOVEMBER 4, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. Where the service of a writ is made on a day after that mentioned in the writ for it to be served, said service will not affect the jurisdiction of the court, provided the service is made within the statutory time.
2. A plaintiff is not debarred from filing his action during one term for an ensuing term of the court when the action, so desired to be filed. will not give defendant fifteen days' notice before the first day of the meeting of the court to which defendant may be required to appear.
3. Generally the court must try the issues of law before trying the facts; but if it depart from this general rule, and the party affected thereby neglects to call the court's attention thereto at the proper time during the trial, he will be presumed to have waived the law points in his pleadings, and such error will not be reviewed by the appellate court upon a writ of error.
4. When a motion is not entitled in any particular division of the court, or where it does not conform to the practice of the court, it should be dismissed.

Mr. Justice Witherspoon delivered the opinion of the court:

Detinue—Writ of Error. This case was tried in the Circuit Court of the second judicial circuit, Grand Bassa County, at its August term, A. D. 1915, and the plaintiff in error not being satisfied with the rulings, decision and other proceedings in the case petitioned this court for a writ of error upon which this case is here for review.