

J. B. WATSON, JR., Appellant, v. FODAY KROMAH, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued April 26, 1934. Decided May 4, 1934.

1. The defendant may present as an offset a counterclaim against the plaintiff, and when this is done in the court of a justice of the peace, the justice shall thereupon enter the substance of defendant's answer on the writ and shall write his judgment thereunder.
2. The notice which is required to be given to the party against whom an issue is being raised is not applicable to the court of a justice of the peace, but only to proceedings in courts of record.
3. The defendant's plea before a justice of the peace may be made orally in open court and no further notice is necessary.

The appellee, plaintiff below, brought an action of debt against the appellant, defendant below, in the court of a justice of the peace. Judgment was rendered against the defendant, who took an appeal to the Circuit Court of the Fifth Judicial Circuit, which affirmed the judgment of the justice of the peace. On appeal to this Court, *judgment reversed and case remanded.*

*C. H. Taylor* for appellant. *T. G. Collins* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This cause originates in the court of a justice of the peace in the county of Grand Cape Mount.

The record in the case discloses the following facts, to wit:

That on the 9th day of June, 1933, one Foday Kromah filed a complaint in debt in the sum of \$49.40 against one J. B. Watson, Jr., defendant, before J. S. B. Taylor, a justice of the peace. J. B. Watson, Jr., defendant, on being summoned, changed venue from Justice Taylor to

Justice I. C. Givens. Plaintiff's claim was based on a legally executed note of hand. It further appears from the record that upon the calling of the case for hearing, J. B. Watson, Jr., defendant, filed a statement of claims in the form of orders issued on him, defendant, by the said plaintiff in the sum of \$49.44 which he contended was due him by plaintiff, intending same as a set-off or counter-claim to plaintiff's complaint.

Inasmuch as defendant was not satisfied with the judgment of the justice of the peace he appealed to the Circuit Court of the Fifth Judicial Circuit, His Honor I. A. David, resident Judge presiding; and it is from the decision of the latter that the case has been appealed to the Supreme Court.

There are five counts contained in the bill of exceptions, to only two of which we will proceed to give our attention, the other three being only corollary to the first two.

Appellant contends in count one of his bill of exceptions that it was error on the part of the Circuit Judge after having denied a motion of appellee's to dismiss the appeal and ordered the case to trial upon its merits, subsequently, without going into the merits of the case, to dismiss the action with the costs of the justice of the peace against appellant, and disallowing the costs of the Circuit Court.

This Court will remark that on the careful inspection of the record it fails to discover the existence of the issue of law upon which the Judge of the Circuit Court dismissed the appeal after he had overruled the motion to that effect. The case having been taken up *de novo* by the Circuit Court, and the motion to dismiss the appeal having been denied, it was error on the part of the trial court to affirm the judgment of the Justice Court without requiring evidence to support said judgment.

In count two of the bill of exceptions it is contended by appellant that the court below refused to admit his bill

of particulars offered at the trial in support of the counterclaim he pleaded against the right of plaintiff to recover against him on the grounds of want of notice for the production of same.

Section 636, subsection 3, of the Revised Statutes of Liberia provides that the defendant may present as an offset, a counterclaim against plaintiff, and when this is done the justice shall thereupon enter the substance of defendant's answer on the writ and shall write his judgment thereunder.

The notice which is required to be given to the party against whom an issue is being raised, or of the filing of a pleading, is not applicable to the court of a justice of the peace, but to proceedings in courts of record. The defendant's plea before a justice of the peace may be made orally in open court, and when thus made it is the duty of the justice of the peace to record same on the back of the writ; no further notice is required. The court below did err in thus ignoring the contention of the defendant in this respect.

The defendant is generally permitted in actions of contract to set up a counter demand, if liquidated, as an offset, to defeat plaintiff's recovery in whole or in part. At common law the defendant could not pray anything in his pleadings but to be dismissed from court; if he had any claim against plaintiff, he must set it up in another suit of his own. But, by statute, as will be found in the Revised Statutes, section 636, the defendant is allowed in actions upon debt to set up a liquidated demand of his own to counterbalance that of the plaintiff, either in whole or in part. Shipman, *Common Law Pleading* (2d ed., 1895), 296, §§ 209, 210; *Cavalla River Company v. Pepple*, 4 L.L.R. 39 (1934).

The court below erred in overruling the counterclaim of defendant, and in affirming the judgment of the justice of the peace without giving the defendant the opportunity of producing evidence to prove his counterclaim.

This Court is therefore of the opinion that the cause was not legally disposed of and should be remanded to the Circuit Court of the Fifth Judicial Circuit for the hearing of the evidence of defendant's counterclaim, and all other relevant evidence; and it is so ordered.

*Reversed.*