

WILLIAM N. WITHERSPOON, Petitioner, v.
MARY WITHERSPOON, Respondent.

CERTIORARI TO THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,
SINOE COUNTY.

Decided February 17, 1932.

1. In a case of malicious mischief there is no necessity for an independent civil action since the punishment therefor covers the ground.
2. A motion to dismiss for want of jurisdiction of the subject matter may be raised for the first time in the appellate court whether or not the attention of the court below was called thereto.

After trial in an action for damages for malicious mischief in the Circuit Court, this Court granted certiorari. Case *dismissed* for lack of jurisdiction in the Circuit Court.

A. B. Ricks and *William N. Witherspoon* for petitioner. *N. H. Sie Brownell* for respondent.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case comes up to this Judicature by a writ of certiorari to the Circuit Court of the Third Judicial Circuit, Sinoe County; trial took place at its November term 1930, and is here for review. This Court preferred going into the merits of the case but as the respondent submitted a motion to dismiss the appeal on the ground that there is no civil action known in the jurisprudence of this jurisdiction as damages for malicious mischief against the respondent, its attention is thereto called. In *Old Blue Book* 22, Legal Principles and Rules, an injury is defined as an unlawful damage done to another and is declared the proper subject of an action. The object of actions for injuries is redress to the injured party. Every act which is prejudicial to the interest of another is an

injury unless it be warranted by some law. The Legislature, being mindful to protect the interest of the injured parties, did at its Annual Session 1914 enact a *Criminal Code* in which an adequate criminal remedy is provided; it is more definitely understood in the following quotation as found in section 74, page 17:

Malicious Mischief defined: "Any person who shall wrongfully, unlawfully and maliciously destroy, deface or in any manner whatsoever injure any house, outhouse, farm or farm building, plantation, church, chapel, or the appurtenances of any such buildings or in any manner or by any means whatever, shall injure or destroy or deface any public or private buildings or the contents, furnishings, or decorations thereof or any public or private monuments, telegraphs and telephone wires and poles or growing trees, whether such trees be ornamental or staple and vegetables; or shall destroy, injure, take and carry away without intent to convert said property to the taker's own use, or shall in any manner whatsoever destroy or deface any personal property or otherwise injure the livestock or domestic animals of another, on the pretext that such livestock or domestic animals were committing damages to growing crops or trespassing upon the lands or premises of the person so killing, cutting or maiming them without giving personal notice of such damage or trespass to the owner of the animal or livestock; or who shall maliciously pull down wall or fences belonging to another or running between his lands or that of another; or injure any work of art or article in the course of manufacture; or any wire, bridge, ship or any personal property not herein enumerated shall be guilty of a misdemeanour. Malicious mischief shall be punished by amercement in punitive damages to the value of the property injured, which shall be remitted to the person injured and in addition the offender shall be fined in a sum not exceeding two hun-

dred dollars. Where the value of the property injured is less than fifty dollars this crime shall be tried by a Justice of the Peace."

The Act of 1924-25, Chapter XVI, increased the jurisdiction of the justice of the peace to the sum of one hundred dollars.

The mode of procedure as outlined in the aforementioned section of the *Code* is so plainly set forth that a layman, though blind to the intricacy of law, should not set up the plea of ignorance. Petitioner in the course of argument endeavored to raise a plea of justification contending that at the time the county was without a legal representative but this is misleading as he, the petitioner, was the prosecuting attorney; and, suppose there was no prosecuting attorney, the *Justice of the Peace Code* has provided a remedy, page 16, section 37, which reads as follows:

"Whenever complaint shall be made to any Justice of the Peace that a criminal offence has been committed, the Justice shall issue a proper warrant for the arrest of the person accused of having committed the offence."

This Court is further of the opinion that, the subject matter being within the jurisdiction of the justice, it was within his competency to adjudicate the same with or without a Prosecuting Attorney, using the *Code* as his guide.

2 Wharton, *Criminal Procedure*, § 1383, says:

"According to a prevalent view in England, a person who, when injured by a felony committed by another, fails to prosecute such other person, cannot proceed in a civil suit to recover damages for his injury. The policy of the law requires that, before the party injured by any felonious act can seek civil redress for it, the matter should be heard and disposed of before the proper criminal tribunal, in order that the justice

of the country may be first satisfied in respect of the public offense.' ”

The *Criminal Code*, to prevent an independent civil procedure, has provided an award of punitive damages for the injured party and a fine not exceeding two hundred dollars for the state, but notwithstanding that, the injured party to this suit desired redress for a purported injury done in the sum of forty-eight dollars. This was not legally correct, and he should not have travelled independent of the scope and form provided by the sovereign. The Court considers this breach of legal privilege an infringement upon the statute so made and provided.

Although parties litigant may group together to do a lawful thing in an unlawful manner to which the attention of the lower court was not called, yet this will serve as no legal bar to the appellate court taking judicial notice of a motion to dismiss for want of jurisdiction over the subject matter of parties litigant and thereby grant the required relief and uphold the majesty of the law and liberty of the people.

In respect to the motion this Court says, that after careful examination it is of the opinion that until the Legislature of Liberia by statute repeals the 74th section of the *Criminal Code*, which is self-explanatory, the Court fails to see that parties are entitled to any other legal process than that provided for in the said section.

Therefore, this Court adjudges that this case for want of jurisdiction is hereby dismissed, and the petitioner ruled to pay all costs and it is so ordered.

Case dismissed.