

JOHN T. PRATT, et al., Informants, v. BOYMAH  
KROMA, et al., Respondents.

MOTION TO DISMISS BILL OF INFORMATION.

Argued March 28, 1977. Decided April 29, 1977.

1. An information is an application for relief in the nature of a special proceeding which must be commenced by issuance of a citation and service thereof on a respondent to bring him within the jurisdiction of the court.
2. A court cannot exercise jurisdiction over a person by a service on him of a notice of assignment in the absence of service of a summons, citation, order, or other appropriate process duly served.

This was a bill of information filed in the Supreme Court which respondents moved to dismiss for the reason that they were not within the jurisdiction of the Court because no writ or order had been issued by the Court summoning them to appear and file their returns. The Court found that in fact no citation had been issued and served on respondents and that service of a notice of assignment on them was insufficient to bring them within the jurisdiction of the Court. The *motion* to dismiss was accordingly *granted*.

*J. F. Chesson* for informants. *M. Fahnbulleh Jones* for respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

When this case was called for hearing respondents' counsel moved this Court to dismiss the above entitled proceedings on the grounds:

1. That they have filed a verified return to the information filed by informants and request the Court to take judicial notice of its records.

2. That their persons have not been legally placed under the jurisdiction of this Honorable Court for the reason that there is no writ or order of court summoning or commanding them to appear on a certain day and time to answer the information and commanding them to file their returns on a certain day. Respondents say that in this jurisdiction defendant, adverse parties, and all party litigants are placed under the jurisdiction of any court including the Supreme Court by means of a writ or order of court. In the instant case no writ or order of court was issued, served on them, and returned by the ministerial officer of this Court in order thereby to place them under the jurisdiction of this Court. Respondents request the Court to take judicial notice of its records.

3. That in keeping with statutes, rules of court, and the practice within this jurisdiction in order to obtain a writ or order of this Court, the party applying shall first of all file with the Clerk of Court a petition or application, then the Clerk of this Court issues written directions to be signed by the Justice in chambers or any other Justice authorized by law to so sign. The said Justice shall indicate in the written directions the day and the time on which the adverse party should appear and the day and time on which he should file his responsive documents. In the instant case there were not written directions issued and served on them to appear for the hearing of a cause before this Honorable Court which does not have jurisdiction over them.

To this motion a seven-count resistance was filed by informants' counsel maintaining the position they had earlier taken in their bill of information.

Under our Civil Procedure Law, Rev. Code, Title 1:

“§ 16.3. A special proceeding is commenced by filing a petition with the clerk and issuance of a citation.

§ 16.4. *I. Contents of citation.* A citation shall specify the time and place of the hearing on the petition, shall specify the supporting affidavits, if any, ac-

companying the petition, and shall direct that the respondent shall appear and file a return.

"2. *Service of citation.* A citation shall be served in the same manner as a summons in an action. The petition and affidavits specified in the citation shall be served therewith on any adverse party at any time specified by the judge before the time at which the petition is noticed to be heard.

"3. *Order to show cause.* The court may grant an order to show cause to be served, in lieu of a citation, at a time and in a manner specified in the order. The petition and supporting affidavits shall be served with the order to show cause."

The information filed by the informants is an application for relief in the nature of a special proceeding. This being so, jurisdiction by the court over the respondents must be by citation issued and served in accordance with the statutory provisions hereinabove quoted. No citation was issued and served as prescribed by the statute; instead, only a notice of assignment was directed to the respondents. It is an elementary principle of law that a court acquires jurisdiction over a party by the issuance and proper service of a writ of summons or other process. With respect to special proceedings such as this case, a citation is provided by statute as the writ or process by which the court acquires jurisdiction. A citation is defined as follows:

"Citation. A writ issued out of a court of competent jurisdiction, commanding a person therein named to appear on a day named and do something therein mentioned, or show cause why he should not. An order or summons by which a defendant is directed or notified to appear. The act by which a person is so summoned or cited." BLACK'S LAW DICTIONARY (4th ed., 1968).

Since the court does not acquire jurisdiction over a party by a notice of assignment, but by a summons, cita-

tion, order, or other appropriate process duly served, the court cannot exercise jurisdiction merely by service of a notice of assignment as was done in this case.

While this Court has held that appearance and plea to the merits amount to submission by a party to the jurisdiction of the court, this would only hold true if the proper writ or process by which the court can legally acquire jurisdiction is, in the first instance, issued, and there is a defect in the service.

From the foregoing, it is clear that this Court acquired no jurisdiction over the respondents when no citation was issued and served on them.

It is an established principle of law that a court cannot render a valid judgment against a party over whom it has no jurisdiction. This Court, not having legally acquired any jurisdiction over the respondents for reasons stated above, cannot render a valid judgment against them. *Schilling & Co. v. Tirait*, 16 LLR 164 (1965).

For the reasons herein stated, the respondents' motion to dismiss is hereby granted and the bill of information dismissed. Informants ruled to pay the costs of these proceedings. And it is hereby so ordered.

*Motion to dismiss information granted.*