

LEWIS SOLOMON, trading under the style and firm name of Lionel Hart & Company of Liverpool, England, Appellant, vs. **H. P. SHERMAN**, surviving partner of the late H. B. Sherman & Bro., Appellee.

LRSC 10; 1 LLR 317

[January Term, A. D. 1897.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Debt.

Reply—Answer.

Where a reply is struck from the pleadings the facts laid in the declaration may nevertheless be submitted to the jury.

A failure to file an answer to the declaration places the defendant upon a denial of the facts only.

This case was decided at the August term of the Court of Common Pleas and Quarter Sessions, Sinoe County, A. D. 1896, and the appellant being dissatisfied with the judgment and other rulings of the judge of said court now bring said case before this court upon a bill of exceptions for review. After carefully examining the entire record in the case as sent up to this court for its review and consideration, we unhesitatingly agree that the judge below erred in dismissing the case after ruling out the appellant's reply. The case should have been submitted to a jury to try the facts presented in the complaint and answer if no other law points had been raised.

This court does not find it necessary to enter into the reasons assigned by the judge of the court below for not sustaining the motion offered by appellant against the answer of the appellee, because the Statute Laws of Liberia, Book 1, page 45 and section 6, reads: "If no answer is filed as is provided in the last section, the defendant shall be understood to deny the truth of the facts, and to rest on that defense only." But this court failed to find in the statute any law authorizing the judge of any court to dismiss an entire case in the manner assumed by the honorable judge of the court below.

The appellant desires this court to render such judgment in this case as the court below ought to have rendered, and cites as our authority for so doing the law found in Liberia Statutes, Book I, page 78, section ii; but this court does not understand the passage of law as cited by appellant to apply in a case like unto the one before us for adjudication. Cases

may arise in which this court could act as is stated in the law above cited, but this court says that this is not one of such cases.

This case is therefore remanded back to the court from whence the appeal was taken, requiring the judge of said court to try the case de novo and according to law; because this court would be assuming too much to render judgment upon any case before the court and jury below had performed their legal duty. The case is therefore remanded, and the clerk of this court is required to inform the court below accordingly; costs to follow after final judgment.

Key Description: Appeal and Error (Dismissal by court on its own motion; Reply briefs)