H. A. WILLIAMS, Appellant, vs. **M. J. JOHNSON** and **LAURA ALLEN**, Appellees.

LRSC 3; 1 LLR 247

[January Term, A. D. 1893.]

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

Ejectment.

1. The withdrawal of a suit after a jury has been empanelled and sworn, amounts in law to a retraxit, and where the suit is renewed it should be plead in the answer as a bar to the second action, but where the answer fails to raise the plea it will be taken as a waiver.

2. A bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and possible of enforcement, though wanting in other formalities, is nevertheless legal.

This case was tried in the Court of Quarter Sessions and Common Pleas, Grand Bassa County, at its June term, A. D. 1892, and it was brought up to this court on appeal. The court feels it its duty to remark that the use and object of motions in legal practice is to prevent what would work injustice to either one of the contending parties in a suit; therefore, courts of justice ought to observe great caution in receiving them, and when this does not appear to be the object sought after, then the necessity ceases to have any claim to the consideration of the court.

The motion in consideration does not in its first point show where a material injury would result to the appellees if the proceedings in the case should be allowed to continue; while there has been a slight irregularity discovered in the record sent up, this court must say that the injustice such irregularities could work against the appellees, if the merits of the case should be brought under review, is not obvious.

In regard to the appellant (plaintiff below) withdrawing his case after the jury had been empanelled and sworn to try the issue, this act amounted to a retraxit and ought to have been raised in the defendant's answer in bar to any other action brought by the plaintiff, for the same cause, against the appellees (defendants below); this not having been done, the neglect to do so amounts to a waiver, and therefore the plea of retraxit cannot be urged. And secondly, with respect to the bond, the court is of the opinion that the object of the same is to indemnify the appellee from any injury that may arise from the appeal should he, the appellant, fail to prosecute his appeal to effect. We are further of the opinion that the construction of the bond, although a little informal in the first instance, in that it does not state that "we, H. A. Williams of Monrovia in the County of Montserrado, as appellant,

and J. A. Gray and J. A. Howard of the County of Grand Bassa as bail, all of the Republic of Liberia," yet the bond in other respects is sufficiently descriptive in its construction and its legal bearing and purport, and before any court of law or equity it will have its binding effect.

Again, as to the motion for a new trial, the affidavit attached to the same is without importance, as its connection with the motion is not supported by any good reason; for, says a law maxim, "reason is the soul of the law," therefore the absence of reason leaves a dead law. We now refer to what has been stated in the first point of the bill of exceptions, and would say that anything that is not calculated to work injustice to the appellees or materially affect their case, is not a matter to be raised in a motion; for the court will not lend its aid to mere technicalities or frivolous objections, nor is it our duty to do so. We have only to decide law questions which have been brought to the notice of the court below, either to correct them or confirm them, and such other questions of law that may arise during the progress of the appeal, the nature of which we have illustrated in the case of Attia against Payne.

It is very clear that the bill of exceptions is addressed to the judge of the particular court, with the names of the contending parties spread thereon. We admit that it was not signed by the appellant or his counsel, but it is clearly identified by the judge's signature as to what party the bill of exception is granted; therefore, we cannot see what injury or inconvenience or injustice is done to the appellee in consequence of the non-signing of the bill of exceptions. Some irregularities in the proceedings of the case are apparent, but are not of such material importance as to disturb or obstruct the legal course to justice. Therefore, the motion is not sustained.

In keeping with this opinion we do hereby announce to the parties in litigation, that as it does not appear upon the records of the case, on account of the mixture of questions of law and fact, for which party the judgment ought to be given, the case is therefore remanded to the court in which it was originally tried, to be tried over again.

Key Description: Actions (Abandonment)