

**A. D. WILLIAMS**, surviving partner of the firm of A. D. Williams & Bro.,  
Appellant, vs. **R. LEWIS & CO.**, Appellees.

**LRSC 3; 1 LLR 229**

[January Term, A. D. 1890.]

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

Bond—Subsequent pleadings of a defendant after

Answer—Counter-claims or set-offs—Account.

1. Where a bond varies from the general principles of law relating thereto, it will produce an irregularity in the proceedings although filed by an attorney on behalf of his client.
2. The subsequent pleadings by a defendant after the answer, are governed by the same rules as those which, by statute, the answer is subject to.
3. An account presented as a set-off in debt is evidence of a counterclaim, though not conclusive.
4. Where a jury allows one outside of its panel to assist in making up its verdict, it is an irregularity which is good ground for a new trial, and where a new trial is refused, and judgment is rendered on such verdict, it will be ground for reversal of said judgment.

This case upon the transcript of record as sent up from the Court of Common Pleas and Quarter Sessions for Montserrado County, presents many complications and irregularities in the court below which have had our most careful consideration, and now we have arrived at a conclusion founded upon the principles of law and justice.

First. As to appellant's first exception we are of opinion that when an attorney for his client executes a bond under the rule of court, and the bond so executed varies from the general

principles of law, the court will not give it support, but rather regard it as an irregularity in the proceedings.

Second. In respect to the second exception, we are of opinion that every pleading to the plaintiff (after the first) is in the nature of an answer within the meaning of the statute, and is subject to the rules governing the same. The court below did not err in striking defendants' rejoinder off the file. (See Liberia Statutes, Book 1, Chap. 5 and 6.)

Third. We are of opinion that in actions of this nature, where litigants disagree as to counter claims or set-offs, the matter ought to be referred to arbitration, agreeable to the 12th section of the 15th chapter of the First Book of Liberia Statutes; and as the admissibility of the evidence belongs to the court and the credibility to the jury, the court below should have either rejected defendants' account entirely or admitted it altogether. (See Liberia Statute, Book 1, Chap. 10, sec. 18.) An account presented in a court of justice as a set-off is evidence of a claim against the alleged debt, but is not conclusive until a verdict and judgment have been rendered thereon; therefore, the account of the defendants in this case below should have been taken altogether and submitted to the jury, and not in part.

Fourth. As to the fourth, fifth and sixth exceptions, we are of opinion that the account filed by the plaintiffs is not such an one as the statute requires; but as it is the only one defendants gave plaintiffs, we must regard it as being the best evidence the case admits. In respect to the witness McGill we are of opinion that the court below did not err in not admitting him, for a Custom House receipt or a copy from the Custom House books under seal would have been better evidence.

Fifth. Appellant in his eighth exception below says he motioned the court for a new trial on the following grounds: 1, Because the verdict of the jury is contrary to law in this, that after the petit jury had retired for deliberation they admitted to their room one D. E. Howard, who assisted them to make their calculations, which resulted against the defendant below. 2, Because the lower court was informed of the fact of the conduct of

the jury, and the court for its better information placed D. E. Howard on oath, who testified in open court that he went into the jury's room; whether he was called or went himself he could not say, but that on coming to court in the morning the jury handed in their verdict, he found that some of the jurors were not satisfied, that the calculations in the verdict already made up by their clerk were correct, and that he took a separate piece of paper and added up the figures of their clerk, and said to their clerk, "It is right."

This fact is a most fatal feature to the verdict, and yet we do not dwell here to establish so great a wrong. See Liberia Statute, first book, 9th chapter, 10th section, and see how positive the rule of law is on this point. The law abhors any interference with a jury after they have retired for deliberation. The act of D. E. Howard entering the petit jury's room, and calculating for them, does not at first glance present a favorable phase. Both Howard and the jury violated the law most flagrantly. Howard entering the jury room and not knowing whether he was called there or went there himself, and conversed with one of the jury on the subject which they had under their deliberation, and concerning which some of them were dissatisfied, is a grave matter. How much was said or done during the interview Howard had with the jury is still a mystery, for neither Howard nor the jury could legally give evidence to excuse or justify themselves. The violation of such a positive law of the land, which so strictly enjoined them to keep themselves together and converse with no one before they have rendered a verdict, should have had the careful and strictest attention of the court below; such violations left unnoticed may lead to the most direful infringements on the rights and liberties of litigants.

Sixth. Lastly, we say the refusal of a new trial in the court below was an error; for it is an admitted fact that a verdict of a questionable character will cause irregularities in the proceedings, but a suspicious one needs legal help itself. Therefore, considering the cause set forth in the defendants' motion below for a new trial, we are of opinion that the court ought to have granted it.

Therefore, it is adjudged by this court that the judgment of the lower court is reversed, and this case is hereby remanded to the Court of Pleas and Quarter Sessions, Montserrado County, for a new trial. The clerk of this court is commanded to send a mandate to the said lower court to the effect of this judgment.