

**WALTER BROWN, Agent for A. Wœrmann, Plaintiff in Error, vs. F. J. GRANT,
Defendant in Error.**

LRSC 2; 1 LLR 87 (1876)

[January A. D. 1876.]

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

1. A jury may deliver its verdict viva voce in open court, but it is error in a court to order its clerk to write out the verdict of the jury. If a verdict be illegal, the judgment founded thereupon will be illegal also. After a verdict has been entered upon the record, an authentic copy thereof will be admissible as evidence of its existence.

2. It is error in a court to refuse to reduce to writing its ruling on any point made in a trial.

3. A party may waive his right to move for a new trial without losing his right to move in arrest of judgment.

This court, having examined the errors assigned, will now proceed to give its opinion on the several points submitted, as they come up in order. The first error assigned is thus stated: "Because there is no legal verdict of the jury in the case according to law and the custom of the court." Upon this point this court says the court below is correct in ruling that the jury could come into court and give its verdict viva voce, and this ruling was the evidence to the jury of the law of the land; but the court below erred in ordering, contrary to its own ruling, the clerk to write out the verdict of the jury, and to cause the foreman to cross-mark the same, the clerk attaching his name thereto as a witness, notwithstanding the clerk was not a member of that body.

The second error assigned is thus set forth: "Because judgment ought not to have been rendered without a legal verdict." In respect to this point this court says the verdict having been returned contrary to the ruling of the court below, judgment ought not to have been rendered thereupon; because the judgment of the court is the sentence of the law and therefore it could not be justly founded upon an illegal verdict. Hence it is an error in the court below rendering the said judgment.

The third error assigned is stated thus: "Because the clerk of the court could not be made a witness to the jury's verdict." Upon this point this court says the verdict must be the evidence of its own existence until it is entered on the records of the court; after which a copy may be used in proof of the existence of such a verdict, the copy having thereto attached the seal of the court and the official signature of the clerk. In no other way can a clerk be made a witness to the jury's verdict; but to ascertain whether the jury have unanimously agreed upon their verdict, the opinion of each jurymen may be demanded by any party to the action. Thus it is obvious that the law contemplates no other evidence, in confirmation or contradiction of the verdict of a jury, but that expressed by the jury themselves. Therefore this court says the court below having allowed the clerk to sign the verdict of the jury, as a witness thereto, erred in so doing.

The fourth error assigned is set forth thus: "Because Your Honor refused to hear a motion in arrest of judgment presented by the defendant's attorney, and also refused to reduce your opinion to writing, according to law." To this point this court says the court below ought to have given the motion of the plaintiff in error (defendant below) a hearing, whether the motion was entertained or not; and this should have been done, upon the principle that we should hear before we condemn. And further the court below ought to have ordered the motion to be entered upon the records of the court together with the opinion or reason of the court for not entertaining the same.

The refusal of the court to reduce its opinion to writing is a denial of a legal right, and an obstruction against the regular mode of obtaining an appeal. And for these reasons this court says the court below erred in refusing to hear the motion in arrest of judgment, and also in refusing to reduce its opinion to writing. A party waiving his right to a new trial does not bar himself of a right to an arrest of judgment; because it is a well-settled principle that a waiver of one legal right does not debar one from resorting to another.

Therefore, this court adjudges that the judgment rendered in the case above mentioned, in the Court of Quarter Sessions, Sinoe County, against the said Walter Brown, agent for A. Wœrmann, of Hamburg, plaintiff in error, in said action of damages for the violation of a written contract is hereby reversed, set aside and made void and of no legal effect whatever; and that the said plaintiff in error recover from the said F. J. Grant, defendant in error, his costs in this action.

Key Description: Appeal and Error (Record, Opinion of lower court; Reversal, Technical, formal, or trivial defects or errors, Verdict, findings and conclusions)