

**AUGUSTUS WASHINGTON, Appellant, vs. MARIA A. LLOYD, Appellee.**

**LRSC 3; 1 LLR 83 (1875)**

[January Term, A. D. 1875.]

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

Ejectment.

1. A witness called to prove the signature of a written document may be questioned upon its whole contents; a variance between the handwriting of a document and its signature will not vitiate it in the absence of proof of fraud:

2. A court may order the correction of mere clerical mistakes in its proceedings at any time before the adjournment of the term at which they were made.

Having inspected the record in the case and carefully considered the exceptions taken by the appellant to the ruling of the court below, we have been led to such con-

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clusion as we believe best accords with the principles of law and equity. Before disposing of the case, however, it is proper to pass upon the points submitted as the grounds upon which the appeal is taken. We shall therefore consider the exceptions to the rulings of the court in their order.

First. Because, when appellant asked witness D. B. Warner, "Has Maria A. Lloyd ever entered a suit for this property?" appellee objected to the same, and the court ruled out the question. The court is right in its ruling upon this point, because it was irrelevant to the issue, and secondly it seems to have been put to draw out a negative answer to the question which could not have been made available only upon a plea of law, and which the appellant could not offer in his defence, he having deprived himself of the privilege of so doing.

Second. Because when appellant asked witness H. R. W. Johnson whether the words "Johnson, Turpin and Dunbar" in this deed offered in evidence by appellee are in the handwriting of Charles R. Johnson, the court ruled that the witness was called to prove the signature and should not be questioned as to the handwriting. Upon this point the court below erred in its ruling, because written evidence when it is introduced must be taken altogether. Therefore when testimony is required of a witness to prove the signature to a deed, the witness may be also required to testify to whatever else he may know about it. However, it is not to be understood that because the handwriting in a deed is different, its validity is thereby destroyed, unless fraud is proved to be the cause of the same. And just here it is proper to say in relation to the exception taken to the court ordering the clerk to alter the records of the previous day's doings, so as to make them show that the witness was called to prove the signature, that the court had a right to amend the record, if it was really true that an incorrect statement was made therein, at any time before the final adjournment of its term of sitting.

Third. Because when the appellant's attorney was about to read different passages of law to the jury, the court below, on objection made by appellee, ruled that appellant could not argue on the

law of the case; because appellant had not put in any answer, therefore his attorney could argue on the facts only. And this law applies to and controls the pleadings in such cases. It is the right, however, of a defendant in an action, who has filed no answer, to have the facts in the case tried according to the rules of law, and he has a right to cite such passages of law to the court as would correct the violation of any rule of law that may happen during the trial of the case.

This brings under consideration the last exception taken by the appellant, the motion to set aside the verdict of the jury and to grant a new trial upon the ground that the verdict is against the law and the evidence; and because the court below ruled that the verdict is not contrary to the law and the evidence, and therefore refused to grant a new trial. Upon this point we say the ruling of the court below involves a mixture of questions of law and fact, on account of which it does not appear to this court for which party judgment ought to be given.

The case is therefore remanded by this court to be tried over again in the Court of Quarter Sessions, Montserrado County, where it was originally tried; and all costs incurred in this court from the appeal are continued.

**Key Description: Appeal and Error (Statutory provisions and remedies)**