HOUSTON BROTHERS & COMPANY, Appellants, vs. **E. A. CLINE OGOO**, Appellee.

[January Term, A. D. 1904.]

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

Damages.

The above entitled action is a cause that was entered in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its December term, 19o2, sitting in law, and purports to have been tried and determined by said court. In the court below E. A. Cline Ogoo was plaintiff and Houston Brothers & Company were defendants. Verdict was rendered by the jury in favor of plaintiff, whereupon the judge gave judgment for one thousand dollars as damages, and costs; and upon its refusal to grant the defendants a new trial as asked for in a motion, they, the defendants, took exceptions to the judgment of the court and brought the case to this resort of legal judicature for a review of the cause, that substantial justice might be secured.

The following, as far as the court can understand from the record of the case, is a synopsis of the history of the case: On the 16th day of July, A. D. 1900, the appellants entered into contract with the appellee to the effect that the former agreed to employ the latter in the capacity of book-keeper for their firm on the conditions that appellee would receive for his service the sum of four hundred and eighty dollars annually, to be paid to him by appellants in equal monthly payments of forty dollars in sterling money of Great Britain; that the appellee would be allowed by the appellants the sum of ten dollars per month in advance, over and above the stated salary of forty dollars, for and on account of his board and lodging; that he, the appellee, would properly and efficiently keep the accounts of the firm of the said appellants, and have all accounts posted monthly, and quarterly balance sheets prepared ; that the appellee would hold himself subject to the orders and instructions (consistent with his work) of appellants; that appellee would attend office at the business place of appellants from the hours of 7 to 11 a. m., and from 12.3o to 5 p. m.

daily, Sundays excepted, unless prevented from so doing by sickness, and in the case of sickness, appellee would notify appellants. On violation of the contract by either party, the violator would pay to the other party as fixed damages the sum of one thousand dollars in gold or silver coin.

The record shows that appellee entered an action against appellants for the recovery of one thousand dollars fixed damages, for the violation of the contract on the part of appellants, the first contracting party. As we have previously shown, the jury brought in a verdict that plaintiff, now appellee, was entitled to recover damages, whereupon the judge rendered his judgment awarding the plaintiff, now appellee, the sum of one thousand dollars in gold or silver coin as fixed damages; to which judgment the defendants, now appellants, excepted and brought the cause before this tribunal.

From a further review of the record we find that the evidence shows that appellee was absent from his work seven months, but that his absence was occasioned by sickness, of which he notified appellants. But there appears to be no evidence adduced by appellee to show that appellants had violated the contract by refusing to pay him, appellee, his regular salary, aside from his mere statement that appellants owed him, and also a letter from appellee to appellants asking for the pay of his salary. Appellee's simple assertion that appellants owed him and had violated the contract, in the mind of the court, is not evidence of the truth of the facts as complained of by appellee. Neither does the court find on record any evidence that appellee was a defaulter, otherwise than that he was ill for seven months, of which he gave appellants notice. Appellants' assertion that appellee owed them, and that they did not owe appellee, in the mind of the court is not evidence that appellee owed them. Neither party has brought forth any legal evidence to support his or their position.

The court below erred when it refused to admit in evidence the account book of appellants when it was offered, for possibly in that book might be found entries in favor of appellants against appellee, or vice versa. The court below should have admitted the book in evidence and appellants should have shown, independently of their books, evidence to substantiate the correctness of the entries therein made.

There being no evidence in the case at all, the court is not in a position to award judgment in favor of either party; and the verdict of the jury being manifestly against evidence, or founded upon no evidence at all, and the judgment of the court being based on said illegal verdict, renders both verdict and judgment void. This court therefore adjudges that the judgment of the court below is hereby reversed, and made null and void; and that substantial justice may be meted out to the parties concerned, the court below is hereby ordered to resume jurisdiction and have a re-trial of the case, and in the meantime admit in evidence all books and papers which may have a tendency to prove or disprove the allegations.

The clerk of the Supreme Court is commanded to issue a mandate to Judge C. T. O. King of the Court of Quarter Sessions and Common Pleas, Montserrado County, to the effect of this judgment, ordering him to execute this judgment at the March term (1904) of his court.