PETER DAVIDSON, Petitioner, *v.* His Honor EDWARD J. S. WORRELL, Judge of the Circuit Court, First Judicial Circuit, Montserrado County, Presiding by Assignment, Respondent.

APPLICATION FOR A WRIT OF MANDAMUS.

[Undated.]

1. Documents found in the files of the court which contradict the records of the court are not a part of the records and not entitled to any effect.
2. A writ of mandamus will not be granted if it would be ineffectual to accomplish its object either because of want of power on the part of the respondent to perform the act required or on the part of the court to compel its performance.
3. A writ of mandamus will not be granted if the petitioner has another adequate remedy.

This is an application for a writ of mandamus to issue to the respondent, Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, compelling him to reempanel a jury in a case brought by petitioner against the Firestone Plantations Company. *Writ denied.*

Coleman and *Simpson* for petitioner. *A. Barclay* for respondent.

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court.

The petitioner Peter Davidson instituted an action of damages for a wrong at the November term, 1931, of the Circuit Court for the First Judicial Circuit, Montserrado County, against the Firestone Plantations Company, defendant. The case was called for hearing at the February term, 1932, of said Circuit Court, His Honor Edward J. S. Worrell, Judge presiding by assignment.

The trial of said case having been duly held on the 16th day of March, His Honor Judge Worrell delivered the

instructions of the court to the jury and the case was submitted to them for their deliberation and verdict.

It further appears by the records that on the 18th of March, 1932, the Judge ordered the sheriff to ascertain from the jury if they were ready with their verdict. To which query the sheriff replied that he could not say. The court therefore instructed the sheriff to ascertain whether the jury had arrived at their verdict. The sheriff returned and informed the court that the verdict had not been arrived at, but might be within an hour. The jury was called into court and queried by the court if they had arrived at a verdict. The foreman speaking for them replied, "The verdict is not ready."

The court then made the following observation:

> "It having been brought to the knowledge of the court that the empanelled Jury not having yet arrived at their verdict in the case Peter Davidson versus Firestone Plantations Company, and no cause having been assigned as to the reason why, and in order that it might not appear that coercion of any means may be brought to bear to influence the verdict, the court in its legal sense of justice orders said Jury disbanded and a new Trial awarded."

After the observation of the court disbanding the jury, Juryman Flowers asked for statements of witnesses Hines and Ross and also denied having told the sheriff that they wanted half an hour to arrive at a verdict.

Petitioner in his application for a mandate sets up in his said application that the Judge acted illegally in disbanding the jury because the jury had arrived at a verdict, but that it was influenced by the Judge to declare otherwise and in support of this position he has filed with his petition an affidavit made by the sheriff which contradicts the Judge's returns and the records of the court.

Now I am of the opinion that statements of this kind which tend to contradict the records of the court should not be permitted to form a part of the records of the case.

In the case *Sargeant* v. *State Bank of Indiana,* 12 How. (U.S.) 371 (1851), it was held that a document found on the files of the court in a case contradicting the entry in the records that due notice was given is not a part of the records, nor entitled to any effect. See *Digest of the Decisions of the Supreme Court of America* by R. B. Curtis, one of the Associate Justices of said Court, p. 451. See also the case *Fisher's Lessor* v. *Cockerell,* 5 Pet. (U.S.) 248 (1831), where it was held that the certificate of the clerk of court that a document was read at the trial does not make that document part of the records. Curtis 451.

Notice having been served upon the Judge to show cause why the application for the writ should not be granted, Judge Worrell made the following return:

"The Return of His Honour Edward J. S. Worrell, Judge by assignment, February Term A.D. 1932, of the Circuit Court First Judicial Circuit Montserrado County and the Republic of Liberia, Respondent, to the alternate writ of Mandamus, shows cause against the Honourable Chief Justice of the Supreme Court of the Republic of Liberia, granting said writ as follows, to wit:

"1. It is respectfully submitted that the Honourable Supreme Court should not grant said writ of Mandamus prayed for because such a writ being of common law origin the common law lays down rules or cases in which such writs are issuable, and it is not granted to compel the Court below to decide in a particular way or to operate as a substitute for an appeal or writ of Error; nor to compel an inferior court not to exercise its discretionary powers. Vide 3 B.L.D. under Mandamus; 18 R.C.L. under General Principles Governing Mandamus p. 114; vide: 7 R.C.L. Mandamus p. 988.

"2. It is further respectfully submitted that the trial Judge was in order to have disbanded the Jury in said case and award a new Trial for the reason that

after deliberating over the facts in said case for fully twenty-four hours they could not arrive at an unanimous verdict and it is therefore untrue that said Jury had arrived at a verdict as alleged by the Petitioners before they were disbanded and a new Trial awarded by the court on the evening of the 17th instant. Vide: Records of the court dated the 17th of March 1932.

"3. It is further respectfully submitted that the writ prayed for from the Honourable Supreme Court in this case ought not to be granted, in that the February Term of the Circuit Court, First Judicial Circuit, Montserrado County, at which said case was tried, adjourned *sine die* on the 21st day of March A.D. 1932, after the Petit Jury in said case had been disbanded, and there is no legal authority, Statutory or Common Law, which would support the idea that the order of adjournment may be annulled, the Jury re-empanelled and discharged, especially when it was shown that they had not and did not arrive at a verdict, which fact is fully supported by the minutes of the court. Vide: 16 R.C.L. page 319 under discharge of Jury.

"4. It is further respectfully submitted that when and at the time the Petit Jury in said case disbanded and discharged they had not arrived at a unanimous verdict, hence this allegation in the Petitioner's Petition to this Honourable Court for the issuance of a writ of mandamus is untrue and misleading; nor since the disbanding of the empanelled Jury in the case at Bar on the 17th instant aforesaid has the case been resumed, parties called and said Jury questioned as to whether they had arrived at a verdict and same received in open court as is the practice of the courts. Vide Records of the Court of the 17th, 18th, 19th and 21st instant.

"5. It is further respectfully submitted that before the disbanding of the Jury in the case at Bar it had

been brought to the knowledge of the court by the ministerial Officer of the court that conditions had arisen among certain of the Jury, principally the Foreman, during the night of their deliberation indicating that the stream of justice had been polluted, and as such the Respondent felt, and still feels, that he being alone under the law responsible for the conduct of the trial and in order that a verdict may be free from the 'scent of corruption' and perversity, your Respondent, as a Dispenser of transparent justice, under such circumstances had no other point but to disband the jury and award a new Trial and as such maintains that the position taken by him the trial Judge is warranted under the Law. Vide: Records of the Court dated March 19th and 21st respectfully. 1st L.L.R. case: Wood vs. Republic of Liberia page 448–51 et seq.

"6. It is further respectfully submitted that the allegations in count 4 of these returns cannot be consistently and legally contested or traversed, in that after the trial jury had been disbanded he the Judge in open court for the benefit of all parties concerned made known the facts which had come to him through the Sheriff of the court and otherwise, as regards the pollution of the Jury, whereupon counsellor C. L. Simpson, one of Petitioner's legal representatives in said case, addressed the court and stated openly that having heard the reasons stated by the Judge the court under the circumstances could not have done otherwise but disband the Jury for which he thanked the court. Vide: Records of the court March 19th.

"7. It is further respectfully submitted that all and singular the allegations contained in count 4 of the Petition before this Honourable Court are untrue, false and misleading, in that Respondent, the trial Judge in the case at Bar never sent the Sheriff with a message to the Petit Jury that they should not bring a verdict or when called into court they should simu-

late that they had not yet arrived at their verdict and therefore said allegations are wicked and malicious.

"8. It is further respectfully submitted that the Petition addressed to this Honourable Court in this case is done solely to mislead the Court and to avoid a New Trial, in that, Petitioners through their counsel, counsellor Clarence L. Simpson, not only supported the position taken by the court in disbanding the Jury and awarding a New Trial, but also by other acts are they estopped from contesting or traversing the said Judge's actions, in that they have proceeded to prepare for the prosecution of the New Trial in said case, and as proof we refer to their act putting the machinery of the court in motion by having issued and served a writ of *duces tecum* on one W. D. Harris and others to produce certain documents in their possession to be used as evidence by Plaintiff in the New Trial of the case Davidson vs. Firestone, action of Damages for a wrong at the May Term of the Circuit Court, First Judicial Circuit, Montserrado County, ensuing, at which fact can be evidenced from the records of the First Judicial Circuit Court, consequently said Petitioner is estopped by his own acts from seeking remedial redress as by acts aforesaid he has tacitly admitted the correctness of the trial Judge's actions in disbanding the Petit Jury. Vide: Certificate of the Clerk of the Circuit Court annexed marked exhibit 'A.'

"Wherefore Respondent respectfully prays that this Honourable Court will deny the writ sought and leave the parties with their legal remedy in the lower court in keeping with law."

Counsellor for Petitioner claims that the Judge's return as well as certain parts of the minutes of the case are false and untrue.

Passing by these and all other questions otherwise in the case, we come to the main point whether the writ of mandamus should issue as prayed for by the petitioner.

I am of the opinion that in view of the fact that the jury has been disbanded and the February term of the court has expired, the writ of mandamus must be useless and unavailing.

Spelling in his work on *Extraordinary Remedies* makes the following observations:

> "It is well settled as a fundamental principle of law of mandamus that courts will not grant this extraordinary remedy where to do so would be fruitless and unavailing. If it appear that the writ would be ineffectual to accomplish the object in view, either from the want of power on the part of the respondent to perform the act required, or on the part of the court granting the writ to compel its performance, the court will refuse to interfere." 2 Spelling, Extraordinary Remedies, § 1377.

Again, a writ of mandamus will not lie where the petitioner has an adequate remedy. *Id.,* § 1374. I am of the opinion that the remedy in this case, in view of the circumstances, would have been a writ of error.

A verdict must be brought into court by the empanelled jury to enable either party to poll the jury if he desires to do so. In the case *Johns* v. *Republic of Liberia,* 1 L.L.R. 240 (1892), a case of assault with intent to kill, the jury handed in its verdict to the clerk of court convicting the defendant. On being subsequently called into court and polled at the request of defendant, two of the jurors said it was not their verdict. The court, however, entered the verdict and passed sentence upon defendant. The latter having brought the case to this Court by appeal, the verdict was set aside on the ground that it was not the unanimous verdict of the jury.

The jury having been disbanded and dispersed it would be impossible for them to bring a verdict into court if one had been found.

In view of the foregoing facts, the writ of mandamus is denied and all costs ruled against the petitioner.

Writ denied.