THOMAS L. MORRIS, Plaintiff-in-Error, *v.* H. RUMANAPF and His Honor MARTIN N. RUSSELL, presiding over the Probate Division of the Circuit Court, First Judicial Circuit, Montserrado County, by assignment, Defendants-in-Error.

WRIT OF ERROR IN ACTION OF DEBT.

Argued January 14–15, 1935. Decided January 18, 1935.

1. Although oral evidence cannot ordinarily be received to explain any written instrument, yet, if in consequence of the introduction of evidence relative to persons, things or other matters a doubt arises, such doubt may be cleared up by oral testimony.
2. An *account* is a detailed statement of the mutual demands in the nature of debits and credits between parties arising out of contracts or some fiduciary relation.
3. An *account stated* is an agreed statement between persons who have had previous transactions, fixing the amount due in respect of such transactions, and promising payment.
4. Only when a *current account* shall have become an *account stated* may plaintiff file with his complaint a statement commencing: "To balance of account."
5. An account stated may be reopened or impeached only for an error induced by fraud or mistake, and such error should be specifically pleaded, and proven.

On writ of error from a judgment for the plaintiff in an action of debt on an account stated, *judgment affirmed.*

H. Lafayette Harmon for plaintiff-in-error. *Anthony Barclay* for defendants-in-error.

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

Only two of the seven points raised in the assignment of errors in this case were stressed during the argument, and they appear to us to be the only two points necessary to be considered in reaching a just decision of this appeal. The first of these constituting the third count in the assignment of errors is substantially: that the judgment was wrongly entered in favor of plaintiff in the court below

since indeed the defendant, now plaintiff-in-error, had not contracted with plaintiff, now defendant-in-error, as an individual person, but with him as agent of a firm known as Trittau & Co.

This issue first raised in the first plea of the answer was contested in the second count of the reply, plaintiff having in said count of the reply averred that the goods which defendant had obtained upon the contract were not given out by him as agent of Trittau & Co., inasmuch as said company did not permit him to give out goods on credit; but that he, said plaintiff, having confidence in the defendant had given him credit of sundry articles out of plaintiff's personal assets, and upon his own personal responsibility.

Adverting to the evidence we find that the court unduly limited the right of the defendant to cross-examine the witnesses adduced, by sustaining objections, and even spontaneously disallowing questions, which were relevant, inasmuch as they bore directly upon the issues made by the pleadings. In spite of this error, however, there were sufficient facts put upon record to enable us to reach our conclusions. For, although when the said Rumanapf was on the stand in his own behalf, the court *sua sponte* disallowed the question put by the counsel for the defense on cross-examination, viz.: "The defendant in his answer alleges that the only business transactions he has had with you were with Trittau and Company and not since. Is this true?" Still when said witness was brought back to the stand as a witness for defendant, then the plaintiff having on cross-examination put substantially the same question in the form: "The invoices you have just identified marked 'A' to 'L' bear on the face of each of them at the top, the printed words 'Trittau & Company' will you please explain to the court why that is, when you say the invoices are those unpaid for goods supplied by you to defendant?" This we regard as an effort on the part of plaintiff to have the wit-

ness explain an apparent ambiguity in accordance with our Revised Statutes, volume II, page 237, section 1383, the relevant portion of which reads:

> ". . . but if in consequence of the introduction of evidence relative to persons, things, or other matters mentioned in any written instrument, a doubt arises, such doubt may be cleared up by oral evidence."

See also Statutes of Liberia (Old Blue Book), 57, ch. XI, § 38.

This ruling of the court with which we cannot agree was at the instance, and upon the objection, of defendant who is estopped from endeavoring to take advantage thereof. Moreover, keeping in mind that the burden of proving this particular issue was upon the defendant, it is clear that, the balances having already been tilted in favor of plaintiff, said plaintiff succeeded in further bringing down the balances so tilted in his favor by the letters from defendant to himself, admitted in evidence, all of which were addressed to Rumanapf as an individual, and not as agent of Trittau & Co. For these reasons the Court has reached the conclusion that the said third count of the assignment of errors is not legally supported by the facts on record.

The other point emphasized during the proceedings here grew out of the allegations in the fifth and sixth counts in the assignment of errors, which taken together raise the point whether or not the action was based upon a bill of particulars otherwise known as a current account, or upon an account stated.

> "An account is defined to be a detailed statement of the mutual demands in the nature of debit and credit between the parties arising out of contracts or some fiduciary relation." 3 Ency. of Pl. & Prac. 543, n. 4.
>
> "An account stated is an agreement between persons who have had previous transactions, fixing the amount due in respect of such transactions and promising payment." 1 Ency. of Pl. & Prac. 87.

"(1) The mere rendering of an account by one party to another is not sufficient to make it an account stated. For that purpose there must be either the actual statement and adjustment of the account by the parties, by going over the items together and striking the balance, or an admission by one party of the correctness of the balance struck by the other, or some other evidence to show that the party sought to be charged has by his language or conduct admitted the correctness of the account.

"(2) The admission of the correctness of the balance struck must be absolute, unconditional, and voluntary, made by the defendant or his agent, to the plaintiff or his agent, before the bringing of the suit of a certain specified sum of money." 2 Ency. of Pl. & Prac. 1024.

It is in the opinion of this Court only when a current account shall have become an account stated that the party complaining is permitted to file a statement commencing "To balance of account" as set out in the case *Moddermann* v. *Green,* 1 L.L.R. 204 (1886), and *Attia* v. *Payne,* 1 L.L.R. 205 (1886). For, as has been seen, the balance with which such account opens will already have been expressly or impliedly agreed between the parties and the necessity of again furnishing an itemized statement of account is thereby obviated.

It is also necessary to observe that an account current may become an account stated by failure to object for,

"When no objection is made to an account rendered within reasonable time, the party receiving it will be bound by it as a stated account." 2 Ency. of Pl. & Prac., 1025, subsec. (3).

But the mere presentation of such an account is not what is legally known as a conclusive presumption,

"but is simply *prima facie* correct, and may be reopened or impeached for any error induced by fraud

or mistake." 2 Ency. of Pl. & Prac., 1025, subsec. (4).

Nevertheless, in the absence of any allegation which would lay a foundation for impeaching the account, or any specific application from the party sought to be charged to have a bill of particulars submitted as ancillary to the account stated already filed, the trial court is authorized to presume that same is correct if proof is submitted *aliunde* that the figures represent an agreed balance, or that copies thereof had been served on the other party, and he had not within a reasonable time thereafter questioned the accuracy thereof.

In the case at bar Rumanapf on the stand, testifying in his own behalf, stated "I have sent several times statements to Mr. Morris and have one or two letters from him informing me that he is unable to pay." Some, at least, of said letters were put in evidence, advising the remittance of payments on account, and asking for additional advances. Nothing has been adduced tending to show that the correctness of the balance struck was questioned. That being so, and in view of the fact that in civil cases "it is sufficient if the allegations of a party are substantially proved," and that by a preponderance of evidence only, we are of the opinion that the judgment of the court below should be affirmed; and it is so ordered.

Judgment affirmed.

MR. JUSTICE RUSSELL having been the trial judge took no part in the consideration or decision of this case.