AMERICAN LIFE INSURANCE COMPANY, by and thru its General Manager (Vice President), ALLEN BROWN, Appellant, *v.* **EMMANUEL SANDY**, Appellee

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 10 and 11, 1984. Decided: November 22, 1984.

1. The awarding of damages is with the jury in a case tried by a jury, and by the court in a case tried by a court without a jury. As the Civil Law Court is vested with the right to try jury cases, it has jurisdiction to try all damages suit.

2. The penalty for instituting an action in a circuit court which could have been brought in a court of first instance is not a dismissal of the suit but forfeiture by the plaintiff of his costs. Rev. Code 2 :45.2.

3. An appealing party should make its contentions plain in the bill of exceptions to relieve the court of the tedious task of searching the records for the alleged errors.

4. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence. Rev. Code I: 25.5(2).

5. Preponderance of evidence is defined as "greater weight of evidence, or evidence which is more credible and convincing to the mind". As such, the preponderance of evidence required to establish proof of an allegation does not depend on the number of witnesses produced.

6. Juries cannot properly act upon the weight of evidence in favor of one having the onus unless it overbears, in some degree, the weight upon the other side.

7. There is no yardstick for the jury to use in arriving at the amount of general damages. Therefore, the court must be convinced as to the surrounding circumstances which may have warranted the amount of general damages awarded.

8. Only the averments that are denied in a responsive pleading require the production of evidence to prove or disprove them. Hence, where the facts are admitted, the production of evidence, oral and written, is legally unnecessary.

9. In an action in which money judgment is sought, the jury must find the amount due as well as the right of recovery. Accordingly, a general verdict for either party does not authorize judgment for the amount alleged to be due.

10. A verdict which does not find an amount with sufficient definiteness to authorize a judgment to be entered thereon for any definite sum is bad and will be set aside.

11. Strict accuracy is not required in the statement of the amount in a verdict, it being sufficient if the amount can be ascertained by mere mathematical calculation. Thus, a verdict is good although the amount of recovery is stated merely by reference to the amount claimed in the petition or can be ascertained by reference thereto.

12. A verdict will not be set aside for manifest mistake in the statement of the amount if the amount intended to be stated is clear.

13. Where the amount due is not in issue, a verdict generally in favor of either party is sufficient without assessing damages, even where the statute requires the jury to assess the amount of recovery.

14. If the verdict of a jury does not conform to the evidence with respect to the amount, the trial court should disband the jury and order a new trial or give additional instructions and direct further deliberation.

15. The direction of a judge to a jury to amend a verdict finds no support in law, and, where done, the act will constitute grounds for ordering a new trial if it appears that the interest or right of the defendant is prejudiced thereby.

16. Ordinarily, a verdict will not be set aside for excessiveness, but an appellate court will do so where there is no evidence to support the amount awarded.

17. While it is better for the trial court to notice an error and correct the verdict at the moment, it is not reversible error for it to correct its judgment *nunc pro tunc*.

18. The reduction by the trial court of an award stated in a verdict, from more than the plaintiff demanded to less than the plaintiff demanded, does not entitle the defendant to a reversal of the judgment where no injustice appears in the correction.

19. Where the jury's error is patent on the face of the verdict, the court should so amend the verdict to make it conform to correct legal principles, but where the jury's mistake is latent and not apparent on the face of the verdict, it is sometimes proper to receive the affidavits of the jurors to ascertain their true verdict.

20. Where the verdict, because of inadvertent mistake or error in calculation, exceeds the amount claimed or proved, the court may, with the consent or acquiescence of the prevailing party, reduce the verdict to the proper amount.

21. Generally, the court has power to reduce a verdict, as where the verdict exceeds the amount claimed or is occasioned by a mere error in addition.

22. One of the duties of the court is to see to it that the verdict of the jury is in a proper form to carry into effect the findings of the jury, and to this end, where the intention of the jury is ascertainable, the court may amend the verdict by correcting manifest errors of form and substance to make it conform to the intention of the jury if the amendment does not affect the question submitted to the jury.

This is an appeal from a verdict and judgment awarding the plaintiff $21,450.00 as special damages and $150,000.00 as general damages. The action grew out of accusations by the defendant company against the plaintiff to the effect that the plaintiff had falsely written checks to the defendant company's agency managers and then converted the same to his personal use. Based on the accusations made by the defendant company, the plaintiff was arrested and presented to court for trial. However, at the call of the criminal case for trial, the prosecution filed a dismissal of the action without prejudice for lack of evidence. Thereafter, plaintiff filed this action of damages.

At the trial, the plaintiff testified that as a result of his arrest and imprisonment, which he attributed to the action of the defendant company, and his suspension and dismissal by the defendant company, his farm had to be abandoned, his ill mother had to be removed from the hospital and taken to his home county, and his children were put out of school for lack of finances.

After hearing the evidence the jury returned a verdict which read "$214.050.00" as special damages and "$150,000.00" as general damages. The trial judge, noting the amount stated by the jury as special damages, ordered the amount specified as special damages changed to $21,450.00.From the verdict, the judgment confirming the same with the modification made by the court, and the action of the court in making the said modification, the defendant company appealed to the Supreme Court for review.

In its appeal, the defendant contended that the trial court was without original jurisdiction of the subject matter of the case which was reserved by the statute to the Ministry of Labour, as the matter grew out of a labor dispute. The defendant company also contended that the plaintiff had failed to prove that he was entitled to special and general damages to warrant the award given by the jury; that the judge acted illegally in altering the amount of the special damages brought by the jury, rather than awarding a new trial; and that the general damages awarded by the jury was excessive.

The Supreme Court rejected the defendant's contentions, holding that the trial court did have jurisdiction to try the case. The Court noted that the plaintiff's action was based on damages he sustained as a result of his imprisonment and the embarrassment, inconveniences and mental anguish he had suffered, all growing out of the action of the defendant company. The Court reasoned that as damages can only be awarded by a jury in a case tried by a jury, the Civil Law Court, being vested with such power over jury cases, had the authority to try the case. In any event, the Court said, the penalty for bringing the action in the trial court whose jurisdiction was being questioned was not the dismissal of the case, but rather forfeiture by the plaintiff of his costs.

On the question of the correction of the verdict by the trial judge, the Court held that the trial judge had the right to correct the figure in the verdict so that the verdict could conform

to the evidence and the pleadings, as long as it did not work to the prejudice of the defendant. The Court, citing various Liberian and United States legal authorities for its position, noted that in the instant case, the trial court, in correcting the verdict, had not prejudiced the right of the defendant and that the defendant was therefore without any basis to complain about the correction. The Court observed that the plaintiff had produced sufficient evidence to warrant the award of special and general damages, and that under the position of the cited authorities, the intention of the jury was clear enough to enable the trial judge to make the correction to the special damages award without prejudice to the defendant.

The Court determined, however, that the amount awarded as general damages was excessive. Accordingly the Court, noting that it had the authority inherently vested in it to reverse, affirm, or modify a jury's verdict, and relying thereon, reduced the award of general damages from $150,000.00 to $100,000.00. As so modified, the Court *confirmed* the verdict of the jury and the *judgment* of the trial court.

James D. Gordon, John T. Teewia and *S. Edward Carlor* appeared for appellant. *Toye C. Barnard* and *E. Winfred Smallwood* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee, Emmanuel Sandy, was employed with the appellant company in the capacity of administrative manager. While serving the appellant company, it was alleged that he unauthorizedly paid out $19,608.46 as yearend bonuses for 1981 to the company agency managers and $3,600.00 as house rent to himself. He was suspended until the amount of $23,208.46, representing the total of the yearend bonuses paid to the agency managers and the rent paid to himself was refunded. He was required to repay this amount before consideration could be given to him for reinstatement. The records also reveal that this case traveled to Speaker Gbatu of the then People's Redemption Council (PRC) and to the Ministry of Justice. The records further reveal that Emmanuel Sandy was imprisoned and subsequently charged in the Theft Court with the crime of forgery.

When the case of forgery was called for trial at the Theft Court on Wednesday, May 11, 1983, the prosecution begged leave of court to file a dismissal. The court denied the

application after defendant's counsel resisted. The records also show that on Monday, May 23, 1983, Emmanuel Sandy was present and that after representations were made for both parties, the prosecution made the following record:

"At this stage, the prosecution hereby files a dismissal of the case in favor of the defendant in view of insufficiency of evidence to convict the defendant when tried, with reservation in keeping with statute relied upon, and submits.

The Court thereupon made the following record:

"THE COURT: Application by the prosecution for lack of sufficient evidence to prosecute the defendant, Mr. Emmanuel Sandy, charged with the crime of forgery, is hereby granted and the bond, if any, tendered by the defendant, is hereby returned to him. And the case is hereby dismissed in keeping with the request of the application of the prosecution. AND IT IS SO ORDERED."

The appellee, defendant in the criminal action, through his lawyer, filed an action of damages in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the appellant company. In the complaint, the appellee claimed loss of salary from May 1, 1982 up to May 31, 1983, at the rate of $1,650.00 per month, amounting to $19,800.00, and loss of leave pay in the amount of $1,650.00, making a total of $21,450.00 as special damages. He also prayed for general damages for the inconveniences, harassment, humiliation, disgrace, embarrassment and mental anguish he had suffered.

Pleadings progressed to the reply and rested. Law issues having been disposed of, trial was had. The jury returned a verdict of liable against the appellant company and awarded appellee, Emmanuel Sandy, $21,450.00 as special damages and $150,000.00 as general damages. Appellant, being dissatisfied with the judgment of the court below, perfected its appeal to this Court for appellate review.

The appellant has filed an eighteen-count bill of exceptions. Count one of the bill of exceptions refers to the jurisdictional issue raised by appellant in count one of its answer, wherein it contended that because the plaintiff's complaint grew out of an employer-employee relationship, the Civil Law Court should not have assumed original

jurisdiction over the case. Instead, it says, the Ministry of Labour should have first acquired original jurisdiction and the Civil Law Court for the Sixth Judicial Circuit appellate jurisdiction.

The appellee had filed an action of damages not only for the withholding of his pay or his suspension from work, but according to him, for the imprisonment, embarrassment, mental anguish and inconveniences he suffered. According to plaintiff's testimony, he had cleared 200 acres of farmland which was left abandoned, together with the engine that he secured had to operate his farm but which because of damage to it, had to be left in the bush. He also averred that to repair said engine would cost him not less than $25,000.00. Since the awarding of damages is with the jury in a case tried by a jury and by the court in a case tried by a court without a jury, it is our opinion that the Civil Law Court has jurisdiction to try all damage suits. Furthermore, the penalty for instituting an action in a circuit court, which could have been brought in a court of first instance, is not a dismissal but forfeiture by the plaintiff of his costs. Civil Procedure Law, Rev. Code 1 :45.2. Count one of the bill of exceptions is therefore overruled.

Referable to counts three and four of the bill of exceptions, the Court observes that although these counts were overruled, the records nevertheless show that the facts alleged in counts four, seven, nine and ten of the answer, which constitute counts three and four of the bill of exceptions, were testified to by witnesses for defendant/appellant during the trial. (*See* testimonies of witnesses Hannah Harris on sheets 2, 3 and 4 of Wednesday, October 5, 1983, 15th day's jury session, and Abraham Kromah, on sheets 9, 10 and 11 of October 7, 1983, 16th day's jury session.) We therefore feel that the defendant/appellant did not suffer any harm. Counts two, three and four of the bill of exceptions are therefore not sustained.

In count six, appellant says that the entire charge of the judge to the jury, with specific reference to the points he was requested by the defendant to charge the jury, was wrong, erroneous, prejudicial and bias. We take recourse to the records wherein we observe the request of the defendant, on the points which it desired the judge to charge the jury, as follows:

"1. The effect of a case growing out of employer and employee relationship;

2. The effect of criminal records introduced in a civil action;

3. The effect of probable cause in a given case;

4. The effect of the uncorroborated testimony of Mr. Sandy;

5. The effect of dismissing a case with reservation;

6. The effect of a party's admission of an act committed by him;

7. The failure of a party to rebut given evidence with particular reference to admitting paying without authority. And submits."

The judge's charge to the jury, on sheets six and seven of Monday, October 10, 1983, same being on the 18th day's jury session, on the principles quoted above, was in keeping with defendant's own request and therefore not biased, prejudicial, erroneous or wrong. This count, together with counts nine and ten of the bill of exceptions are overruled.

Count seven refers to the affirmation of the verdict by the judge. We do not feel that this was an error. Therefore, the said count is overruled.

Appellant, in count 8 of the bill of exceptions, charges as reversible error the denial of the motion for a new trial. This was a two-count motion for a new trial which we herewith quote:

"The defendant in the above entitled cause moves this Honourable Court for a new trial and showeth these reasons, to wit:

1. Because defendant says that the verdict of the empaneled jury is against the weight of the evidence adduced at the trial, in that,

a) the unrebutted evidence shows that it was the State through the office of the county attorney that jailed Mr. Emmanuel Sandy, yet the jury's verdict shows otherwise, contrary to such material evidence.

b) Mr. Emmanuel Sandy's own admission in his telex of May 6, 1982, reference his own unauthorized act and promise to pay, yet the jury held for him.

c) The fact that Mr. Sandy's testimony was not corroborated, yet the jury held for him.

2. And also because defendant further moves this Honourable Court to set aside the verdict of the jury, in that same is manifestly against the instructions of the judge.

"WHEREFORE and in view of the above, defendant moves this Honourable Court to set aside the verdict of the jury and grant a new trial."
We also quote plaintiff's resistance to the motion for new trial:

"Plaintiff in the above entitled cause requests this Honour-able Court to deny defendant's motion for a new trial for the following reasons, to wit:

1. Because as to count one of the motion, plaintiff says that the verdict of the empaneled jury conforms to the weight of the evidence adduced at the trial, in that:

a) The evidence shows that it was the defendant who complained to the Ministry and on the basis of the said complaint the Ministry of Justice, on behalf of the government, instituted criminal proceedings against plaintiff which led to his arrest and imprisonment.

b) According to the evidence, the plaintiff promised to pay $3, 600.00 back, not because he unauthorizedly paid his rental allowance which was budgeted for him, but because Mr. Allen Brown kept troubling him; and for his own pride and to avoid arbitrary suspension, plaintiff made this promise.

c) The testimonies of plaintiff's witnesses did corroborate plaintiff's testimony that they did receive the payments for which he had been criminally charged. The credibility of the witnesses' testimonies and the documents and evidence produced at the trial are within the province of the jury, and the preponderance of the evidence was found by the jury to be on the side of the plaintiff.

2. And also because as to count two of the motion plaintiff says that the verdict of the jury is in accord with the instructions of the judge.

WHEREFORE, in view of the foregoing, plaintiff respectfully prays this Honourable Court to deny the motion for a new trial and render final judgment confirming and affirming the verdict of the jury."

An inspection of the records show that on May 10, 1982 the resident vice president, Mr. Allen R. Brown, wrote a letter of suspension without pay to Emmanuel Sandy for unauthorizedly paying out 1981 yearend bonuses to agency managers in the amount of $19,608.46 and for paying himself a rental allowance of $3,600.00. The suspension was to last until the total of $23,208.46 was refunded to the company. On May 24, 1982, Messrs. John Bright, Emmanuel Perkins and Jacob Wah, the agency managers in whose names the 1981 yearend bonuses were paid, addressed a letter to vice president, Allen Brown, which we quote hereunder:

"TO: Mr. Allen R. Brown
Resident Vice President
FROM: Agency Managers, ALICO, Liberia
SUBJECT: 1981 YEAR END BONUSES DATE: 24 May

We have learned with great surprise that Mr. Emmanuel Sandy, our administrative manager, has been suspended without pay because of the 1981 end of the year bonuses in the amount of $19,608.46 (Nineteen Thousand Six Hundred and Eight Dollars and Forty-Six Cents) he paid to us.

Mr. Sandy paid this $19,608.46 in order to fulfill a promise made to us that he would pay 2% of our respective annualized premiums in cash at the end of 1981 accounting year should Liberia become No. 1 in the Worldwide Contest and obtain approximately a million dollar annualized premium. Mr. Resident Vice President, we are proud to say that Mr. Sandy requirements were fully met by us.

Mr. Resident Vice President, considering the fact that Mr. Sandy's promise was in good faith and intended to motivate us, and in view of the fact that the money was received by us, we

the agency managers, feel Mr. Sandy, in all fairness, should not be penalized for this payment. We are therefore kindly requesting that this amount be debited to our personal commission accounts and repayment schedules be worked out accordingly.

JOHN BRIGHT Sgd._____
EMMANUEL PERKINS Sgd._____
JACOB WAH Sgd." _____

We quote below also the defendant company's legal counsel's Legal Memorandum submitted to the defendant company on June 22, 1982:

TO: American Life Insurance Company
FROM: Banks, Lewis and Williams Associates
SUBJECT: RE: EMMANUEL SANDY ET. AL: CHECKS MATTER

We have perused the matter involving certain checks issued to or in favor of agents of ALICO and the circumstances surrounding the issuance thereof as well as others fraudulently issued by Mr. Francis Edwards. At first glance, the matters seem appropriate for criminal prosecution of both Mr. Sandy, administrative manager of ALICO and Mr. Edwards. There are, however, a few points which must be highlighted and from which conclusions in the best interest of ALICO must be drawn.

1. Checks were issued in favor of agents to which they were not entitled and the proceeds therefrom alleged to have been converted by the administrative manager, Mr. Sandy. For this, as stated earlier, Mr. Sandy may be prosecuted criminally. Notwithstanding, how-ever, the matter has been made complicated by a letter addressed to Mr. Allen Brown by the agency managers of ALICO to the effect that they did receive the amounts in question and that Mr. Sandy should therefore not be held responsible therefor; and further, that they are willing to refund the amounts. Moreover, the said agency managers proceeded to issue in favor of Mr. Sandy receipts to the effect that they had in fact received the amounts in question. This has thrown an entirely new set of facts into the picture. It is difficult to see, in the light of these, how a smooth prosecution of Mr. Sandy could occur. This is not to mean that Mr. Sandy cannot be prosecuted; it means, however, that the tasks have been made more difficult, and that Mr. Sandy has now been provided with an adequate

defense of the use of the amounts in question. We believe, therefore, that perhaps ALICO may consider simply terminating the employment of Mr. Sandy and having him paid an amount of money, with an appropriate release being issued that Mr. Sandy will not bring any action, suit or proceedings of whatever nature against ALICO. This may also avoid the unnecessary publicity which the case may generate and which may have adverse effects upon ALICO's relationship with its customers, as top management personnel may be shown to be involved in the misuse of the company's money, generally premiums paid by customers.

2. As regards Mr. Edwards, we can readily say that he may be successfully prosecuted without any difficulty."

In addition to these surrounding circumstances and the willingness of the appellee to refund the $3,600.00, even though he testified and submitted copy of the budget which provided $4,800.00 for rental payment for the administrative manager, the position he occupied up to the time of his suspension, we further discovered from the records that when the case of forgery was called for hearing in the Theft Court on May 11, 1983, the county attorney, in association with the defendant company's lawyer, in person of Counsellor Johnny N. Lewis, announced representation for the State. On the same day, after representations were made, the State moved to dismiss the case. However, after defendant then, and now appellee's counsel resisted, the court denied the application. We also gather from the records that on June 10, 1982, Ossei Yaw, who took over the appellee's position as administrative manager, wrote a letter to the county attorney for Montserrado County, forwarding some of the allegedly forged checks that were issued as yearend bonuses to the agency managers by the appellee, to be used as fruits of the crime of forgery.

Viewing all these prevailing circumstances and exercising his discretional power, the judge did not err in denying the motion for new trial.

Defendant/appellant also states in count thirteen:

"And also because defendant says that Your Honour ad-mitted into evidence those documents that were objected to on the trial records which contained the reasons for defendant's objections. For this major error, Your Honour will approve this bill of exceptions."

We again want to say here that parties should always make their contentions plain in the bill of exceptions so as not to devolve upon the Court the tedious task of searching the records for the alleged error. There were several documents marked by court and admitted into evidence in this case. Which of these documents the defendant has reference to is uncertain. *Quai v. Republic,* 12 LLR 402 (1957); *Bailey v. Sancea,* 22 LLR 59 (1973). Count thirteen is therefore overruled.

With reference to count fourteen where the contention of the defendant is that the evidence of the plaintiff was not corroborated, and that therefore the lower court erred in refusing to set aside the verdict, this Court says that the statute provides under burden of proof as follows:

"*2. Quantum of evidence.* It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence." Civil Procedure Law, Rev. Code 1 :25.5 (2).

The preponderance of the evidence required to establish the proof of an allegation does not depend on the number of witnesses produced. Black's Law Dictionary defines preponderance of evidence as "greater weight of evidence, or evidence which is more credible and convincing to the mind. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight"of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favour of the one having the onus, unless it overbears, in some degree, the weight upon the other side." BLACK'S LAW DICTIONARY 1344 (4th ed.). The jury having satisfied them-selves that the allegations, as laid in the complaint, were established by a preponderance of evidence, and the court utilizing its discretionary power as not to set aside the jury's verdict, cannot be regarded as an error for which the judgment should be reversed.

As to counts fourteen and fifteen, the Court observes that the testimony of the plaintiff stood unchallenged or unrebutted on the records. Under the circumstance, the trial court had to take cognizance of the record. This, therefore, cannot be laced as an error on the part of the judge.

As for the general damages awarded, the records reveal that the plaintiff explained to the jury that he had cleared 200 acres of land which were not attended to because of his suspension and imprisonment. He also testified that the machine with which he was operating his farm had been damaged and that it would cost not less than $25,000.00 to put it back into operation. He further alleged that his ill mother, who was in the hospital, had to be sent to Nimba County because he could no longer afford to maintain and take care of her. He also explained that his children were put out of school because of the lack of finance to maintain them. All of these, he said, were traceable to the act of the defendant/appellant. He therefore prayed for general damages to compensate him for the inconveniences, embarrassment, humiliation, disgrace and mental anguish he had suffered as a direct result of the defendant/appellant's act. The jury awarded $150,000.00 as general damages. General damages are defined as follows:

"General damages are such as the law itself implies or presumes to have accrued from the wrong complained of, for the reason that they are its immediate, direct, and proximate result, or such as necessarily results from the injury, or such as did in fact result from the wrong, directly and proximately, and without reference to the special character, condition, or circumstances of the plaintiff." BLACK'S LAW DICTIONARY 468 (4th ed.); *American Life Insurance Company, Inc. v. Holder,* 29 LLR 143 (1981).

There is no yard stick for the jury to use in arriving at the amount of general damages. Therefore the court must be convinced as to the surrounding circumstances which may have warranted the amount of general damages so awarded. In the instant case, there is no stated amount utilized for the clearing of the 200 acres. However, the deprivation of the children from attending school, the hospitalization of the mother, and the embarrassment, inconveniences, disgrace and mental anguish suffered by the plaintiff are elements which should be taken into consideration.

Regarding count sixteen of the bill of exceptions, the Court says that whilst it is true that the imprisonment of the plaintiff/ appellee was done by the Government of Liberia, yet it is equally true that the imprisonment was predicated upon evidence submitted by the defendant company. Therefore, this count cannot be sustained to reverse the judgment.

In count seventeen, defendant/appellant contends that the suspension of the plaintiff was based upon his ill performance, in that he performed certain acts without any legal authority, and which, it said, the plaintiff/appellee himself admitted. It was therefore illegal, wrongful and unlawful, appellant says, for the judge to rule in favor of the plaintiff/appellee. The act complained of was the payment of yearend bonuses to agent managers and the use of $3,600,00 as rent out of money appropriated for the administrative manager, the office or position occupied by the plaintiff/appellee at the time. But the agency managers who received those checks acknowledged receiving the checks and wrote the resident vice president, Mr. Allen R. Brown, that they were willing to make the refund to the company if the company insisted on a refund. This letter was written May 24, 1982 and signed by the three agency managers in person of Jacob Wah, John Bright and Emmanuel Perkins. There is also a memorandum from the legal counsel of the defendant company advising the company not to prosecute Emmanuel Sandy, but rather that it should relieve him of his position and let him issue a clearance to the company. It would appear that this memorandum was ignored by the defendant company.

Viewing these circumstances together, as outlined earlier in this opinion, it cannot be said that the defendant company did not contribute to the imprisonment and detention of the plaintiff/ appellee. Indeed, the acting administrative manager, Ossei Yaw, on June 10, 1982, also wrote the county attorney for Montserrado County forwarding checks No. A168849, A168851 and A168848, representing checks issued by appellee in favour of Messrs. Jacob Wah, Emmanuel Perkins and John Bright respectively, in the total amount of $9,464.00, which allegedly were to have been converted to appellee's personal use and benefit.

In count five of the bill of exceptions, the defendant maintains that the judge committed a reversible error when he independently corrected the verdict of the empaneled jury by changing the award of the special damages contained in said verdict. Defendant further contends that while it is true that a judge has the right to correct a jury's verdict, any such correction should relate to only form and not to the substance of the verdict. This is the crucial issue upon which our colleagues have disagreed with us. Our colleagues maintain that the judge should have awarded a new trial.

The records reveal that the plaintiff pleaded special damages in the aggregate amount of $21,450.00. That was the salary for 12 months at the rate of $1,650.00 per month, covering

the period between May 1982 and May 1983, totaling $19,800.00, plus loss of leave pay which was one month's pay of $1,650.00. These totaled $21,450.00. This total amount was pleaded in count seven of the complaint and was never refuted or denied by the defendant in its answer. At the trial, the plaintiff/appellee again testified to this amount and, although the defendant wit-nesses testified before court, none of them denied the fact that the plaintiff/appellee was earning a salary of $1,650.00 monthly, nor did any of them even testify against these special damages. It is a general principle of law that what has been admitted need not be proven. Therefore, the amount of $21,450.00, having been pleaded and testified to and remained undisputed, there was no need for further proof. This Court has consistently held that:

"Only the averments that are denied in the responsive pleading require production of evidence to prove or disprove them. Hence, where the facts are admitted, obviously the production of evidence, oral or written, is absolutely and legally unnecessary. *Watson v. Oost Afrikaansche Compagnie (OAC),* 13 LLR 94 (1957). The above enumerated averments in the complaint, having been conceded expressly and tacitly in the answer and motion to intervene, they need no proof...." *Intrusco Corporation v. Dennis*, 31 LLR 69 (1983).

The writing of $214.050.00 instead of $21,450.00 was an inadvertent error which the law gives the court power to correct since it is an undisputed amount and is apparent on the face of the record. The authorities on the issue maintain:

"AMOUNT OF RECOVERY. In an action in which a money judgment is sought, the jury must find the amount due as well as the right of recovery, this rule being statutory in some states, and a general verdict for either party does not authorize judgment for any amount. The rule above stated as to the certainty and definiteness required in a verdict applies to the finding of the amount due and a verdict not finding such amount with sufficient definiteness to authorize a judgment to be entered thereon for any definite sum is bad and will be set aside; but strict technical accuracy is not required in the statement of the amount, it being sufficient if that can be ascertained by mere mathematical calculation and the verdict is good, although the amount of recovery is stated merely by reference to the amount claimed in the petition, or can be ascertained by a reference thereto. Nor will a verdict be set aside for manifest mistake in the statement of the amount recovered, the amount intended to be stated being clear. A verdict in excess of the amount claimed is not necessarily void, but will

be set aside unless plaintiff consents to a reduction of the verdict to the amount claimed unless the excess is slight, when it may be referred to interest. Where the amount due is not in issue, a verdict generally in favor of either party is sufficient, without assessing damages, even under a statute requiring the jury to assess the amount of recovery, such a provision not applying where the amount is not in issue, and such a statute does not relate to cases where the amount can be computed from the record or from the admitted evidence. Where the jury are not charged separately as to actual and exemplary damages, their failure to specify in their verdict which they find is not reversible error. Where words and figures in the verdict conflict as to amount, the words will control." 38 CYC 1879 and 1880. (Emphasis ours)

Appellant's counsel cited the case *Intrusco Corporation v. Osseilly,* 31 LLR 175 (1983), decided July 7, 1983. In that case, the jury brought a verdict without naming any amount. In reverting to the records, we observed that the plaintiff and his witness never testified to any amount. The jury, therefore, could not have named any sum certain and did not name any sum certain upon which a judgment could have been rendered. Unlike that case, the plaintiff in the instant case pleaded the $21,450.00 as special damages, which was never denied by the defendant in its answer. During the trial, the plaintiff again testified to the same amount, which testimony was never refuted or denied by the defendant. In *Appleton v. Republic,* 11 LLR 284, 286-287 (1952), the court instructed the jury to bring a verdict of $890.92 as the amount embezzled, but the jury returned a verdict of $1,246.81. The court then amended the verdict as follows:

"After presentation of evidence on behalf of both the plaintiff and the defendant, the jury, upon deliberation thereon presented in open court a verdict of guilty of embezzlement in the sum of $1,246.81. The verdict not having conformed to the instructions of the court, was ordered amended to show embezzlement of $890.92, in harmony with the instructions to the jury. Which verdict is by this court affirmed."

This Court held, when the case traveled on appeal before it, that:

"It is our opinion that if the verdict of the jury did not conform to the evidence with respect to the amount embezzled, the trial court should have either disbanded the jury and ordered a new trial or given additional instructions and directed further deliberation. To have directed the amendment of the verdict in open court in a matter of substance finds no support in law.

This error would have constituted grounds for ordering a new trial had it appeared that any interest or right of the appellant had been prejudiced thereby. But it appears that the amendment of the verdict was in the interest of the appellant since it reduced the amount required for restitution.

The evidence against the appellant, his failure to account for the deficit which he admits, and the circumstances which show a criminal intent, allow us no alternative but to affirm the judgment of the lower court; and it is hereby so ordered."

We are in full agreement with this opinion and we therefore hold that this error would have constituted a ground for a new trial had it appeared that any interest or right of appellant had been prejudiced thereby.

There are other cases decided by this Court on excessive verdict, but the only case that is really analogous to this case is *Appleton v. Republic, supra,* in which the verdict of the empaneled jury was amended or reduced from $1,246.81 to $890.92

In *Wright v. Tay,* 12 LLR 223 (1955), the plaintiff complained that the defendant did not only carry his own lumber but that he took away lumber belonging to other persons, thus disrupting her business and causing her to suffer damages. She instituted an action seeking damages in the amount of $1,533.79, including $500.00 for counsel fee. The jury instead brought a verdict for $3,000.00. The $1,533.79 bore no similarity to $3,000.00 as $21,540.00 is to $214,050.00. For only the "0" is inadvertently added between the 4 and 5. In *Levin v. Juvico Supermarket*, 24 LLR 187 (1975), the plaintiff, after receiving the purchase price for a freezer, filed an action of damages seeking loss of profits which, among other things, included the loss of reputation of business. The jury returned a verdict of $54,000.00 without any supporting evidence. Besides, there were other manifest irregularities.

This Court, in the case *Cooper v. Davis,* 27 LLR 310 (1978), observed that the lower court confirmed an award of $85,000.00 for damages when in fact the court had not passed upon the issues of law raised in the pleadings. Syllabus 8 therefore reads: "Ordinarily a verdict will not be set aside for excessiveness, but an appellate court will do so where there is no evidence to support the amount awarded." *Id.*

In the case at bar, we strongly feel that the amount of $214.050.00 is a manifest mistake in the statement of the amount of $21,450.00, which was pleaded by appellee, admitted by appellant by its failure to deny the same in the answer, and testified to at the trial. The records show that when the clerk of court was instructed to enquire from the jury whether or not they had arrived at a verdict, and the jury had replied affirmatively and was ordered by court to read the verdict, he read said verdict as follows:

"THE CLERK: Your Honour, as usual after interrogation, the jurors have returned from their room of deliberation and they have arrived at a verdict.

According to the verdict brought by the jury, it has on the said verdict he is liable $21,450.00 for special damages and $150,000.00 for general damages." (*See* minutes of court, 18th day's jury session, sheet 10).

If the clerk of court could read $214,050.00 as $21,450.00, what can we say about our jurors, majority of whom are with limited formal education.

In *Momanus v. Farmers Mut. Hail Ins. Co.*, 239 Mo. App. 882, 203 SW 2d 107 (1947), where the jury returned a verdict in the sum of "2.0.3307," it was held that the trial court could correct the judgment from "2.0.3307" to $2,033.07. The court stated that although it would have been better for the trial court to have noticed the error at the moment and had the jury correct it, it could not be said that it was reversible error for the trial court to correct its judgment, *nunc pro tunc*. 56 ALR 2d 237.

In *Harrison v. Peabody,* 34 Cal. 178 and *Federspied v. Johnstone,* 37 Mich 303, 49 N. W. 581, it was held that the fact that the trial judge reduced a verdict rendered in plaintiff's favor for more than his demand to an amount less than his demand did not entitle the defendant to a reversal of the judgment where no injustice appeared in the correction. In the instant case, there is no injustice done to the defendant. It is the plaintiff who should have contested; if at all any party should have contested.

In *Freid v. McGrath,* 135 F2d 833, 834, the Court held:

". . . The rules of law which will govern the exercise of the District Court's discretion may be

stated briefly as follows: Where the jury's error is patent on the face of the verdict, the court should so amend the verdict as to make it conform to correct legal principles. But where the mistake is latent in and not apparent on the face of the verdict, it is sometimes proper to receive the affidavits of the jurors to ascertain their true verdict....."

Referable to the reduction of the amount of recovery on the jury's verdict, the authorities have this to say:

"Reduction of Amount of Recovery

The general rule is that where the verdict, because of inadvertent mistake or error in calculation, exceeds the amount claimed or proved, the court may, with the consent or acquiescence of the prevailing party, reduce the verdict to the proper amount.

Generally the court has power to reduce a verdict, as where the verdict exceeds the amount claimed or is occasioned by a mere error in addition, and while it has been held that an excessive verdict may not be reduced where the excessiveness is due to the lack of evidence to sustain the finding of the jury rather than inadvertence, error of law, misapprehension of facts, or errors of computation, other cases have permitted a reduction of the amount of recovery where it is excessive in view of the evidence. An amount improperly allowed as interest may be deducted. While the prevailing party cannot obtain an entirely new and different verdict under the guise of an amendment simply because the ultimate effect would be to reduce the amount given by the jury in their verdict, it is quite generally held that where the verdict, because of inadvertent mistake or error in calculation, exceeds the amount claimed or proved, the court may, with the consent or acquiescence of the prevailing party reduce the verdict to the proper amount. In a number of cases where only the defeated party was complaining, lack of consent or acquiescence of the prevailing party has been held not to render improper the deduction of manifest and determinable excesses.

It is often stated quite broadly that the court may reduce an excessive verdict due to an obvious error in calculation without the consent of the prevailing party where the matter is susceptible to accurate mathematical calculation and involves no consideration of, or opinion on the evidence, and some cases have sustained reductions to the amount claimed in the pleadings without the consent of the prevailing party; but it is the general rule that where the damages are unliquidated, the court can-not, without the consent or acquiescence of the

prevailing party, invade the province of the jury by reducing the amount of the verdict. Where the proper amount is apparent, the trial court, in some jurisdictions, may correct the verdict by striking off the excess. Where, from the itemization of damages, it is apparent that a double recovery has been allowed, the duplicated elements may be stricken." 89 C. J. S., § 517 (3), at 205.

One of the duties which has devolved upon the court is to see to it that the verdict of the jury is in a proper form to carry into effect the findings of the jury and, to that end, where the intention of the jury is ascertainable, the court may amend the verdict, and by correcting manifest errors of form or substance, make it conform to the intention of the jury, if the matter of amendment can in no way affect the questions submitted to the jury or do injustice to the parties." 38 CYC.1896 (b).

In passing, we want to say that the argument of defendant/ appellant to the effect that the agency managers retracted their letter of May 24, 1982 dehors the records, in that said document, if any, is not made a part of the records before us. It is also observed that the issue of the amendment of the jury verdict was not raised in the motion for new trial so as to afford the trial judge the opportunity to pass upon it. We have mentioned this only in passing.

The jury rightly awarded general damages because the plain-tiff did suffer inconveniences, embarrassment and mental anguish traceable to the acts of the defendant company. However, a court to which an appeal is taken may reverse, affirm, or modify, wholly or in part, any judgment before it as to any party. The Court shall render a final determination or, where necessary or proper, remand the case to the lower court for further proceedings. Civil Procedure Law, Rev. Code 1 :51.17. We feel that the general damages should not have exceeded One Hundred Thousand ($100,000.00) Dollars. The general damages is therefore ordered reduced from $150,000.00 to $100,000.00. *American Life Insurance Company, Inc. v. Holder,* 29 LLR 143 (1981). *Townsend v. Cooper,* 11 LLR 52 (1951); *Johns v. Republic,* 13 LLR 143 (1958) and *Williams v. Tubman,* 14 LLR 109 (1960).

In view of the foregoing circumstances, the facts narrated and the laws cited, it is our opinion that the judgment of the court below be, and the same is hereby affirmed with the modification that the general damages be reduced from $150,000.00 to $100,000.00. And it is

hereby so ordered.

Judgment affirmed, as modified.

MR JUSTICE YANGBE, with whom MR. JUSTICE KOROMA concurs, *dissents.*

In a case tried by a jury, the court and jury each has, under our system, separate and distinct functions which may be summed up in a few words. It is the province of the court - the trial judge - to determine and decide questions of law presented in the pleadings at the trial, and to state the law to the jury. It is the province of the jury to decide or determine the facts of the case, from the evidence adduced at the trial, in accordance with the instructions given by the court; and it is the policy of the law to protect the province of the jury from invasion by the court. To dispense with either court or jury, or to permit one to disregard the province of the other, is to impinge on the right of a jury trial guaranteed to litigants under article 1, section 6th of the Liberian Constitution of 1847, which reads:

"Every person injured shall have remedy therefor, by due course of law; justice shall be done without sale, denial or delay and in all cases, not arising under martial law or upon impeachment, the parties shall have a right to trial by jury, and to be heard in person or by counsel, or both."

"The right to trial by jury as declared by article 1, Section 6th of the Constitution or as given by statute shall be preserved inviolate". Civil Procedure Law, Rev. Code 1 :22.1(1).

The relevant part of the verdict in this case that was attacked on appeal and which has prompted my disagreement with the affirmance of the judgment, reads thus:

"Emmanuel P. Sandy of Monrovia.....Plaintiff)

versus)ACTION OF

American Life Insurance Company..Defendant)DAMAGES

$214,050.00

Verdict

We the petty jurors to whom the case: Emmanuel P. Sandy of Monrovia, Liberia, plaintiff versus American Life Insurance Company, defendant, action of damages $150,000.00 was submitted, after a careful consideration of the evidence adduced at the trial, we do

unanimously agree that the defendant is liable $21,450.00 reallowable for special damages is $150,000.00. general damages $214,050.00".

The sum of $214,050.00 appears in the caption of the case without any showing whether it is general or special damages. However, the intention of the jury is made manifest in the body of the verdict where the $214,050.00 again appears as special damages. It is also clearly written in the verdict "$21,450.00" without any indication as to how and who wrote the figure "$21,450.00 in the verdict. Nevertheless, recourse to the minutes of the trial court shows that the $214,050.00, stated in the body of the verdict, and referred to in the minutes of the trial court as special damages, was not awarded by the jury, but was inserted in the verdict upon the dictation of the trial judge after the jury had returned from the room of deliberation. We quote from the minutes the words of the trial judge:

"THE COURT: Now the court observed the errors made on the verdict. In keeping with law, we hereby rectify the said errors, that is to say, that the court charged the jurors to bring a special damage of $21,450.00 and the said verdict is hereby rectified by instead of $214,050.00 and the general damages stand as it is $150,000.00. Now Mr. Foreman, your special damages awarded according to the charge of the bench to you is $21,450.00.
ANSWER FROM THE JURY: Yes
Q. Is it correct also that your general damage awarded is $150,000.00 ?
Yes".

The majority of this Court has sustained the modification made by the trial court on the verdict, according to their view, because the items of special damages pleaded in the complaint were not denied in the answer. Therefore, they say, the trial court judge had the right to resort to the complaint and award the amount pleaded and which were not denial.

In a pleading, every word, sentence or phrase has some legal importance. Only affirmative matters may be pleaded specifically. Let us now look at count fourteen of the defendant's answer. Count fourteen of the answer reads as follows: "And also because defendant denies all and singular any allegations of law and/or fact contained in the plaintiff's complaint not specially traversed in this answer." The statute on this subject reads as follows:

" . . . . Unless the pleader intends in good faith to controvert all the averments of the

preceding pleading, he shall make his denials as specific denials of designated averments or paragraphs or he shall generally deny all the averments except such designated averments or paragraphs as he expressly admits, but if he does so intend to controvert all its averments, he may do so by a general denial" Civil Procedure Law, Rev. Code 1 :9.8(2).

The defendant/appellant had denied generally in count fourteen of the answer those averments in the complaint that it did not specifically traverse in accordance with the relevant provision of the statute quoted above. The majority opinion did not take into consideration the legal significance of this section of the statute, which omission, in my opinion, influenced the majority's conclusion on this point. It is obvious that the figure changed in the verdict by the court is the substance of that verdict and not its form. It is also admitted that the court has the power to alter the verdict of a jury only with respect to form and not as to matters of substance. To hold otherwise will mean that from now on the trial court must dispense with jury trials which, in my opinion, is an obvious infringement upon the right of litigants to be tried by a jury, as guaranteed to them under the Constitution quoted herein, *supra*. The question of modification of a verdict by a trial court is not foreign to this jurisdiction, for, in *Potter v. Stevenson,* reported in 1 LLR 53 (1871), the jury returned a verdict in which it awarded plaintiff an amount. The trial court modified the verdict, and on appeal to this Court, this was the position taken by the Court:
"First, this Court therefore decides that it was an error in the court below in sending the jury back, in the case *William Stevenson, Administrator of the Estate of W. H. Hill v. E. A. Potter,* to reconsider their verdict to lessen the damages by them awarded. If the judge thought that the damages too great or too little, he should have granted a new trial." *Id.*

In the conclusion of the opinion, the Court said:
"It is the judgment of this Court that the decision of the lower court be reversed and the appellant be placed in respect to the property taken under said decision as if no such suit had ever been commenced, and further that the appellant recovers all costs." *Id.*

The law of pleadings requires that items of special damages relied upon must be pleaded specifically and proven at the trial. Therefore, the award of special damages is not as axiomatic. Furthermore, it is the sole province of the jury to award damages, special or general. Accordingly, the insertion of $21,450.00 as a substitute for the $214,050.00, awarded by the jury, is a clear usurpation by the court of the province of the jury, and a clear

infringement upon the right to be tried by a jury as guaranteed by the provisions of the Constitution quoted herein. If the judge thought that there was an error in the figure and the jury did not abide by his instructions, he should have awarded a new trial and not set aside the award of the jury and insert his own figure as special damages. According to the majority opinion, which sustained the judgment in this case, from now on, jury trials will be dispensed with. What a novelty in our judicial system.

In the majority opinion, many criminal cases are cited. We should not forget that the substance in a criminal verdict and that of civil cases are distinguishable. In a criminal suit, the substance of a verdict is that the defendant is either "guilty" or "not guilty", whereas in a civil case, the substance of the verdict is either that the defendant is "liable" or "not liable" in a sum certain, as the case may be. Where an individual is a private prosecutor and restitution is required after pronouncement of sentence, a civil suit may be brought in which the amount recoverable is ascertained with a degree of certainty. Therefore, a sum of money named in a criminal verdict is not the substance thereof and, if corrected by the trial court, it is a matter of form, whereas in the civil case, it is the opposite. Thus, the criminal cases cited in the majority opinion are not the solution to the problem.

There are many foreign judicial precedents relied upon in the majority opinion. We should not forget also that common law or foreign judicial precedent does not override *lex forum*. Additionally, I have already cited *Potter v. Stevenson,* 1 LLR 53 (1871), earlier is this opinion, under the doctrine of *stare decisis*.

I would like to mention also that the charge of the trial judge to the jury is an obvious indication of the trial court's intention to award the $21,450.00 as special damages instead of leaving it to the jurors who are the sole judges of the facts.

Another reason assigned as a justification for affirming the judgment of the court below is that although the lower court overruled certain factual allegations asserted in counts four, seven, nine and ten of the answer, yet at the trial they were testified to by the witnesses for defendant/appellant. Therefore, the majority says, the defendant/appellant did not suffer any harm.

The crucial questions posed in this connection are: Whether the judge of the trial court was

correct when he ruled out issues of fact instead of ruling same to trial to be decided by the jury; whether, during the trial of the facts, a party is allowed to introduce points not ruled to trial; and, can the jury draw conclusion on such facts that were not ruled to trial to arrive at a true and valid verdict?

In the case *Board of Trustees of Monrovia College And Industrial Training School v. Coleman,* 3 LLR 404 (1933), it was held that:

"When a jury is sworn, the complaint and subsequent pleadings not ruled out are read and explained and the oral evidence marshaled so as to enable the jury to draw their conclusion from the facts and render a true and valid verdict for which they were sworn."

Therefore, to the prejudice of defendant/appellant, the jury was precluded from drawing their conclusion from the facts alleged in those counts of the answer that were improperly overruled by the trial judge when he was deciding the issues of law. In so doing, the trial judge did not afford the defendant/ appellant the chance to produce witnesses to testify to those points of fact stated in the answer as would have enabled the jury to decide on the credibility and effect they were entitled to factually. Therefore, the factual points raised in the answer that were not ruled to trial, but testified to by the witnesses for the defendant/appellant, did not cure the prejudicial errors commit-ted by the court below. Any deliberate departure from the normal mode of trial which affects the rights of a party to be tried by jury is prejudicial and a reversible error. In *American Life Insurance Company v. Boima,* 31 LLR 528 (1983), this Court remanded the case for improper conduct of the trial judge. In the entire records before us from the court of origin, no admission was made by the defendant/appellant of the amount of special damages pleaded in the complaint; nor did the appellant concede a definite amount as special damages during the trial. No motion was filed by either party requesting the court to award any definite sum. Therefore, the court below committed a reversible error when it modified the verdict.

I have therefore refrained from signing the judgment in this case.