PAYE KONNAH and **SAYE TIAWAN**, Appellants, v**. GEORGE CARVER,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Heard: May 29, 1989. Decided: July 14, 1989.

1. Plaintiff in all claims of damages, special or general, is required to plead with particularity and prove his case during the trial. This he must do even where the defendant has abandoned his defense and the plaintiff has prayed for default judgment.

2. When a defendant to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on the day assigned for the hearing of said case, such failure is sufficient cause for the opponent to ask for a default judgment.

3. When the jury has reached a conclusion, after having given consideration to the evidence and has found it sufficient to support the verdict, the decision should be upheld.

4. The want of proof is deemed sufficient to defeat the best laid action.

5. The fundamental rule of pleading and practice is that evidence must support the allegations or averments, since allegations are intended only to set forth in a clear and logical manner the party's claim containing the offense complained of; and if it is not supported by evidence, it can in no way amount to proof.

6. While it true that it is the province of the jury to say what general damages should be, the amount awarded should always depend upon and be governed by the evidence adduced at the trial.

7.Even where only general damages is claimed, the plaintiff must carry the burden of producing evidence to give indication to the jury as to what its verdict should be based on.

The appellee, plaintiff in the court below, filed an action of damages for damage to personal property in 1987, claiming that crops planted on his parcel of land were devoured by appellants' animals, despite the fact that his farm was fenced in. In the complaint, the appellee prayed for general damages as the jury saw fit and just.

During the trial in the court below, the appellee and his witnesses failed to establish, among other things, the size of the farm, the quantity of crops (rice, plantain tree, cassava, etc.) that were allegedly destroyed, or the value of the crops allegedly destroyed. Moreover, the appellants did not appear in response to the assignment to present evidence on their behalf; therefore, the case was concluded on a default judgment.

At the conclusion of the trial, the jury returned a verdict of liable against the appellants and awarded appellee general damages in the amount of $11,000.00. The verdict was confirmed

by the trial judge and a judgment entered thereon. From said judgment, the appellants appealed to the Supreme Court for a review and final determination.

In its opinion, the Supreme Court held that while the trial jury is clothed with statutory authority to award general damages, the amount awarded should always be based upon and governed by the evidence adduced at the trial, and that this standard must be complied with even in cases of default judgment. The Court observed that the appellee had not established that he was entitled to the amount awarded by the jury. Consequently, the Court affirmed the judgment with the modification that the award of $11,000.00 made by the jury be reduced to $3,500.00.

C. Wallace Octavius Obey appeared for appellants *P. Edwin Gausi* appeared for appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

The appellee, the plaintiff in the court below, in 1987 filed a four-count complaint for damages to personal property against the appellants. In count two of the complaint, the appellee alleged that he had planted in 1986 several kinds of crops such as cassava , pepper, rice, etc. He further averred that he was the owner in fee simple of the land on which he planted the crops. He also averred that the cattle of appellants had from time to time gone to his farm and eaten his crops. In count three of the said complaint, the only other important count, the appellee alleged that although he had his farm fenced in, the appellants' animals however tore down the fence, entered the farm and devoured his crops. Appellee therefore prayed for judgment against the appellants and for general damages as the jury saw fit and just. He did not ask for special damages.

In their answer, the appellants raised several issues, including one that the action of "damages to personal property" is not provided for by our statute. Count-two of the said answer we hereunder quote, it being, in our opinion, relevant:

"2. That under our fundamental principle of law governing pleadings as well as notice, the plaintiff who alleges that he is the owner of a farm land which he planted several cash crops and were destroyed by defendants' cattle should have given notice to the defendants of the area and total acres on which he allegedly planted his crops. Having elected to evade these principles of law which would have informed the defendants of what the plaintiff intends to prove against them, the complaint must crumble and fall, count 2 of the plaintiff's complaint being a fit subject for dismissal.

In his reply, appellee rejected the contention of the appellants that the action be dismissed on the ground that our statute does not provide for "damages to personal property" as an action. The appellee also contended that the defendants misunderstood the application of the principle of notice because he had promised in his complaint to produce his deed during the trial which contains the metes and bounds of the property. Consequently, he concluded

that the notice requirement was fully complied with. He therefore prayed that defendants be adjudged liable and that he be compensated in general damages.

The records certified to us in this case revealed that on Thursday, September 8, 1988, 26th day's jury session, of the Eighth Judicial Circuit Court, the following record was made by the appellee:

"At this stage, counsel for plaintiff begs to inform this Honourable Court that they rest with the production of evidence . . . ."

In response to that submission, the trial judge made the following record:

"The Court: The plaintiff having rested evidence in this proceeding, this case is hereby deferred to tomorrow, the day of September, A. D. 1988, at the precise hour of 9:00 in the morning and these records shall serve as regular notice of assignment served and returned served on each party litigant since all of the legal counsel for both plaintiff and defendants are physically present in court . . . ."

Despite the above record made on the previous day, when the case was called on Friday, September 9, 1988, at the hour of 11:25 A. M., the appellants and their counsel failed to appear. Under the above circumstances, counsel for plaintiff invoked Rule 7 of the Circuit Court Rules, praying that the court permit him to argue his side of the case. The request was granted and ultimately the jury brought in its verdict in favor of the plaintiff. We are satisfied from the evidence presented and the argument of counsel for the appellants that the trial judge acted in accordance with law and the practice when he granted the request of counsel for the appellee. Therefore, the contention of appellants to the effect that the trial judge hurriedly disposed of the matter without allowing them the opportunity to put in a defense is not sustained.

In prosecuting their appeal, the appellants filed a five-count bill of exceptions. In count one, the appellants accused the judge of committing a reversible error when he sustained the objections to questions which were intended to elicit from the appellee himself and his witnesses the precise figures or estimate of the crops allegedly destroyed by defendants' animals. This accusation of the appellants against the trial judge is unmeritorious since it is not supported by the record before us. In our opinion, the trial judge correctly sustained all objections to these questions because, according to the records, the same questions had been put to one witness or another earlier and they were answered. Under such circumstances, in keeping with the practice in this jurisdiction, a witness need not answer a question or questions which he has already answered. In count five of the bill of exceptions, the appellants also charged the judge of committing a significant reversible error in confirming the verdict of the jury awarding the appellee $11,000.00 as general damages, not because it

was excessive, *but because, according to them, the verdict was brought and delivered in their absence.* (Emphasis ours).

As already mentioned in this opinion, the appellee had claimed that he owned a parcel of land in fee simple on which he planted sundry crops, including rice, cassava, plantains, etc. However, surprisingly, *the size or amount of the appellee's award of$11,000.00 was not raised as an issue by the appellants in their bill of exceptions, their brief or the argument before this Court, at least not directly or squarely.* The appellants instead contended that the appellee failed to give them notice as to what he hoped to prove during the trial with respect to the size of the farm, the acreage and quantity of the crops devoured by appellants' animals. In other words, the appellants contended, though in an indirect way, that the appellee should have stated in his complaint or reply the size of the land on which the crops. was planted and the exact quantity of crops, perhaps when harvested. This information, the appellants argued, was necessary to give the court and jury, and themselves, an idea as to why he was claiming general damages. (Emphasis ours.) The fact that the appellee claimed only general damages, and not special as well, baffles us, since such a claim for seed rice, clearing the land and planting it would have served as a guideline for the jury in determining the size of the award. Since the appellants have not denied the appellee's allegation that his crops were devoured by appellants' animals, and since we have said that we are satisfied that the trial judge committed no wrong when he granted the request of appellee's counsel, made on September 9, 1988, to present his side of the case. The only question for our determination then is, whether or not even under these circumstances the appellee has stated sufficient facts in his pleadings and in his argument before this Court to warrant the jury's verdict of $11,000.00 as general damages. We are not convinced that he did.

During the trial of this case and while on the cross-examination, the plaintiff, now appellee, was asked the following question:

"Mr. witness in your testimony you mentioned that such crops as plantain, cassava, rice and etc. were destroyed by cattle such as sheep and goats owned by the defendants. You will please state if you can the quantity of crops plantain tree, cassava, rice etc. that were allegedly destroyed according to you?"

The witness replied: "I want to say that I am not in the position to state the number or quantity or rice, plantain, pepper, cassava that were destroyed on the farm because usually we do not count the amount of rice, plantain, pepper, cassava when a farmer makes his farm. *My farm which I made in question was big or large like from this court building to the public market of Sanniquellie."* (Emphasis added.)

Indeed, this is an interesting answer, coming from the appellee himself Another but similar question put to the witness was:

"Mr. witness you will please tell us how many acres of land in 1986 did you cultivate according to you and thereon planted crops which were destroyed by the defendants' cattle?"

To this question the appellee gave the following answer, which we consider not helpful:

"Usually we do not count and or we do not mention the number of acres for farming nor do we use tapeline for measurement of the farm."

While testifying on behalf of the appellee, Joseph Gausi, appellee's second witness after himself, was asked this question: "Can you estimate the quantity of crops destroyed by the goats and sheep of the plaintiffs farm?"

His answer was: "I cannot estimate." The second question put to this witness of appellee reads thus:

"Mr. witness since you personally went to the plaintiffs farm upon his request and saw the same, are you in position to estimate to the size (sic) of the said farm?"

This witness, like the appellee himself, gave the following curious answer: "Yes, it was almost like from here to the first gas station where the union office is."

We observed further, according to the evidence in this case, the following question was put to Paye Goekpeh, appellee's third and final witness:

"Mr. witness can you give an estimation of the quantity of crops destroyed by the defendants' cattle according to you?

Again this witness gave the following ineffectual answer: "During my inspection on the said farm, I discovered that cattle ate the crops of the plaintiff such as rice, pepper, cassava and green corn. Usually, we the farmers do not count the number of the crops that we plant."

As can clearly be seem from all of the answers to questions propounded to the appellee and his witnesses by the legal counsel for the appellants, the questions invariably sought to obtain some indication as to what damages might have been sustained by the appellee. There is not a single answer given which could have been of any assistance to the court and jury. How did the jury then come up with a verdict of $11,000.00 is a mystery to this Court. Also, why the trial judge felt constrained to confirm and affirm the said verdict mystifies us.

Under our law, the plaintiff in all claims of damages, special or general, is required to plead with particularity and prove his case during the trial. This he must do even where, as in the instant case, the defendant has abandoned his defense and the plaintiff has prayed for a default judgment. It is noteworthy, however, that we point out that where the plaintiff fails to carry this burden of proof imposed upon him by law, the court should not uphold the verdict of the a jury. In the instant case, the jury brought a unanimous verdict of liable against the appellants and awarded the appellee $11,000.00 as general damages, which '

verdict the trial judge confirmed and affirmed. In our opinion, a motion for a new trial would have been appropriate. But again, the appellants chose not to file one. With respect to the enormous award in the verdict, the answers given to the questions put to the appellee and his witnesses should have, in our opinion, compelled a contrary result.

The holding of *Reeves v. Spiller,* 1 LLR 298 (1897) is that when a party to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on a day assigned for the hearing of said case, such failure is sufficient cause for the opponent to ask for a default judgment. This was the exact situation in which the appellants found themselves when they failed to appear in time when the jury was charged and they brought in their verdict.

We will now consider the other issue in the case, whether the verdict of the jury is in harmony with the evidence. Appellants have contended here that the verdict is manifestly against the weight of the evidence. We are in agreement with this contention.

In *Liberian Oil Refinery Company v. Mahmoud,* 21 LLR 201 (1972), this Court, in affirming the judgment of the trial court, held that when the jury has reached a conclusion after having given consideration to the evidence it found sufficient to support the verdict, the decision should be upheld. As do most jury verdicts, the one in the instant case reads:"We the petit jurors to whom the case. . . was submitted and after a careful consideration of the evidence at the trial of said case, we do unanimously agree that the defendants are liable for $11,000.00 general damages." When squared with the ruling in the *Liberian Oil Refinery Company* case, the verdict in the instant case is found wanting and should have been set aside and a new trial awarded pursuant to a motion. *Collins v. Republic,* 21 LLR 366 (1972).

It is our opinion that as far as proof of damages at the trial is concerned, the appellee made no attempt to carry this heavy onus imposed upon him by law. In other words, if the questions and many more had been clarified at the trial, particularly with reference to the estimate and value of the crops allegedly devoured by the appellants' animals, the truthfulness or falsity of the two pleadings would have been established beyond dispute. In essence, the witnesses for the appellee and himself testified to the effect that they had not the vaguest notion as to the quantity of the crops involved and their value. There is no evidence in the entire records to show or even suggest the estimated value of crops. In the absence of any corroboration that he sustained financial loss, could the jury legally accept as truth the mere allegations of the appellee, especially where only general, not special, damages are sought? We do not think they should have.

Count five of the bill of exceptions deals with the verdict of the jury which is in the staggering amount of $11,000.00.Reviewing the evidence such as it is and as we have already observed, we find nothing to warrant a verdict in the amount, if an award at all. Although the appellee asked for general damages only, the jury should have been given some

indication as to what their verdict could be based upon. In *Jogensen v. Knowland,* 1 LLR 266 (1895) and *Haid v. Ebric,* 17 LLR 662 (1966), this Court held that "want of proof must defeat the best laid action". The Court also held in *Houston et al. v Fischer et al.,* 1 LLR 434 (1904) at 436, that the fundamental rule of pleadings and practice is that evidence must support the allegations or averments, since allegations are intended only to set forth in a clear and logical manner the party's claim constituting the offense complained of and if it is not supported by evidence, it can in no way amount to proof.

In this case one wonders what yardstick the jury used in arriving at $11,000.00 as general damages. In *The Salala Rubber Company v. Onadeke,* 24 LLR 441 (1976), a jury brought in a verdict for plaintiff, awarding a huge sum as general damages in a suit for malicious prosecution. In reversing the judgment because the appellee had failed to establish his claim, this Court observed that while it is true that it is the province of the jury to say what general damages should be, the amount awarded should always be based upon and be governed by the evidence adduced at the trial. "The Court will not uphold unreasonable amounts arbitrarily awarded by a jury as damages ...." We have not been able to find anything in the evidence to justify the $11,000.00. Courts should always remember that a mere allegation does not constitute proof; the burden of proof remains upon the shoulders of the one who makes the allegations.

According to the circumstances as appear in the record of this case, and in keeping with the law cited, we are of the opinion that the judgment of the trial court should be affirmed, but with the modification that the staggering amount of $11,000.00 in general damages be reduced to $3,500.00. We have taken this position because to do otherwise would violate our basic principles of law regarding pleading, burden of proof and damages.

In view of the foregoing, it is our opinion that the amount of $3,500.00 should be the judgment to be enforced with costs against the appellants. And it is hereby so ordered.

Judgment affirmed with modification