

LIBERIA AGRICULTURAL COMPANY (LAC), Appellant, v. **NATHAN MINGLE,**
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
GRAND BASSA COUNTY.

Heard: June 6 & 7, 1989. Decided: July 14, 1989.

1. Damage is loss, injury or deterioration caused by the negligence, design or accident of one person to another in respect of the latter's person or property. "Circuit courts do not have jurisdiction over labor matters.
2. When issues of the court's jurisdiction over the person and subject matter are properly raised by parties, the court is duty bound to pass upon same before proceeding any further.
3. A verdict awarding damages in an action for breach of contract will be held excessive and the judgment based thereon reversed where the damages awarded exceed the sums alleged in the complaint.

Nathan Mingle, the appellee, was employed by the appellant, Liberian Agricultural Company (LAC), in 1968. After ten (10) years in the employ of appellant, appellee resigned in 1978 and took up employment with the West African Explosive Chemical Limited (EXCHEM). While in the employ of EXCHEM, it was alleged that appellee received substantial income and benefits. Subsequently, however, the appellee resigned from EXCHEM and again took up employment with appellant, which is alleged to have induced appellant with an alleged hidden agenda to frustrate and embarrass appellee. Appellee was promised a higher salary but the promise did not materialize. Instead, the appellee was dismissed and subsequently evicted from appellant's residential house heretofore provided appellee by virtue of his employment with the appellant. The eviction brought upon appellee and his family hardship, humiliation, frustration and embarrassment. Consequence of these conditions and situation, appellee felt were traceable to the unbecoming and wrongful acts of appellant, and so he instituted the action of damages for wrong in the Second Judicial Circuit Court in February, 1986.

At the disposition of the law issues, appellant, as defendant in the court below was ruled to a bare denial following the dismissal of its amended answer. At the conclusion of the trial of the facts, the trial jury returned a verdict of liable against appellant and awarded appellee the sum of \$75,000.00 as damages. A motion for a new trial was filed, heard, and denied. The trial judge confirmed the verdict of the jury and adjudged Appellant liable to pay to Appellee \$75,000.00 with costs. From this final judgment of the court below, the appellant appealed to the Supreme Court for final determination.

The Supreme Court in reversing the judgment of the lower court declared that the evidence adduced at the trial was in the nature of wrongful dismissal over which the Circuit Court has

no trial jurisdiction. Further, that the amount awarded as damages was excessive, in that the appellee had laid in his complaint and requested to be awarded the sum of \$2,910.00 as special damages. The trial jury did not give consideration to this prayer but, rather, laid in the verdict the amount of \$75,000.00 without designating it as special or general damages. The Supreme Court found that the amount awarded was too excessive and not supported by sound reasoning. The judgment was therefore reversed.

Victoria Sherman Lang and *Roger Martin* appeared for appellant. *Henrietta Koenig* and *J. Edward Koenig* appeared for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

Appellee in this cause of action filed an action of damages for wrong against appellant in the Second Judicial Circuit Court, Grand Bassa County, alleging in substance the following:

Appellee in the above entitled cause of action was employed by the appellant on August 20, 1968 as a school teacher and was transferred to the warehouse as a clerk in 1971. In 1972, he was promoted as staff and became supervisor of the shipping section and remained a staff member until 1978, when he resigned and took up employment with the West African Explosive Chemical Limited (EXCHEM). While in the employ of the West African Explosive Chemical Limited, he received substantial income and benefits such as educational and insurance benefits for his family. However, appellant is said to have induced appellee to leave the employ of EXCHEM and rejoin appellant under the pretext that he would receive a higher salary. To the contrary, the said inducement was made with the intent to frustrate and embarrass the appellee.

Shortly after his re-employment with the appellant, he was called from his assigned dwelling to the appellant's head office, given a letter of dismissal and asked to turn in the vehicle assigned to him by the appellant. The appellee had to walk four miles from the head office back to his assigned house, thereby degrading and dehumanizing him before his former colleagues and subordinates. The appellant also immediately had the cooking gas turned off and appellee and his family evicted from the premises. Even though appellant promised the appellee, during the summary ejection proceeding to provide transportation to transport appellee and his family from the premises of appellant, yet, after two days had elapsed the transportation was not forthcoming. The appellee was also having difficulties obtaining food, therefore he, his pregnant wife and children had to walk seven miles to the road to charter a taxi for Buchanan; thus leaving all his personal and household effects at the premises of appellant, his assigned house. On February 26, 1986, appellee, being injured by the many unbecoming and wrongful acts of the appellant, filed an action which culminated into a verdict of \$75,000.00 general damages.

Appellee claims that on June 3, 1988, appellant, through his counsel filed a motion for a new trial and simultaneously obtained notice of assignment for its hearing and had the notice of assignment served on appellee's counsel together with copy of appellant's motion at 6:55 p. m. The assignment commanded the appellee to appear in court on June 4, 1988, at the hour of 10:00 a.m. This, appellee says, was another act of appellant intended to inflict injury upon appellee, knowing that appellee lived in Grand Bassa County and his counsel lived in Monrovia, thereby making it almost impossible for appellee to make necessary transportation arrangement to have his counsel travel to Grand Bassa County by 10:00 a.m. However, through the kind understanding of appellee's counsel; the resistance to appellant's motion for a new trial was prepared and same was filed in court before 10:00 a.m. on June 4, 1988, and in keeping with the court's instructions appellee's counsel sat patiently in court until 10:25 a.m. before the motion was called for hearing and same was disposed of in keeping with the Civil Procedure Law, Rev. Code 1:10.7. On the subject of default on motions, about 11:00 a.m. June 4, 1988, appellant's counsel appeared in court in a hurry.

To the complaint appellant filed an answer and simultaneously filed a motion to dismiss. Appellee filed a reply. The below ruling was made by His Honour the trial judge, ruling the case to trial:

"COURT'S RULING

In reference to the above entitled cause of action, the records of this Honourable Court disclose to us that Plaintiff Nathan Mingle of the above mentioned county and Republic on February 25, 1986, brought an action of, damages for wrong against the aforesaid defendant in the Second Judicial Circuit Court of Grand Bassa County and Republic aforesaid, sitting in its May Term, A. D. 1986 in which plaintiffs complaint specifically set forth 7 counts praying this Honourable Court to award him the sum of \$2,910.00 and also general damages sufficient to compensate him for pain, suffering and emotional distress he had suffered and any further relief this Honourable Court may deem just and equitable. (See complaint).

As we peruse the records of this case it is further observed by this Honourable Court that defendant filed a ten-count answer, dated March 5, A. D. 1986. (See answer).

Subsequently defendant filed a notice of withdrawal with reservation to file an amended answer dated April 28, 1987. (See notice of withdrawal).

To this amended answer plaintiff filed a 13 count amended reply on the 15th day of May 1987. (See plaintiff's amended reply).

Subsequently on the 19' h day of June 1987, plaintiff filed a three-count motion, praying for the dismissal of defendant's amended answer, to which motion defendant filed a six-count resistance on the 24' h day of June 1987, raising factual and legal issues. We shall therefore confine ourselves to the major contention upon which both parties vehemently argued,

which is that the initial cost awarded Plaintiff under our law should be paid before the filing of an amended answer. In support of plaintiff's motion, plaintiff cited this Honourable Court to the Civil Procedure Law, Rev. Code 1: 9.10, which I quote as follows, to wit:

`An amendment to pleadings permitted. At any time before trial any party may in so far as it does not un-reasonably delay trial, once amend any pleading made by him by: ... (b) Paying all cost incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and (c) substituting an amended pleading."

Plaintiff again cited this Honourable Court to *Kparnee v. Tarno-Freeman*, 18 LLR 159 (1967), in which the Supreme Court ruled that a party to an action permitted under the law to amend his pleading must, before refiling, pay all costs thereby incurred by the opposing party to properly complete such amendment. This court was further cited to page 163 of the same citation of law, where the Supreme said that, and I quote:

`At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any particular pleading made by him by:

(a) Withdrawing it and all subsequent pleadings made by him.

(b) Pay all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading."

In strong resistance to plaintiff's motion, defendant's counsel cited this court to the same law citations relied upon by plaintiff's counsel.

In order to satisfy the court before we can commence our final ruling in these proceedings we shall look at the filing date of the amended pleadings and the date of the payment of the cost.

We observe that defendant's amended answer was filed May 2, 1987 and further observed that the cost in these proceedings were paid on the first day of May 1987 to Robert Hodges Jr., Sheriff, Second Judicial Circuit Court, Grand Bassa County, Republic of Liberia. (See exhibit R2).

The court in perusing the records further in this proceeding has strenuously checked and failed to see any receipt from plaintiff on behalf of the defendant so as to compare the statutory requirement which is being supported by the Supreme Court's ruling of *Kparnee v. Tarno-Freeman*, and the Civil Procedure Law, Rev. Code 1: 9.10.

Therefore and in view of the foregoing, it is the candid opinion of this Honourable court that the cost was not paid to plaintiff before the filing of defendant's amended answer. This court therefore hereby rules and adjudges that the amended answer of defendant is hereby dismissed, and this case is ruled to trial on its merits. And it is hereby so ordered.

GIVEN UNDER MY HANDS IN OPEN COURT

THIS 14TH DAY OF SEPTEMBER, A.D. 1987.

Sgd, Joseph L. Barchue Sr.

RESIDENT CIRCUIT JUDGE,

2ND JUDICIAL CIRCUIT COURT,

GRAND BASSA COUNTY."

During the hearing appellee along with two other witnesses testified on his behalf. Thereafter defendant/appellant produced evidence to rebut his claim. Both appellant and appellee produced into evidence documents. Some were refused admission and others were admitted into evidence. The jury returned a verdict awarding appellee \$75,000,00 as general damages. The verdict is quoted hereunder: "We the members of the petit jury for Grand Bassa County, Republic of Liberia, duly sworn and empaneled according to law upon our oath, after hearing evidence adduced at this trial, and after due deliberation, have found that defendant is liable and plaintiff is hereby awarded \$75,000.00 for damages.

DATED THIS 2ND DAY OF JUNE A. D. 1988.

Sgd. David B. Quegar

Sgd. Sundapay Chappy

"Esther King

"Rebecca Morris

"Alfrida Matthews

Thomas M. Bropleh

"Martha Barrolle

Henry Baryogar

"James Johnson

Annie Gargahn

"Sarah Tarwhea

"Clifford H. Fleeting

FOREMAN"

Subsequently, appellant filed a motion for a new trial which is quoted hereunder: "And now comes movant, Liberian Agricultural Company in the above-entitled proceedings and moves this Honourable Court for a new trial and that the verdict of the empaneled jury during the trial of said cause of June 2, 1988 awarding Respondent Nathan Mingle damages of \$75,000.00 be set aside for the following legal and factual reasons, to wit:

1. Movant maintains that this Honourable Court and the jury thereof do not have jurisdiction over the subject matter of wrongful dismissal or to determine said issue and, therefore, the jury and this Honourable Court are not competent forum. The jury in particular, not being competent to determine the issue of wrongful dismissal of Respondent Nathan Mingle, said verdict being and including an award of damages for wrongful dismissal of respondent by movant is an illegal, void, and *ultra vires* act and should be set aside as contrary to law and thus not in the interest of justice.

2. And movant further says that the Labour Practices Law does not provide for trial by jury of the issue of wrongful dismissal and that said verdict is contrary to law, and thus should be set aside as against the interest of justice.

3. Movant also says that the award of \$75,000.00 is excessive and is a clear indication of the prejudice, bias, passion or corruption. Movant further says that the discriminatory remarks in her argument to the jury made by Counsellor H. Koenig, counsel for respondent, that the white management of movant did not like or despised Liberians and ill treated them in general is a statement to which counsel for movant brought to the attention of court and requested that the jury disregard same, but to the contrary she persisted with such remarks which inflamed and stirred up the minds of jurors to be prejudiced against movant and, therefore, said award should be set aside as excessive, prejudicial and against the interest of justice.

4. Movant further says that the verdict that movant is liable and should pay damages of \$75,000.00 is against the weight of the evidence because, for example, respondent failed to prove that he was induced under the pretext of receiving a higher salary because he did receive the \$1,110.00 offered by movant and his salary at EXCHEM was \$1000.00 which is a clear indication that the sum of \$110.00 could not have been any inducement and that other reasons motivated respondent to leave EXCHEM. Furthermore, no liability attaches or damages can accrue for agreeing to and entering a contract of re-employment. Movant also says that since the best evidence of wrongful dismissal is a competent forum's judgment that respondent was wrongfully dismissed and since such judgment of wrong dismissal was not produced or offered in evidence, the verdict is contrary to the weight of the evidence.

Wherefore and in view of the foregoing, movant prays this Honourable Court to set aside the verdict of the empaneled jury on June 2, 1988 awarding respondent \$75,000.00 and that a new trial be granted in the interest of justice."

The motion was denied and final judgment was rendered in favor of appellee awarding him \$75,000.00 as general damages without any mention of the \$2,910.00 as special damages prayed for in his complaint.

It is from the ruling of the trial judge, to which appellant had excepted, that it announced an appeal to this Honourable Court, filing an eleven-count bill of exceptions quoted hereunder:

"Defendant/appellant in the above entitled action, dissatisfied with the several rulings of Your Honour and this Honorable Court on the issues of law raised in the pleadings and during the trial of the action, including Your Honour's rulings on objections raised by counsel for defendant to the admission of certain documents offered into evidence by plaintiff, etc. etc., the verdict of the trial jury finding the defendant liable to plaintiff in damages in the sum of \$75,000.00, defendant's motion for a new trial, and the court's final

judgment delivered on June 15, 1988 affirming and confirming the verdict of the jury, all to which defendant excepted and gave notice on the records/ minutes of the trial that defendant was appealing the same to the Honourable the Supreme Court of Liberia at its October Term, A. D. 1988, hereby respectfully submits this bill of exceptions for the approval of Your Honour so as to avail to defendant the opportunity to have the Honourable Supreme Court of Liberia review the errors complained of at its October Term, A. D. 1988 or at any other term of the said Court to which the appeal may be removed, and submits as the basis of the appeal the following errors to wit:

1. Because this Honorable Court, with His Honour Varney Cooper, circuit judge presiding by assignment, in disposing of issues of law raised in the pleadings dated March 28, 1988, erred in ruling counts 4 and 5 of defendant's amended answer to trial but overruling counts 1, 2, 3, 6, 7, 9 and 10 of the said amended answer, to which defendant excepted.

2. That this Honourable Court erred in respect of the ruling on the law issues overruling counts 1, 2 and 3 of defendant's amended answer for the reasons specified in the said ruling because the allegations contained in plaintiff's complaint are insufficient to constitute a cause of action in respect of damages for inducement.

3. And also because defendant says that this Honourable Court erred with respect to its ruling on the law issues in overruling counts 6 and 7 of defendant's amended answer for the reasons specified therein and holding that the court was the proper forum to determine actions of that nature founded upon allegations of wrongful dismissal. Defendant says that this Honourable Court erred as to counts 6 and 7 of the amended answer of defendant because the said counts have reference to the fact that the alleged wrongful dismissal of an employee cannot be construed as tortious conduct nor could damages be awarded for alleged wrongful dismissal since there is an adequate exclusive remedy under the Labor Practices Law, and that there exists no final judgment from a court of competent jurisdiction declaring the dismissal of plaintiff wrongful. Further, defendant says that this Honourable Court has no jurisdiction over the subject matter or issue of wrongful dismissal.

4. That this Honourable Court with respect to its ruling on the law issues also erred in overruling count 5 of the defendant's amended answer because the same was a misinterpretation. Count 5 of the defendant's amended answer responds to count 4 of plaintiff's complaint alleging the existence of a capricious plan concerning which plaintiff's alleged wrongful dismissal was in furtherance of, and it denies the existence of a capricious plan in view of the lack of causal relation or connection of the dismissal of plaintiff to the offer made to him for re-employment as two different managers were in charge at the respective time plaintiff was re-employed in 1983 and when he was dismissed in 1985. This Honourable Court misinterpreted count 5 as presenting the issue of defendant's responsibility for plaintiff's dismissal.

5. And also because this Honourable Court erred with respect to the ruling on the law issues in overruling count 10 of the defendant's amended answer which contended that plaintiff be estopped from bringing said action in view of the fact that he signed a release and a receipt for \$3,035.00. Defendant submits that this constitutes reversible error.

6. That this Honourable Court erred in that not having overruled count eight of the defendant's amended answer, it did not rule the count eight of said amended answer to trial.

7. And also because defendant says that Your Honour erred in overruling defendant's objection to the admission of copies of documents offered by plaintiff into evidence on the minutes/records of the court of May 27, 1988 at page 8 and admitting the said documents into evidence contrary to the best evidence rule as contained in the Civil Procedure Law.

8. And also because Your Honour erred in denying defendants motion for a new trial by granting a default on the motion since the case was called at 10:35 a.m., because Your Honour should have taken into consideration that counsel for defendant was not residing in Buchanan, but was coming to said court from Monrovia, which Your Honour had been previously notified about on the records, a two hour trip. Further, plaintiff had not filed any resistance to said motion and therefore was not entitled to a default on the motion.

9. And also because Your Honour affirming and confirming the verdict of the empaneled jury awarding plaintiff damages for \$75,000.00, erred because the verdict did not specify as to what amount constitutes special damages and what constitutes general damages, which renders Your Honour's judgment a fit subject for reversal.

10. And also because Your Honour's judgment confirmed the said verdict encompassing and including damages for wrongful dismissal when the Labor Practices Law does not provide for damages for wrongful dismissal thereby rendering said verdict confirmed by Your Honour's judgment contrary to law, and therefore said judgment constitutes reversible error.

11. And also because defendant says that the said verdict and final judgment clearly demonstrate prejudice, bias, passion and deception and contrary to the facts adduced at the trial and the law controlling thereby constituting reversible error.

WHEREFORE AND IN VIEW OF THE ABOVE, defendant respectfully tenders this bill of exceptions for the approval of your Honor to facilitate its appeal to the Honorable Supreme Court of Liberia."

When this case was called for hearing before us, appellant presented the below issues for our consideration:

1. Whether or not the trial judge was within the pale of the law in overruling counts 1, 2, 3, 6, 7, 8, 9 and 10 of the amended answer and whether the court below had original jurisdiction to hear and determine labor matters?

2. Whether or not in law the dismissal of an employee on a contract of indefinite or definite duration, constitutes tortious conduct by an employer for which damages should be awarded to the dismissed employee?

3. Whether or not the trial judge was correct in affirming the vague and indistinct verdict of the empaneled jury when said verdict does not specify what amount is awarded as general damages, and what as special damages, and is completely unsupported by the weight of evidence adduced at the trial?

4. Should the employment of an employee who has resigned from the employ of another company, as in the instant case, be construed as an employment in perpetuity, irrespective of what such an employee does?

Also, appellee presented for our consideration the below issues:

1. Does appellee's complaint constitute a cause of action of damages for wrong?

2. Did appellee prove by the preponderance of evidence his action of damages for a wrong?

3. Did the trial judge commit an error in admitting into evidence the documents which had been testified to, marked, identified and confirmed?

4. Did appellant suffer any harm as a result of said admission after it admitted nearly all of the documents into evidence which it had objected to?

5. Did the jury bring a correct verdict?

We will answer the issues as presented by both appellant and appellee in the reversed order, starting first with the issues of the appellee and in so doing answer the issues appellant presented in its brief.

1. Does appellee's complaint constitute a cause of action for damages for a wrong?

We answer this issue in the negative. "Damage", according to Black's Law Dictionary (5thed), is "loss, injury, or deterioration, caused by the negligence, design, or accident of one person to another, in respect of the latter's person or property. . ." Appellant contends that the trial court committed reversible error when counts 1, 2, 3, 6, 7, 8, 9 and 10 of appellant's amended answer were overruled because there has been no breach of contract by appellee as a result of appellee's resignation from EXCHEM and no complaint has ever been instituted by EXCHEM against appellee for his resignation. Consequently, appellee has suffered nothing traceable to the conduct of appellant. Furthermore, no such breach of contract was pleaded by appellee in his entire complaint. Also the records do not show any inducement of appellee by appellant, appellee having resigned voluntarily from EXCHEM to rejoin the employ of appellant.

Appellee's complaint, at count 4, says: "That in furtherance of its arbitrary and capricious scheme defendant wrongfully dismissed plaintiff on September 6, 1985. Copy of said letter of dismissal is attached hereto marked exhibit "D" and made a part of this complaint." We are amazed that one would assert illegal dismissal and then institute an action for damages for wrong. There is no showing in the records of any determination of illegal dismissal by any labour forum to the effect that appellee was wrongfully dismissed by appellant. Even if it were to be determined that the dismissal of appellee was wrongful, damages will not lie because the circuit courts do not have jurisdiction over labor matters.

Therefore, the trial court erred when the above counts of appellant's amended answer were overruled because these counts raised the issue challenging the jurisdiction of the Second Judicial Circuit Court. For reliance, the Court cites the Labor Practices Law, Lib. Code 18-A: 9(a) (i) (ii) and 1508(5) and (6). We now proceed to issue no. 2.

2. Did appellee prove by the preponderance of evidence his action of damages for wrong?

Appellee contends that he was wrongfully dismissed since he on an indefinite employment contract. Taking for granted that appellee was an employee under a contract for a definite duration, his wrongful dismissal cannot constitute a tortious act. on the part of a management. Damages therefore will not and cannot lie. *Ibid.* It is stated in Black's Law Dictionary (5thed), that tort is a wrong independent of a contract; a violation of duty. In every tort action there must be evidence of a legal duty from the defendant to plaintiff. There are three essential elements that are considered to be the basis for any tort action. They are:

- (a) Evidence of legal duty
- (b) Breach of the legal duty
- (c) Proximate cause of that breach

In the instant case, the appellant failed to prove all three of those elements. Under such circumstances, our Labor Practices Law provides the way and manner in which one can be compensated for wrongful dismissal. "A person employed under a contract of indefinite duration who is wrongfully dismissed may be awarded under the applicable statute an amount of up to two years' wages". *National Iron Ore, Ltd. v. Board of General Appeals*, 26 LLR 429 (1978). Then with respect to the release signed by appellee when he was dismissed by appellant, this Court held: "A release is a writing manifesting an intention to discharge another from an obligation and must be signed by the party executing the release". *Monrovia Construction Corporation v. Wazami*, 23 LLR 58 (1974). "A party to a stipulation is estopped from denial of facts contained or implied therein." *Smith y. Page*, 11 LLR 146 (1952).

In the absence of a determination by a labor forum, such as the Ministry of Labour, that the appellee has been wrongfully dismissed, and in the face of the release signed by appellee at

the time of his dismissal, the claim of damages for wrongful dismissal was unfounded and baseless. We now turn our attention to the third issue.

3. Did the trial judge commit an error for admitting into evidence the documents which had been testified to, marked, identified and confirmed?

This Court has held on numerous occasions that identification of documents in legal proceedings is primarily required to avoid reception of false documents. And this Court has also held that before documents can be admitted into evidence, they must be testified to, identified, marked by court and confirmed. The documents referred to in the instant case met the legal requirements and were therefore properly admitted into evidence. Admission, however, does not give credence to the documents; rather, the passing upon the weight of the documents as evidence to support and strengthen plaintiff's or defendant's evidence rest with the jury, or in case of non-jury trial, with the court. Therefore it was not error for the trial judge to have admitted the documents into evidence. This answer satisfies issue four of appellee's bill of exceptions. Hence, we shall proceed to the discussions of issue no. 5.

5. "Did the jury bring a correct verdict?"

The records reveal that appellee's evidence consisted of his dismissal and the special damages alleged to the tune of Two Thousand Nine Hundred Ten Dollars (\$2,910.00), the money allegedly spent by him to renovate a dwelling for his use and transportation following his dismissal. The jury brought in a verdict in an amount of Seventy-Five Thousand Dollars (\$75,000.00). The verdict does not say what this amount is for. Even the \$2,910.00 claimed by appellee was not mentioned in the verdict. The trial judge ignored these facts and law, confirmed the verdict and rendered his final judgment. What a dangerous precedence!

This Court has held in the case *Wright v. Tay*, 12 LLR 223 (1955) that: "A verdict awarding damages in an action for breach of contract will be held excessive where the damages awarded exceed the sums alleged in the complaint." How could the jury award a sum in excess of the sum prayed for in the complaint? And upon what reasoning did the trial judge render a judgment confirming such an excessive verdict? The court should have set such a verdict aside in the face of no proof.

In view of the foregoing, the judgment is hereby reversed. Costs disallowed. And it is hereby so ordered.

Judgment reversed.