E. A. AMOAH, Appellant, v. **BEATRICE FREEMAN,**Appellee.

APPEAL FROM THE CIVIL LAW COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: January 12, 1983. Decided: February 4, 1983.

1. Insulting expressions in the form of questions constitute no ground for an action of damages for injuries to the reputation.

2. Words that are merely insulting are not actionable as libel or slander, and mere words of general abuse, however, opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation of special damages.

3. A communication made in good faith on any subject matter in which the person communicating has an interest or in reference to which he or she has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains a matter which without this privilege, would be actionable and although the duty is not a legal one, but only a moral or social duty of imperfect obligation.

4. Qualified or privileged communications are not actionable for injuries to reputation.

5. A qualified or conditionally privileged communication is one made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he or she has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a mariner and under circumstances fairly warranted by the occasion and duty, right or interest.

6. It is an established general rule that a communication respecting the character of an

8. The general rule is that upon the examination of a witness in chief, the examining attorney is not to ask leading questions. A party must not lead his own witness, although he may lead the witnesses of his adversary. Leading questions should generally be confined to cross-examination and excluded in examination in chief; the test of a leading question is whether it suggests answer thereto by putting into the mind of the witness the words or thoughts of such answers.

9. In an action for libel or slander, the exact language of the defamatory publication must be set out in the complaint, and it is not sufficient to set out in the publication in its substance and effect. In fact it has been held that if slanderous words are uttered in the form of a question, they will not be admitted in support of a declaration charging them to have been spoken affirmatively.

Appellant in these proceedings, general manager of Mobil Oil Company of Liberia, was alleged to have made slanderous remarks against and about the appellee, a Mobil Oil dealer, as a result of which, appellee instituted an action of damages alleging that by these remarks made against her, her good reputation had been tarnished, besmeared, defamed, slandered and injured.

Pleadings in the case having rested and the law issues heard and disposed of, the case proceeded to trial and ended in a verdict in favor of the plaintiff, appellee herein, with a jury award of $10,000.00 as damages. A motion for new trial was denied, after which the court entered final judgment affirming the verdict of the empanelled jury and adjudging the appellant liable to pay to the appellee $10,000.00 damages. From this final judgment and several rulings of the trial judge, appellant excepted and appealed to the Supreme Court.

Upon review of the records, the Supreme Court held that appellee's evidence adduced at the trial did not support the allegations laid in the complaint, and that the question posed to appellee on the direct was leading and instructive; and, hence, contrary to accepted trial procedure. Finally, the Court held that the averments in the complaint, giving rise to the cause of action were conditionally or qualifiedly privileged and that they do not constitute a basis for an action for defamation. Accordingly, the judgment was reversed.

MR. JUSTICE SMITH delivered the opinion of the Court.

In the month of December, 1975, the appellant in this case was alleged to have made slanderous remarks against and about the appellee, which remarks, as set out in the complaint, read as follows:
"I gave you the damn product to sell and report the money to me and you have embezzled (eaten) the money; I'm going to call the Director of Police to have you arrested and put in jail."

It is growing out of this expression, that appellee instituted an action of damages for injuries to her reputation against the appellant in the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its March Term, 1976, alleging that by this statement her good reputation had been tarnished, besmeared, defamed, slandered and injured.

Pleadings in the case having rested and the law issues heard and disposed of, the case came on for trial during the March 1976 Term of the court and ended in a verdict in favor of the plaintiff, appellee herein, awarding her $10,000.00 as damages. The trial judge, after hearing and denying appellant's motion for new trial, on the 19th day of May, 1976, entered final judgment affirming the verdict of the empanelled jury and adjudged the appellant liable to pay to the appellee $10,000.00 damages. It is from this judgment and several rulings of the trial judge that appellant excepted and brought this case on appeal for final review and determination on a seven-count bill of exceptions. However, it is only count six of the bill of exceptions we deem necessary to consider.

In count six of the bill of exceptions, appellant complains that the verdict of the jury is manifestly against the weight of, and contrary to the evidence adduced at the trial, and that the trial judge should have granted the motion for new trial but instead, he confirmed the verdict contrary to the facts adduced at the trial.

During the trial, Beatrice Freeman, the appellee, made the following statement under oath in support of the allegations set forth in her complaint:

"On the 19th of December, 1975, I was not at the station that morning; I took my little boy to the doctor. When I returned at about 1:30 p.m. the boy told me that the manager sent for me. On my arrival there, I learned that the gas was finished. So I went in to check the money I had, while doing so one Mr. Amos Garpue, who was then the sales manager for all the gas stations, told me that my presence was needed by the manager. When we got to Mobil, at the manager's office, he said to me that I had not been to the office for three days to make deposits. I confirmed this and told him that it was due to some unavoidable circumstances. He then asked for the money which I told him I had. He then told me to go for the money because he learned that I was out of gas. He also told me that after making the deposit and obtaining my receipt I should call at the office. I went and checked $1,084.00, deposited the money, obtained my receipt and went to the manager's office with the said Amos Garpue. The manager then called in Mr. Reeves and said to me: "I am trying to help you. I gave the damn product to you for sale and bring the bloody money. What do you think, is Mobil Company your grandfather?" After he uttered these words to me, I stopped him and told him not to go any further. He then picked up the telephone to call Director Andrew Davis; after that, he further said to me: "I have the biggest saying. I can say whatever I feel like saying. I am the manager for this company" He then told Amos Garpue to go with me to the station to go and take over the station. That was the end of the line between him and me. Amos and myself left and went to the station, took inventory of what I had, a copy of which was given me. While we were at the station, the Mobil truck came with gas in Amos Garpue's name. Right there, he became the dealer, this was on a Friday. On Sunday evening, I saw some carpenters around there, checking the office door. On Sunday morn-ing, the carpenters went and changed the lock on the door to which I had the key, meaning that I am a rogue and did not want me to enter there anymore. This is all I know."

The foregoing statement in chief of the appellee, made under oath, is quite different from what is alleged in the complaint. The remark that, "I am trying to help you, I gave the damn

The second witness for the appellee, Amos Garpue, testified as follows:

"It was on the 19th day of December, 1975, when I as a Mobil employee, in the capacity of retail sales supervisor, made a call to Miss Beatrice Freeman's Mobil Gas Station. On my arrival there, she was absent. So I asked her manager who was then at the office about her whereabouts. He said he did not know; so, I realized that Miss Beatrice Freeman had not been making daily sales report to Mobil in terms of money for about a period of one week, according to arrangement made between the manager, Mr. Amoah, and her covering loans given to her. So as a sales supervisor I came back and made report to Mr. Amoah, my manager. In this respect, he asked me to go and find Miss Beatrice Freeman immediately. I could not find her right away so later she came in the afternoon of the same day and I drove her in my car to the Mobil office. Mr. Amoah then asked her: "Miss Freeman, why have you stopped making report to Mobil for one week?" This was in my presence and Mr. Hilary. Miss Freeman said: "Since you gave me the product loan in December, 1974, I have been paying the money everyday to Mobil for sales, and each time when I came in here and asked for the status of my account, nobody is able to give me the proper answer and I have been in doubt for the past months, so I have concluded that the company has been cheating me; and for this reason, I decided to keep the money myself if and when I ready for gas, I will come and pay the money myself." Mr. Amoah then said that was not the agreement between them. Mr. Amoah then told Miss Freeman to go and get all the money she had been getting "for the week" and deposit same with the cashier; after this, she must carry the receipt to him and he will tell her what next to do. Miss Freeman and myself entered the car and drove to the gas station, leaving Mr. Amoah and Mr. Reeves in the office. We got there and she collected $1,000 and some more dollars came back and deposited the money with the cashier, then she and I went back to Mr. Amoah's office. When we got there with the cash receipt, Mr. Amoah said to her: "Miss Freeman, we have come to the end of the line," meaning that she was no more needed in the service. Talking from one thing to another, Mr. Amoah asked Miss Freeman: "Do you want to turn your manager into the hands of the police?`" Miss Freeman said "no" because she and myself were sitting. Mr. Amoah then said to Miss Freeman: "What do you think, I gave you the damn

The last witness to testify for the appellee was Hilary Reeves; here is his testimony in chief:

"Some time in December, I was called by the manager to his office for a discussion. When I arrived, I met Miss Beatrice Freeman and Mr. Amos Garpue. The latter was the retail sales manager, who gave us the detail of the subject for discussion. Mr. Garpue advised us as follows: That on that day he had gone to the Mobil Freeport Services Station for a routine inspection, and realized that the station was out of product, and upon inquiring from Miss Freeman why there was no product at the station, he said that Miss Freeman told him she had no money to purchase gas and so Mr. Garpue had come to the office to advise the manager of the situation. At this moment, the manager asked Miss Freeman what had happened at the station that caused her to be unable to purchase product and operate the station normally. Miss Freeman said that she did not know what had actually happened, but when the manager insisted that she had to tell us what had happened, she admitted having in her custody One Thousand Eighty Four Dollars and Seventy-Nine cents ($1,084.79), which she had paid to the company's cashier before going in for the meeting. Then the manager asked her, that inasmuch as the deposit she had made was less than 50 per cent of the total of the product loan that he, in his capacity as general manager of the company, had granted her as capital to operate the station, could she justify her inability to buy product and operate the station as it should. Miss Freeman said she did not know what actually happened at the station, and so the manager asked her if she felt that the boy (her employee), who was responsible for collecting her money and making her report, had been acting dishonestly by not reporting to her all of the sales proceeds. When she said that she did not know, the manager suggested that under the circumstances, the matter should be turned over to the police in order that the boy would be investigated. Miss Freeman said that she felt that the boy was working with her and the matter should have been left with her to investigate; the manager continued by saying, "I had the time of giving you the product loan, and advised you not to permit anything to go wrong with the funds, do you think that this company is yours to manage its funds as you like it? At the time I granted you the loan, I had to write off about $2,000.00 from your account because you could not and would not pay it, and you now feel pleased to tell me that you do not know

"Q. Mr. Witness, on yesterday when you testified for the plaintiff and in answering to a question on the direct examination, you said" I heard the manager to say I will call the police to investigate the boy who is preparing the report, and he did pick up a telephone but certainly he did not make any call." Please say, Mr. witness, positively and clearly, whether or not you heard in your presence or in and out the defendant's office the defendant say: "I gave you the damn product to sell and report the money to me and you have embezzled (eaten) the money I am going to call the Director of Police to have you arrested and put in jail as falsely alleged in count two of plaintiff's complaint?"

A. I heard the manager say that he would turn the matter over to the police so that the boy who prepared the report for Miss Freeman to be investigated. I also heard the manager to say that the company is not Miss Free-man's to operate it or manage its funds as she pleases. I did not hear any word of embezzlement."

This was the evidence adduced at the trial by the appellee to establish her allegations of slander as set forth in the complaint. In her own testimony under oath, the appellee did not say that the appellant accused her of embezzlement. One of her wit-nesses, Hilary Reeves, testified that he did not hear any mention of embezzlement. The other witness, Amos Garpue, testified that he heard the appellant to have said: "What do you think, I gave you the damn product to report the money to Mobil, instead of doing so you take the money and used it for yourself?" And so no one has, in fact, testified to the correctness of the alleged defamatory statement as has been set out in the complaint. However, the alleged slanderous statements of the appellant, as testified to by the witnesses for the appellee, are all in the form of questions and insults to the appellee. The appellee herself testified that when the appellant said: "I am trying to help you, I gave the damn product to you for sale and bring the bloody money, what do you think, is Mobil Company your grand-father?" And she told him not to go any further. It was also testified to by witness Garpue for the appellee that the appellant said: "What do you think I gave you the damn product to report the money to Mobil instead of doing so you take the money and use it for yourself. Do you think the Mobil Company is for your damn grandfather?" And the appellee said to him: "Do not insult me."

"According to the great weight of authority, in an action for libel or slander, the exact language of the defamatory publication must be set out in the complaint, and it is not sufficient to set out in the publication in its substance and effect. In fact, it has been held that if slanderous words are uttered in the form of a question, they will not be admitted in support of a declaration charging them to have been spoken affirmatively." 17 RCL, Libel and Slander, § 142.

In this case, besides the fact that there is no statement charging the appellee with embezzlement, the insulting expression of the appellant in the form of questions constitutes no ground for an action of damages for injuries to the reputation of the appellee.

For further legal authority, "words that are merely insulting, are not actionable as libel or slander, and mere words of general abuse, however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation of special damages." 50 AM. JUR. 2d, Libel and Slander, §20.

What is held true in this case, according to the evidence, is the fact that Beatrice Freeman, the appellee, was a dealer for Mobil Oil Company of which the appellant was Manager; that she was engaged in the retail sale of petroleum products supplied by Mobil at the Mobil Gas Station on Bushrod Island, Freeport, Monrovia. The arrangement arrived at, according to the appellant, was to put the appellee on her feet. By such business transaction, it is quite clear that the Mobil Company, of which appellant is manager, supplied appellee gasoline for sale; hence, there existed a common interest between the parties as well as a duty to each other under their said business arrangement; and, therefore, the appellant in good faith made inquiry as to why there was no petroleum products at the station for a period of about one week end. Why she had not made the usual sales report. The evidence shows that appellee admitted having kept the money realized from the daily sales and had not reported, the same for some days; that it was upon the instruction of the appellant that appellee deposited the amount of $1,084.00, evidenced by a receipt which she took to the appellant. By reason of this established

It is held :

"A publication is conditionally or qualifiedly privileged where circumstances exist, or are reasonably believed by the defendant to exist, which cast on him the duty of making a communication to a certain other person to whom he makes such communication in the performance of such duty, or where the person is so situated that it becomes right in the interests of society that he should tell third persons certain facts, which he in good faith proceeds to do. This general idea has been otherwise expressed as follows: A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation." 17 RCL, Qualified Privilege Generally, §341.

It is also provided under the common law that:

"A qualified or conditionally privileged communication is one made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a mariner and under circumstances fairly warranted by the occasion and duty, right or interest." 50 AM. JUR. 2d, Libel and Slander, §195,

When the retail sales manager, Amos Garpue, went on an inspection on behalf of the appellant, as testified by him, Miss Beatrice Freeman, the dealer and appellee in this case, was absent from the station. He observed that the gas at the station was finished and there was no sale going on. It was also observed at the office that the appellee had not made report on her daily sales for about a week, which was contrary to the arrangement arrived at. This situation

Another revelation, as disclosed at the trial and which was not in any way refuted by the appellee, is from the testimony of appellee's own witness, Hilary Reeves, who in testifying under oath said, and we quote:

"Then the manager asked her, if she, in as much as the deposit she made was less than fifty (50) per cent of the total product loan that he, in his capacity as general manager of the company, had granted her as capital to operate the station, could justify her inability to buy products and operate the station as it should be. Miss Freeman said she did not know what had actually happened at the station. When the manager asked her if she felt that the boy (her employee) who was responsible for collecting her money and making her report, etc., had been acting dishonestly by not reporting to her all of the sales proceeds, she said that she did not know and so the manager suggested that under the circumstances, the matter should be turned over to the police in order that the boy would be investigated. Miss Freeman said she felt that the boy should have been left with her to investigate. . . . . "

This statement of witness Hilary Reeves, for the appellee, suggests that indeed and in truth all the money covering the petroleum products supplied the appellee were not deposited and accounted for. The said testimony of appellee's witness establishes the fact that the dealer, Miss Beatrice Freeman, realized and accepted that there was a short in deposit. The said statement also clearly establishes that appellant's suspicion was cast on the boy employed by the appellee and not on the appellee herself. If the appellant's suspicion was on the appellee's employee at the gas station, could one hold the view that the appellant made a defamatory remark about the appellee by charging her with having embezzled the company's money? If, on the other hand, the appellant had said, and it was established by proof that appellee used the company's money for herself, as testified to by Witness Garpue which statement, in our opinion, was made on a privileged occasion, was there not a short deposit, that is, the full proceeds of the product could not be accounted for? Consequently, was there not probable cause for the appellant, general manager of Mobil, to say that the dealer, plaintiff/ appellee, had used the company's money for herself? Our answer is that the appellant had a qualified privilege to do so under the circumstances.

respecting the character of an employee, or former employee, is qualifiedly privileged if made in good faith by a person having a duty in the premises to one who has a definite interest therein, and this is true even though the communication contains a charge of crime". Ibid., §273.

Under the foregoing circumstances, we cannot bring our-selves to agree that the appellant made any defamatory statement against and about the appellee which would entitle appellee to recover. Our distinguished colleague, who dissents from us, is of the opinion that although appellee did not make any mention in her statement in chief about her being charged by the appellant with embezzlement and/or eating the company's money, yet her answer to a question on the direct examination supplied the omission. Here is the question as well as the witness' answer to which our colleague has reference:

"Q. Did the defendant in the presence of Messrs. Reeves and Garpue make any remarks regarding you embezzling and/or making money and not reporting it?

A. Yes

Whilst it is true that there was no objection interposed by appellee to the above quoted question at the trial, to constitute a legal issue for appellate consideration, and whilst it is also true that the appellate court shall not consider points of law not raised in the trial court and argued in the brief, yet the appellate court may, in the interest of justice, base its decision on the plain error apparent on the records. Civil Procedure Law, Rev. Code 1: 51.15.

This Court, being the court of last review, and since our distinguished colleague is relying on the question aforesaid and appellee's answer thereto as having supplied the omission to support his position, it becomes necessary for us to carefully look at the question and the answer in order to determine whether it supplied the omission to support the verdict of the

"The general rule is that upon the examination of a witness in chief, the examining attorney is not to ask leading questions. A party must not lead his own witness, although he may lead the witnesses of his adversary. Leading questions should generally be confined to cross-examination and excluded in examination in chief; the test of a leading question is whether it suggests that answer thereto by putting into the mind of the witness the words or thoughts of such answers " WHARTON CRIMINAL EVIDENCE, Vol. 3, § 1269.

The said question of the examining attorney being leading, contrary to our accepted trial procedure, the same is hereby ruled out; and consequently, the appellee's answer thereto cannot be said to have supplied the omission. We therefore hold that the alleged defamatory allegation as set out in the complaint, forming the basis of the action of damages, was not proved at the trial to justify the recovery sought, and the verdict of the jury should not have been confirmed.

In view of all that we have said, coupled with the legal authorities cited herein, it is our considered opinion that the judgment of the trial court should be, and the same is hereby reversed with costs against the appellee. And it is hereby so ordered.

Judgment reversed.

MR. JUSTICE YANGBE dissenting.

I am in complete agreement with the history of the case as stated in the majority opinion, therefore, it is meaningless to repeat same. I am also in accord with the majority view that we should consider and decide only count six of the bill of exceptions in this case which dwells on the merits of the case, and that we should ignore the rest of the counts that deal only with

The records in this case evinces that in the testimony in chief of the appellee, she omitted to mention the defamatory statement quoted in the complaint. Consequently, the counsel for the appellee propounded the following question to appellee on the direct examination:

"Ques: Did the defendant in the presence of Messrs. Reeves and Garpue make any statement regarding you embezzling and/or making money and not reporting it?

Ans: Yes."

In the majority opinion, the answer to this question put to the appellee on the direct is excluded from the records and therefore was not taken into consideration with respect to the slanderous statement which is the crux of this matter and the proof also corresponds therewith.

According to the law, the admissibility of evidence is the province of the court and when admitted, its credibility and effect is solely the function of the jury. Hence, the trial of the appellate court is without any legal authority to exclude from the records the testimony of a witness instead of passing upon the probative effect of the testimony that was admitted without any objections nor against any rule of evidence.

Another question on the direct examination was:

"Ques: Mr. Witness, did I understand you to say that both you and Mrs. Reeves were present when the alleged slanderous remarks were being made by the defend-ant, your manager?

in Cummings v. Green, [1928] LRSC 3; 3 LLR 11(1928).The attorney for plaintiff/ appellee, therefore, acted within the pale of the law when asking his question on the direct.

Another witness for plaintiff/appellee was Mr. Hilary Reeves whose testimony in chief alone is quoted in the majority opinion, but overlooked this vital question and answer on the cross-examination.

Ques: Did you hear the defendant say to the plaintiff this is not your damn grandfather's station. I

gave you the damn product to sell and report the money to me and you have eaten the money?

Ans: I heard the manager say it and he said it." This is another answer which brought the truth to light. Thereafter plaintiff/appellant rested with the witness. Minutes of court, sheet 12, 35th day's session.

In keeping with the holdings of this Court, cross-examination of a witness is not, under the statute of Liberia, limited only to facts brought out in the direct examination, but may extend to any fact touching the cause or likely to discredit the witness. Civil Procedure Law, Rev. Code, 1: 25.23; also in Bryant v. Bryant, [1935] LRSC 15; 4 LLR 328 (1935), it was held that: " . . . A cross-examiner is entitled as a matter of right to test the interest, motives, inclinations and prejudices of a witness, his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, and the manner in which he has used those means." While exercising the rights of direct and cross-examination, the truth was unearthed.

up from his seat, took the telephone and dialed a number and said kindly give me Mr. Andrew Davis, the Director of Police, and he put the telephone down. But neither Director Davis nor any police came. Now I do not know if the telephone request was made by Mr. Amoah either to come or arrest Miss Freeman or her manager."

This briefly is the evidence of the appellee adduced at the trial of this case, which is considered by the majority Bench as inadequate to sustain the judgment of the trial court.

During the arguments before us, counsel for appellee cited Cummings v. Green, [1928] LRSC 3; 3 LLR 11 (1928), in which it was held that in action of slander the exact defamatory words must be set out in the complaint and the proof must correspond to said allegation. Where there is a material variance between the complaint and the evidence, it is fatal to the issue.

The complaint in this case does not contain the exact slanderous words complained of. There is no variance between the complaint and the evidence, therefore in my opinion, the Cummings v. Green case relied upon by appellant is not applicable in this case. The defamatory statement quoted in the complaint certainly imputes acts of dishonesty and criminal to appellee and the proof also correspond therewith.

Every court of justice must of necessity be governed by facts and law that are applicable in a given case. In this case as I have mentioned earlier, we have unanimously agreed to consider and pass upon only the facts and not upon procedural grounds as raised in the bill of exceptions, in that they are not important to us. I will now traverse the evidence adduced at the trial by the appellant in this case, and in doing so it is equally significant to bear in mind the factual denial stated in the answer. The four counts of the answer that were ruled to trial are as follows:

whole transaction and the conversation to the said counsel and in his explanation he denied ever using such words or statements concerning the plaintiff; thereafter, the counsel wrote the letter referred to in said complaint which defendant felt not necessary to reply since he has already made his side very, very clear to plaintiff's counsel.

3. And also because the defendant says that, as to count four, he did invite plaintiff to his office to discuss why the business she was conducting with plaintiff's company was not showing very good financial report and that the said invitation was not to belittle any woman as plaintiff attempts to infer, and create sympathy by alleging "to belittle Liberian womanhood". Defendant says that he respects womanhood and respects every human being whether Liberian or not.

4. Defendant says that this action is instituted merely for the purpose of having him to desist from claiming and collecting the loan of $3,600.00 which he, as manager of Mobil, loaned plaintiff upon her request, because the business was failing and she was indebted to several persons and was being harassed by them. It was upon this plea of plaintiff, that defendant made the loan to her and because of her failure to make settlement of the loan in keeping with their understanding that defendant wrote two letters to plaintiff, copies of which are attached and marked "Exhibits D-1 and D-2," respectively; the original being in the possession of plaintiff, the production of which at the trial defendant gave notice that he shall pray for subpoena duces tecum. Plaintiff with intent not to conform to the conditions of the dealership agreement between them made and executed, has instituted this unmeritorious suit.

At the trial, in his effort to support these factual averments, stated in the amended answer, appellant consistently continued to deny categorically, the slanderous statement quoted in the complaint, and without any qualification or jurisdiction. After appellant rested evidence, he offered and were admitted into evidence two letters dated January 2, 1975 and January 14, 1976, respectively, both addressed to plaintiff/appellee. The first letter is to the effect that plaintiff/appellee promised to investigate the understatement of sales on her shift sheets and the management of Mobil wanted to know when she would be ready for further discussion on the standing balance on the account of appellee. The second letter referred to the first letter dated January 2, 1975 as a reminder. After the introduction into evidence of the two letters,

not proven at the trial, in civil cases by preponderance of evidence, will amount to absolutely nothing.

Apart from the general denial of the appellant in the answer, only the two letters written prior to the date the defamatory remark was made by the appellant were admitted. Therefore and obviously, the two letters are not relevant to the factual issue which is the kernel of this matter. The defendant/appellant not having produced any evidence oral or written that impair that of the appellee, there was no need to rebut what was not challenged at the trial. Under the burden of proof doctrine, we have the following:

"It is sufficient if the party who has the burden of proof establishes his allegation by preponderance of evidence." Plaintiff/appellee has fully met this requirement. Civil Procedure Law, Rev. Code 1:25.5; and Knowlden v. Reeves et al.[1954] LRSC 22; , 12 LLR 103 (1954).

The majority opinion has sua sponte introduced the issues of leading question and the plea of privileged communication as some of the basis for reversing the judgment in this case. I have quoted above the four counts of the answer ruled to trial and no where therein, was the issue of privileged communication, qualification, or justification raised, and nowhere at the trial, was any question objected to by appellant on the ground of leading and urged in the bill of exceptions, nor did appellant argue the same. A court of justice, whether on the trial or appellate level, is a referee and in consonance with this view. In Clark v. Barbour, [1909] LRSC 1; 2 LLR 15 (1909), it was held that the Court will only decide upon issues joined between the parties as specially set forth in their pleadings and the Supreme Court is limited only to points of contentions raised in the bill of exceptions. Civil Procedure Law, Rev. Code 1: 51.7.

The majority views are that (a) the slanderous remark was not proven, (b) it is not actionable per se; and (c) that it was in the form of a question and was made in good faith. I have already

"I give you the damn product to sell and report the money to me and you have embezzled (eaten) the money; I am going to call the Director of Police to have you arrested and put in jail".

This quoted statement certainly impugned the reputation of the appellee. The test of slanderous statement is whether it is true. It has not been established that appellee was ever found guilty of any criminal charge as uttered by the appellant concerning the reputation of appellee, so as to justify such statement. It must be remembered that appellant totally denied in the answer the allegation laid in the complaint, therefore, the questions of good faith and privileged communication are not relevant at all, with due respect to my learned colleagues and their views expressed in the majority opinion.

Because of what I have narrated and the law cited supra, I have withheld my signature from the judgment in this case. Hence, I dissent.