

CLARA A. CASSELL, President, Woman's Auxiliary Society of Trinity Memorial Church, Inc., Monrovia, by and through **W. DAVIES JONES**, Rector; **C. L. SIMPSON**, Senior Warden; **NETE SIE BROWNELL**, Junior Warden; **C. G. BRYANT** ; **JACOB BROWNE** ; **S. R. HORACE** ; **CLARA A. CASSELL**; and **ANTHONY BARCLAY**, Vestry, Petitioners, v. **JACOB CUMMINGS** and **HIS HONOR CHARLES T. O. KING**, Presiding Circuit Judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Respondents.

CERTIORARI TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Argued November 23, 27, 1950. Decided February 2, 1951.

1. The judgment of the judge must always correspond with the verdict of the jury in all substantial particulars.
2. A judgment in an action of ejectment which omitted an award of damages granted by the verdict of the jury is subject to correction on order of the appellate court.

Petitioners, plaintiffs below, instituted an action of ejectment against respondent Cummings, defendant below. The jury returned a verdict in favor of plaintiff and, in addition, awarded damages. The judgment of the judge omitted the damages. Plaintiffs brought this petition for certiorari to this Court to have the judgment corrected. *Petition granted and lower court ordered to correct judgment.*

Nete Sie Brownell for petitioners. *Jacob Cummings* for himself.

MR. JUSTICE SHANNON delivered the opinion of the Court.

This matter began in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, when Clara A. Cassell, President of the Woman's Auxiliary of Trinity Memorial Church, Inc., Monrovia, by and through W. Davies-Jones, rector, C. L. Simpson, senior warden, Nete Sie Brownell, junior warden, C. G. Bryant, Jacob Browne, S. Raymond Horace, Clara A. Cassell and Anthony Barclay, vestry, as plaintiffs, now petitioners-in-certiorari, instituted an action of ejectment against Jacob Cummings, defendant, one of the respondents, for the recovery of two parcels of land situated in the City of Monrovia. The pleadings in this cause went as far as the reply of the plaintiffs, and when the cause was assigned for hearing before His Honor Judge C. T. O. King, then resident judge in said circuit, despite the service of

repeated notices of said assignment, the said defendant did not appear. Therefore the trial judge proceeded to hear the issues of law raised in the pleadings and ruled the case to trial.

The trial upon this ruling proceeded a day or two after the ruling of the trial judge aforesaid but the defendant still had not made an appearance. The trial resulted in a verdict in favor of the plaintiffs as follows :

"We, the petit jury, to whom the case Clara A. Cassell, President of Woman's Auxiliary, Trinity Church, Monrovia, et al. plaintiffs versus Jacob Cummings, defendant, action of ejectment was submitted, after hearing the evidence adduced at the trial do unanimously agree that the said plaintiffs are entitled to recover from defendant the pieces of property mentioned in their complaint being lots Nos. 212 and 7 situated in the City of Monrovia and that the defendant shall pay to plaintiffs as damages the amount of Six hundred and fifty dollars."

It appears from the records certified to us that at the time of the rendition of this verdict the defendant came into court, and without any record of his exceptions to the verdict, "asked leave of court to grant him a new trial because he was not notified that the case was to be taken up neither did the bulletin show, and for that reason he asked for a new trial."

However, since it appeared from queries put to the said defendant by the trial judge that he admitted that he had been given notice of the assignment and hearing of the cause, the application for a new trial was denied and the trial judge rendered and entered the following judgment on the verdict :

"The above entitled cause having been tried at the present term of this Court before me and the jury; and the verdict of the jury having been found for the above-named plaintiffs as follows :

"Petit Jury Room September 22, 1949.

" We, the petit jury, to whom the case Clara A. Cassell, President of Woman's Auxiliary, Trinity Church, Monrovia, et al. plaintiffs versus Jacob Cummings, defendant, action of ejectment was submitted, after hearing the evidence adduced at the trial do unanimously agree that the said plaintiffs are entitled to recover from defendant the pieces of property mentioned in their complaint being lots Nos. 212 and 7 situated in the City of Monrovia and that the defendant shall pay to plaintiffs as damages the amount of Six hundred and fifty dollars.'

"It is therefore adjudged : That said plaintiffs shall recover against the defendant the lands mentioned in their complaint and their costs in this action. Costs against defendant. And it is so ordered.

"Given in open court this 4th day of October, A. D. 1949.

"[Sgd.] CHARLES T. O. KING

Resident & Assigned Judge."

The defendant excepted to this final judgment of the trial court and prayed an appeal to this Court which appeal was never processed or completed. The reason for this is apparent from a careful study of the verdict and the final judgment, but not otherwise. It would appear that, notwithstanding the jury had in its verdict, in addition to awarding plaintiffs the lands sued for, awarded them damages in the sum of six hundred and fifty dollars, the latter award, although it had not been attacked by the defendant, was deleted from the final judgment of the trial court without an assignment of legal reasons therefor. In fact, no reason at all was assigned.

It seems, and it is so stated in the petition for a writ of certiorari, that the plaintiffs, knowing that no positions had been taken on the record against the award by the jury, did not notice the omission of damages by the trial judge. It was not until the defendant had failed to process his appeal, of which he had given notice, and in their efforts to enforce the judgment, which they were satisfied was fully in accord with the verdict, that plaintiffs learned of this deletion. They then attempted by certiorari to have this glaring, and, as they submit, flagrant, and mischievous error corrected.

In deciding this case, we must resolve the following:

(1) Whether or not the trial judge has the right to set aside any award made by a jury in its verdict without an application therefor and a day assigned for the hearing of said application to afford the opposing side an opportunity to resist it if it so elects, and

(2) If the question above can be resolved in the affirmative, whether or not it will be proper on the part of the judge and fair, and not prejudicial to the other party to make this deletion without giving full, open, and ample notice of same so as to afford the plaintiffs an opportunity to contest same.

Our statute with respect to the proper grounds for setting aside a verdict and

ordering a new trial states the following:

"The court may set aside the verdict or decision of the jury, and order a new trial, whenever it shall be proved that the jury or any of them have received a bribe, or have conversed otherwise than openly in the presence of the court, with any party to the suit, or agent of such party, on the subject of the trial, after being affirmed ; or if any jurymen was related to either of the parties, or to the wife of either of the parties, as father, son or brother, or had himself any pecuniary interest in the cause, or if the verdict shall be manifestly against the evidence, the law, or the legal instructions of the court, or if the debt or damages found by the jury; be greatly too much or too little, when compared with the evidence in the case." Stat. of Liberia (Old Blue Book), ch. VII, § 16, 2 Hub. 1544

The statute then describes the procedure after the verdict of the jury is set aside.

But in this case the verdict was not set aside, which act might have been better understood and more pardonable and excusable. Instead, we find unexplained deletion in the judgment of the award by the jury of six hundred fifty dollars damages. We frown upon this act of the trial judge since, from every indication, it was planned, intended, and done with the ostensible purpose of prejudicing the petitioners, plaintiffs below, and depriving them of the benefit of the jury's verdict. There is no law to support this.

The judgment of a judge must always correspond with the verdict of the jury.

"The practice of amending verdicts in matters of form is one of long standing, and is based on principles of the soundest protective public policy in furtherance of justice, having nothing to do with the real merits of the case. It is limited, however, strictly to cases where the jury have expressed their meaning in an informal manner. The court has no power to supply substantial omissions and the amendment in all cases must be such as to make the verdict conform to the real intent of the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. After the amendment the verdict must be not merely what the judge thinks it ought to have been, but what the jury intended it to be. Their actual intent, and not his notion of what they ought to have intended, is the thing to be expressed and worked out by the amendment." (27 R.C.L. page 887, section 62).

"There is no principle of law more firmly established than that the judgment must follow and conform to the verdict, decision, or findings in all substantial particulars.

A judgment must be supported by the verdict, decision, or findings in the case or it will be irregular and erroneous, although not void or inoperative. . . . The proper remedy in case a judgment does not conform to the verdict is by a motion to modify the judgment, or by appeal or writ of error." 33 C.J. 1169 (1924).

It is obvious, therefore, from the foregoing that the trial judge was undeniably wrong in deleting from his judgment the award of six hundred and fifty dollars in the verdict as damages in favor of the petitioners, plaintiffs below, and his act in so doing savors of an intention to prejudice the rights and interest of plaintiffs, now petitioners. This conclusion is reinforced by his unwillingness to record expressly his disallowance of the damages awarded. Since the trial judge had no right to set aside this award in this manner, it is not necessary to pass upon the second issue.

In view of the foregoing, it is our opinion, and we so direct, that the petition of the petitioners, plaintiffs below, be granted and the prayer therein contained be ordered, to wit, that the clerk of this Court shall forthwith send a mandate to the judge of the trial court commanding him to insert in the judgment in said case as rendered and entered by His Honor Charles T. O. King the amount of six hundred and fifty dollars as damages awarded petitioners, plaintiffs below, by verdict of the petit jury and to proceed to the enforcement of same with as little delay as is possible. Costs of these proceedings are against the respondent Jacob Cummings, and it is hereby so ordered.

Judgment ordered corrected.