INTER-CON SECURITY SYSTEM, INC., by and thru its Project Manager, and CAPTAIN LARRY FLORES, Appellants, v. FREEMAN BARTUAH, Appellee.

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

Heard: April 5, 2001. Decided: July 6, 2001.

1. Where the jury has stated a particular amount as damages, a typographical error in the statement of the said amount by the judge, in confirming the verdict of the jury, does not constitute reversible error.

2. Documents which are relevant and material to a case, once marked and confirmed by the court, must be presented to the jury for its consideration.

3. The Rules of the Circuit Courts require that the parties shall have their witnesses duly summoned before the case is called for trial and no postponement of the hearing will be allowed unless it is shown to the satisfaction of the court that due diligence was employed to secure the attendance of the witnesses.

4. The Rules of the Circuit Courts require that prior to the making of any opening statement to the jury to commence the trial, each party shall introduce his/her witnesses.

5. Issues cannot be raised for the first time in the Supreme Court, and where the issues are not raised in the trial court and passed upon, or not included in the bill of exceptions; they cannot be reviewed and passed upon by the appellate court.

6. Where a plaintiff produces clear and convincing evidence to satisfactorily establish his claim, and the defendant produces conflicting evidence, none of which exonerates the defendant other than a mere denial, such evidence shall be considered as a concession of the truthfulness of the testimony brought by the plaintiff.

7. Special damages are required to be proved.

8. While it is the rule that a jury may not award more than what is prayed for, the rule applies only to special damages, which must be proved.

9. With regards to general damages, the plaintiff is required to prove the occurrence of the act complained of as an injury or damage to his person, property, or rights.

10. The measure of damages, while discretional with the jury, must comport with the quantum of evidence produced by the plaintiff.

11. While the general rule adopted by the Court is that the general damages must be proportional to the special damages, the former being not less than 10% nor more than 100% of the latter, the rule may not necessarily be followed and the Court may award such general damages outright.

12. Generally, a verdict will not be set aside as being excessive except where the general damages are grossly disproportionate to the measure of damages.

The appellee, Freeman Bartuah, instituted an action of damages against the appellants, Inter-Con Security System, Inc. and Captain Larry Flores, claiming that Co-appellant Larry Flores, while acting within the scope of his authority and instructions of Co-appellant Inter-Con Security System, Inc. had severely injured him when he attempted to enter the gates to the Co-appellant Inter-Con premises where he worked as a security guard. The appellee claimed that as a result of the injuries he sustained, he had to be taken to a medical clinic where he incurred expenses of US$500.00. In his action, the appellee prayed for special damages in the amount of expenses incurred in the course of his treatment, and general damages in the amount of US$250,000.00. After a jury trial, a verdict of liable was returned against the appellants. In the verdict the jury awarded the appellee special damages of US$500.00 and general damages of US$300,000.00. The verdict was affirmed by the trial judge in his final judgment, except that the amount of US$500,000.00 was stated as special damages, a figure which the judge noted was a typographical error. From this judgment, the appellants appealed to the Supreme Court.

The Supreme Court affirmed the trial court's judgment but reduced the amount of general damages from US$300,000.00 to US$45,000.00, noting that the award of general damages must comport with the injuries sustained by the injured party. The Court, however, rejected the appellants' contention that the award was excessive since the award of general damages was in excess of what the appellee had prayed for, noting that the appellee had proved his case by a preponderance of evidence, as opposed to the appellants, and that in the case of general damages, the plaintiff has only to prove the act which he claims resulted in his injury and the injuries sustained. The Court opined that while the amount of general damages was high, the case was not one in which the court's rule regarding general damages being not less that 10% nor more than 100% of the special damages was applicable. Hence, the Court reduced the damages to US$45,000.00, stating that the reduced figure was in line with the evidence produced by the appellee as to his injuries and the pains, suffering, and humiliation to which he was subjected.

Regarding the claim that the judge had erred in stating the special damages at $500,000.00 rather than the US$500.00 which was awarded by the jury, the Court opined that this was a non-issue since the trial judge had admitted that this was a mere typographical error, and since the records showed that the judge had confirmed the verdict without stating that he was making any modification thereto.

With regard to the appellants' contention that the trial court was without jurisdiction of the subject matter of the case since the incident complained of by the appellee occurred on diplomatic premises, the Court said that the issue had not been raised in the trial court and therefore could not be raised for the first time before the Supreme Court, and that the Supreme Court would therefore not entertain such issue. The Court accordingly affirmed the judgment, as modified.

Kemp and Associates, in association with Joseph N. Nagbe, of the Freeman Legal Consultancy, appeared for the appellants. Cooper W. Kruah, of the Henries Law Firm, appeared for the appellee.

MR. JUSTICE WRIGHT delivered the opinion of the Court.

This case is on appeal from a judgment of the Civil Law Court, Sixth Judicial Circuit, confirming a verdict awarding the appellee special damages of US$500.00 and general damages of US$300,00.00. All the jurisdictional steps having been complied with, this Court now sits in review of that judgment.

On November 16, 1998, the appellee, Freeman Bartuah, filed a seven-count complaint against his employer, Inter-Con Security System, Inc., and Captain Larry Flores, the appellants, alleging substantially that he was employed by Inter-Con Security System, Inc. as a security guard on August 16, 1990; that on November 20, 1997 he reported for work at about 7:30 a.m., as required by the co-appellant management; that as was customary, all guards, before taking up their daily individual assignments, were required to assemble for general muster and briefing at the Greystone Compound of the United States Embassy, one of several compounds for which Inter-Con provides security; and that as he entered the iron gate, with one leg already inside, the deputy project manager, a retired US marine, Captain Larry Flores, who was already inside the compound, ordered the deputy guard force commander of Inter-Con, Mr. Thomas Redd (or Wleh) to stop the appellee from entering the compound through the gate. The complaint alleged further that at that point, Mr. Thomas Redd (or Wleh) pushed the gate back against the appellee who then became stranded and jammed between the two doors of the gate. According to the appellee, Capt. Larry Flores then advanced to the gate, where he used one hand to assist Mr. Thomas Redd

(or Wleh) to push the gate against the appellee, and the other hand to take the PR-24 baton from the side of Mr. Thomas Redd (or Wleh), which he used to pound and hit the appellee several times in the lower abdomen until the appellee became unconscious.

The complaint stated also that the two men then released the gates, causing the appellee to fall outside the gate, where he laid on the ground, thought to have been dead, until after 45 minute when he regained consciousness. The complaint further alleged that thereafter some of the appellee's friends carried him on their shoulders to the US Embassy main entrance, at gate one, where the project manager was said to be, and that while the appellee was being carried to the gate he vomited blood twice. Hence, his friends rushed him to the Soko Sackor Memorial Hospital, where he was admitted for three days as an in-patient and subsequently treated for two weeks as an out patient. Further, the complaint alleged that during the period the appellee urinated blood, and that for the treatment of his injuries he paid the total of US$500.00.

In addition, the appellee alleged that while the deputy project manager, Capt. Larry Flores, was beating him with the PR24 baton, Capt Flores repeatedly told him in a loud voice that he, the appellee, along with twelve (12) other employees of the co-appellant company, had been dismissed. He stated that when he recovered to some extent, he was not permitted to resume work with Inter-Con. Hence, he filed an action of damages for personal injuries in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, against Co-appellant Inter-Con, since he was beaten by Capt. Larry Flores who, at the time, was acting in his capacity as deputy project manager. The action was also filed against Capt. Larry Flores personally.

The complaint concluded with the allegation that as a result of the beating inflicted on him by Capt. Flores, deputy project manager of appellant company, the appellee suffered physical pains over his body, mental anguish, and disgrace, for which he prayed for special damages in the amount of US$500.00 and general damages in the amount of US$250,000.00.

The appellants filed a nine-count answer in which they denied the truthfulness of the averments contained in the appellee's complaint. They maintained that the appellee's complaint was grossly misleading and lacked any iota of truth, as at no time did the co-appellant company deputy project manager hit the appellee with a baton. They therefore prayed the court to dismiss the complaint for lack of legal soundness and truthfulness.

On June 12, 1999, counsel for both parties appeared in the lower court and requested that the case be ruled to a jury trial on the facts. Whereupon a jury trial was had and a unanimous verdict of liable returned by the jury against the appellants and in favor of the appellee, awarding him US$500.00 as special damages and US $300,000.00 as general damages, instead of the US$250,000.00 prayed for by plaintiff in the complaint.

The appellants filed a motion for a new trial contending that the verdict was contrary to the weight of the evidence adduced at the trial, in that the appellee had neither itemized the amount of US$500.00 which he had claimed as special damages, nor was there any official receipt from the clinic as evidence that the said amount had been paid. The motion further stated that the appellee had failed to produce the head of the Soko Sackor Clinic to testify to the medical report, given the fact that the doctor who signed the medical report was said to have died.

The appellants also contended that the jury's verdict of US$300,000.00 as general damages was excessive and unreasonable, firstly, because the appellee had failed to prove the allegations contained in his complaint and, secondly, because the award amounted to unjust enrichment for the appellee. Further, the appellants contended that the judge had erred by dispensing with the appellants' last witness, even though the appellants had applied for a subpoena ad testificandum since the testimony of that potential witness was relevant, competent, and material to the appellants' defense.

The judge denied the motion for a new trial and entered final judgment in favor of the appellee, confirming and affirming the verdict adjudging the appellants liable to the appellee. The judge awarded the appellee special damages in the amount of US$500,000.00 and general damages in the amount of US$300,000.00. The appellants excepted to the judgment and announced an appeal therefrom, and thereafter filed a bill of exception containing seven counts.

In the bill of exceptions, the appellants contended that the judge erred in confirming the jury's verdict because same was contrary to the weight of evidence adduced at the trial. They also asserted that the judge erred when he awarded special damages in the amount of US$500,000.00 contrary to and in excess of the US$500.00 that the jury had awarded. Further, that the judge erred when he admitted into evidence the photocopy of the Medical Certificate without the whereabouts of the original being established.

Further, they said, the judge erred when he denied the appellants' request for a writ of subpoena ad testificandum for its last witness. Finally, they alleged that the judge had failed to realize that the court had no jurisdiction over the subject matter of the case because the alleged altercation took place on diplomatic grounds.

The judge approved the bill of exceptions count by count, as they were supported by the records, but made notation on count two that the figure of US$500,000.00 stated as special damages was merely a typographical error and that reference should be made to the verdict and relevant portions of the minutes.

The above contentions, contained and laid out in the bill of exceptions, are the same issues that the appellants have submitted to this Court for determination. The Court shall therefore address them accordingly. Firstly is the contention that the judge erred when, in his final judgment, he awarded the appellee US$500,000.00 as special damages when in fact the jury awarded the appellee only US$500.00 as special damages. For this reason, the appellants contend that the judgment should be set aside and a new trial awarded.

This Court says that the above contention is a non-issue and therefore has no bearing on the outcome of the case or the judgment rendered, in that the trial judge conceded that it was a mere typographical error that the figure of US$500,000.00 had been typed by the clerk-typist, instead of US$500.00. It should be noted that the judge stated in his final judgment that he was confirming and affirming the jury verdict. Recourse should therefore be taken to what the jury did in fact award. The jury was very clear and specific in their award, writing in both figures and words that the amount of special damages was US$500.00 (five hundred United States dollars). The judge in his notation on count two of the bill of exceptions, after conceding that the typed figure was an error, specifically stated: "See jury verdict and other portions of minutes." We therefore hold that there is no error which warrants the reversal of the judgment since the judge, as well as the appellee, conceded that the typing of the amount of US$500,000.00 was a typographical error by the clerk/typist. We hold that the figure stated for special damages is US$500.00 (five hundred United States dollars), which was awarded by the jury.

The second issue relates to the contention that the judge erred when he admitted into evidence the photocopy of the appellee's medical certificate without the whereabouts of the original being established, as required by law. Responding to this contention, the appellee asserted that when the photocopy of his medical certificate was testified to and marked by the judge during the trial, the court was informed that the original of the document was part of the documentary evidence already submitted against the same party Inter-Con in a labor action, and that the said labor case was (and still is) on appeal to the Supreme Court from the judgment of the Ministry of Labour and the National Labour Court. The appellee contended that once the information was given establishing the whereabouts of the original, a sufficient basis was set for the admission into evidence of the photocopy of the medical certificate.

The appellee contended further that the authenticity of the document was established by the witness he produced, in the person of the administrator of the Soko Sackor Memorial Hospital, who also confirmed that indeed Mr. Freeman Bartuah was admitted at the Hospital on November 20, 1999 and that he was treated by Dr. Gaye (now deceased). See the court's

minutes of the 31st day's jury sitting. The appellee contended moreover that once the document had been authenticated, it was properly admitted into evidence.

We find from the transcribed records certified to this Court that indeed when the appellee himself was on the stand, on the direct examination, he told the court that the original of his medical report was earlier submitted to the Ministry of Labor in a suit brought against Inter-Con Security System, Inc. See minutes of court, 21st day jury sitting, April 12, 2000, sheets 6-7. We note further that when the appellee's counsel asked the appellee if he could remember and say the whereabouts of the original of the document, the appellants' counsel objected to the question on the grounds that it was burdening the record and that the appellee was not the best evidence. The court overruled the objection and the question was answered, as already stated. Whereupon the appellee's counsel applied for a mark of identification to be placed on the document. There was no objection made by the appellants' counsel to that request. The document was therefore marked as exhibit P/2 and later confirmed by court, again without objection from the defense. The objection was only raised when the document was offered for admission into evidence. The appellee argued that once the document was marked and confirmed by the court, it was proper to have the same forwarded to the jury. The trial court agreed with the appellee, overruled the appellants' objection, and passed the document to the jury for its consideration.

This Court has held over and again that all documents which are relevant and material to the case, once marked and confirmed by the trial court, must be passed to the jury. Levin v. Juvico, 24 LLR 187 (1976); Republic v. Eid et al., 37 LLR 761 (1995); African Mercantile Agencies v. Bonnah, 26 LLR 80 (1977); Fayad. Dennis, 39 LLR 587 (1999). We therefore hold that the judge did not err when he admitted the medical report into evidence and presented it to the jury for their consideration.

The third issue relates to the contention that the judge erred when he denied appellants' request for a writ of subpoena ad testificandum for the production of their last witness. In responding to this contention, the appellee maintained that Co-appellant Inter-Con had ample opportunity to bring Capt. Larry Flores if it had wanted to do so, but that they made no effort to produce him. The appellee further contended that no other person would have been in a better position to say whether or not Co-appellant Larry Flores, who was accused of having committed the act of beating the appellee, did indeed actually commit the said act and why. The appellee said that the act having been committed in the open, which made it impossible for Capt. Flores to take the stand and give a different story, accounted for why Capt. Flores was absent from the trial, thereby avoiding the risk of committing perjury. Thus, the appellee argued that the judge was legally correct when he denied the appellants' application for the third continuance to produce this one last witness. The appellee asserted

that after the appellants' third witness had completed testifying on May 5, 2000, counsel for the appellants prayed the court for continuance to produce the appellants' last witness whose testimony was said to be material, relevant and competent to their defense. The appellee interposed no objections to the request. Hence, the Court granted the application and suspended the trial of the case until May 8, 2000. See minutes of court, 39th day's jury sitting May 5, 2000, sheet twelve.

On May 8, 2000, when the case was called for resumption of the trial, counsel for the appellants again requested for a postponement until the next day, May 9, 2000, informing the court that the witness "could not appear due to our professional and prior engagements and therefore he has consented to be present on tomorrow the 9th instant. The said request is made in good faith...." Again, appellee's counsel did not interpose objection to the request but called the court's attention to the fact that the next day, May 9, 2000 would be the last day of the jury session for the March Term, and that as such the request should be granted with the instruction to the appellants that every effort should be made to secure the attendance of the witness so that both sides could be able to present their case to the jury and conclude the case within the statutory time.

The court, in granting the appellants' request, also took into account the appellee's observation and informed the appellants that if they failed to have their last witness appear, the court will be compelled to dispense with the last witness. There was no exception noted to this ruling of the court. See minutes of court, sheets one and two, 41st day's jury sitting, May 8, 2000.

On May 9, 2000 when the case was again called for hearing, counsel for the appellants applied to the court for a writ of subpoena ad testificandum to have Dr. Jallah Cole, head of the Soko Sackor Clinic appear on the next day, May 10, 2000 to testify for the appellants. The appellee's counsel resisted this request and prayed the court to deny the same and to proceed with the case in keeping with the court's ruling, made the day before when the second continuance was granted.

The court sustained the appellee's resistance, denied the appellants' request for another continuance and the issuance of the writ of subpoena ad testificandum, and ordered the case proceeded with as the last witness could be dispensed with. In the mind of this Court, the judge did not commit any error in denying the application and ordering the trial proceeded with because it does not appear that the appellants' counsel was dealing with the court in good faith. Under our order of trial, the appellants had all the time they needed to get all their witnesses lined up and ready for trial. The appellee took the stand on April 12, 2000

and rested his side of the case on May 2, 2000, a period of about twenty days. The appellants put their first witness on the stand on May 4, 2000, quite five days before making the application for the issuance of the writ of subpoena ad testificandum. The appellants knew or should have known all of the persons they would need as witnesses or what kind of evidence would be required for their defense and how to obtain that evidence. In fact, under the Rules of the Circuit Courts, each party shall have their witnesses duly summoned before the case is called for trial and no postponement of the hearing will be allowed unless it can be shown to the satisfaction of the court that due diligence had been employed to secure the attendance of the witness(es). Also, prior to the making of his opening statement to the jury to commence trial, each party shall introduce his witness. See Rules 9 and 17. Circuit Court Rules amended and revised January 1999. We hold therefore that the judge was legally correct and within the ambit of the law when he denied the appellants third request for continuance and the application for the issuance of the writ of subpoena ad testificandum.

The fourth issue centers around the allegation that the trial judge failed to realize that the court had no jurisdiction over the subject matter because the alleged altercation had taken place on diplomatic grounds. This Court observes that when the judge approved the appellants' bill of exceptions, he made the notation that this particular issue was never raised in the trial court and hence that count of the bill of exceptions (count 6, page 2) was not approved. This Court has held in a long line of cases that issues cannot be raised for the first time in the Supreme Court; that issues not raised in the trial court cannot be reviewed and passed upon by the appellate court, and that those issues not included in the bill of exceptions and not having been passed on by the trial court will not be reviewed by the Supreme Court. Cooper v. Davis, 27 LLR 310 (1978). Syl. 2, text at 314-315. Benson v. Johnson, 23 LLR 290 (1974), Syl 7. We will therefore not belabor the issue. We hold simply that the judge properly acted to exclude this issue from those which were to be the subject of appellate review.

Having said all of the above, the primary question upon which this appellate review rests is whether or not the appellee met the required burden of proof to support the finding of the jury that the appellants were liable. Put another way, the question is whether or not the verdict of the jury was supported by, or was contrary to, the weight of the evidence adduced during the trial? To answer this question, we take recourse to the records to review the evidence.

In his complaint, the appellee alleged that he had appeared for work on the morning of November 20, 1997, at about 7:30 a.m. and that he had met Mr. Thomas Wleh (or Redd) at the gate of the Greystone Compound, while Capt. Larry Flores was inside the compound. The appellee stated that as he attempted to enter the compound, putting one foot inside the

gate, Capt. Larry Flores ordered Mr. Thomas Wleh not to permit him to enter and thereupon Mr. Wleh closed the one side of the gate that was opened, pushing it back on the appellee, and thus catching him between the two shutters of the gate. Finally, the appellee alleged that Capt. Flores joined Mr. Wleh (or Redd) at the gate to press the gate with one hand against the appellee's body, causing it to get caught between the gate, and that at the same time he, Captain Flores, used his other hand to beat the appellee with the baton in his lower abdomen until the appellee became unconscious. The complaint alleged that it was only at this time that the gate was relaxed and he fell to the ground helpless.

What evidence did the appellee bring to support these allegations and what evidence did the appellants bring in support of their denial of the same?

The appellee produced five witnesses, the first of whom was the appellee himself, who repeated the averments laid in the complaint. The second and third witnesses, Mr. John Miah and Mr. George T. Beiae, were eyewitnesses to the incident. Mr. John Miah was a fellow security guard in the employ of the co-appellant, Inter-Con Security Systems, Inc., while Mr. George T. Beiae had gone to seek employment with Inter-Con. They testified to what they saw, which was substantially the same as what the appellee had said. See the minutes of court, 30th day's jury sitting, April 25, 2000, sheets three (3) and four for George T. Beiae's testimony in chief and sheets four (4) and five (5) of the 31st day jury sitting, April 26, 2000, for John Miah's testimony in chief.

The appellee's fourth witness was M. Samuel Manjae, the administrator of the Soko Sackor Clinic, where the appellee was treated. This witness testified that on November 20, 1997, Dr. Gaye sent to his office a record for the treatment of Freeman G. Bartuah for injuries to his lower abdomen. The witness said that the appellee was first treated by Dr. Gaye from November 20-23,1997 and later by Dr. Wellington Toquon, on February 19, 1998, evidenced by records at the clinic. See minutes of court, 31st day's jury sitting, April 26, 2000, sheet thirteen; also 33rd day's jury sitting, April 28, 2000, sheet seven, where the witness also testified that he, as administrator, was in charge of medical reporting which included statistics, finance and records. This witness told the court that Dr. Gaye had since passed away in July 1998. See sheet nine, April 28, 2000, supra.

The appellee's fifth witness was Dr. Francis Bropleh who testified as an expert witness to give an opinion as to what obtains in situations of the nature complained of by the appellee (i.e. hitting to the lower abdomen). He testified that hits to the lower abdomen can cause pains in the bladder, the spleen, the penis, and vomiting blood from the large and small intestines, as well as urinating and stooling blood. See sheet two, May 21, 2000, 36th days jury sifting.

The appellants produced three witnesses, the first of whom was Thomas Redd (or Wleh), deputy guard force commander. This witness testified that he and the deputy project manager were at the Greystone compound on the day in question and that the appellee, Freeman Bartuah, had entered the compound between 7:02-7:20 a.m. and chatted with the two of them. The witness testified also that three or four days before November 1997, the management of Inter-Con had received a tip-off that some of its employees were planning a strike action for November 20th and that the commanders of all the shifts should talk to their men not carry out the strike action, but that if they had certain concerns, the same should be forwarded to the management for consideration. He stated that still being aware of the tip-off, the management of Inter-Con Security Systems, Inc. posted, on November 20th the various commanders at various locations to ensure that there was no disturbance. The witness further testified that it was not even 7:30 a.m. when Appellee Bartuah entered the Greystone compound, conversed with Capt. Flores and him, and left the compound. A few minutes later, he said, they heard that a group of guards were at the gate and that the appellee was among them. The witness stated further that they had been instructed that these persons, the appellee and others, should not be allowed to enter the gate.

The witness also informed the court and jury that at about 7:28 a.m., the appellee reappeared at the gate and wanted to enter but was denied entry based on the instruction from the Inter-Con management that the striking guards should not be allowed to enter. He said the appellee remained at the gate for awhile and made certain remarks and later left, only to return to the gate about five minutes thereafter, at which time he met Commander William Taylor, attacked him, and tried to take away the PR-24 Baton from him, but Taylor held on to his baton and the appellee left the compound. See minutes of court, 38th day's jury sitting, May 4, 2000, sheet two.

The appellants' second witness was William S. Taylor, who testified as to the tip-off they had received prior to November 1997 that some of their guards would be demon-strating on November 20, 1997. This witness testified that on November 20, 1997 he took up his assignment at Greystone compound and that they had been informed by radio that all the gates should be closed and that Appellee Freeman Bartuah should not be allowed to enter because he was an active part of the strike action. The witness further said that he was assigned outside the gate and that after he explained to the appellee why the appellee could not enter, the appellee reached for the baton that was on the side of the witness. The witness said that he resisted the appellee's attempt to take his baton, that the appellee made some remarks and joined the other guards, and that the appellee then left to go to the main embassy gate one. See minutes of court, 39th day's jury sitting, May 5, 2000, sheets one and

two. According to the witness, he took up assignment at about 8:15 a.m. but that he never saw Capt. Larry Flores. He also testified that the gate was of such that if you are outside you cannot see someone inside and vice versa. He said further that Appellee Bartuah never entered the compound in his presence.

The appellants' third witness was Guard Post Commander Leo C. Diggs, who testified that he was assigned at the main Embassy gate one, far away from where the appellee alleged the beating took place. He said that Appellee Bartuah approached him at the embassy's gate from the direction of Greystone gate one and went to Nuah Town, and that upon the appellee's return he was smelling with alcohol on his breath. He added that from the appellee's behavior and attitude, the project manager called Greystone by radio and instructed that the appellee should not be permitted to enter Greystone. He further stated that a group of 12 guards appeared in front of the Embassy gate one demanding to see the regional security officer of the US Embassy, but that the officer refused to meet them or receive a letter from them. After about 45 minutes sitting on the side walk, he said, the strikers left for their various locations. See minutes of court, 39th day's jury sitting, May 5, 2000 sheets ten and eleven.

From the witnesses' testimonies, the appellee established, by two eye witnesses, that he was in fact beaten. Their testimonies corroborated that of the appellee. We therefore find that the appellee met the burden of proof as required by law, and that thereafter the burden shifted to the appellants to exonerate themselves.

Of the three witnesses produced by the defense, each of them testified to facts different from the ones narrated by the other. The first witness was the only one who was on the scene when the alleged beating occurred. He confirmed the appellee's claim that the appellee appeared at Greystone before 7:00 a.m., entered the fence, chatted with them, and then left. The second witness said that he took up assignment by 8:15 a.m., which was after the incident had taken place. This witness said that the appellee never entered Greystone fence in his presence. The third witness was never at Greystone, where the incident took place, but was at the Embassy main gate one. He therefore could not have seen the incident. In fact, his testimony was completely useless as far as proving or disproving of the appellee's claim was concerned.

The Court notes that Capt. Larry Flores was never produced to testify since the act complained of, i.e. the beating of the appellee, is attributed to him. He would have been the best person to come and give the appellants' account of what happened. Indeed, when the case was argued before this Court, counsel for appellee told us that after the incident, Capt. Flores was transferred from Liberia and promoted to a new post in Guinea or some other country, and that accounted for why he was not brought as a witness, even though the suit

was brought against both he and his employer. When the writ of summons was served, it was received for the co-appellant company by its deputy project manager, Mr. Hernandez, who by then had replaced Capt. Larry Flores. The Court accordingly holds that where a plaintiff has produced clear, convincing and corroborating evidence to satisfactorily establish his claim, and where, as in this case, the defense has brought conflicting evidence, none of which exonerates the defendant of the claim against him other than containing mere denials, it should be considered as a concession of the truthfulness of the testimony brought by the plaintiff, and therefore the defendant should be held liable. Davis v. Davis, 19 LLR 150 (1969). The only testimony offered by the defense which borders on this case is that of the first witness, but he having been a party to the act complained of, his testimony was self-serving since he obviously would have given a story different from that of the appellee.

We find therefore that the jury did not commit any error in finding that the appellee, by a preponderance of the evidence, had established a prima facie case. In like manner, we hold that the judge did not have and would not have had a legal basis to do otherwise than confirm the finding of the jury.

The last issue which must be addressed relates to the contention that the verdict is excessive and that the award is not supported by the evidence adduced at the trial. In fact, the appellants claimed that the appellee did not produce any evidence to justify any award of damages. In order to resolve this issue, we take recourse to the records.

In his complaint, the appellee alleged he was beaten and that he suffered physical pains in various parts of his body. He also complained of mental anguish, humiliation, and disgrace. He produced a medical report to prove the injuries he had sustained, the treatment he underwent, and the cost associated therewith. The jury found that the special damage of US$500.00 was sufficiently proven, and hence, they awarded what was prayed for. On the issue of the general damages, the appellee prayed for US$250,000.00 and the jury awarded him US$300,000.00. The appellants contended that the jury erred when they awarded more than was prayed for.

In regard to the above, the Court says that it is special damages that are required to be proved with particularity. Civil Procedure Law, Rev. Code 1: 9.5(7). The Court agrees that the jury may not award more than was prayed for, but says that the rule applies to special damages because what is alleged must be proved. However, as to general damages, the plaintiff is required to prove the occurrence of the act complained of as an injury or damage to his person or property. The measure of damages, while discretionary with the jury, has to be the quantum of evidence produced by the plaintiff. The underlying theory for the law on general damages is that for every wrong or injury there is a remedy or redress or compensation.

This Court has adopted the rule that general damages must be proportionate to the special damages, and in so doing, should not be less than 10% or more than 100% of the amount of the special damages awarded. ADC Airlines v. Sannoh, 39 LLR 431 (1999), Supreme Court Opinions, October Term 1998. The Court held then that generally a verdict will not be set aside as being excessive except where the general damages are grossly disproportionate to the measure of damages.

During the arguments before this Court, the appellee contended that while he agrees with the Court in the ADC case, supra, yet that case can and should be distinguished from the instant case, in that in the cited case the measure of damages was clear and easily discernible since it was based upon a contract, or written instrument, whereas in this case, the claim was based on an intangible (i.e. pain and suffering, vomiting and urinating blood, public ridicule and humiliation). This Court is inclined to agree with the appellee that this case is removed from the realm of the ADC case, which we herein hereby reaffirm. We hold that the appellee sufficiently established his claim of injury to his person by the act of the appellants. We also agree that the award of US$300,000.00 is excessive, but hold that we will not apply the rule laid down in the ADC case that the damages should fall within the range of between 10% and 100% of the special damages because the circumstances are different, and for which this Court says the general damages will not be tied to the special damages, but will be awarded outright. Accordingly, we reduce the general damages from US$300,000.00 to US$45,000.00 for all the pain, suffering, public ridicule, and disgrace suffered by the appellee.

Wherefore, and in view of all the laws cited, the facts and circumstances narrated, and upon careful consideration, it is the ruling of this Court that the judgment appealed from, adjudging the appellant liable, be and the same is hereby affirmed and confirmed except that the award of general damages is hereby reduced from US $300,000.00 to US$45,000.00. The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge therein presiding to resume jurisdiction over the case, and enforce its judgment consistent with the modification herein made as to the general damages. Costs of these proceedings are ruled against the appellants. And it is hereby so ordered.

Judgment affirmed with modification.