INTRUSCO CORPORATION, by and thru its President, **WILLIAM MARRIAN, JR.,** Appellant, v. **MOHAMOUD OSSCILLY,** Appellee.

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

Heard: May 2, 1983. Decided: July 7, 1983.

1. A party objecting to an instruction to the jury at the close of trial must state distinctly the matter to which he objected and the ground of his objection.

2. The rules as to the certainty and definiteness required in a verdict apply to the finding of the amount due, and a verdict not finding such an amount with sufficient definiteness to authorize a judgment to be entered thereon for any definite sum is bad, and will be set aside.

3. The jury's verdict must separately state the amount awarded as special damages in addition to the general damages found.

4. Where the appeal challenges the evidence produced, the filing of a motion for a new trial shall be mandatory, failing which the Supreme Court shall not entertain the appeal.

5. Fraud must be pleaded with particularity, stating distinctly who committed the fraud, upon whom it was committed, when and where such fraud was perpetuated.

6. Where the appeal from a final judgment is to the evidence, the filing of a motion for new trial shall be mandatory before a review of the appeal by the appellate court.

7. A motion for new trial is basically directed against the evidence and the conduct of the jury during the trial, and is aimed at the re-examination of the issues of fact in the court after a verdict.

8. In the absence of a motion for new trial, a bill of exceptions may be considered on all questions except the weight of evidence.

9. A motion for new trial is unnecessary where the alleged errors relate to matters arising from the trial, or on ruling on a motion after judgment, or where the question arose in a trial by the court without a jury.

In an action of damages in the lower court, the jury returned a verdict for plaintiff, now appellee, which verdict did not state any specific amount of damages. On appeal to the Supreme Court, the Court ruled that the amount of damages must be stated in the jury's verdict in order for the trial judge to pass judgment thereon, and that a judgment rendered on an uncertain verdict cannot be regarded as valid. Consequently, the Supreme Court reversed the decision of the lower court and remanded the case for a new trial.

S. Edward Carlorappeared for the appellant. Joseph Andrews appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Appellee instituted an action of damages in the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against the appellant claiming $4,960.00 as follows: Three thousand six hundred ($3,600.00) dollars as estimate of the cost submitted by the Freeway Garage for the repair of his car insured under policy No. 20ICA with the appellant corporation which was involved in an accident on March 23, 1981, and one thousand three hundred sixty dollars ($1,360.00) representing 34 days per diem payment for the time the car was out of use, at the rate of $40.00 per day. Pleadings progressed to reply and rested. After the law issues were disposed of, a trial was had and the jury returned a verdict in favour of appellee. The appellant excepted to the verdict and the final judgment confirming the verdict, and appealed to this Court on a six-count bill of exceptions.

Appellant contended in count six of its bill of exceptions that the judge's charge to the jury was extremely adverse to its interest as it relates to awarding special damages, general damages and the effect of a written contract. Recourse to the records in this case revealed that after the judge's charge to the jury, counsel for appellant noted his exceptions, as follows: "to which charge defendant excepts and gives notice that when the jury shall have been discharged, he will give reasons for his exceptions", without stating distinctly the matter to which he objected and the grounds of his objection contrary to our Civil Procedure Law, Rev. Code 1:22.9 which provides that:

"1. prior to retirement of jury. At the close of the evidence or at any earlier time during the trial, any party may request in writing that the court instructs the jury on the law as set forth in his requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall in such instance instruct the jury in writing after the arguments are completed. The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel. No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

"Count six is not sustained in view of the prevailing statute just quoted. We shall treat counts 5, 3 and 2 together since these counts charged the judge for making certain the uncertain verdict of the jury. We quote the jury verdict for the benefit of this opinion:

"VERDICT

We, the petty jury jurors, to whom the case Mohamoud Osscilly of the City of Monrovia, Liberia, plaintiff versus Intrusco Corporation, defendant(s) was submitted after careful

consideration of the evidence adduced at the trial of said case, we do unanimously agreed that plaintiff is entitled to recover, that is, the insurance company should pay for the damages in the amount of damages.

Respectfully submitted,

1. Janet Harris

2. Louise C. Dennis

3. Rebecca Freeman

4. Mary Garnette

5. T. K. Ware

6. Varney Kamara

7. Maka Gray

8. Kula Cooper

9. Elizabeth Roland

10. Esther Toe

11. Samuel Mammie

12. Dahn Cooper Fort"

We shall review the evidence to ascertain the special damages proven at the trial which the jury had reference to as the amount of damages which the court had made certain. The plaintiff testified on his own behalf, as follows:

"In March 1981 I sent my car with the driver and the store-boy in the evening after 6:00 for business trip. About ten o'clock that night, two officers and the store boy went to my house and informed me about the accident and that the driver was in jail. They took me to the police station in Paynesville to see the car and I saw the car when we reached there. They asked me as to whether I gave the car to the driver or the driver is working for me. The next day I carried the report to the insurance company and I told them that my car had an accident. They said to me that they will send a jack truck to bring the car, and they carried it to the garage. After twenty days, the insurance company sent me a letter to go and take the car from the garage because they were not responsible for the accident. I carried the letter to my lawyer and I sent it with him to the insurance company and they refused to repair the car. After I received the police report and other documents, I instituted this action against the insurance company. I rest,"

After his general statement, the plaintiff identified the letter written him by the insurance company, the insurance policy and the police report, but the judge sustained the appellant's objection to the estimate for the repair on the ground that it was never pleaded. Appellee's second witness was one Sekou Kolati who even though he took the witness stand, yet he never testified because all questions put to him on the direct were objected to by , the appellant and sustained by the Court. Hence, he was discharged without testifying. The third witness was one Peter Mende whose testimony we quote hereunder:

"We have our store down Waterside, Monrovia, and everyday Mr. Mohamoud Osscilly sent me out to collect money from our customers. One day Mr. Osscilly sent me to collect money from one of the customers who live on Kakata Highway at Mount Barclay. I told the man that my wife was sick at Mount Barclay so he should permit me to see her before coming back to Monrovia and he said yes. On our way back to Monrovia, two trucks were racing and one tried to overtake the other. When our own driver saw the danger we were in, he cut the wheel and our car left the said road and went and hit against a light poll. He did this to prevent us from being killed. This is all I know except to answer questions."

Neither the plaintiff nor his one witness did testify to any amount and the estimate was never admitted into evidence. The jury therefore could not have named any amount in its verdict, since according to the evidence adduced at the trial, there was no specific amount testified to by the plaintiff and his witness. The judge therefore erred by mentioning an amount of $4,960.00 in his final judgment not stated in the verdict. In Appleton v. Republic, 11 LLR 284, 286 (1952) and Oruma v. Republic, 21 LLR 14, 19 (1972), this Court held:

"It is our opinion that if the verdict of the jury did not conform to the evidence with respect to the amount embezzled, the trial court should have either disbanded the jury and ordered a new trial or given additional instructions and directed further deliberation. To have directed the amendment of the verdict in open court in a matter of substance finds no support in law."

The rules as to the certainty and definiteness required in a verdict apply to the finding of the amount due and a verdict not finding such an amount with sufficient definiteness to authorize a judgment to be entered thereon for any definite sum is bad and will be set aside. 89 C. J. S., Verdicts, §497.

Civil Procedure Law, Rev. Code 1:22.11 stipulate that:

"1. In general. A general verdict is one in which the jury finds in favor of one or more parties. A special verdict is one in which the jury finds the facts only, leaving the court to determine which party is entitled to judgment thereon. In every case, the court shall direct the jury to return a general verdict unless in his opinion the facts adduced in evidence justify the return of a special verdict."

The verdict under review is not a special but a general verdict.

Further, special damages must be specifically pleaded and proved, and similarly the jury's verdict must separately state the amount awarded as special damages in addition to the general damages found. Saleh v. Montgomery, 21 LLR 125, 131 (1972). In the case at bar, there was no amount proven at the trial and the jury did not award any amount in the verdict. Counts 5, 3 and 2 of the Bill of Exceptions are well taken.

Count four of the bill of exceptions is overruled, for reason that fraud must be pleaded with particularity, stating distinctly who committed the fraud, upon whom it was committed, when and where such fraud was perpetrated.

In count one, appellant maintained that the judgment is against the weight of the evidence but he did not file a motion for a new trial.

This Court in The Forestry Development Authority v. Buchanan Logging Corporation 29 LLR 437 (1981), held that under our present statute, after having considered the review statute which was amended, the filing of motion for a new trial was permissive and not mandatory in a jury trial. It would seem that counsellors of this Bar are now misapplying this portion of the opinion by failing to take the necessary safeguard in the interest of their clients. We therefore have to modify the portion of that opinion relative to the filing of a motion for a new trial in a jury case and lay down, instead of the principle therein enunciated, the following:

Where the appeal is to the evidence, the filing of a motion for a new trial shall be mandatory before a review of the appeal by this Court. Bryant v. African Produce Company, 7 LLR 93, text at 99 (1940). The reason for this principle is that a motion for a new trial is basically directed against the evidence and the conduct of the jury during the trial, and is aimed at the reexamination of the issues of fact in the same court after a verdict. The authorities on the issue maintain as follows:

"In the absence of motion for a new trial, a bill of exceptions may be considered on all questions except the weight of evidence. 4 C. J. S., Appeal and Error, p. 1178.

The object or function of a motion for a new trial is to secure the correction of, or to give the trial court an opportunity to correct errors occurring in the conduct of the trial, without the delay, expense, or inconvenience of an appeal, and to preserve such errors for appellate review.

A motion for a new trial has been held proper only to secure a reexamination of issues of fact.

A motion for a new trial seeks to set aside the verdict, and this has been said to be its sole office; the object of a motion for a new trial by a jury is to have the verdict rendered in the

case set aside, so that there may be a reexamination of the issues of fact involved in the case, and that the judge may again charge the jury as to those issues of fact and the evidence." 66 C.J.S., New Trial, § 1(b), pp.63 and 64.

A motion for new trial may be unnecessary to preserve the matter for review in some circumstances, as where, because of the nature of the question involved, such a motion would be inappropriate, where the alleged errors relate to matters arising prior to the trial, or on a ruling on a motion after judgment, or because the question arose in a trial by the court without a jury or in an equity case ...." 5 AM. JUR. 2d., Appeal and Error, § 555.

Our statute also supports the authorities just quoted for, it provides that:

"After a trial by jury of a claim or issue, upon the motion of any party, the court may set aside a verdict and order a new trial of a claim or separable issue where the verdict is contrary to the weight of the evidence or in the interest of justice. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section." Civil Procedure Law, Rev. Code 1:1.26.4. Post-trial motion for new trial.

In The Forestry Development Authority v. The Buchanan Logging Company, the judge dismissed the defendant's answer without any legal reason prior to the trial of the fact by the jury, and he also prohibited the defendant's witnesses who were qualified without any objection and sequestrated from testifying during the trial on the ground that the defendant was placed on a bare denial in contravention of the Civil Procedure Law, Rev. Code 1:9.1.(2), which is quoted thus:

"2. When answer not required. If a defendant appears within the time prescribed by section 3.62, his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such a defendant may cross-examine plaintiffs' witnesses and introduce evidence in support of his denial, but he may not introduce evidence in support of any affirmative matter."

The court considered these errors as reversible errors and therefore reversed the judgment and remanded the case for a new trial commencing with the disposition of the law issues. Count one of the bill of exceptions cannot be entertained in view of all we have narrated.

The jury's verdict being in contrast to the rules of certainty and definiteness, by failing to find an amount with sufficient definiteness to authorize a judgment to be entered thereon for any definite sum, the judge should have either set it aside or given further instructions to the jury to deliberate, instead of simply naming an amount in his final judgment.

In view of the facts stated and the laws cited, it is our candid opinion that the judgment of the trial court ought to be and the same is hereby reversed and the case remanded for a new trial. And it is hereby so ordered.

Judgment reversed and case remanded.