GERTRUDE KNOWLDEN, Appellant, v. **ERIC E. REEVES**, **A. BERNARD GIBSON**, **J. WINSTON STEWART**, **SAMUEL E. PERRY**, **ADEMOLA ILLUYUMADO**, **H. WILLIAM TYES**, and **GIBSON & SON**, Appellees.

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

Argued March 11, 15, 16, 1954. Decided May 28, 1954.

1. A party in a libel action has the right to request a written charge to the jury.

2. In the absence of a request for a written charge to the jury the Supreme Court cannot review exceptions to an oral charge.

3. Special damages must be alleged and proved.

4. The burden of proof of an allegation is on the party making the allegation.

5. In a civil case, the plaintiff must prove his allegations by a preponderance of evidence.

Plaintiff, appellant herein, instituted an action of damages for libel against defendants, appellees herein. The plaintiff was successful. On appeal to this Court by defendants, the judgment was reversed and the case remanded. *Reeves v. Knowlden, 11* L.L.R. 199 (1952). After a second trial, judgment was rendered against plaintiff. On appeal to this Court, *judgment affirmed.*

T. Gyibli Collins for appellant. *Richard A. Henries* for appellees.

MR. CHIEF JUSTICE RUSSELL delivered the opinion of the Court.

During the March, 1952, term of this Court, we reversed the judgment of the lower court in this case, and awarded a new trial because of certain irregularities in the trial. *Reeves v. Knowlden, 11* L.L.R. 199 (1952).

A second trial was held during the September, 1952, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Judgment was rendered against plaintiff, and an appeal therefrom has been taken to this Court.

The complaint follows:

"1. Gertrude Knowlden, plaintiff, complains of the above named defendants and alleges, that said defendants, maliciously intending to injure plaintiff in her good name, fame and credit, and to bring her into public scandal, infamy and disgrace among her neighbors, and to cause the public to believe that said plaintiff was guilty of the offense hereinafter mentioned and charged upon her by said defendants, and to vex, harass and oppress plaintiff, the said defendants on November 11, 1930, in a newspaper called 'Daily Times' did maliciously publish of and concerning plaintiff a false, scandalous, and defamatory matter, to wit:

" 'SHE IS CHARGED WITH STEALING TWO CHICKENS

" 'Monrovia—Monday, October 30. A woman by the name of Gertrude Knowlden was this morning arrested by the police. She was charged with theft for having stolen two chickens from Mrs. Fernandez. The former was detained at the police station pending investigation and trial.'

"which said publication as per copy annexed as Exhibit 'A,' imports on its face, as well as in its usual and ordinary sense, as understood by the readers and the public, that the plaintiff has been guilty of the crime of larceny, in that, the said defendants by their said publication meant and intended to convey to their readers and the public in general that the plaintiff did steal or has stolen the property belonging to a third party, and was therefore arrested and detained in custody.

"2. Plaintiff further complains that, by virtue of the premises, she has been and still is greatly injured in her good name, fame and credit, and brought into public scandal, infamy, disrepute and disgrace among her neighbors and in her relations with the community, to her damage in the sum of three thousand dollars."

The answer follows:

"1. Defendants submit that Count `1' of plaintiff's complaint is grossly false, misleading and calculated to embarrass defendants, in that there was no intent on defendants' part to injure plaintiff in her purported good name, since what was published was actually what happened; that is to say plaintiff was actually arrested by the police, and was actually charged with stealing a neighbor's chicken, as more fully appears from certified copy of page 97 of the Police Criminal Record Book, and from the Police Daily Occurrence Book for Monday, October 30, 1950, at 8 :30 A.M.,

hereto annexed and marked Exhibit 'i.'

"2. Said defendants deny that their aforesaid publication meant or implied that plaintiff has been guilty of the crime of larceny, as is alleged in her said complaint; for nowhere in said publication have the defendants charged plaintiff with theft, but rather their aforesaid publication tells in a simple manner what steps were taken by the police following the disappearance of a neighbor's chicken. The court will please take judicial notice of the publication already filed in the office of the clerk.

"3. As to Count '2' of the complaint, the defendants deny that plaintiff could have been damaged by their said publication, since the said publication did not accuse the plaintiff of stealing the chicken, but merely reported the action taken by the police. Damages would lie only if the publication could be proven to be false in its recital of the occurrence.

"4. Defendants deny that plaintiff could possibly be damaged in the sum of three thousand dollars when she is not known to be gainfully employed, nor does she stand to lose any financial returns which would have come to her."

The pleadings progressed as far as the filing of a surrejoinder. Since the reply of plaintiff, the rejoinder of defendants, and the surrejoinder of plaintiff produced no new matter, it is not necessary to pass thereupon, especially since no exceptions have been filed thereto by plaintiff, appellant, herein.

After the issues of law raised in the pleadings were disposed of, the cause was ruled to trial upon the issues of fact. The jury rendered a verdict in favor of the defendants. Plaintiff filed a motion for new trial which was duly heard and denied by the trial Judge. Plaintiff then excepted and filed notice of appeal to this Court.

Plaintiff thereafter filed a bill of exceptions consisting of seven counts, the most salient of which we quote :

"5. While instructing the trial jury, Your Honor charged that, plaintiff having sued for a certain sum of money, she was bound to prove said amount of damages in order to recover, her claim being in the nature of 'special damages' ; whereupon Your Honor particularly directed the trial jury to bring in such verdict as they did. To which oral charge of Your Honor plaintiff excepted.

"6. Notwithstanding it was brought out in the evidence of Laura Fernandez that she

did not charge the plaintiff with 'stealing' nor made any such representation to the police officer on duty at the time ; but rather that she reported to the police on guard a dispute relating to the ownership of a fowl ; which evidence substantially rebutted the Police Record Book and other evidence introduced by the defendants; yet still Your Honor overruled plaintiff's motion for new trial of this case although the jury apparently arrived at their verdict under misapprehension of the facts. To which plaintiff excepted.

"7. And also, notwithstanding the foregoing facts and circumstances, Your Honor rendered final judgment relieving the defendants of all liability for malicious publication, to which judgment plaintiff excepted."

This Court cannot adequately review the issue raised in Count "5" in the absence of a written charge, which plaintiff had a right to apply for, and which would have enabled us to pass upon the said issue. But it is clear that the trial Judge was within the scope of his statutory authority when he instructed the jury on the law and evidence before its retirement.

The Old Blue Book states the following: "Where special damage is relied upon, it must be stated in the complaint and proven." 1841 Digest, pt. II, tit. I, sec. 37; 2 Hub. 1521. Therefore it must be proven at the trial.

Plaintiff did claim special damages. How far she was able to prove the same will be discussed, *infra,* in this opinion. But it is obvious that the trial Judge did not err when, in instructing the jury, he gave as his summary of the law that it was necessary for plaintiff to prove at the trial the special damages alleged in her complaint.

The evidence given in this case by plaintiff and her witnesses falls far short of the requirement of the law which this Court laid down as a rule in *Itoka v. Noelke,* 6 L.L.R. 328, 332 (1939)

"According to the laws of this country it is not sufficient merely to allege an injury and claim damages therefor, but the plaintiff must prove the injury complained of and that he has been damaged to a sum commensurate with the amount claimed as damages."

This plaintiff "leaded special damages by reason of the publication of scandalous matter against her by the defendants in the *Daily Times;* and prayed for an amount of three thousand dollars to compensate her for this alleged injury.

Mere allegation is not proof ; and the burden of proof falls on the shoulders of the party making an allegation. The burden of proof in this case made it incumbent upon plaintiff to prove by a preponderance of evidence the allegations of fact contained in her complaint. With respect to the special damages alleged, the plaintiff has failed to carry such burden of proof.

Considering Count "6" of plaintiff's bill of exceptions, the evidence makes it clear that criminal proceedings were initiated against plaintiff upon the complaint of witness Fernandez. The records disclose that witness Fernandez complained to the police, which complaint became the basis of criminal proceedings. Under the circumstances the jury was fully justified in its verdict, since the publication complained of constituted a true and fair report of facts of public record and significance.

Proof is totally absent with respect to Count "7" of the bill of exceptions. The trial Judge thus had no alternative but to enter a final judgment based upon the verdict of the jury. A legal maxim states : "That which is spoken silences that which is implied." Since plaintiff failed to prove a prima facie case, nothing can be taken by intendment.

We are therefore of the opinion that the judgment of the lower court must be affirmed; costs against plaintiff; and it is hereby so ordered.

Affirmed.