LAMCO J. V. OPERATING COMPANY, represented by its General Manager**,** JOHN PERVOLA, Appellant, v. **TOFFIC AZZAM** and **SOHA AZZAM,** Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: April 14, 1983. Decided: July 6, 1983.

1. In adjudicating disputes involving releases or stipulations, the courts must be on their guard to detect those ugly motives that may have worked on the ignorance or misapprehension of the parties issuing such releases.

2. A release that pricks the conscience of public policy or that takes advantage of the situation should not be condoned.

3. Once the release was contingent upon the occurrence of certain future events to become effective, the rights/obligations of the releasor do not automatically attach. Rather, the dependence of the release on such future events imputes the idea that the release was in fact a conditional one and hence cannot automatically defeat all the rights of the releasor.

4. The modern practice is for courts of law to decide cases on the merits rather than on technicalities which tend to deny or delay justice.

5. While it is true that an execution of a release ordinarily discharges the releasee from further obligations, notwithstanding, where the conditions and circumstances under which the release was executed show fraudulent motives such fraud will vitiate such contractual obligations ab initio.

6. In order for the principle of res judicata to apply, it must be plainly shown that the parties are the same, the subject matter is the same and the matter in controversy was a subject of judicial investigation and that the matter was conclusively adjudicated by a court of competent jurisdiction.

7. The rationale behind the principle that courts will not do for parties that which they ought to do for themselves is to ensure pure neutrality on the part of the court.

8. The trial court has power to put manifestly irregular or defective verdict in such form as to make it conform to the intention of the jury and to carry their verdict into effect where the intention can be ascertained with certainty.

9. It was no error on the part of the trial judge to have denied the application for a change of venue on the ground that the motion was premature; that is before the disposition of law issues.

10. All questions of law shall be decided by the court while all mixed questions of law and facts shall be decided by the jury with the assistance and under the direction of the court and that all questions of mere facts shall be decided by the jury.

11. A motion for change in venue goes to the facts; hence, it cannot be made and granted until and unless the issues of law raised in the pleading have been decided by the court, and the case ruled to trial on the facts.

12. A valid release conclusively estops the parties to revive the claims released and that the release completely discharges and extinguishes all rights and claims of the releasor against the releasee which are included in the release.

13. A release may be avoided for fraud or fraudulent representations made by the releasee or his agent and relied on by the releasor to his injury; and silence may constitute fraud where there is a confidential relation or a duty to speak.

14. The separate rules of equity and law are abolished under our statute, and both are merged into one form of civil action. Rev. Code 1:1.3.

15. Where fraud is apparent, the court cannot legally close its eyes because the issue was not raised squarely.

16. Conditional releases are not valid until the condition stipulated therein is satisfied.

17. Prejudicial to defendant's interest is not a legal ground for an objection to a question posed to a witness.

18. Where a wrong ground is given as a reason for an objection to a question, the proper legal action or course to follow by the court is to overrule the objection and permit the question so propounded to be answered by the witness.

Appellees, plaintiffs in the lower court, while traveling in their vehicle, were involved in a head on collision with appellant's vehicle in Buchanan, Grand Bassa County. The police investigation determined that the appellant's driver was at fault. He was therefore charged with reckless driving causing bodily harm and damage to personal property. At a trial in the traffic court, appellant's driver was found guilty of the offence charged and fined $300.00. Thereafter appellees wrote appellant demanding compensation. Following a series of negotiations, a compromise amount was agreed upon and appellant made payment thereof. A release was then issued by the appellees in favour of the appellant.

In spite of a release signed by appellees in favour of appellant, however, the appellees commenced an action of damages against the appellant. The trial jury found the appellant liable in damages in the amount of $450,000.00. The trial court, in its final judgment, confirmed the verdict of the jury, with the modification that the damages be reduced by the amount which appellant had paid to the appellees.

On appeal to the Supreme Court, the judgment was affirmed as modified with costs. The Court acknowledged that a release ordinarily releases the releasee from all further claims by the releasor, but maintained that the release may be avoided for fraud or because of fraudulent representations. The Court noted that in the instant case there was sufficient evidence to show that the release was executed under fraudulent conditions. The Court opined that in such situation the fraudulent motives and acts vitiated the contractual obligations of the releasers, appellees in the case. It observed that the appellant had callously exploited appellees' ignorance, and that this exploitation had occurred especially in the absence of counsel.

The Court noted further, aside from the matter of the fraud committed, that a release which pricked the conscience of public policy should not be condoned; and it declared that as the release depended upon the occurrence of some future events to become effective, the rights of the releasers did not automatically attach. The Court therefore affirmed the verdict of the jury and the judgment of the trial court confirming the same as modified.

Victor D. Hne appeared for appellant. M Fahnbulleh Jones appeared for appellees.

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

An inspection of the records certified to this Court for review revealed that on the 22' day of November, 1981, the appellees, husband and wife, while traveling in their vehicle in Buchanan, Grand Bassa County, were involved in a head on collision with a motor vehicle belonging to the appellant. As a result of collision the appellees, together with their guest passengers, sustained serious physical injuries, loss of cash, and damage to their vehicle.

Consequently, the appellees and the other victims were admitted for medical treatment at the appellant's medical center in Buchanan. The other victims were later discharged, but appellees, however, were hospitalized for a longer period in view of the serious condition of their injuries. The records showed also that following the accident an on-the-spot investigation was conducted by the traffic police and the findings of the investigation showed that the appellant was at fault. As a result, the appellant's driver was prosecuted for "reckless driving causing bodily harm and damages to personal property". He was found guilty as charged and fined $300.00 or suffer a twelve (12) month prison sentence. There is no record, however, to show that the appellant appealed the judgment of the traffic court, an indication that the appellant conceded the truthfulness of the charge preferred against it.

When the traffic prosecution ended, the appellees wrote to the appellant for compensation in the sum of $18,000.00 and that the appellees were referred to Messrs. Intrusco, appellant's insurers, to that effect. It appears that after a number of discussions the appellant managed to persuade the appellees to accept $11,000.00 instead of $18,000.00 until they present the income tax returns for $3,500, which will be paid later and that on the 13th day of January, 1982, the appellees were made to sign a release prepared by appellant in favour of itself tending to discharge the appellant from all claims arising out of the accident. Later the appellees discovered that the sum of $11,000.00 was not only too little to meet the losses connected with the accident but was for specific purposes as contained and revealed by the check request as well as the check stub. Hence, they demanded compensation for general damages. As the appellant was not willing to honor this claim, the appellees, therefore, decided in March, 1982 to file an action of damages in the People's Second Judicial Circuit Court, Grand Bassa County, to recover the sum of $18,000.00 and general damages. The records show that on the 17th day of April, 1982, a judgment was handed down by the trial court awarding the appellees a sum of $450,000.00 as general damages for the personal injuries sustained and property losses incurred. This sum was, however, reduced by $11,000.00, a sum already received by the appellees; bringing the final sum to $439,000.00. The appellant took exceptions and filed this appeal for review.

In its 31 counts bill of exceptions, the appellant has charged the trial judge with the commission of numerous errors mostly of a procedural nature. We have made special efforts to study all the counts in an attempt to establish the basis of appellant's contentions but only counts 2 and 25 deserve our attention because in our opinion the rest of the counts have no material relevance to the fair and impartial determination of the case.

In count 2 of its bill of exceptions, the appellant contended that the appellees have received a sum certain and have executed a release in favour of the appellant and were therefore estopped from making further claims against the appellant and that on the basis of the doctrine of estoppel, the matter was thus res judicata and further that the trial judge committed reversible error by entertaining this action for trial. In count 25, the appellant contended that fraud being an equitable remedy, the trial judge should not have entertained this issue in the trial when the cause of action was at law. The appellant therefore claimed that in doing so the judge committed a reversible error. These two counts, as already remarked, are the only counts of the 31 counts that deserve comments in deciding this case. The rest of the counts deal with issues that are mostly trivial in substance, besides being irrelevant and repetitious.

However, from these counts of appellant's bill of exceptions and brief, the appellees' counter contentions, the attending facts and circumstances, the following issues present themselves for the final determination of this matter:

1. Whether or not a motion for change of venue for local prejudice goes to law or fact?

The Liberian statute requires that all questions of law shall be decided by the court whilst all mixed questions of law and facts shall be decided by the jury with the assistance and under the direction of the court and that all questions of mere facts shall be decided by the jury.

Relying upon the legal premises laid, it is but reasonable to conclude that a change of venue on ground of local prejudice that will prevent a defendant from getting a just verdict in a civil case, which is the only benefit obtainable for such a change of venue before a court of records goes to facts. Consequently, it goes without saying that no such change of venue can be granted until and unless the issues of law raised in the pleadings shall have been decided by the court or judge and the case ruled to trial on the facts.

Applying the law to these sets of facts, pleadings having rested at a reply, the appellant desiring a change of venue for local prejudice should have waited until the judge had ruled the case to trial on the facts. Massaquoi v. David and Sherman, 6 LLR 320 (1938). In our opinion, it was therefore no error on the part of the trial judge to have denied the change of venue on the ground of the motion being premature; that is, before the disposition of the law issues. Massaquoi v. Republic, 2 LLR 461 (1924).

2. Whether or not the release prepared by the appellant and signed by the appellees, which depended upon some future events for its completion, was a general release amounting to an automatic extinguishment of all rights of the appellees as against the appellant?

The general rule of law is that a valid release conclusively estops the parties to revive the claims released and that the release completely discharges and extinguishes all rights and claims of the releasor against the releasee which are included in the release. 76 C. J. S., Release, § 41. The rationale behind this legal principle is that the release is a compromise agreement and as long as there is a consensus ad idem, the release places a firm clamp on all the rights of the releasor. There is good common sense behind this legal proposition as regards the court's practice in avoiding impairment of contractual obligations. Hence, looking at this case purely from this angle, the appellant would appear to be correct in its contention that the execution of the release operated as an estoppel against the appellees as regards future claims. The trial judge therefore could be said to have committed a technical error in entertaining this action under such circumstances.

This view, we submit, is a very narrow one as it tends to import technicalities to defeat a meritorious cause. Courts of England, America and those of this jurisdiction, as judged from our holding in the case of Murdoch v. United States Trading Company, 3 LLR 288, 295 (1932), have generally entertained releases and pleas of estoppel with great caution to protect the weaker parties who in most cases execute releases as a necessary evil to get their rights in time. In nine cases out of ten, releases are executed under conditions of "take it or leave it",

and the executions of the releases become thus a necessity as the less evil. Releases issued under such conditions cannot be said to be voluntary. Economic duress may motivate the execution of a release coupled with the inability to argue at arm's length with the stronger party. It is common sense that a starving man does not choose the quality of food he gets; in the same way a beggar accepts any coin given him. Therefore, in arbitrating disputes involving releases or stipulations, for that matter, the courts must be on their guard to detect these ugly motives that may have worked on the ignorance or misapprehension of the parties issuing such releases. Banks, et al. v. Hayes, 10 LLR 98 (1949). Thus a release that pricks the conscience of public policy or that takes advantage of the situation should not be condoned.

Furthermore, the release in question, which relies on the presentation of an income tax receipt of $3,500 to pay the remaining of appellees' claim, must be examined in its entirety as to whether or not it totally released the appellant in fact and indeed from all liabilities. In our opinion, once the release depended upon certain future event to occur before it was effective, it imports the idea that the release was in fact a conditional one and hence cannot automatically defeat the rights of the appellees. Similarly, a release that augurs craftiness and disregard for moral conscience should not be condoned. C.J.S. Release, § 27, condemns such releases in the following words:

"A release may be avoided for fraud or fraudulent representations made by the releasee or his agent and relied on by the releasor to his injury; and silence may constitute fraud where there is a confidential relation or a duty to speak".

A careful examination of the records submitted to this Court revealed the following chain of factors. The husband, plaintiff number one, lost twelve fresh teeth, broke one of his wrists, broke one of his knee caps, broke some of his ribs, lost his spectacles, lost a good sum of money, his car was damaged beyond repairs and above all his face was grotesquely disfigured with a hundred stitches. The wife, plaintiff number two, lost two fresh teeth, damaged her two jaws, damaged some of her ribs, and her face awfully distorted almost beyond recognition with a hundred fifty stitches. The children and other dear dependants also experienced serious bodily harm. An examination of the records also reveals that the treatments administered to the appellees at the Lamco Medical Center in Buchanan, were too inadequate for the type of injuries the appellees sustained as the result of the accident. This fear was also clearly expressed by several specialized medical consultants in Monrovia to whom the appellees had been referred by the appellant's insurers the Intrusco. We can never paint the appellees' injuries better than in the words of the wife, the co-appellee. In her excellent brief description of their injuries, she replayed the accident drama by displaying her badly distorted face, broken jaws, uprooted fresh teeth, the consequences of which made her look like an ugly old lady while she in fact was a charming young lady before this unhallowed incident. She expressed to the jury the fears of the medical consultants as to the adequacy of medical attention in Liberia with the result that she and her husband including their little

children would have to go abroad for a period of five or six months to undergo intensive dental surgery including plastic surgery to restore their natural appearance. In her opinion, a colossal sum of money would be needed to sustain them through this long and protracted chain of medical attention. This fact was also conceded by the appellant as evidenced from the testimonies of the Insurance Company's Claims Manager, one Mr. Charles Ananaba, and the Assistant Claims Manager, one Mr. Gabriel Oniyama. It is interesting to observe that terrible physical injuries like these could not appeal to the conscience of the insurance officials when discussing possible compensation settlement. The Insurance Company and the appellant still thought it prudent to fight for a safe compromise in the face of these victims. One does not need to be a medical expert or an insurance consultant to realize that the loss of fourteen teeth, compounded with broken wrist, ankles, knee caps, jaws, ribs, faces and what have you, will cost one a life's fortune in terms of medical expenses even granted that all the medical care was carried out entirely from local institutions. Besides, the appellees will have to foot the bill for a new motor vehicle to replace their wrecked one.

Now, to give a definite answer to question number two as to whether or not the execution of the release by the appellees in favour of the appellant thereby set the appellant scotch free forever, it is our considered opinion that the purported release satisfied technical requirements only and thus of little validity. A close study of the circumstances leading to the execution of the release in question clearly shows that prior to the purported execution a series of discussions were held between the appellees and the appellant's insurers in an attempt to work out an equitable settlement. The records show that the appellees' first claim was in the sum of $18,000.00 based upon a proper breakdown at that material time(emphasis our own). We see from the records that after several meetings the appellant, through its insurance company proposed a sum of $11,000.00 as a compromise settlement based upon a selected breakdown. It is obvious from the records that the release had been prepared by the appellant well in advance of the compromise settlement. During the cross-examination, following his statement in chief, Mr. Touffic Azzam, one of the appellees herein, responded to a question put to him as follows:

"...Your Honor, the day I signed the release was January 13, 1982 in the presence of my counsellor, James G. Johnson. After conversation with the manager concerning my claims, he advised me to proceed to the claim manager's office and sign the release. He promised however that the $11,000.00 was portion of my claim and the balance would be paid after I submit to him (emphasis ours) my total claim including Government taxes; my proof that the check was received on the 14th of January 1982 after I signed the release on January 13, 1982, is the check stub I now have in my possession. I should like to mention also that I insisted on receiving back the release I signed, since the check was not delivered to me on that day, but the Claim Manager argued that it would be no problem ..."(Emphasis ours). See 42' day's jury session, February Term, Wednesday, March 31, 1982.

We learned also that the original draft of the release did not exonerate the appellant from all claims of the appellees. It is clear from the records that the appellees were assured by the appellant of the settlement of further related claims in future such as the loss of business in the sum of $3,500.00 for the 15 days the appellees were out of business. This explains why the first draft of the release did not import words of total exclusion from further liability. Similarly, during the trial appellees' legal counsel, Counsellor James G. Johnson, attested to the appellees' claims in response to questions put to him by the court and appellant's counsel as follows:

" In my presence as well as the presence of the plaintiff, the check was prepared and an accompanying release for the $11,000 00 also prepared. Mr. Charles Ananaba sent his messenger and/or officer of the office to the manager for it to be approved. The release I saw that day when the check was prepared and sent up stairs for the manager's approval did not carry the phraseology full settlement for all injuries sustained everything else. To my greatest surprise few days later, I read from a copy from Mr. Touffic Azzam in full settlement of injuries sustained which is an, act of fraud".

And yet when the appellees received their check in the sum of $11,000.00 a few days later, they observed with great shock that in the release a clause had been inserted exonerating the appellant from any further claims connected with the motor accident. The appellees observed also that in the check payment request only a few items had been mentioned as grounds for the $11,000.00 payment. This phenomenon was also repeated on the $11,000.00 check stub, as seen from the testimony and exhibits proferted.

For a fair disposition of this matter, it is necessary for us to examine at this juncture the certified records from the stand points of the appellant and appellees, respectively. The appellant contended, among other things that following the accident discussions were held between the appellees and appellant's insurers, Intrusco, and that during these meetings the appellant offered to compensate the appellees in the sum of $11,000.00 as opposed to the sum of $18,000.00 demanded by the appellees. The appellant claimed further that in consideration of the sum of $11,000.00 the appellees executed, voluntarily, a release acknowledging the receipt of $11,000.00 and thereby unequi¬vocally discharging the appellant from all claims connected with the accident. The appellant claimed further that the execution of the release operated as an automatic estoppel against any future claims and that this matter thus became res judicata.

The appellees, on the other hand, claimed that in their several meetings with the appellant's insurers, they insisted on a sum sufficient enough to cover their basic losses, injuries and expenses and that the appellant's insurers proposed a tentative settlement in the amount of $11,000.00 until all phases of the claim were fully studied. The appellees claimed further that it was on this basis that they decided to affix their signatures unto the release and their

subsequent acceptance of the $11,000.00. Appellees also claimed that they were not given a copy of the release on the day of signing the said document; that a copy was given to them a few days later with alterations.

With these two stories we find ourselves sandwiched in the midst of truth and falsehood. The question to ask ourselves is this: which side should be followed? We would like to believe the story of the appellant; but how does the appellant explain to us why the release was prepared in advance of payment? How does the appellant explain as to why the release was not prepared by the appellees? And how does the appellant explain as to why the appellees were not given a copy of the executed release on the same day the release was signed?

The appellees' claims in this regard are well supported by properly corroborated testimonies. During the trial, the appellees produced several witnesses who unequivocally endorsed the appellees' stories both regarding the gravity of their physical injuries, loss of property, and the crafty negotiations of appellant's insurers leading to the signing of the release in question. Mr. Hafed Bakay, one of the victims of the accident, on April 6th, 1982 gave excellent evidence which was fully in harmony with the claims of the appellees as to what transpired at the insurance company's office. His testimony, like those of the appellees and other witnesses, was not rebutted by the appellant. On the 6th day of April, 1982, during the February Term, Madam Soha Azzam, one of the appellees also testified to the truth¬ fulness of their claims, as follows:

"...When we arrived there, my husband left me in the car and went upstairs to see the insurance company. When he returned I observed frowns on his face. Then I asked him what was the trouble, he informed me that the paper he signed had been slightly changed and some words were added which release the company of all and any financial responsibility and that the phrases added on the paper was that the $11,000.00 covered all bodily injuries and other damages sustained (emphasis our own), he said to me that those phrases were not written in the release when he signed it the day before; but when he went in the building and in that particular office to receive his check, a copy of that paper given to him mentioned what I have just said. That disturbed him a lot. That's all I can now remember..."

One interesting thing must be mentioned here with regard to the release purportedly executed by the appellees. Paragraph three of the release begins with the following words, "It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim (emphasis ours to show motive of appellant) and that the payment made is not to be construed as an admission of liability and that the said release did not deny any liability therefor and intend merely to avoid litigation and buy the peace". Why on earth would an insurance company pay out money for something it considers unlawful or illegal? And why

should the same insurance company pay for a "doubtful and disputed claim" and yet warn the payee not to go to court, thereby ousting the jurisdiction of the court.

One sad thing that immediately strikes our minds when looking at this case is this: how could the appellees accept to sign a prepared release before receiving full compensation and how could they also have signed the release with such onerous terms and overtones? The appellant has exploited this issue to ridicule the allegations of the appellees as regards the validity of the executed document and the adequacy of the $11,000.00 paid to the appellees. We admit the Appellees committed a foolish error; an error that could easily be associated with their ignorance of legal technicalities when dealing with professional insurers. Be it as it may, are we going to let crafty and unscrupulous parties like insurance companies get away scotch free like this? The modern practice is for courts of law to decide cases on the merits rather than on technicalities, which just tend to deny or delay justice; Sirleaf v. Reeves, 20 LLR 433 (1971).

We, therefore, hold that while it is true that an execution of a release ordinarily discharges the releasee from further obligations, notwithstanding, the conditions and circumstances under which this release was executed show fraudulent motives on the part of the appellant and consequently fraud will vitiate such contractual obligations ab initio. Nassre & Saleeby v. Elias Bros., 5 LLR 108 (1936).

We have evidence sufficient enough to show that the release was signed ("executed") under fraudulent conditions; the appellant callously exploiting appellees' ignorance and artlessness especially so when the final transactions were conducted in the absence of the appellees' legal counsel. It appears also from the records that the appellees are either illiterate or semi-literate and the appellant's insurers appear to have exploited this factor to their maximum advantage. We conclude, therefore, by holding that while a release executed under fair conditions will discharge the party in whose favour it is executed, such release, however, will be of little legal consequence if executed under duress, misrepresentation or fraud, actual or constructive. 76 C.J.S., Release, § 41- 45. The evidence in the case at bar plainly shows that the release was prepared initially by the appellant in the absence of the appellees; that the appellees were induced into signing the release on the understanding that more compensation would be given; that the final draft of the release contained exculpatory clauses that never appeared in the original draft; that the appellees were never given a copy of the release on the day of signing despite repeated demands; and that the appellees were concluding their claim under conditions of depressed mental and psychological disposition. Under such conditions, the appellees cannot, therefore, be said to have knowingly, willingly and intelligently executed the purported release in favour of the appellant as alleged.

3. Whether or not an equitable remedy can be entertained along with a legal remedy?

Now, coming to the issue, namely as to whether or not an equitable remedy can be considered together with a legal remedy, the general rule of law is that equitable remedies can be considered along with legal remedies where it is shown that the acts complained of are contrary to equity, and to the injury of the plaintiff, and that he has no remedy, or not a complete remedy, without the assistance of a court of equity. Nassre & Saleeby supra, and Thorpe et. al v. Thomson, 3 LLR 193 (1930). One of the largest classes of cases to justify interposition of courts of equity is where there has been a misrepresentation or suggestio falsi. Before the Judicature Acts of 1873 and 1875, the courts of equity and those of law in England existed side by side each administering separate rules of procedure and justice. With the coming of the Judicature Act of 1873, the rules of equity and those of law were merged so that it was possible for a court of law to administer both rules of equity and rules of law jointly or severally.

It is now a practice in courts of common law to administer both rules of equity or law jointly or severally as doing otherwise would bring about delay in the administration of legal justice and thus do much harm to society. 3 C.J.S., Appeal and Error, § 36, 40 & 60; Weeks v. Weeks, 29 LLR 332 (1981); Harmon v. Republic, 24 LLR 176 (1975). Therefore, the allegation of the appellant that the trial judge committed a reversible error in entertaining allegations of fraud or false representations, which are equitable remedies, is not valid as it is not supported by any legal authority at common law or in our jurisdiction. Our statute, like the common law, abolished separate rules of equity and law, merging the two rules in a court of justice depending on the classes of reliefs sought. See the Civil Procedure Law, Rev. Code 1.3, under "One form of civil action",

4. Whether or not the principle of res judicataas invoked by the appellant will apply to the facts and circumstances of this case?

This Court has time and again held that in order for the principle of res judicata to apply under any given facts or circumstances it must be plainly shown that (a) the parties are the same; (b) the subject matter is the same and above all (c) that the matter in controversy was a subject of judicial investigation and that the matter was conclusively adjudicated upon by a court of competent jurisdiction; Liberia Mining Company Ltd ,v. Keilee Lebbi, 29 LLR 237 (1981). Our holding is rooted in the common law jurisprudence. Applying this principle to the facts and circumstances of the case at bar, it is not difficult to see that the principle of res judicataas invoked by the appellant will not and cannot apply. Yes, conceded the parties are the same, but the subject matter is not the same and, most importantly, the subject matter has never been conclusively determined by a court of competent jurisdiction. The amount of $11,000.00 paid to the appellees was paid out of court, arising from private negotiations between the appellees and the appellant. The court was in no way ever involved in the negotiations, and the matter was never the subject a of judicial investigation, let alone judicial deter-mination. Under such facts and circumstances, how could the principle of res judicata

ever apply? We are of the opinion that the principle of res judicataby and large is not applicable in this case. Borbor v. Tay, 21 LLR 112 (1972) and Pearce v. Flomo, 26 LLR 299 (1977).

5. Can a court close its eyes where fraud is apparent simply because the pleadings fail to raise the issue squarely?

In the appellees' reply, they contended that the release was given fraudulent construction and interpretations as to the intent of the contracting parties regarding what was paid for and what remained to be paid for. Thus, the court in deciding this case cannot legally close its eyes merely because no fraud was squarely pleaded. Civil Procedure Law, Rev. Code 1: 51.15

After this brief review of the facts, circumstances and the legal principle appertaining to this case, it is our considered opinion that the appellees were hoodwinked into a legal trap with potential legal consequences on their legal rights. The release signed by the appellees is thus ruled out as a legal document valid enough to bind the conscience of the Appellees. The trial judge was thus right in his well-reasoned judgment to entertain arguments against such fraudulent motives and practices. Failing to do so would have only helped to widen the gates of corrupt legal practice now shamelessly cherished and perpetuated by some responsible personalities of our society. We are still at a loss even to this very moment to understand as to why the appellant promised to compensate the appellees in the sum of $3,500.00 for loss of business if income tax returns could be produced and yet the same appellant thought it prudent to prepare a legal instrument absolving itself from all further claims. It is elementary law that conditional releases are not valid until the conditions stipulated therein are satisfied. 76 C.J.S., Release, § 42.

6. What should be the position of a trial judge in case where a question put is objected to by the adversary on an improper ground; granting that the question is objectionable?

During the arguments before this Bench, counsel for appellant strongly contended and submitted that counts six through eleven of its bill of exceptions relate to questions objected to by appellant on the grounds of "prejudicial to defendant's interests", but overruled by the trial judge to its prejudice. After a careful examination of the grounds of objections in the light of the law controlling, we discovered, however, that "prejudicial to defendant's interest" as claimed by the appellant is not one of the grounds covered by the law in force. This Court has held in several of its opinions that a court cannot do for a party that which he ought to do for himself. The rationale behind this principle is to ensure pure neutrality on the part of the court. This Court, therefore, is of the view that the proper legal action or course to follow, in a case where a wrong ground is given as the reason for the objection, is for the court to overrule the objection and permit the question so propounded to be answered by the witness. Ware v. Republic, 5 LLR 50 (1935): Sirleaf v. Reeves, 20 LLR 433 (1971).

7. Whether or not a trial judge has any legal authority to modify a jury verdict and render final judgment?

The jury awarded the plaintiffs $450,000.00 as general damages. The trial judge corrected the verdict by deducting the $11,000.00 already received by plaintiffs from the amount, leaving a balance of $439,000.00. The appellant contends that a trial court cannot both modify a jury verdict and at the same time render final judgment and therefore claims that in doing so the trial judge committed a reversible error. The Court says that a verdict being a unanimous agreement of a petty jury as to the facts submitted to the jurors for determination, no such verdict should be set aside for want of form since such defects are met and cured by rules and practice of court which permit them to be corrected.

The general rule of law at common law and followed in the American jurisdiction and in this jurisdiction is that the trial court has power to put a manifestly irregular or defective verdict in such a form as to make it conform to the intention of the jury and to carry their verdict into effect, where the intention can be ascertained with certainty. 89 C.J.S., Trials, § 515 & 1 517 and Jogensen v. Knowland, 1 LLR 266 (1895). With this principle, it is not difficult to see why the trial judge in the case at bar corrected the verdict of the jury as the intention of the jury could easily be ascertained with absolute certainty. Appellees (plaintiffs) had received a sum of $11,000.00 towards the settlement of their claims and this was plainly acknowledged by the appellees during the trial of the cases. So the failure of the jury to offset this amount in the face of such laudable evidence could only be construed as being an oversight or inadvertence. That latent intention on the part of the jury was clear and could be ascertained with much ease. In any case, the substance of the verdict was intact in the best interest of the parties who were in no way affected by the modification. However, it is our considered opinion that while we sympathize with the appellees on their physical plight, we also feel that $450,000.00 was too big a sum to be awarded in the prevailing circumstances. We, therefore, rule that the appellees be compensated in the sum of $350,000.00 as general damages, a sum we consider sufficient enough to compensate them for the fractured ribs, knee caps, sprained wrists, internal injuries, medical expenses for local treatment, losses of and damage to personal property, loss of business and above all for their proposed trips overseas in search of better medical care. Jos Hanson & Soehne (Ltd) v. Clarence Tuning, 17 LLR 617 (1966); Townsend v. Cooper, 11 LLR 52 (1951); Williams and Williams v. Tubman, 14 LLR 109 (1960); Wahab v. Helou Brothers, 24 LLR 250 (1975). The damages awarded would appear punitive and exemplary in nature but this is necessary especially so where there is confidential or fiduciary relationship. King v. Williams, 2 LLR 219 (1916) and Johns v. Republic, 13 LLR 143 (1958). Nevertheless, we cannot help but also frown at the appellees' ignorance of the law and naivety, which ignorance became almost culpable. That "the ignorance of the law is no excuse" was as good in 1066 in England as it is today in Liberia in all cases especially those of a criminal nature. But are the courts of

justice going to sit back and like the old English sea merchant, sing "caveat emptor" against the whole world? Is a court of justice, the vanguard of the masses, going to sit as a back bencher and let the stronger arms exploit the weaker ones? That would be not only against equity but also against public policy.

In view of the facts, circumstances and legal propositions postulated herein, we, therefore, uphold the decision of the learned trial judge as modified in this opinion and accordingly confirm the judgment with costs.

To this conclusion, our learned colleagues in persons of Messrs. Justices M. Kron Yangbe and Boimah K. Morris excepted contending:

1. That a trial judge has no legal authority to modify a jury verdict and at the same time render a final judgment ¬contends Mr. Justice Yangbe.

Mr. Justice Morris on the other hand contends that:

1. A release is a contract and that once executed it is conclusive and automatically releases the releasee from all other liabilities and that it extinguishes all the rights of the releasor despite the conditions and circumstances under which said release was executed.

2. Mr. Justice Morris further argues and holds the view that if an issue of fraud is not squarely raised in the pleadings of the parties, the court should close its eyes and refuse to pass on same even if it is apparent on the records as in this case.

Thus, our distinguished colleagues have dissented on these grounds. The views expressed in the majority Opinion need no further elucidation to show the flaws in our dissenting colleagues' reasoning as can be seen in issues numbers 2, 3, 4, 5 and 7. A court of law that losses its eyes in the face of gross injustice apparent or real is nothing but a constructive social sell-out and thus a contributory agent to social injustice.

The clerk of this Court is therefore hereby ordered to send a mandate to the trial court with instructions to resume jurisdiction over this case and enforce its judgment as modified at the earliest sitting possible so as to bring to an end this long and protracted matter. And it is hereby so ordered.

Judgment affirmed with modification.

MR. JUSTICE MORRIS dissents.

On November 22,1981, the appellees together with some other occupants were traveling to the beach in Buchanan, Grand Bassa County, when their vehicle collided with another vehicle owned by the appellant. The appellees and the other occupants of their vehicle sustained bodily injuries and the car was also damaged. They were all taken to the appellant's

hospital where the other occupants were treated and discharged, but the appellees were hospitalized for fifteen days, that is, from the 22nd day of November to the 7 th day of December, 1981, but were not charged for the medical treatment they received as the same was charged against appellant. When the appellees were discharged from the hospital, Co-appellee Touffic Azzam wrote the appellant company on the 30th of December, 1981 the following letter:

"Lower Buchanan
December 30th, 1981

Mr. John Pervola
General Manager
Lamco J. V. Operating Company

Dear Mr. Pervola:
I beg leave to refer you to a motor accident which took place on November 22nd, 1981 involving Your Company's (Lamco J. V. Operating Company) vehicle No. 561-BB driven by Charles Branch of P P F Department, and my vehicle No. A-499, driven by me, in which I sustained injury and property damage.

I submit the attached bill of particular covering the injury sustained and properties lost and damaged; as you will observe from the police accident report.

I shall appreciate the company remit to me the undersigned the necessary check covering the amount of $18,625.00 (Eighteen thousand, six hundred twenty five dollars) for damages and losses sustained.

Very truly yours, Sgd. Touffic Azzam"

BILL OF PARTICULAR ATTACHED TO LETTER
"Republic of Liberia Grand Bassa County

BILL
Lamco J. V. Operating Company by and thru its General Manager, John Pervola, owner of vehicle No. 561-BB, and Charles Branch, an employee and driver of vehicle 561-BB owned by Lamco Operating Company, charged for reckless driving, misuse of lane resulting into injury and property damage, Grand Bassa County, Liberia, Dr. $18,625.00

TO
Touffic Azzam et al., driver and owner of vehicle No. A¬499, of Lower Buchanan, Grand Bassa County Liberia, Cr.

PARTICULAR:

Growing out of the accident involving vehicle No. 561-BB owned by Lamco J. V. Operating Company, and vehicle No. A-499 owned by Touffic Azzam, the following are the injuries and damages sustained.

Touffic Azzam, 7 natural teeth
and five artificial teeth damaged ....
$3,500.00

Touffic Azzam car damaged
7,300.00

Amount in cash lost from the
damaged car No. A-499
300.00

Business operation was affected
for 15 days from November 22 to December 7, 1981
3,500.00

Soha Azzam (wife of Toufic Azzam) lost 2 natural teeth
600 .00

Soha Azzam lost her eye glasses value
400.00

Soha Azzam had to undergo stitches for lacerations all over her face
700.00

Oldman Azzam lost of eye glasses value
550.00

Oldman Azzam because of accident injury was absent from business service
for 5 days
250.00

Hafed Baky because of accident injury was absent from business service
for 9 days.
450.00

Hafed Baky sustained injury on leg, knee cap damaged.
250.00

Mohoud Kateeb being victim also sustained injury ankle sprain and was absent
from business for 11 days
350.00

Taxi charter for 16 days from the 28 December 1981 at the rate
of $50.00a day, total
800.00

Taxi Charter for 2 days to and from Monrovia and Buchanan at the rate of

$75.00 total

150.00

_____

$18,625.00

Submitted by:

Sgd. Touffic Azzam

Upon the receipt of the above letter and the accompanied bill of particular, the insurance company for the defendant negotiated with appellees and, as a result of the negotiation, an amount of $11,000.00 was paid as a compromise settlement of the bill of particular excluding the $3,500.00 representing business income for 15 days which was to be paid upon the presentation of a tax returns from the appellees.

The below listed amounts included in the bill of particular were also excluded from the $11,000.00 compromise made because the insurance company maintained that co-appellee Touffic Azzam was not clothed with any authority to sign a release on behalf of these people but the people could be dealt with individually:

1. Oldman Azzam's eye glasses
   $550.00
2. Oldman Azzam's income for business service for five days
   250.00
3. Hafed Baky's income for business service for nine days
   450.00
4. Hafed Baky's bodily injuries on his leg and knee cap 250.00
5. Mohoud Kateeb whose ankle was allegedly sprained and also income
   for business service for eleven days
   350.00
   Total amount excluded
   $1,850.00

If one subtracts $1,850.00 from the $18,625.00, the balance would be $16,775.00. If one could further deduct the $3,500.00 for business income which the appellants insurer agreed to pay upon the presentation of the income tax returns was agreed upon by both parties from the remaining $16,775.00, the remainder would be $13,275.00. The compromise was actually therefore made over the remainder which is $13,275.00 out of which $11,000.00 was paid leaving a balance of $2,275.00. After the appellant's insurer, Intrusco Insurance Corporation, paid the Eleven Thousand ($11,000.00) Dollars, co-appellee, Touffic Azzam, executed a release on behalf of himself and his wife, Soha Azzam, which I quote below verbatim:

"RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, being of lawful age, for the sole consideration of Eleven Thousand & 00/100 Dollars ($11,000.00) to the undersigned in hand paid, receipt where of is hereby acknowledged, do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge Lamco J. V. Operating Company/Insurance Company of North America/ Intrusco Corporation and his, her, their or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, demands, actions, causes of action, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequence thereof resulting or to result from the accident, casualty or event which occurred on or about the 22n d day of November, 1981, at or near Block Factory Beach, Bassa, where Touffic and Soha Azzam were hit in a motor accident causing injuries and bodily injuries to both.

"It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees deny liability therefor and intend merely to avoid litigation and buy their peace.

"The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this release contains the entire agreement between the parties hereto, and that the terms of this release are contractual and not a mere recital.

"THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

Signed, sealed and delivered this 13th day of January, 1982.

Sgd. Signature not legible Witness
Sgd. Emmanuel Herring Witness
Sgd. Touffic Azzam,
Sgd. Touffic Azzam for Soha Azzam

"REPUBLIC OF LIBERIA
COUNTY OF MONTSERRADO.

On the 13th day of January, 1982, before me personally appeared Touffic & Soha Azzam to me known to be the person(s) named herein and who executed the foregoing release and they acknowledged to me that they voluntarily executed the same.

My term expires December 31, 1983.
Sgd. H. R. Bryant NOTARY PUBLIC MONT. COUNTY,
REPUBLIC OF LIBERIA.

$2.50 REVENUE STAMPS AFFIXED TO THE ORIGINAL."
Appearing on the side of the release is the following: "Compensation for loss of profit will be made when complainant submits statements of tax returns for quarter before accident."

The majority opinion has classified the above release as being conditional and fraudulent or with fraudulent interpretation and the majority therefore feels that the release is not binding. I shall first quote word for word the two counts complaint to see if any issue of fraud has been raised by the complainant:

"1. That the said plaintiffs sustained severe injuries in a motor accident on the 22"d day of November A.D. 1981, when the defendant's chauffeur Charles Branch of the P P F Department, operating the defendant's vehicle No. 561-BB recklessly driving and misusing his lane collided with the plaintiffs' vehicle No. A-499 resulting into injuries and property damage as will more fully appear from an inspection of the hereto attached copy of Police Accident Report and Ruling of the People's Traffic Court for Grand Bassa County, marked exhibits "A" and "B" respectively to form part of this complaint.

2. Plaintiffs further complain and say that the injuries sustained in the right knee, right wrist, right rib fractured, teeth injuries and scars in the face and one hundred stitches in the face as a result of the accident, the plaintiff have suffered physical disability by thirty five per cent of their natural health, disabled and incapacitated in performing their usual daily vocation, being mercantile businessman as will more fully appear from an inspection of the hereto attached medical certificate marked exhibit "C" to form part of this complaint."

The appellant in count 1 of its answer to the complaint contended that the appellees were estopped and forever barred from instituting this action against the appellant resulting from the November 22, 1981 motor accident, since they had already received compensation for the injuries sustained by them from the insurer of appellant and executed a release in favour of the appellant and its insurer thereby discharging them from any and all future claims whatsoever. Appellant annexed a copy of the release as exhibit "A" to its answer. The appellees in count one of the reply contended that the appellant had misconstrued and misinterpreted the agreement and the intentions of the parties at the period of executing of the release, for prior to its execution appellees and appellant's insurer mutually agreed that the release should restrictively engulf or cover the settlement of claims relating solely to

those involving the value of appellees' car at the cost of $7,300.00 where only $6,100.00 was paid; co-appellee Touffic Azzam seven natural teeth valued at $3,500.00 but yet the amount of $3,600.00 was paid by appellant's insurer; the amount of $300.00 which appellees claimed was missing from the damaged car after the occurrence of the accident was fully paid; co-appellee Soha Azzam's two natural teeth valued at $1,300.00 but of which amount $600.00 was paid, as well as $400.00 which was paid as the value of co-appellee Soha Azzam's eye glasses. They argued that the release was not intended to cover personal injuries and certain expenditures incurred by appellees including local and foreign travels.

The judge in disposing of the law issues' said and I quote: 'Even though count one of defendants answer regarding the principle of estoppel had some legal weight, we have decided to rule said count to trial since plaintiffs' reply raised a point of difference in claim and separate identity."

Recourse to the complaint, I observed that the complaint refers to the accident of November 22, 1981 involving the appellees and the chauffeur of appellant company. I also observed from count two of said complaint that the injuries as listed in the bill of particular such as teeth and bodily injuries and property damage are the same injuries over which the compromise was effected between the appellees and the appellant. The only difference as indicated in count two is that appellees suffered physical disability by 35% of their natural health which has allegedly disabled and incapacitated them in the performance of their vocation. They attached a medical certificate as Exhibit "C" to buttress this allegation, but there is no such stipulation in the medical certificate. However, this issue was overruled by the judge while disposing of the law issues and there was no exceptions taken to the judge's ruling on this point. Besides this 35% physical disability, the whole complaint is a restatement of the bill of particular relative to the injuries.

I shall now consider the release executed by the appellees to see if it excludes the injuries for which the appellees have instituted this action. Carefully perusing the said release, I have not been able to find where the appellees made any reservation to themselves for any further claim besides the $3,500.00 for business profit; instead, the release absolved the appellant from any and all claims, demands, action, cause of action, rights, damages, cost, lost of service, expenses and compensation whatsoever which the undersigned, meaning the appellees, now have or may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries and property damaged and the consequences thereof resulting or to result from the accident, casualty or event which occurred on or about the 22nd day of November, 1981 at or near Block Factory Beach, Bassa, where Touffic and Soha Azzam were hit in a motor accident causing injuries and bodily injuries to both.

Since the release was pleaded by appellant in its answer as a bar to the appellees' claim, I feel that appellees in filing their reply should have made a tender of the consideration which affected the compromise culminating to the release executed and signed by them if they thought that the $11,000:00 was insufficient settlement, or if in their opinion they felt that fraud was perpetrated on them. The appellees having failed to make a return tender of the amount they received up to now, I am of the opinion that the validity of the release cannot be questioned or disturbed now; the authorities on this issue hold that:

"Before one can maintain an action to avoid a settlement and recover a larger amount, he must return or tender a return of the sum received by him in the settlement. It is timely to do so when the reply in response to the defendant's plea of a settlement in "bar is filed." Horace McGregor v. Dorothy Mills, 53ALR 754, 756.

In this case, no tender or the return of the sum received has been made at all nor did the appellees put in issue the execution, delivery, and the general nature of the release. I shall define a compromise and a release for the benefit of my dissension:

"A compromise is an agreement to terminate by means of mutual concessions, a claim which is disputed in good faith or unliquidated. It is an amicable method of settling or resolving bona fide differences or uncertainties and is designed to prevent or put an end to litigation. It involves an agreement that a substituted performance is acceptable instead of what was previously claimed to be due; thus, each party yields something and agrees to eliminate both the hope of gaining as much as he previously claimed and the risk of losing as much as the other party previously claimed.

The term "settlement" as it relates to the subject of compromise and settlement has been used in many senses. It may refer to the fulfillment of any conditions which, in accordance with the compromise agreement, are prerequisite to the discharge of a claim; or it may refer to the performance of promises which are contained in the compromise agreement. It may occur simultaneously with, and as a part of, the compromise agreement, or it may occur later. It often involves one or more of the following: a payment, a release, a covenant not to sue, a promise to discontinue a pending suit, or a receipt." 15 AM JUR.2d., Compromise, § 1, at 935, 936.

A release is the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised. A release is of itself a discharge of the claim or obligation. It is the discharge of a debt by the act of a party in distinction from an extinguishment which is a discharge by operation of law . . . ." 66 AM. JUR. 2d., Release, at 678.

Black's Law Dictionary (4 th ed.), at 1453, also defines a release as follows:

"The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced."

It is further provided that: "Where in an action for personal injuries in which the answer sets up a release, the reply merely alleged that the release was procured by fraudulent misrepresentation as to the extent of the injuries without putting in issue the execution, delivery, and general nature of the release, appellees thereby admitted its execution and delivery for a good and valuable consideration and that it discharged the cause of action set up in the complaint:" 134 ALR 1 and 2 §119, Admissions.

I disagree with the contention of the appellees as conceded by the majority that the intent of the parties at the time of executing the release could be ascertained from the check stub or check request, and hold that a release like any other contract is governed by its own terms, stipulations or provisions as contained in the release itself. The following citations support my holding:

"The construction of releases is governed by the general rules relating to the construction of contracts, and it is necessary to consider the entire instrument in the effort to ascertain the intent of the parties at the time the release was executed ...."

"The scope or sphere of operation of a release depends upon its terms. It may be limited to a particular claim of a particular person, or it may extend to all claims that may be asserted against the defendant, regardless of their nature. Furthermore, the scope of a release is governed by the terms of the release itself, as indicating the intention of the parties at the time the release was tendered and accepted." 16 Couch on Insurance p.196, Sections 60.18 and 60.19. The appellees also contended in count 2 of their reply that the release is invalid because it has been given fraudulent and erroneous interpretation and construction in that, prior to convening a meeting for a discussion and harmonization of the extent of appellant's liability to appellees and the manner of providing compensation for the entire loss and damages sustained by the appellees, it was resolved by both parties that appellant would provide initial and partial compensation for damages done to appellees' vehicle, the loss of co-appellee Touffic Azzam's seven natural teeth and five artificial teeth, the amount of $300.00 in cash that was lost at the time of the accident, Co-appellee Soha Azzam lost of two natural teeth plus her eye glasses. They further contended that subsequent to plaintiffs' receipt of $11,000.00 compensation was to be provided for other claims such as personal injury which was not included or recovered in the $11,000.00 settlement. According to the records in this case, the only promise made to the appellees is the payment of the $3,500.00 for business income upon the presentation of income tax returns by the appellees which they have failed to present. This promise relating to the payment of the $3,500.00 for business

income is written in the release and forms a part of it. Furthermore, clause four of the release unequivocally provides that:

"The undersigned further declare(s) and represent (s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto and that the terms of this Release are contractual and not a mere recital.

Co-appellee Touffic Azzam in answering to questions on the cross-examination admitted that he can read and he read and understood the release before signing it on his own behalf and that of his wife Soha Azzam. He also admitted voluntarily signing the release in the presence of his legal counsel Counsellor James G. Johnson on January 13, 1982. Asked whether he was forced to sign the release, he said no he was not forced to sign it. Further, I have carefully examined the photocopy of the release in the records but I have not discovered any alteration, or change after the appellees signed it.

One alleging the perpetration of fraud must plead it with particularity setting forth the alleged fraud committed and upon whom and how said fraud was perpetrated. He shall then prove the fraudulent act at the trial. In Horace McGregor v. Dorothy Mills supra, it was held that "when one seeks to avoid a settlement on the grounds that the release was obtained by fraud, he has the burden of producing clear, unequivocal and convincing evidence; and a mere preponderance of the evidence is not sufficient." I have not discovered in the records before us where the plaintiffs/appellees pleaded fraud or have produced convincing evidence to substantiate the alleged fraudulent act or interpretation of the appellant in effectuating the release.

The statute provides that, "in all averments of fraud or mistake, the circumstances constituting the fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other conditions of mind of a person may be averred generally, Civil Procedure Law, Rev. Code 1:9.5(2) In the case Francis v. The Mesurado Fishing Company, 20 LLR 542, 552 (1971), this Court, in affirming its holding in Henrischsen v. Moore, 5 LLR 60 (1935), held that upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial, and in the absence of evidence in support of the allegations, the decree of the court in favour of plaintiff will be reversed. The Court further held in Monrovia Construction Corporation vs. Wazani, 23LLR 58, 65 (1974) that in law fraud must be proved, not presumed by circumstances.

The majority opinion has listed as one of the grounds for affirming the lower court's judgment the preparation of the release by the appellant's insurer. I disagree because this reason has no support in law, since co-appellee Touffic Azzam who signed the release read and understood it before signing and thereafter same was notarized. Further, co-appellee

Touffic Azzam was accompanied by his legal counsel at the time he read and signed the release.

My colleagues interpret clause three of the release as being tinted with fraudulent motives. I quote clause three of the release word for word:

"It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releasees deny liability therefor and intend merely to avoid litigation and buy their peace."

Because of the provisions in clause three of the release just quoted, the majority maintain in their opinion that:

"…Why on earth would an insurance company pay out money for something it considers unlawful or illegal? And why should the same insurance company pay for a doubtful and disputed claim and yet warn the payee not to go to court, thereby ousting the jurisdiction of the court!"

They then concluded that the conditions and circumstances under which the release was executed show fraudulent motives on the part of the appellant and therefore fraud will vitiate such contractual obligations ab initio.

While I agree that fraud will ordinarily vitiate any contractual obligation, nevertheless, I categorically disagree with my colleagues holding that the above quoted clause three of the release depicts any fraudulent motives; because, to effect a compromise settlement, the claim must be doubtful and disputed otherwise, the settlement is not a compromise. Law writers are in agreement that:

"Since the basic function of a compromise is to resolve doubt or uncertainty through amicable means rather than through litigation, a disputed claim must involve doubt or uncertainty in order to constitute a sufficient foundation for a compromise. If, at the time of an agreement, there is no dispute between the parties and neither party believes that there is any uncertainty as to the rights and obligations between them, the agreement is not a compromise." 15 AM. JUR. 2d. Compromise, §13 page 947.

Another point considered by my colleagues in the majority opinion is that the amount given as the consideration for the compromise is small or to quote them exactly, "one does not need to be a medical expert or an insurance consultant to realize that the loss of fourteen teeth, compounded with broken wrists, ankles, knee caps, jaws, ribs, faces and what have you, will cost one a life's fortune in terms of medical expenses even granted that all the medical care was carried out entirely from local institutions." In their opinion, my colleagues have alleged that Mr. Touffic Azzam lost twelve fresh teeth, broke one of his wrists, broke one of his knee caps, broke some of his ribs, lost his spectacles, lost a good sum of money,

his car damaged beyond repair. and his face was grotesquely disfigured with a hundred stitches; his wife lost two fresh teeth, damaged some of her ribs and had one hundred fifty stitches on her face.

Again I must disagree with my colleagues, because I have carefully perused the whole records and no where therein have I found that Mr. Touffic Azzam lost twelve fresh teeth, broke one of his knee caps, broke some of his ribs, broke his wrists, lost his spectacles and received 100 stitches on his face; nor did I find in the records that Mrs. Soha Azzam's two jaws were damaged, some of her ribs broken and one hundred fifty stitches on her face.

The records do reveal that Mr. Azzam lost seven of his natural teeth and five artificial teeth, he sustained injury to the right knee and right wrist and a fractured rib and Mrs. Soha Azzam had one hundred stitches on the face, lost two of her natural teeth and her eye glasses. See attending physician's report, bill of particulars and complaint. It is my candid conviction that injury to the knee and the wrist does not necessarily import a broken knee cap or a broken wrist. Secondly, the appellees were represented by an experienced legal counsel and the $11,000.00 received by the appellees was considerable in comparison to their bill of particulars supra. Thirdly, they should have made a tender of the $11,000.00 they had received at the time of filing their reply if they thought the $11,000.00 was too small. Lastly, the law on compromise settlement provides that:

"A compromise and settlement is generally binding upon the parties although it resolves a controversy differently from what the court would have decided if the controversy had been brought before it for ecision. If a settlement made in good faith resulted in one party's paying more than he was legally bound to pay, he cannot get it back, nor can a party obtain any more if it turns out that the settlement provided him with less than he was legally entitled to receive." 15 AM. JUR. 2d., Compromise, §21.

In her testimony, Mrs. Sofia Azzam admitted that prior to her husband Touffic Azzam receiving the $11,000.00 check for the compromise settlement, he knew that the release absolved appellant from all claims including personal injuries when she testified among other things:

" ....My husband and I traveled to Monrovia to the insurance company. When we arrived there, my husband left me in the car and went upstairs to see the insurance company. When he returned, I observed frowns on his face. Then I asked him what the trouble was, he informed me that the paper he signed had been slightly changed and some words were added which release the company of all and any financial responsibility and that the phrase added on the paper was that the $11,000.00 covered all bodily injuries and other damages sustained. He said to me that phrase was not written in the release when he signed it the day before; but when he went in the building and in that particular office to receive his check, a

copy of that paper given to him mentioned what I have just said. That disturbed him a lot. That's all I can now remember."

The above quoted testimony of Co-appellee Soha Azzam clearly establishes the fact the appellees were in full knowledge that the release had discharged the appellant from all claims including the present action prior to the receipt of the $11,000.00 check. Hence, this action of the plaintiffs/appellees is baseless and ought to have been dismissed by the trial court. Therefore I strongly hold and maintain that there was no basis for this action and my colleagues would appear to agree with me when they admitted in their opinion, " ....we admit the appellees committed a foolish error; an error that could easily be associated with their ignorance of legal technicalities when dealing with professional insurers. Be it as it may, are we going to let crafty and unscrupulous parties like insurance companies get away scot free like this?" The majority further agreed that the release executed by the appellees was intended to discharge appellant from all claims including the present action at the time of the execution of said release but since they later saw the writing on the check request or check stub which was different from the compromise agreement reached at between them and the defendant, they entered this action requesting for more compensation. This is what the majority had to say on this issue:

" ....It appears that after a number of discussions the appellant managed to persuade the appellees to accept $11,000.00 until the income tax returns receipt for $3,500.00 could be paid later instead of $18,000.00 and that on the 13th day of January, 1982, the appellees were made to sign a release prepared by appellant in favour of itself tending to discharge the appellant from all claims arising out of the accident. Later the appellees discovered that the sum of $11,000.00 was not only too little to meet the losses connected with the accident but was for specific purposes as contained and revealed by the check request as well as the check stub. Hence, they demanded compensation for general damages."

It is not therefore plain from the above quotation that the appellant never perpetrated any fraud in the execution of the release, nor were there any fraudulent motives. The only contention of the plaintiffs/appellees as found in the records and vividly argued before us relative to the release is that the appellant had given fraudulent interpretation to the release, yet, the majority in its opinion holds that the release has fraudulent motives. An interpretation, by definition, is the process of discovering and expounding the meaning of a statute, will, contract, or other document, while motive is the cause or reason that moves the will and induces actions, says Black's Law Dictionary, 4th ed. Courts of Justice should desist from raising issues and passing upon those same issues, since courts are not party litigants.

I also disagree with the holding of the majority that the appellees were hoodwinked at the time they were making the compromise because they were represented by a legal counsel. I

further disagree with the majority that the trial judge was correct to amend the jury's verdict in matter of substance, there being no support in law.

In view of all what I have said and the laws relied upon, it is my considered opinion that the appellees had no basis for instituting this action. To hold otherwise, would be opening floodgates and encouraging endless litigations. I therefore dissent.

MR. JUSTICE YANGBE concurs with MR. JUSTICE MORRIS and dissents.

Prior to the disposition of the issues of law in this case, a motion for change of venue, predicated upon local prejudice, was filed by defendant/appellant. There is a denial of the existence of local prejudice in the resistance to the motion. The lower court denied the motion on the ground that it was filed prematurely, which ruling the majority has sustained. The majority has based the affirmance of the ruling upon the several holdings of this Court that all issues of law must first be decided by the court before facts, but overlooking the fact that in those cases where this Court enunciated that rule, the trial courts failed to pass upon all the issues of law in the pleadings before sending the case to the jury for trial of facts in the main case. Unlike this case, the trial judge did pass upon all the issues of law raised in all the pleadings. Therefore, the issue presented in this case is not the failure of the court below to pass upon all the issues of law, but rather whether prior to the ruling on the issues of law, the trial court should have heard evidence and decided the issues of facts tendered in the motion for change of venue.

It is a cardinal procedure that all motions, whether factual or legal must first be decided by the court alone and that hearing and disposition of motions by the court take precedent over all the issues raised in all the pleadings of the parties. 56 AM. JUR. 2d., Motion, § 24. There is no inhibition in the statute that the court should not hear evidence on a motion which contains facts prior to the decision by court on issues of law. It is not debatable either that a motion is an application to court for an order or a relief incidental to the main relief sought in the action or proceeding in which the motion is filed, Civil Procedure Law, Rev. Code 1:12.1 and 56 AM. JUR. 2d., Motion, § 4. In Fagans v. Harris-Fagans,23 LLR 190 (1974), this Court held that when a motion which contains facts is filed, the court should decide it upon the basis of oral testimony or deposition.

The trial judge cited in his ruling on the motion for change of venue, the case Dillon v. Republic, 15 LLR 119 (1962). In that case, this Court held that:

"At the very inception of the trial, a motion for change of venue because of local prejudice was denied by the trial judge on the ground that such prejudice was never established. There is nothing in the records to show that the appellee were required by the trial court to show to what extent, and in what manner, local prejudice against him actually existed. We must, therefore, conclude that the failure of the trial judge to show that local prejudice did not

exist, before deciding that it did not exist, was prejudicial to the interest of appellee, erroneous and therefore reversible error." It is, therefore, logical that at any time the court should pass upon a motion, whether it contains facts or law before passing on issues of law even during trial of a case or after final judgment for appropriate relief.

In Richards v. Popo et al., petition for prohibition, the Chambers Justice denied the petition because the lower court was in a process of enforcing a mandate of this Court en banc when the petition was filed and he felt further that the complaint should have been made in a bill of information. We reversed the ruling of the Chambers Justice during this present Term of Court. In that case, I spoke for the Bench, and if I am to repeat myself, I wrote that the right to be heard is basic and should therefore be enjoyed by every litigant at any stage of a proceeding, whether administrative, judicial or executive, and to support this holding, I cited Wolo vs. Wolo 5 LLR 423 (1937). In my view, the denial of the motion for change of venue because it was allegedly filed prematurely, is tantamount to a refusal to hear a litigant, because:

"There are various situations in which motion may be disposed of without a hearing. Where the relief sought by a motion can be granted only after the determination of material questions of fact on conflicting evidence, the court may dismiss the motion, thus requiring the parties to determine the matter by an ordinary action. A rule prematurely sought may be discharged without prejudice to the petitioner's right to renew the application should proper occasion arise or may be continued pending the occurrence or non occurrence of event whose occurrence would allow the motion to be made." 56 AM. JUR. 2d., Motion, § 22.

Assuming that it is forbidden by statute for the trial court to pass upon a motion which contains factual issues prior to the disposition of the issues of law tendered in the main pleadings of the parties, the court should defer it or deny the motion without prejudice until the disposition of the issues of law and thereafter the party may renew the motion as provided by the authority quoted supra.

It is obvious that although, the ruling denying the motion for change of venue in this case is not on the merit, and no matter how erroneous it may be, nevertheless, under the principle of concurrent jurisdiction, no judge of the same grade can legally entertain or grant another motion for the same relief even after disposition of the issue of law, without interfering with the ruling of his colleague, much to the prejudice of the defendant/ appellant. Republic v. Aggrey, 13 LLR 469 (1960). The jury is the sole judge of trial of facts that are not triable by the court. Civil Procedure Law, Rev. Code 1:23.1. The same reason that disqualifies a judge is the same reason that disqualifies a jury. Horace et al. v. Republic, 16 LLR 341 (1958). As a matter of right, a litigant is entitled to the cool neutrality of both the judge and the jury in any case, civil or criminal. It is well known that local prejudice often exist against a certain class in a community which sway the verdict of the jury or the judgment of the court and

which, therefore, operates in some cases to deny to persons of that class the full enjoyment of that protection which others enjoy.

In view of these considerations, how can a court of justice refuse to investigate factual issues of local prejudice raised in a motion for change of venue and the resistance thereto and expect to mete out transparent justice and fairness to the parties concerned? I certainly doubt it. The denial of the motion for change of venue and the affirmance of the ruling of the trial court by the majority of this Court is solely because the case had not been ruled to trial when the motion was filed. As against this, defendant/appellant cited 4.5 (2) The Civil Procedure Law, Rev. Code 1: 4.5(2) which reads:

"A motion for change of place of trial on the ground that the place designated for that purpose is not the proper place must be made on or before the date on which the defendant is required to plead. A motion for change of place of trial on any other ground must be made at any time before commencement of trial."

The ground for change of venue in criminal and civil cases and the procedures are the same. Massaquoi v. David and Sherman, 6 LLR 320 (1938). In a criminal case, however, a defendant is called upon to plead when he is arraigned, whereas in a civil case the date for him to appear and plead is usually stated in the summons and thereafter, in proper cases, another date is set for trial of law, facts and/or both. In a criminal case, therefore, a motion for change of venue must be filed prior to the arraignment and in a civil case same must be filed at any time on or before commencement of trial. Civil Procedure Law, Rev. Code 1: 4.5 (2).

In Bouvier' s Law Dictionary (vol. 7), pp 3320, the word "trial" is defined thus:

"In Practice,the examination before a competent tribunal, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue."

"The examination of the matter of fact in issue in a cause, the decision of the issue of fact."

"The final examination and decision of matter of law as well as facts for which every antecedent step is a preparation." In this case, the motion for change of venue was filed before commencement of trial or disposition of issues of law by the court without the aid of the jury in accordance with Civil Procedure Law, Rev. Code 1:23.1 cited earlier.

In Fagans v Fagans, supra, two judgments were rendered by default in two related matrimonial cases brought against the appellant. In that case, appellant filed in the trial court a motion to vacate the writ of execution on the grounds that he was not served with summons and the returns endorsed on the summons was false. The motion was denied by the trial court. On appeal, this Court held that when a motion which is based upon facts extrinsic to the record is filed, the trial court must decide the motion on the basis or oral testimony and deposition.

In this case, however, it is clear that the existence or non existence of local prejudice is an issue of fact and cannot be resolved without production of evidence, yet, the learned trial judge without hearing evidence, ruled, among other things, that:

"Whether or not impartiality was evident, comparing the established positions of both parties was not explicitly and definitely established thus the existence of local prejudice in the circumstances was not clearly argued and established."

Thus obviously the trial judge decided pure issue of facts without production of any evidence. This is another reversible error committed by the lower tribunal.

The trial court as well as the majority of this Bench cited Massaquoi v. David, supra, in which this Court quoted from 27 RCL 825, and held to the effect that removal of a case from one circuit to another on account of local prejudice should not be had prior to disposition of issues of law, since the purpose of removal is to have an impartial jury and it cannot be known before the disposition of issues of law that the case will be tried by a jury. This theory should not be the sole criterion in deciding an issue of this magnitude. For, under the same parity of reasoning, the statute which regulates procedures in courts must be adhered to and given effect. In Civil Procedure Law, Rev. Code, 1:26.2, it is provided:

"After the close of evidence presented by an opposing party with respect to a claim or issue or at any time on the basis of admission, any party may move for judgment with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render and if the jury disregards the direction, the court may in its discretion grant a new trial ...."

It is clear, therefore, that even during the trial, the appellant as a matter of right, could have precipitated and still move the court or a jury to give a verdict favorable to it; and, on the basis of evidence and law it would have been entitled to a directed verdict or a judgment of acquittal. This right should be exercised even after trial. Hence, in my view, prior to disposition of issues of law, to deny a motion for change of venue which contains facts only because the case may not be ruled to trial by jury is not logical or consistent with the procedural statute and other laws cited earlier in this opinion.

The next crucial issue of my disagreement is the release duly executed by the appellees in this case. The facts surrounding the execution of the release have been interpreted as fraudulent and in fact, the release is construed as conditional as far as it relates to the damages for personal injuries suffered by plaintiffs/ appellees herein.

It is admitted, on both sides, that prior to the filing of this case on the 13th day of January, 1981, the $11,000.00 release was voluntarily signed by the plaintiffs/appellees and the only reservation made in said release was:

"Compensation for loss of profit will be made when claimant submits statement of tax returns for quarter before accident."

There is no mention whatsoever in the complaint with reference to the $11,000.00 release or the circumstances under which it was executed. Hence, in the answer, the defendant/ appellant pled the doctrine of estoppels, predicated upon the release. However, in the reply, the appellee only contended that defendant/appellants construction and interpretation of the release were fraudulent, but of course, not that the same was fraudulently executed by the defendant/appellant, nor that the defendant/appellant misrepresented or concealed any fact during the execution of the instrument. The statute provides that:

"All averments of fraud or mistake the circumstances constituting the fraud or mistake shall be stated with particularity. Mistake, intent, knowledge and other conditions of mind of a person may be averred generally;"

"In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been duly performed or have occurred. A denial of performance or occurrence shall be made specifically

and with particularity." Civil Procedure Law, Rev. Code 1:9.5 (2)(3). In this case, no issue of fraud or misrepresentation made by the defendant/appellant during the execution of the release was raised in the complaint, reply or in the bill of exceptions, the latter being the sole basis of the appeal and any point of contention, legal or factual, not stated in the pleadings nor in the bill of exceptions, is not relevant in appellate review. Clark v. Barbour and the Civil Procedure Law, Rev. Code 1:2.51 and

51.7. In my opinion, matter of defense or ground for prosecution, except jurisdictional issue over the subject matter and territory which may be raised at any time even in the appellate court for the first time, Philips v. Nelsons and Freeman, 10 LLR134 (1949), Morris v. Monah, alias Philips, 14 LLR. 588 (1961) and Compagnie de Cable SudAmericaine v. Johnson, 11 LLR 264 (1952), must be raised by the parties in their respective pleadings and not the court sua sponte; otherwise, the court will not only take both parties by surprise, but will do for the litigants that which they ought to do for themselves, instead of playing the role of a referee. During the arguments before us in this case,. in answer to question from the Bench, as to whether the issue of fraud was raised in the reply as required by statute, counsel for plaintiff/appellees frankly answered in the negative.

Still on the release and its voluntary execution by the plaintiffs/appellees, in answer to question on the cross here are some of plaintiffs/appellees' answers:

Ques: "Mr. Witness, you mentioned in your statement that you went to Monrovia to Intrusco's claim manager with your counsel and presented a bill of claim for damages and

that after your negotiation period you signed a release and received the sum of $11,000.00 from Intrusco, is this correct?

Ans: "Yes.

Ques: "You mentioned that you signed the release at Intrusco. Please say on whose behalf was this release signed, in other words was it for you alone?

Ans: "I signed the release on behalf of myself and my wife. Ques: "Is it not true that your wife also received compensation for the loss of her teeth? Ans: "I signed the release for me and my wife and for the two teeth she lost. Ques: "Did you read the release before signing it? Ans: "Yes, I read it. Ques: "Did you voluntarily signed the release or were you forced to sign it? Ans: "I wasn't forced to sign the release."

In consideration of these questions and answers and the circumstances I have stated hereinabove, it is quite clear that the issue of fraud was never raised in the pleadings nor proven at the trial in connection with the $11,000.00 release duly signed by the plaintiffs/appellees.

The only reservation or condition precedent expressed on the release is that compensation for loss of income from the business of plaintiffs/appellees would be made upon submission by plain-tiffs/appellees the tax returns for the quarter before the accident.

During the trial of this case, the following question was also asked the plaintiffs/appellees on the cross:

Ques: "You mentioned on sheet four of today's session that Mr. Ananaba promised, however, that the balance for loss of income would be paid after you had submitted total claim including Government taxes. Was this ever done by you, that is did you, having signed the release and receiving $11,000,00, ever submit another claim showing that you had paid government taxes?

Ans: "No, I have not submitted it because my accountant has not completed the statement. However, to prove my assertion you will find indicated on the claim itself the following note "compensation for loss of profit will be made when claimant submits statement for tax returns for the quarter before accident."

It is again admitted that the tax returns was never submitted by the plaintiffs/appellees so as to entitle them to another amount as per the release, other than the $11, 000, 00 received by them as a result of the claim of $18,625,00 which they presented growing out of the accident and which amount was subsequently reduced to $11,000.00 based upon a compromise

In the majority opinion, the release is considered conditional. I will therefore quote 76 C.J.S., Releases, § 42, and it reads, as follows:

"A release made subject to the occurrence of a condition precedent cannot be pleaded in bar of the claim until the happening of the event specified, but such a release operates as a discharge on the occurrence of the condition.

Releases on condition subsequent have been both sustained and held invalid to the extent of the subsequent condition.

An agreement to give a release which is based on a condition is not enforceable until the condition is fulfilled; but a release is not subject to a condition which is not in the release itself or part of the contract of release."

I agree that an agreement to give a release which is based on a condition is unfavorable until the condition is fulfilled; but, I maintain, however, that a release is not subject to any condition which is not specified in the release itself or made part of the contract of release. Damages for personal injuries and expenses to travel outside of Liberia for medical attention are not the reservation agreed upon and specified in the release referred to herein. The only condition stated in and on which the release was executed was the submission by plaintiffs/appellees of the income tax returns of their business for the quarter immediately prior to the accident as a prerequisite to settle the loss of profit, and plaintiffs/appellees admitted that they had not submitted the income tax return because their accountant had not completed it. Therefore, plaintiffs/appellees are not entitled to any more compensation in addition to the $11,000.00.

I will now address myself to the alleged dissimilarity of the claim contained in the letter of December 30, 1981 for the amount of $18,625.00 submitted to the defendant/appellant by the plaintiffs/appellees, as a result of the accident and the amount sought to be recovered in this case. The letter was accompanied by several documents, including a bill of particulars, police charge sheet and medical reports showing property damaged and personal injuries. These documents showed the very claim for personal injuries and the property damage sustained by the plaintiffs/appellees, and after several meetings and negotiations,

the amount of $18,625.00 was reduced to $11,000.00 based upon a compromise. Plaintiffs/appellees testified that after receipt of the $11,000.00, they subsequently realized that said amount was inadequate to enable them and their family to travel and be maintained in foreign parts while receiving further medical attention. Therefore, he resurrected the claim, and at this time, in court to recover additional compensation.

It is a settled principle of law and reasoning that the courts, even in equity, will not relieve against an unfortunate or improvident bargain where there has been no fraud or imposition and it was entered negligently, either with full knowledge of all the facts or without taking advantage of a readily available opportunity of acquiring such information. Should courts undertake, because of improvidence, to set aside contracts which are lawful, they would

invade personal rights, disturb and destroy the safety of business transactions and encourage endless litigations. When parties have made lawful contracts in language leaving no doubt as to the intention, there is no ground for any interference by the courts, but the contracts must be enforced as written. It is also conceded in the majority and this concurrent opinion that courts will not impair the obligation of valid contracts, nor will the courts undertake to make contracts for parties, but rather to interpret them and in the absence of illegality, to leave the parties just where they are.

Plaintiffs/appellees admitted that after the submission of the $18,625.00 claim to the defendant/appellant, there were several meetings during which they negotiated and the amount was finally reduced to $11,000.00 and they did read and signed the release for $11,000.00. The release for the $11,000.00 had to be prepared by one of the parties. Therefore, whether it was prepared by the defendant/appellant before the date the $11,000.00 was received by plaintiffs/appellees, does not matter; what are important are, whether plaintiffs/appellees well understood the release, whether Touffic Azzam signed it voluntarily, and whether the release discharged defendant/appellant from all liabilities, as a result of the accident, except "compensation for loss of profit which will be made when claimant submits statement of tax returns for quarter before accident," which are all in this case.

A court of justice knows no east, west, north or south. All litigants are equal in the eye of the law and the court should therefore confine itself to only law and facts in the fair administration of justice. I wonder what criterion the court will use to determine the weak and a strong litigant in the absence of law, facts and circumstances in a given case. My answer is in the negative.

My final point of disagreement is the deduction of $11,000.00 from the amount awarded by the trial jury. The defendant/ appellant questioned the deduction in the motion for new trial, but was overruled by the court and it is again raised in the bill of exceptions and the ruling of the court below is affirmed in the majority opinion.

In Potter v. Stevenson, 1 LLR 53 (1871), the jury awarded more than what was proven. On appeal to this Court, here is what the holding of the Court was on this score, to wit:

"First, this Court therefore decides that it was an error in the court below in sending the jury back ....to reconsider their verdict to lessen the damages by them awarded. If the judge thought the damages too great or too little, he should have granted a new trial."

The common law authority on the issue state that the general rule of law is that with the consent of the jury the court may correct, or direct the correction of, formal mistakes and inaccuracies in the verdict, and likewise it is not error for the court to supply formal omission and to strike out surplusage. 23 C. J. S., Criminal Law, § 1411. In other words, a

verdict may be amended so as to put it in proper form or to make it conform to the intent of the jury.

As a general rule also, a court has no power to amend a verdict in matters of substance or to supply substantial omissions, without the jury's consent; and after the verdict has been finally accepted and recorded, the court may not, even with the consent of the jury, amend or change the verdict in any matter of substance. Ibid., §515, 516.

The reduction by the trial court of the award in the verdict is not a matter of form, but rather a matter of substance and was done after the jury was discharged from further answering on the panel and without its comment, contrary to the law I have cited. Therefore, in view of what I have narrated and the law cited, I have withheld my signature from the judgment in this case.