

JOHN H. WRIGHT, Representing Lott Carey Mission School in Brownsville, Liberia, under the Auspices of Lott Carey Foreign Convention of Washington, D.C., U.S.A., Appellant, *v.* GILBERT H. TAY for his Wife, GERTRUDE L. TAY, Appellee.

APPEAL IN ACTION FOR BREACH OF CONTRACT.

Argued April 26, 27, 28, 29, 1955. Decided August 5, 1955.

1. A verdict awarding damages in an action for breach of contract will be held excessive where the damages awarded exceed the sums alleged in the complaint.
2. A complaint containing more than one cause of action should state each alleged cause of action separately and distinctly.

On appeal from a judgment awarding damages in an action for breach of contract, *judgment reversed* on a finding that the award was based upon a verdict in excess of the damages claimed in the complaint; and *remanded* with instructions that the parties replead so as to distinguish separate causes of action.

R. F. D. Smallwood for appellants. *T. Gyibli Collins* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

The instant cause arises from a sale of lumber by Gertrude L. Tay to John H. Wright, acting for the Lott Carey Mission School. She alleged that, after he had purchased and paid for the said lumber, she had accompanied him to the place where this lumber was stored, and had stacked appellant's lumber in certain places, and that, subsequently, in her absence, he not only carried away his own lumber, but also carried away lumber belonging to other persons, thus disrupting her lumber business and

causing her to suffer damages. Accordingly, and upon the premises stated, above, she instituted an action seeking damages in the sum of \$1,533.79.

Answering the complaint, the defendant denied that he had taken away more lumber than he had paid for, and alleged that the lumber he took away had been more than covered by payments in advance. The cause was tried before his Honor, J. Dossen Richards, and a jury, which returned a verdict awarding damages in the sum of three thousand dollars to the plaintiff, upon which verdict the trial court rendered final judgment. It is from the said judgment that the appellant has appealed to this Court.

The case is brought up for review upon a bill of exceptions containing twelve counts, of which we shall now consider Count "II." This count attacks the verdict as against the weight of the evidence, and as inconsistent with the relief demanded in the complaint, which alleged that the value of lumber which was taken away by the defendant in excess of what he had paid for was \$1,033.79, in addition to \$500 counsel fee, which two amounts, when added, make a total of \$1,533.79; whereas the jury awarded damages in the sum of \$3,000.

How could the jury award a sum in excess of the sum prayed for in the complaint, and upon what reasoning did the trial Judge render a judgment confirming such an excessive verdict? Even if the additional amount had been alleged in the complaint, by what right could the jury award the same without evidence in proof thereof? The trial court should have set such a verdict aside, and erred in failing to do so. Without passing upon other issues raised in the bill of exceptions we therefore reverse the judgment and remand this case to the court below with instructions that the parties be required to replead, and that the parties pay their respective costs.

The attention of trial courts is hereby called to the statutory requirement that, where a party has several causes of action suited to the same form of action, he

may blend them in the same complaint, but, in so doing, he must separately state such several causes. In some cases that have come before us on appeal the juries, in rendering verdicts, have awarded damages without specifying the counts upon which such awards were made. The verdict in each case must specifically state the amount of award on each count. Rev. Stat., 429, sec. 2. And it is hereby so ordered.

Reversed and remanded.