JOSEPH ITOKA, District Commissioner, acting for District Number One, Eastern Province, Hinterland Jurisdiction, Republic of Liberia, Appellant, *v.* FRANTZ NOELKE, Appellee.

APPEAL FROM JUDGMENT IN ACTION OF SLANDER.

Argued December 19, 20, 1938. Decided January 6, 1939.

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

Plaintiff-appellant sued defendant-appellee for slander and appealed from the judgment entered on the verdict. *Affirmed* on appeal.

C. Abayomi Cassell for appellant. *A. D. Wilson, Jr.* for appellee.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case is before this Court for final adjudication on an exception taken to the verdict of the petty jury, and the final judgment of the trial judge based on the aforesaid verdict in this case. The records in the case show that one Joseph Itoka, District Commissioner, acting for District Number One, Eastern Province, Hinterland Jurisdiction, on the 24th day of July, 1937, instituted an action of damages for slander against Frantz Noelke. The plaintiff now appellant in his complaint alleges as the basis of this action: that the defendant, now appellee, on the 21st day of September, 1936, at the City of Harper, County of Maryland, Republic of Liberia did utter and speak of, and concerning, the plaintiff, now appellant, in

the presence and hearing of divers persons, the following false, slanderous and defamatory words, to wit:

> "Joseph Itoka is using his position as acting District Commissioner for the Hinterland Jurisdiction, Eastern Province, District Number one for the promotion of the trade in that District for the firm of G. F. Overbeck, Limited, in whose service he is serving as their factor. He imprisons Chiefs under the pretext of enforcing the collection of taxes, and then requires them to make arrangements with him for payment of their said taxes, and he receives produce from them in lieu thereof for his personal gain."

And he meant thereby that the said Joseph Itoka, District Commissioner acting for District Number One, Eastern Province, Hinterland Jurisdiction, Republic of Liberia, plaintiff in the lower court, now appellant, is using his public position aforesaid, for his private benefit and for that of the firm of G. F. Overbeck, Limited; that the words so spoken by defendant against plaintiff impute to him, the said plaintiff, the commission of a criminal offense, to wit, false imprisonment; that the tendency of such words is to bring plaintiff, now appellant, into public disrepute and to cause people to shun his society and association and to subject him to criminal prosecution and punishment; and that therefore he had been damaged, and prayed the trial court to award him for the foregoing reasons damages to the sum of three thousand dollars as compensation for the injury he believed he had sustained, caused by the use of the defamatory words spoken by the defendant, now appellee. The defendant, now appellee, in answer to the complaint of the plaintiff in the lower court, now appellant in this Court, denies having on the said day, at the City of Harper in Maryland County aforesaid, uttered and spoken of and concerning plaintiff the words laid in the plaintiff's complaint, since in deed and truth the said defendant, now appellee, was busily en-

gaged at the water front the whole of said day discharging and loading cargo to and from the German steamship *Wigbert* and further denies each and every allegation of all the facts contained in the aforesaid complaint.

On the 18th day of May, 1938, when the case was called for hearing, the plaintiff and defendant had their witnesses qualified, and they deposed respectively, and after evidence had been rested, and arguments heard *pro et con,* the trial judge charged the impanelled jury, who retired to their room of deliberation and brought the following verdict to wit:

> "We the impanelled jury in the case: Joseph Itoka, plaintiff, versus Frantz Noelke, defendant, action of damages for slander, do unanimously agree, after hearing the evidence adduced for and against the within named parties in this suit; that the defendant is guilty and that the plaintiff be awarded damages in the full sum of Fifty cents ($0.50) according to evidence adduced in said case."

To this verdict of the petty jury no exception was taken by defendant, now appellee,—on the contrary defendant acquiesced in said verdict. The plaintiff, now appellant, however, excepted, and filed a motion for a new trial which motion was denied, and the court proceeded to render its final judgment in words as follows:

> "The petty jury in this case duly impanelled to try the issue of facts joined, having returned a verdict awarding the plaintiff damages to the amount of fifty cents, it is hereby adjudged that Joseph Itoka, plaintiff, recover damages to the amount of Fifty cents as against the defendant with all costs of court."

To this final judgment of the court below the plaintiff, now appellant, excepted and filed his bill of exceptions containing one important count which will now claim our consideration, and that is:

"Because the verdict of the jury, duly sworn to try

this cause, is manifestly against law in that the amount of damages awarded by the jury is greatly too little when compared with the evidence in the case."

Now, it is obvious that at the beginning, the plaintiff had the burden of proving the following: 1) that the defendant did speak the words charged in the complaint; 2) that as a result of the words so spoken, he had suffered an injury; and 3) that damages resulting to him from said injury amounted to three thousand dollars.

So far as the evidence on the record certified to us goes, it would appear that the defendant did speak words of similar import to those charged in the complaint; when he received information that Itoka, the appellant, a rival trader, had been appointed an acting District Commissioner, appellee became apprehensive that appellant would use his official position to enhance his business and thus overbalance the possibility of fair competition. But we have failed to find anywhere in the record that plaintiff suffered any injury as a result thereof.

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

Notwithstanding the premises the jury, after having heard the whole case, awarded plaintiff damages in the sum of fifty cents only, to which verdict plaintiff excepted and filed a motion for a new trial complaining that the damages were "greatly too little." Upon a ruling of the trial judge denying said motion, this appeal is now before us, plaintiff still contending that the jury had, contrary to the evidence, awarded damages ridiculously too small. The plaintiff, now appellant, seems to us, however, to have overlooked the fact that he thereby greatly increased his burden, for, in addition to having proved what is hereinbefore outlined, he has here, in this Court, the additional burden of convincing us that

damages awarded were greatly below the amount of damages he had proven he had sustained.

Pressed by questions from this Bench he strenuously contended that, according to the 52nd section of Chapter I on Injuries, page 29, of our *Old Blue Book,* injuries to the reputation were counted among that class of personal injuries the actions for which partake of the nature of a criminal prosecution, and that the jury in estimating damages may take into consideration the misconduct of the defendant, and increase the damages by their discretion for the purpose of punishing him. This theory contradicts the one he formerly advanced that a bad design is not a necessary concomitant to the commission of an injury as it is to the commission of a crime. *Id.* at § 1.

> "On the point of exemplary or vindictive damages there has been some discussion between law writers, some contending that punitive damages are intended as a personal punishment to the offender; others that the object should rather be a lesson to the public. The better doctrine seems to be that they are usually given as a punishment to the offender, for the benefit of the community and a restraint to the transgressor. Such damages are only given in cases where malice, fraud, or gross negligence enter into the cause of action; and in order to warrant their recovery, there must enter into the injury some element of aggravation, or some coloring of insult or malice that will take the case out of the ordinary rule of compensation. The question of whether an act was wilful, wanton, or malicious relates only to damages, and not to the right of recovery; and, if the act complained of can be so classified, the jury is authorized by law to award smart money or punitive damages. Unless there is some element of malice, or gross negligence, or circumstances of aggravation, the measure of damages is the measure of compensation for the loss sustained and nothing more; and an instruction as to punitive dam-

> ages when there is no substantial evidence that the negligent action complained of was wanton or malicious has been held to be erroneous. Although the courts have not been uniform in awarding exemplary damages where the injury is purely nominal, yet where the law implies sufficient damages to sustain an action, it has been held sufficient ground to warrant the imposition of vindictive damages; but as a rule it must be shown by the evidence that actual damages are due." 13 Cyc. 106–109; 17 C.J. 968.

In the case *Scott* v. *Donald,* 165 U.S., 58, 41 L.Ed. 632 (1897), Mr. Justice Shiras, speaking for the Supreme Court of the United States of America, said *inter alia* the following:

> "Damages have been defined to be the compensation which the law will award for an injury done, and are said to be exemplary and allowable in excess of the actual loss, where a tort is aggravated by evil motive, actual malice, deliberate violence or oppression. While some courts and text-writers have questioned the soundness of this doctrine, it has been accepted in England, in most of the States of this Union, and has received the sanction of this court."

As has been seen, we have not been able to find from the evidence all the elements necessary to entitle plaintiff to the recovery of any damages. Since, however, defendant not only did not except to the verdict rendered against him but actually accepted same, and since when he was arguing the case at this bar and his attention was called to the fact that he was not precluded and estopped from questioning the correctness of the verdict of fifty cents awarded against him, he frankly confessed that the decision was correct, and since, as he admitted, in the case of *Richards* v. *Coleman,* 6 L.L.R. 285, decided here on the 10th of December last the Court had refused to consider exceptions not encountered in the bill of exceptions, for an even stronger reason he was precluded from argu-

ing a point to which he had not even taken any exception.

It follows therefore in our opinion that the judgment of the court below should be affirmed, that the entire costs up to the filing of the bill of exceptions should be borne by appellees who were defeated in the court below, and all other costs after the filing of bill of exceptions should be paid by appellant who lost his appeal; and it is hereby so ordered.

Affirmed.