RECTOR *vs.* SHELLHORN.

A general verdict is good on two issues, when the finding necessarily shows that the subject matter of both issues, was determined by the verdict.
Thus, in an action of trespass for an assault and battery, where issues were made up upon the pleas of not guilty, and justification, the jury were sworn to try the issues joined, and they returned: "We the jury find for the plaintiff, and assess his damages," &c., the verdict is responsive to the issues, and good.

Writ of error to the circuit court of Pulaski county.

THIS was an action of trespass for an assault and battery, brought by John C. Shellhorn against Henry M. Rector, and determined in the Pulaski circuit court, at the May term, 1845, before the Hon. J. J. CLENDENIN, one of the circuit judges.

The declaration contained two counts, differing only as to the extent of the injuries alleged to have been received by the plaintiff, and the aggravating circumstances attending the assault and battery upon him.

The defendant pleaded, 1st, not guilty; 2d, that the plaintiff first assaulted him, and that he acted on the defensive. The plaintiff took issue on the first plea, and replied to the second, denying the assault on his part, set up in justification; to which the defendant took issue.

The case was submitted to a jury, sworn, as the record states, "*to try the issues joined,*" and they found as follows: "We the jury do find for the plaintiff, and assess his damages at three hundred dollars, and costs." The court gave judgment accordingly.

The defendant's counsel moved for a new trial, on the grounds: 1st, that the verdict was contrary to the instructions of the court; 2d, contrary to law and evidence; 3d, that improper evidence was admitted; 4th, the verdict was not responsive to the issue; 5th, the damages were excessive; 6th, the court improperly overruled instructions asked by defendant; 7th, the court erred in giving the instructions asked by plaintiff; 8th, the jury ascertained the damages upon an illegal rule of assessment.

The court overruled the motion for a new trial; to which the

defendant excepted, and took a bill of exceptions, setting out nothing but the evidence—the substance of which follows:

Dr. Marchand and the defendant were disputing about a negro, and on collaring each other, the plaintiff came up, and putting his hand upon defendant, in a friendly manner, begged him not to strike the doctor, that he was an old man. Defendant replied, d—n you, do you take it up? plaintiff made some answer which witness did not hear, and thereupon defendant picked up a large stone, and striking him on the head, he fell to the ground senseless, bleeding at the ear and nose. He was removed to his home, was attended by physicians, who, for sometime, considered him dangerously wounded, and did not leave his house for several weeks. Some of the witnesses thought his mind permanently injured by the blow. He was a carpenter; lost some five or six weeks from his trade, and paid about $30 for medical services. Witnesses did not see him make any assault upon defendant, before he was stricken, nor did they hear him use any threats or harsh language; he seemed disposed only to make peace between defendant and the doctor.

HEMPSTEAD & JOHNSON, for the plaintiff. The issue in this case was whether the defendant was guilty of the trespasses alleged in the declaration, and the verdict is not responsive to it. If the issue is found at all, it is only by argument and inference, and therefore void. 6 *Com. Dig., Pleader,* (*s.* 22). On *non est factum* the verdict ought to find directly that it is his deed, and if it only find that the defendant knew it to be a bond, and gave it voluntarily, it is void. 2 *Rol.* 693. So, if a defendant plead payment, verdict that he owes the money is not good, for it finds the issue only by argument. *Yelverton's Rep.* 77. So, in trover, or not guilty, if the verdict is that the defendant converted the goods to his own use, it is not good, though tantamount to not guilty. *Cro. Eliz.* 866. *Com. Dig., Pleader,* (*s.* 22). In all cases a general verdict which finds the point in issue by way of argument is void, although the argument or inference is necessary. *Com. Dig., Pleader,* (*s.* 22). The verdict in this case, instead of finding the defendant

guilty or not guilty, merely finds for the plaintiff, without saying what is found, and it is only by inference that we can ascertain what it means.

PIKE & BALDWIN, contra. It certainly is not seriously expected that this judgment will be reversed. The instructions are not before the court. The verdict, so far from being contrary to law and evidence, is in accordance with both; the damages, so far from being excessive, ought to have been five times as large; there is no showing how the jury ascertained them: and the only difficulty is in seeing how they made them so small. The verdict is, "We the jury find for the plaintiff," and certainly this is a good finding. It would be a mockery to produce authority in such a case.

JOHNSON, C. J., delivered the opinion of the court.

The record and assignment of errors present but one question, for the consideration, and decision of this court. The question is, did the circuit court err in overruling the defendant's motion for a new trial. The motion itself, as copied into the transcript, contains numerous objections to the judgment, and, amongst others, that the court erred as well in giving instructions that were wrong as in refusing others that should have been given. Whether these grounds of objection are sustained by the facts of the case, we are unable to determine, as the defendant below has wholly failed to reserve the points and bring them before us in the manner pointed out by law. In order to ascertain whether the court erred or not in overruling the motion for a new trial, it will be necessary to inquire, *first,* whether the plaintiff below established his case by such proof as to warrant the verdict rendered in his favor; *secondly,* whether the damages assessed by the jury were excessive; and *thirdly,* whether the verdict itself is responsive to the issues joined between the parties to the action.

After a careful inspection of all the testimony adduced upon the trial, we have not been able to discover the slightest discrepancy between the statements of the witnesses who were present, and saw the transaction. They all concur in establishing the guilt of

the defendant, in so clear and explicit a manner as to leave no doubt in the mind of any reasonable being. The verdict, therefore, so far from being contrary to the evidence, is in strict accordance with, and fully sustained by it. The question of excess of damages, we conceive, is not entited to one moment's consideraation. The circumstances as detailed by the witnesses, were exceedingly aggravated, and would have warranted a much severer, and more exemplary punishment. We now come to consider the third and last objection. The defendant below interposed his plea of the general issue, and also his special plea of justification. Issues were formed upon both pleas. The record shows that the jury were sworn to try the issues joined, and that they found for the plaintiff, and assessed his damages at the sum of three hundred dollars. This finding clearly covers both issues; for they were sworn to try the issues made up by the pleadings; and the response is, they find for the plaintiff. A general verdict is held to be good on two issues, when the finding necessarily shows that the subject matter of both issues was determined by the verdict, and so it was ruled in the case of *Login vs. Elder,* 1 *Burr.* 383. 1 *J. J. Marsh.* 314, 316, *Bates vs. Lewis.* This doctrine was also recognized in the case of *Wilson vs. Bushnell,* decided by this court at the January term, 1839. See *Wilson vs. Bushnell,* 1 *Ark. Rep.* 469, '70, '71. The verdict in this case is undoubtedly good, as it finds the facts put in issue by the parties in such manner that a valid judgment can be pronounced in the case. It is therefore believed that there is no error in the decision of the circuit court, in overruling the defendant's motion for a new trial.

Judgment affirmed.