

Some courts adopt a less stringent application of the rule or confine it more according to the nature of the case in which prejudice is claimed from error. Thus it has been held that where there was an "unusually fair trial" free from passion or prejudice and substantial justice appears to have been done, the errors must be very grave and material for the findings to be set aside. In Wisconsin it was held that improper evidence should not cause reversal, unless it clearly appears that but for its admission the finding would have been different.

*Error harmless pro tanto and prejudicial specially.*—The particular evil in American administration of law, generally speaking, is that, while our facilities in the way of presenting, verbatim et literatim, a complete record of a trial in a court appealed from, yet errors wherein they are certainly harmless are taken to be generally prejudicial and overturning everything that has been done in the trial court. This is exemplified in ruling generally that a new trial should be awarded where there is error and injury—thus not confining the injury to its scope. Thus take the case where the cross-examination of a particular witness is denied or unduly restricted. This case argues on broad lines about the right to free and full cross-examination, which being denied is presumed to work injury, and though in the case the cross-examination may have been concerning that which went to the root of the whole case, a wide statement of this kind is misleading in tendency. In a Nebraska case the evidence held incompetent and prejudicial related merely to the question of damages and yet the case was remanded generally for a new trial. In a Missouri case we find the scope of the prejudice caused by certain incompetent evidence stated, i.e., its effect on the amount of recovery, and yet the cause was reversed and remanded for a new trial generally.

But it is unnecessary to go into extensive citation of cases on this question, for every case, in which a reversal and remand is directed, unless a plaintiff will consent to an affirmance with a reduction of damages, goes upon this theory. In North Carolina, we find the partial new trial theory the rule, and occasionally resorted to in other states.