JOHNSON BESTMAN, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

MOTION TO SET ASIDE CONVICTION BEFORE THE TRAFFIC COURT, GRAND GEDEH COUNTY.

Argued November 10, 1970. Decided January 22, 1971.

1. Objections to the jurisdiction of a court over the subject matter of a proceeding can be raised at any time.
2. Mere surplusage appended to a crime specified by statute, will not vitiate an indictment which is otherwise sufficient.
3. Decisions applicable to former statutes are not binding upon the interpretation of subsequent statutes relating to the same subject.

The appellant was charged in the Traffic Court with "reckless driving resulting in injury and property damage," and found guilty. He appealed to the Circuit Court, where the judgment was affirmed, from which he appealed to the Supreme Court. During the pendency of the appeal, he moved to set aside the conviction, maintaining that the crime, above quoted, set forth in the indictment was not on the statute books and, therefore, the Traffic Court had lacked jurisdiction over the subject matter of the case, since offenses must be specified by statute before they are chargeable as crimes. The Supreme Court denied the allegation and characterized the words after "reckless driving" as mere surplusage, not affecting the nature of the crime charged. *Motion denied.*

Joseph F. Dennis for appellant. The *Solicitor General* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

During November 1969, Johnson Bestman was held before the Traffic Court, Grand Gedeh County, charged

with the crime of reckless driving resulting in injury and property damage. After a hearing he was found guilty of the offense. He appealed to the Circuit Court of the Seventh Judicial Circuit, Grand Gedeh County. The Circuit Court affirmed the finding and he has appealed therefrom to this Court.

On November 6, 1970, appellant's counsel filed a motion to set the conviction aside, labeled by him as a motion to dismiss the appeal, for lack of jurisdiction over the subject matter.

Substantially, appellant contends there is no such offense as charged to him pointing specifically at the words following "reckless driving." His argument is that by adding "resulting in injury and property damage" constitutes reckless driving into a different category not covered by the penal law. He also claims failure to specify the owner of the property damaged and the value thereof.

The appellee has opposed the motion and contends that mere surplusage does not alter the nature of the offense. It contends that appellant has also waived his other arguments by not raising them at the trial.

When this case was called on November 10, 1970, appellant's counsel contended that the statutes do not provide for any crime known as "reckless driving resulting in injury and property damage" and therefore the appeal should be dismissed, or more properly, the conviction should be set aside and the defendant discharged. He stressed the point also that the charge sheet upon which defendant was arrested, tried, and convicted, not reflecting a chargeable offense, rendered the court's judgment ineffectual, since it lacked jurisdiction in the subject matter of the proceeding.

His citations in support of his argument, however, were inapplicable and this Court must express its displeasure over the absence of professionalism on counsel's part.

The law applicable to reckless driving is set forth clearly:

> "Any person who operates a motor vehicle in a willful or wanton disregard for the safety of persons or property shall be deemed guilty of reckless driving. For a first offense the operator shall be fined not less than fifty nor more than one hundred fifty dollars or be imprisoned not less than three nor more than six months, or both; for a subsequent offense he shall be fined not less than one hundred fifty nor more than five hundred dollars or be imprisoned for not less than one nor more than two years, or both." Vehicle and Traffic Law, 1956 Code (1957–58 Supp.), 37:112.

In *George* v. *Republic of Liberia,* 14 LLR 158 (1960), the court stated that decisions construing statutes supplanted by the 1956 Code are not necessarily applicable as interpretations of legislative intent respecting provisions of the 1956 Code.

It is clear, therefore, that no contention can be raised that the provisions of the applicable law can be clouded by decisions relating to prior laws.

Adding to the charge of reckless driving the accompanying phrase, "resulting in injury and property damage," did not alter the nature of the offense committed, if the charge of reckless driving was sustained at the trial. Obviously reckless driving might entail the showing of some injury or damage, yet the nature of the offense remains unchanged, for such results may well be the consequence of recklessness.

This is a motion denying the jurisdiction of the court over the subject matter of the case, which according to law may be done at any time before final judgment is rendered and it is our impression that such objections may be raised at any time before the final disposition of the case. For we cannot forget that jurisdiction over the subject matter of a proceeding is conferred by law and not by the consent of parties.

There is a vast difference between that which is known as surplusage and that which the law inhibits. Surplusage does not vitiate the indictment and does not give rise to a challenge to the court's jurisdiction over the subject matter of the case, whereas a failure to properly frame the indictment's charge will.

> "It is the general rule that mere surplusage will not vitiate an indictment or information which, without regard to the surplusage, certainly and definitely alleges matter sufficient to charge the offense sought to be charged, and the superfluous or unnecessary averment or words may ordinarily be rejected as surplusage." 27 AM. JUR., *Indictments and Information,* § 109

And again:

> "Allegations which neither add to nor detract from material allegations are surplusage." 41 AM. JUR., *Pleadings,* § 52

In view of the foregoing, the motion is, therefore, denied.

Motion denied.