VIANINI LIMITED, through its manager, J. CAMPINILLA, Appellant, *v.* HENRY W. McBOUROUGH, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 16, 1968. Decided June 14, 1968.

1. In charging a jury, a judge is not permitted to inject into his instructions any issue of fact or law not raised by the pleadings of the parties.
2. Where a verdict appears to be defective or erroneous in a mere matter of form, not affecting the merits of the rights of parties, it may be amended by the court to make it conform to the issues, as in the instant case, where the jury, before its dismissal, was ordered back to deliberate again, after receiving instructions on the damages it was permitted to consider, under the law and under the pleadings.
3. A trial judge is permitted to enter final judgment in a matter at any time after disposition of a motion for a new trial in a civil matter (or after a motion in arrest of judgment in criminal matters), and is not bound by any time requirement.
4. In a civil case, the plaintiff is required to sustain his burden of proof by a preponderance of the evidence, and not, as in criminal matters, beyond a reasonable doubt.
5. Where a motor vehicle has been proved totally demolished as a result of an accident, the fair market value of the vehicle can be established by documentary and other evidence, without need for expert testimony.

The truck owned by the plaintiff was totally demolished in a collision with a truck owned by defendant. The answer of the defendant to the complaint seeking the market value of the destroyed vehicle was confined to a general denial. The jury returned a verdict in favor of the plaintiff, and initially awarded him, in addition to the market value of the truck, a special award, but under the instructions of the court they deleted the extra amount awarded, though not demanded, and returned a second verdict allowing the amount sought by plaintiff. From the judgment affirming the finding the defendant took this appeal. The *judgment* was *affirmed* and *slightly modified* to allow for extra interest on the amount of the verdict returned by the jury.

G. P. Conger Thompson for appellant. *S. Raymond Horace* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the court.

On the 8th day of April, 1964, plaintiff sued on an action of damages to personal property in the Circuit Court, Sixth Judicial Circuit, June Term, against defendant corporation, claiming that plaintiff's 3-ton truck and defendant's 10-ton truck collided on the Monrovia-Kakata highway while traveling in opposite directions resulting in the damage of plaintiff's truck beyond repair.

Pleadings in the case went to the surrejoinder and rested, but on a hearing of the issues of law, the defendant was placed on a general denial and the case was ruled to trial on the facts. During the same Term of the aforesaid court this case was tried before a jury. A verdict was returned in favor of the plaintiff awarding special damages, on which verdict the court rendered judgment affirming the same, exceptions were taken, and an appeal to this Court prayed for and granted. The case having thus come up on appeal, at the March 1966 Term of the Supreme Court, the cause was heard, and in its opinion handed down at the close of the said March Term, this Court said the following:

> "Now, upon the whole, having carefully inspected and reviewed the record brought before us and observed all of the irregularities ushering from the trial in the lower court, it is our unanimous opinion that the case is a fit subject for remand, and we do hereby order the same remanded with the instructions to the court below that a new trial be conducted on the facts involved, the judgment in the former trial being reversed."

During the September Term of the court below, in its Law Division, the case was called on the new trial docket in conformity with the mandate from this Court, with

Frederick Tulay, Circuit Judge, presiding. After the facts were put in evidence, the jury was charged, retired for deliberation, and returned a verdict in favor of the plaintiff.

To this verdict exceptions were again taken by the defendant, now appellant, and a motion for a new trial was filed, heard, and denied. Judgment having been rendered affirming the said verdict, exceptions were taken and the case appealed to this Court for a second time.

This appeal has come up on a bill of exceptions containing three counts, the first of which reads as follows:

> "Count 1. That the charge of the judge was manifestly against the weight of the evidence adduced at the trial and, therefore, prejudicial to the interest of defendant, to which charge defendant excepted. As for instance, the judge, in expounding on the law to the jury, said:
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> " 'The Court here brings it home to you that defendant has good points backed by law, but the failure to plead these points in the answer is a defect for which neither plaintiff, nor you, and/or the court, can be held responsible.
>
> " 'That because the two drivers were adjudged by the Traffic Court to be responsible for the accident, neither party may recover from the other, but each should take his own losses and hold his peace. This is fine, the only but about it is that the fine was paid because neither had the right to appeal from the Traffic Court. If the Traffic Court granted appeals, the picture might have been a different one. Throughout the pleadings of the defendant, the crux was that the two drivers were responsible for the accident because they paid the fines. They did not attempt in their answer to say anything about market value, garage certificate to prove that the dump truck was damaged beyond repairs, . . .'
>
> "Defendant submits that it was incumbent upon the

plaintiff to prove every item alleged in the complaint, whether or not defendant attacked this in the answer. Particularly so when the Supreme Court remanded this case on the grounds that the market value of the purportedly damaged vehicle was not proved and the evidence was void of an on-the-spot investigation to determine which of the two vehicles did damage the other. Because the right of the defendant is on bare denial, he is not estopped from cross-examining the witness on his evidence before court nor on the averments in the complaint, or arguing said evidence and averments with supporting citations before the court and jury. (See *Salami Brothers* v. *Wahhab,* Supreme Court opinion, March 1962 Term; also *Vianini* v. *McBourough,* Supreme Court opinion, March 1966 Term.)"

The charge made to the jury by the trial judge is very extensive and elaborate and does not necessarily need to be traversed in its entirety in this opinion. In our opinion it presents a synopsis of the entire facts put in evidence and seeks to explain the principles of law controlling. However, for expediency, we shall set forth the concluding portion of the said charge.

"The court brings it home to you that the defendant has good points backed by law, but the failure to plead these points in the answer is a fatal legal blunder for which neither plaintiff, nor you, and/or the court, can be held responsible. The court also wonders why both drivers were fined fifty dollars each, when according to the report of the police who testified, Joe Mars, the driver for the plaintiffs, was wrong and, therefore, responsible for the accident or cause of accident. His testimony was contradicted by that of Chief Jallah Galamah, Chief of Traffic, National Police Force. Here you also remember that the Traffic Court in Montserrado County is a special tribunal set up and from which there can be no appeal

taken from its judgment. So you see the reason why neither Joe Mars nor Joseph Kollie appealed, and both of them had to pay the fine. Defendant's counsel desire us to instruct you that the market value of the truck at the time of the accident should have been established by proof, just as we have said before, that is required by law. If you say that a person destroyed your property, the market value at the time it was destroyed must be given and proved that it was so. The market value of the property after it has been destroyed must also be given to show whether or not it was damaged beyond repairs. Counsel for the defendant contends that it was not done and because it was not done there must not be any recovery. It is a point well taken, but we find it to be weak because they did not raise this issue in their answer to give the plaintiff a chance to traverse it. They also want us to instruct you on the fact that damage of a vehicle beyond repairs must be proved by a reputable garage, by this they mean that plaintiff should have taken a representative from one of the reputable garages in town to examine the dump truck and say whether it could be repaired or not and have that garage issue a certificate for that purpose; another point well taken, but not pleaded in the answer, is that because the two drivers were brought down by the Traffic Court to be entirely responsible for the traffic accident, neither party may recover one from the other, but that each should take his own losses and hold his peace. This is fine, the only but about it is the fine was paid because none had the right to appeal from the Traffic Court. If the Traffic Court granted appeals, the picture might have been a different one. Throughout the pleadings of the defendant, the crux was that the two drivers were responsible for the accident because they paid the fine. They did not attempt in their answer to say anything about market value or a garage certificate to prove

that the dump truck was damaged beyond repairs. Coming back to the judgment handed down by the Traffic Court, we want to remind you that when the accident took place, a police officer went to the scene who testified before you that Joe Mars was wrong, but he told you that he never appeared before the Traffic Court and both drivers told you that two and one-half months after the accident another police officer took them to the scene to make reconstruction of the accident. And chances are that it was the second police officer who reconstructed the accident 75 days or more afterwards and that it was he who prosecuted the drivers before the Traffic Court. Well, you are the judges of the facts, we leave that to you also. Plaintiff is praying for the recovery of special damages in the sum of $5,350.00, less $500.00 which was disallowed by court, the balance being $4,850.00. If you are convinced that plaintiff, from what you have been told, has sufficiently proved his special damages, award him the sum of $4,850.00 which he seeks to recover. On the other hand, if you believe from the information given you that plaintiff has failed to prove his special damages then, well, deny him the award. But remember, that in your deliberations you are to confine yourselves to the information given you inside here and not the knowledge you gain from outside the courtroom, and also remember that the law of this land is blind and does not say that because this man has money to pay, and because that man has no money, he must not pay. The law protects both citizens, strangers, and foreigners alike. You are to govern yourselves with what has been given you here. In short, if Henry McBourough is entitled to recovery of $4,850.00 for his truck or not, you are to answer that question. You may, therefore, go to your room of deliberation and bring a verdict in answering that question."

The foregoing is the complete summary of the charge given to the jury in the case by the presiding judge and which count 1 of appellant's bill attacks. These instructions constitute a summary of the evidence adduced at the trial according to the record before us in the case. In our opinion, they do not present any indication of prejudice to either party, nor are they conflicting, contradictory, confusing, or misleading. Moreover, they do not convey an opinion as to what should be the jury's finding.

There were certain points not pleaded by the defendant, yet it was requested of the court to instruct the jury thereon, which the trial judge undertook to do, but in charging the jury thereon, it was incumbent upon the court to also inform them of the law controlling in such cases, and in doing so, in our opinion, the court did not err. This view is sustained by *Tettleh* v. *Stubblefield,* 15 L.L.R. 3 (1962), where the Court said at p. 9:

> "A judge before whom a matter is pending is not legally authorized to introduce or inject into the cause any issue of fact or law not specifically raised in the pleadings of the contending parties."

Charging the jury on the points requested by defendant's counsel was merely a liberal act on the part of the trial judge, because they were not pleaded and cannot be accepted as grounds for exceptions. To the same effect, *Dennis* v. *Neffiel,* 9 L.L.R. 26 (1945).

Count 1 of the bill is, therefore, not sustained.

Count 2 of the bill states:

> "That defendant submits that the verdict is a nullity and should be discarded, set aside, and a new trial awarded, as raised in defendant's motion for a new trial. In short, the trial judge was without authority to send the jury back to reconsider their verdict to lessen the damages by them awarded. If the judge thought the damages too great or too small he should have granted a new trial."

On examination of the record before us in respect to this

count of the bill of exceptions, it is made clear that the jury returned a verdict awarding plaintiff special damages in the sum of $4,850.00, and a special award in the sum of $4,000.00. This could be calculated as nothing more than a defect in form, because the special award did not substantively affect the rights of either of the parties, and this defect was observed prior to the dismissal of the jury, and before the verdict was ordered recorded or exceptions taken thereto. Moreover, the question of a special award was never argued nor placed before the jury in any form. It was, rather, an assumption of their own making which could have no effect on the legal meaning of the verdict.

In 39 AM. JUR., *New Trial,* § 121, the following is found:

> "Where a verdict appears to be defective or erroneous in a mere matter of form, not affecting the merits or the rights of the parties, it may be amended by the court to make it conform to the issue; the defect or irregularity cannot be made a ground for a new trial. . . ."

The special damages sued for was not reduced nor increased, nor did the court undertake to amend the verdict independently of the jury. Instead, the court instructed the jury on the law applicable, and had them amend their verdict by eliminating the special award found by them in the sum of $4,000.00, which was separate and distinct from the special damages found by the jury. In our opinion, therefore, this was legally correct. See *Appleton* v. *Republic of Liberia,* 11 L.L.R. 284 (1952).

Count 2, therefore, is not sustained.

Count 3 is mostly based on procedural grounds, because it refers to appellant's exceptions to the court's ruling on the motion for a new trial. But there is one point therein which we would like to touch on before passing, and that point is that it does appear that appellant labored under the misguided impression that the law imposes a time limitation within which final judgment must be rendered

in any given case after a motion for a new trial has been heard and denied. If our impression in this regard is correct, then we must here deny the appellant's contention, because a judge is authorized under the law to enter a final judgment in any cause at any time after disposition of a motion for a new trial in all civil causes, and after a motion in arrest of judgment in all criminal cases.

When this case was argued here the second time, appellant's counsel strongly argued:

a. That plaintiff had failed in the lower court to prove that the accident was caused exclusively by the defendant.

b. That plaintiff had also failed to prove by expert testimony that the vehicle was damaged beyond repairs.

c. That the market value of the purported damaged vehicle according to plaintiff's complaint was not proved by expert testimony.

d. That special damages, as alleged in plaintiff's complaint, was not proved at the trial, in the absence of which there could be no verdict in favor of plaintiff and, consequently, no judgment.

e. That the amount of $45.00 alleged to be the daily intake of the truck, should have been proved by receipts or other written documents.

Appellee's counsel argued that they had proved the allegations of their complaint conclusively, and the verdict of the jury was in complete harmony with the evidence adduced at the trial and the instructions of the court, hence, the judgment should not be disturbed.

Let us now take a look at the evidence adduced at the trial. The plaintiff took the witness stand and testified, among other things: that he is the rightful owner of the Ford 3-ton dump truck, 1961 model, purchased from the USTC of Liberia for the sum of $5,375.00, bearing license plate no. 885; that this truck had been in his possession and ownership for a period of 21 months up to the time it was damaged beyond repair by defendant's 10-ton truck;

that the said damage was done to his truck by virtue of the reckless, wrongful, and negligent acts of defendant's driver, Joseph Kollie; that depreciation on the truck up to the time of impact and damage was $1,345.00, at the rate of $64.00 per month, according to calculation from reputable garages within the City of Monrovia; that the value remaining was $4,030.00, excluding license fees, registration, and other charges, bringing the total value to $4,850.00, for which amount he sued. Further testifying, he stated that the truck was a common carrier from which he received a minimum daily intake of $45.00, and that the damage it sustained by consequence of the reckless acts of defendant's driver rendered it beyond repair. He identified two revenue receipts for licenses paid for the truck, and two registration certificates, a bill of sale, and a certificate of release for the truck from the USTC garage. All of this evidence was confirmed by Joe Mars, driver of the truck, except for the written documents, and identification of these was confirmed by a witness, Edward N. Carey.

We have reviewed the evidence thoroughly to determine whether, as a matter of law, the verdict of the jury should be set aside. Witnesses Joe Mars, M. D. Minor, and defendant's own witness, Matthew Dweh, testified to the fact that the defendant's driver was exclusively responsible for the collision of the two trucks. Besides that, defendant's own witnesses, Jimmy Gibson and Matthew Dweh, also testified to the fact on conjunction with the evidence of the plaintiff, that plaintiff's truck was broken into pieces and that parts of the truck still remain on the scene of the accident, hence, such proof is tantamount to proof of damage beyond repair.

In our opinion there was no necessity for expert testimony to have been taken to establish the market value of the damaged vehicle, because plaintiff alleged and satisfactorily proved the value of the vehicle, which the defendant made no effort to contradict and this is a civil

case where the preponderance of the evidence suffices as proof, and is not a criminal case where the plaintiff is called upon to present proof beyond a reasonable doubt. In reference to the question of proving the special damages as alleged in plaintiff's complaint, the presentation of the bill of sale, license receipts, registration certificates, the certificate of release of the vehicle by the seller, which were all admitted into evidence without the slightest objection by the defendant, in conjunction with the other facts in connection with the damage done to the vehicle, cannot be regarded as insufficient to warrant the verdict of the jury as was given in this case. It is the responsibility of the defendant to pinpoint the principal facts lacking to prove the plaintiff's complaint at the trial.

The evidence presented by the plaintiff in this case in our opinion clearly established the pecuniary loss that accrued to plaintiff in consequence of the negligent and wrongful act of the defendant. The facts have proved all aspects of that which the law requires to be proved, and there was nothing left undone in regard to the regularity of the trial. Hence, it is our opinion that the judgment rendered in the court below should not be disturbed, and it is hereby affirmed, with the modification that defendant pay the amount of damages in the sum of $4,850.00, with interest at six per cent thereon, from the time of the accident, as punitive damages for the inconvenience of the plaintiff.

Costs in this case are hereby ruled against the appellant. And it is hereby so ordered.

Affirmed.