FIRESTONE PLANTATIONS COMPANY, by its General Manager, ROSS E. WILSON, Appellant, *v.* WILLIAM E. GREAVES, Appellee.

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

Argued November 27, December 3, 5, 9–11, 17, 1946. Decided January 31, 1947.

1. The purposes of redirect examination are to explain away adverse matter in cross-examination and to supply omissions in direct examination.
2. The measure of damages for injury to, or destruction of, personal property is its market value at the time of injury.
3. Special damages must be specifically pleaded in the complaint and proved at the trial.

Plaintiff sued defendant for damages for injury to his car sustained in a collision with a driver of defendant, now appellant. On appeal from judgment for plaintiff awarding him damages for said injury and for his deprivation of the car, *judgment affirmed in part* as to the injury to the car *and reversed in part and case remanded* to try the issue of damages for deprivation of the use of the car.

B. G. Freeman for appellant. *Nete Sie Brownell* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

During the early part of the year 1944, William E. Greaves, appellee in this case, bought a second hand sedan car from the Liberian Government for the sum of two hundred and twenty dollars and, after much effort in having it put into good, running, and usable condition, he commenced using it. On June 14, 1944 his wife with other friends took the car out to Firestone Plantations

and elsewhere and on their return to Monrovia during the night of June 15, 1944 said sedan car was the victim of a collision with a heavy truck owned by Firestone Plantations Company, appellant. The collision took place on the Monrovia-Salala road at a location between Oldest Congotown and Paynesville, said truck of said company being at the time driven by one Alfred Pritchard, an employee of said company.

Appellee, feeling that the said collision was due to the wanton neglect of appellant's driver, in addition to reporting the matter to the proper traffic authorities in the Interior Department, brought it to the attention of appellant with a view, obviously, of arriving at some harmonious and agreeable understanding and adjustment whereby the considered wrong could be redressed without the necessity of resorting to litigation.

Despite these efforts of the appellee and notwithstanding the findings of the traffic authorities which attached responsibility for the collision to Alfred Pritchard who was shown before said authorities to have driven wantonly, flagrantly, unlawfully, and negligently as well as to have been intoxicated at the time, the appellant refused to accept any responsibility whatsoever. This left the appellee with no alternative but to seek redress through the courts and hence on November 22, 1944 he commenced this action for damages for injury to personal property against the appellant before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The pleadings in the case having rested with the rejoinder of the defendant, now appellant, same were heard and disposed of by His Honor T. Gyibli Collins, circuit judge then presiding over said circuit by assignment. The trial came up before another circuit judge, His Honor Edward Summerville, and resulted in a verdict and judgment against appellant, and it is from this judgment that this appeal is before us on a bill of exceptions containing five counts.

The first count contests the ruling of the trial judge in overruling appellant's objections to the following question put by appellee to his witness, A. M. Bruce, on the redirect examination:

> "Q. You said that if it had not been for the vehicle that was behind you, you would not have known who collided with you on that night. Did you ever see the driver of the truck that night? If so, who was he and what explanation, if any, did he make as to the incident, and also [what was] his condition when you met him?"

Appellant objected to the question on the grounds of cross-examination of own witness and of assumption of a fact not proven.

We are of the opinion that the trial judge was in order in overruling said objections, especially so when the question was put to the witness on the redirect examination and by the party producing him, because the function of a redirect examination is by legal writers declared to be primarily explaining away whatever might be brought out adversely in the cross-examination and/or bringing in what might be inadvertently omitted in the direct examination, what is commonly called the examination in chief. 1 Greenleaf on Evidence, §§ 466, 467, at 600 (16th ed. 1899). It seems to us that this question was put to the witness obviously with a view of allowing him to bring in what was considered inadvertently omitted in the examination in chief; this has support in law and in practice.

The second count is based on certain objections raised to the admission of certain written instruments into evidence, which objections were overruled by the court. These instruments carry the trial court's marks "A," "B," and "C," and are, respectively, the statement from the Bureau of Revenues showing that appellee paid the sum of two hundred and twenty dollars for the said car; a copy of the opinion and findings of the Commissioner of Traffic after an investigation held at the Interior Depart-

ment after the collision; and a statement apparently prepared by E. B. Cassell, manager of the Liberian Government Garage, wherein he assessed the damage done to appellee's sedan car as a result of the collision. The primary objection to the certificate from the Bureau of Revenues was that said certificate was not sufficiently identified; but as it is not shown in what respect the lack of sufficiency of identification is claimed, we find ourselves unable to agree with the contention, especially in face of the testimony of appellee himself wherein he submitted said document and identified it to be a statement given him by the authorities of the Bureau of Revenues evidencing his having definitely paid for the sedan car. Since it appears from the briefs and arguments of appellant's counsel that the question of appellee's ownership of the car is conceded, it does not appear to us necessary to belabor the point.

The other two documents were objected to on the ground that they were irrelevant. These objections do not appear to us to be well taken since the former document tends to prove negligence and improper driving on the part of appellant's driver and the latter tends to prove the extent of damage or injury to the sedan car as a result of the collision.

Counts three, four, and five of the bill of exceptions are, respectively, exceptions to the verdict of the jury, the court's ruling on a motion for a new trial filed, and the eventual judgment awarding appellee damages in a sum allowed by the jury's verdict. We are therefore to consider the evidence in the case and see how far it supports said verdict, and in doing this it will be necessary first to ascertain who was responsible for the collision because the entire case hinges on the question of whether or not appellant's driver was responsible. If he was, then appellant is answerable to appellee in damages, but if the contrary, appellant would not be liable.

The testimony of Ethel Greaves, wife of appellee, and

A. M. Bruce, appellee's driver, agree in tending to show that on their return to the city on that night and whilst passing through Paynesville to Oldest Congotown, they saw coming ahead of them a vehicle with a very brilliant light approaching them in a very zigzag manner, that is, it did not appear as if the driver in said approaching vehicle had proper control of same; that notwithstanding this, the driver of appellee's car dimmed his light and signaled the approaching vehicle to do likewise, but the signal was not heeded, and the vehicle continued to approach, whereupon, to quote witness Bruce:

> "The mistress of the car [obviously meaning Mrs. Greaves] asked me to brake on my right because the coming vehicle is not sturdy [*sic*] on the road. I had dimmed my light. Then I took the order of Mrs. Greaves; yet the vehicle did not dim its light. I blew three times for him to dim his light, but he did not dim it. About a few seconds he came and hit my left fender and away he passed."

Along the same line Mrs. Greaves testified as follows:

> "I was in our car. I was on my way from Firestone and after we passed Mr. William Ross' farm in Paynesville, there were two lights approaching, one behind and one in front. The one in front was very bright and coming very fast, dancing all over the road, so I said to the driver, Mr. Bruce, 'That thing coming in front there, the light is too bright. . . . Stop the car and let it pass because the man is driving like he is crazy.' And he stopped on the extreme right of the road. The other light behind had to stop because we stopped. The front light that was coming came right ahead. My driver went on blowing the horn so the approaching driver could know that there was another car there. Notwithstanding he ran into us and passed on. But for the car behind we would never have known who hit us. The pickup behind us stopped them. When I did come to myself, Mr.

Magnus Jones at the Bank was in that pickup that was behind us and he came to the car and opened the door, asking if anybody there was hurt. I said, 'No, I am not, but the other two ladies are.' Joshua Cooper, Mr. Wolo, Mr. Crawford together with this same Magnus Jones, they all came to our rescue. The truck had stopped way down the road. They made the truck back up and then Joshua Cooper said to the driver: 'You hurt these people and then running off like that?' Afterwards, when the truck backed up alongside the car, Esli Holder and the driver got out, the driver smelling with cane juice. He could hardly stand up. Then Magnus Jones said to Esli: 'You mean to tell me, you are in this truck and your driver nearly killed these people and you are running off?' They then started an argument. Then Joshua Cooper said to us: 'But look, this man is drunk. He can hardly stand up.'"

Substantiating this testimony, Joshua Cooper, an employee of the Liberian Government Garage and a recognized mechanic, testified as follows:

"On the night of the 15th June last year on my way from Firestone Plantations, Mr. Greaves' car was in the front of me until the incident took place. But to the best of my ability as for what happened, being behind Mr. Greaves' car just below Paynesville, I saw a light that was somewhat too bright for me to have moved on; in that I stopped and before me was Mr. Greaves' car that had done the same thing. As the truck ascended the hill, I heard when it struck Mr. Greaves' car and moved on until it got near me. Having my light on I jumped out and stopped the driver of the said truck to find out who he was. In that truck was Mr. Esli Holder and Miss Mary Manley. They came out and jointly we walked up to Mr. Greaves' car and there we saw the damage. I then asked the driver as to what was wrong. He said

> nothing was wrong, but the only thing was that Mr. Holder had carried him down to Kroo Town and had given him something to drink. Right there and then, from what I could see, he certainly had more than he could stand, and that was carrying him instead of he carrying it. And because of that he just couldn't see the car that was before him. He thought he had passed the car when he heard the hit."

He further testified, and very convincingly, that the sedan car was traveling on the right side of the road but that the truck was definitely out of place in violation of traffic regulations. Furthermore, he stated also that the driver of the said truck failed to dim his lights in approaching another vehicle coming from the opposite direction, which act was also in violation of traffic regulations. The testimony of F. E. Robertson, the Commissioner of Traffic, very strongly supports that of the previously named witnesses and seems to be conclusive as to the attachment of responsibility for the collision to the driver of appellant. This conclusion was arrived at both from his, the commissioner's, personal observations at the scene of the collision as well as from the investigation held at the Interior Department whereat were present representatives of both the appellant and the appellee.

Witness Cassell's testimony, not being relevant to the issue of responsibility for the collision, will not be passed upon or reviewed now. Since the written instruments admitted into evidence are principally in corroboration of what was testified to orally, a succinct review of which has already been made, we pass on to the testimony of witnesses for appellant in an effort to break down the apparently good case appellee made against appellant through appellee's witnesses.

The summing up of the evidence of the appellant would show that, whilst it does not deny the collision as charged by the appellee, it certainly does not admit or accept any responsibility therefor. Alfred Pritchard,

appellant's driver, claimed that he was traveling on the right side of the road when the collision took place; that any imputation of his being intoxicated with liquor on that night is without factual foundation; that the wrongful, negligent, wanton, and careless driving which accounted for the collision was on the part of A. M. Bruce, appellee's driver; and that, consequently, appellant is not answerable to appellee for any damages whatever.

Mr. Helm's testimony in the case seems to have been based principally upon observations that he made a day after the collision and, as such, are in their nature professional deductions backed by his twenty odd years' use of motor vehicles. Said testimony tended to show that when he got to the scene of the collision to make his observations he found appellee's sedan car on the wrong side of the road from which fact, he claims, a natural and reasonable deduction can be made that the driver was wantonly and negligently driving at the time and point of the collision. But we shall see from his testimony how he comes out in the effort:

> "Immediately on learning of this [that is, of the collision] I proceeded to the scene of the accident accompanied by the truck driver and Attorney Esli Holder. On arriving at the scene of the accident we found the sedan car still there and also the driver of the car. The driver of the plaintiff's car was questioned; he admitted in reply to a question as to whether or not his car had been moved since the accident and he answered that it had not been moved. We then proceeded to measure the road. It was found that the usable surface of the road was 24 feet 6 inches wide; this of course makes the center line 12 feet 3 inches from the side or edge of the usable road. I would like to add this point, that what was accepted as the edge of the road was the edge of the cut made by the road grader. Actually there was beyond the edge of the road cut an additional approximately three or

four feet on the right hand side of the road as one proceeds towards Monrovia. The driver of the Greaves' car also stated that his car was standing still at the time of the crash. Actual measurements between the left front wheel of the Greaves' car and the edge of the usable road on the left hand side of Greaves' car showed the distance to the left eleven feet and four inches. This shows that the left front wheel of the Greaves' car was eleven inches over the center line on the left or wrong side of the road. The driver of the Greaves' car further admitted that Mr. DeShields had made no measurements at the scene of the accident. Attorney Holder and driver Pritchard and I proceeded to Monrovia. We requested Mr. DeShields to accompany us to the scene of the accident for the purpose of checking measurements. Mr. DeShields' reply was to the effect that he had completed his investigation and would not return to the scene with us."

In answer to a question from the jury as to what side of the road, looking towards Monrovia, the Greaves' car was on, the right side or the left side, the witness answered as follows: "The measurements taken at the scene of the accident showed that part of the Greaves' car, that is the front portion, extended over the center line on the wrong or left side of the road."

The testimony of Joel Tolbert does not seem to say more than witness Helm had said in that he simply confirms Helm's testimony to the effect that he, with others, was called upon to witness the measurement of the road around the area where the collision took place, which said measurement showed that the left front wheel of appellee's car was only eleven inches on the left of the center of the usable road and that, to use his own words, "the left front wheel was in the center of the road because the back of the car had been twisted to the right. The left wheel was eleven inches from the left of the road."

Witness Mary Manley-Smith in testifying did not or could not say much as to what side of the road the truck in which she was traveling was moving; but to give a clearer picture of what she said we quote her:

"Climbing up one hill near the beginning of Paynesville, I saw a bright light ahead of us. As we went up this hill the light became brighter. I asked Mr. Holder who was in the truck with us, 'When the people are traveling at nights don't they dim their lights?' He said, 'Yes, but these people don't go by that.' We came nearer the top of the hill. The car that was in front of us and the truck that I was in met at the top of the hill. Neither of them stopped. In that time I was looking ahead of the car that was in front of us because there was another light. Thinking that the first car had passed, my attention was drawn to the light that was coming ahead. In that time I heard the noise and felt a slight shock. I asked what was the trouble. Mr. Pritchard said that 'the car that was coming up just now has struck against us.' In that time, Mr. Holder told him to stop and let us see what is the trouble. We all rushed out of the truck and went to where the car was sitting. The pick-up that was ahead of us got to the place at the same time where the incident occurred. When we reached the car, the driver from the car and the driver of the truck with the people started an argument saying that Mr. Pritchard was drunk, he did not know what he was doing, is why he ran into the car. Pritchard said that he was not drunk and contended up to the time we left that he was on the right side of the road. I do remember hearing them that night saying that each was on his right. The pick-up took the people that were in the car to town and we went to Harbel. . . . When we got out of the car [truck] I observed that the front of Mr. Greaves' car was slanting across the center of the road towards the direction of the sea."

The court questioned the witness:

"Q. This slant you observed, how far did it carry the front of the car towards the sea?

"A. Say about the center of the road.

"Q. Some witnesses have come and said that Mr. Holder was drunk too. Was he drunk?

"A. We tried three places to get rum but we failed. I cannot say they were drunk except they drank before I met them."

This testimony of witness Mary Manley-Smith has the following peculiar and cogent aspects: (1) It corroborates very strongly that part of witness Helm's testimony which shows that only a small portion of the left front wheel of appellee's car was beyond the center of the road towards the left or wrong side; (2) From her own knowledge, she could not say whether or not appellant's truck was traveling on the right side of the road; (3) Obviously, because of the heavy weight of the vehicle in which she was traveling, she simply felt a slight shock as a result of the collision; and (4) She could not swear that driver Pritchard was not drunk on that night of the collision, but testified, however, that they tried three different places to get rum and failed. She said she could not even swear that they, that is, Pritchard and Holder, did not drink before she met them.

Esli Holder, to whom the records before us refer as appellant's junior or assistant counsel on its plantations, who was on appellant's truck at the time of the collision, also testified. From his testimony we quote the following:

"On the night of the collision going from Monrovia to Firestone we passed three or four cars coming to Monrovia between Sinkor and Congotown. Descending the hill from the broadcasting station we saw a reflection of a car light and whilst ascending the second hill we continued to see this light. The slope on the side of the hill from Monrovia is much shorter than the slope on the other hill from Paynesville. Our truck got to

the top of the hill first and as soon as we went about two yards from the top, all this time driving on our right, one car ran into our truck. As soon as this happened we stopped the truck and got down; the fender and the light on the left of the truck were all broken up. When we went to the car, their left fender was also broken. . . . The next morning Mr. Helm and I went on the scene to take measurements of the road. Before we started we asked three disinterested parties in the persons of one Joel Tolbert, H. G. George, and one Mr. Pritchard from Congotown. We found out that the car was on the wrong side of the road coming towards Monrovia, that is, the driver of the car was driving on the left. After that we came to the Interior Department. We found out that Mr. Robertson was not in town. Then we went to the waterside for Mr. DeShields and asked him to go with us on the scene. He refused and said that he had already been out there. Mr. Greaves' driver was also in the scene and I remember calling him to come and take part and he refused. After Mr. DeShields refused to go with us we went back to Firestone and were later called to the Interior Department for an investigation. On that night, driver Pritchard dimmed his light; every car that we saw between Sinkor and Congotown dimmed its light and when we saw Mr. Greaves' car, he dimmed his light."

The plaintiff's attorney cross-examined the witness:

"Q. If, as you say, the left fender and light of the truck were broken and the left fender of the car was also broken, then you make the court to understand that the car had left its right and crossed the road in an attempt to pass the truck on the right. Am I correct?

"A. The car running down on its left attempted to cross the road to its right and hit the Firestone truck."

Besides the apparent incoherency of this intelligent witness' testimony throughout, it is rather puzzling to understand how, if they were truly driving on their right from Monrovia, and the appellee's car was on the left or wrong side coming towards Monrovia, as a result of the collision in an effort on the part of the driver of the car to cross the road on its right, the car could have been found with only eleven inches of its left front wheel across the center of the road on the left side coming towards Monrovia. What could be easily and reasonably acceptable under the facts suggested in the testimony of witness Holder as well as of witness Pritchard would be if the front of the car had been found on the right side of the road and the rear part on the left side.

Whilst it is true that under our law an accused criminal can be convicted only where his guilt is shown beyond a rational doubt, this does not obtain in the trial of civil cases, since in such matters decisions are made upon a preponderance of evidence. This preponderance need not necessarily be established by the quantum of evidence produced but in most cases is established by its quality. Hence, according to our statutes we have the following: "It is sufficient if the allegations of a party, are substantially proved." Stat. of Liberia (Old Blue Book) ch. X, § 7, at 52, 2 Hub. 1548.

We do not hesitate to say, from the digest of the evidence in the case as made above, that the driver of appellant's truck was on that night driving unlawfully and negligently since: (1) It is shown that he neglected to dim the lights of his vehicle in approaching another from a different direction as is required by the traffic regulations of this country, even though a signal was given him to do so; (2) It is a disregard of the safety of the lives of persons traveling in another vehicle after a collision for one car to run away from the scene of the collision without stopping to find out what has happened to the other vehicle, which is what appellant's driver did, ac-

cording to the evidence of witnesses Joshua Cooper, Ethel Greaves, A. M. Bruce and Magnus Jones, and such an act is, to say the least, reprehensible; and (3) An attempt to drive a vehicle in a state of intoxication is also in violation of traffic regulations, and the evidence in this case predominantly and preponderatingly shows that Pritchard, driver of appellant's truck, was intoxicated on that night and at the time of the collision.

It is regrettable that, notwithstanding the findings of the traffic commissioner emphasized this point of intoxication and recommended the prosecution of this driver for violation of regulations which was confirmed by the Secretary of the Interior, there is no vestige of evidence in the records to show that said driver was ever prosecuted.

During the argument of the case before us, the counsel for appellant attempted to minimize the value of the certificate issued by the assistant commissioner of traffic, W. O. DeShields, as well as to minimize the weight of traffic commissioner Robertson's evidence and his findings from the investigation held at the Interior Department after the collision, but said counsel attached great importance to witness Helm's testimony. This testimony of witness Helm is, in our opinion, more in support of the claim of appellee to the effect that his driver was driving on the right side of the road coming into the city than that of appellant who claims that appellee's car was being driven on the wrong side of the road. If, as stated by witness Helm, appellee's car, at the point of impact at the time the said witness Helm came upon the scene, was showing an intrusion of the left front wheel of only eleven inches on the left side beyond the center of the graded road, then there can be no other correct and probable conclusion but that said car was actually traveling on the right side of the road and that there would not or could not have been this collision if appellant's driver Pritchard had not, in approaching from the opposite direction, bor-

dered on that side which, for Pritchard, was the wrong side. It does not at all require a wide or technical knowledge in the handling and driving of motor vehicles to arrive at this conclusion. It can also be easily concluded, since the evidence has shown the truck of appellant to have been nothing less than that of two and one-half ton capacity, far more weighty than the car, that it was as the result of the collision that said car swerved or slanted a little to the left which, as has already been observed, resulted in an intrusion of merely eleven inches whilst the rest of the body of the car was still on the right and proper side of the road.

In view of the evidence in the case which we have just reviewed, we are of the unanimous opinion and conclusion that the driver of appellant's truck was at the time and point of collision wantonly, unlawfully, and negligently driving the truck on the wrong side of the road and, therefore, the responsibility for the collision attaches to him and his principal, the appellant, in whose employ he was at the time of the collision.

Now, having placed the responsibility as we have done, the next question for consideration is how far the appellee has been damaged as a result of this injury. To follow up the appellee's case and decide how far he has proven the damages awarded him in the lower court, we deem it necessary to quote his complaint, the basis of the action:

> "1. Because plaintiff complains that he was the owner of sedan car, model 1938, 85 H.P. V. 8, carrying Government license number 136, valued at eight hundred dollars ($800.00) of money current within this Republic. That on the night of the 15th to 16th June A.D. 1944, while plaintiff's car was on its way from Firestone Rubber Plantations to Monrovia, defendant's truck No. 193, driven by one Alfred Pritchard, an employee of defendant Company, did unlawfully, flagrantly, wantonly and negligently collide with plaintiff's

sedan car as aforesaid, between the Settlements of Paynesville and Oldest Congo Town, Montserrado County, and damaged said car to such extent that plaintiff was obliged finally to abandon said car. Wherefore plaintiff prays that damage may be awarded him to the value of said car, in the sum of eight hundred dollars ($800.00).

"2. And also because plaintiff further complains of said defendant that as the result of the damage done to plaintiff's car as aforementioned, he has been deprived of the use of said car from the 15th June 1944, up to the institution of this action, and continuously thereafter to the further damage of plaintiff. Wherefore plaintiff prays that an amount of ten dollars ($10.00) per diem may be awarded him as damages for the deprivation of the use of said car as from the said 15th day of June A.D. 1944."

Count three of said complaint which makes a claim or demand for counsel fees incidental to said action in the amount of five hundred dollars having been dismissed by the judge who disposed of the legal pleadings in the matter before the lower court, we find ourselves unable to pass upon it since it has not been brought up for our consideration in the usual and proper way. *Arrivets* v. *Barclay,* 9 L.L.R. 233 (1947).

In an effort on the part of appellee to prove the value of his car at the time of the collision, he showed that he had paid the sum of two hundred and twenty dollars for it from the Liberian Government in an almost useless condition, which fact necessitated his putting it under repairs for which he had to make local purchases of several spare parts, as well as additional payments for mechanical work, so that after said repairs he placed a value of eight hundred dollars on said car. During the trial in the court below, strenuous efforts were made by appellant's counsel to have appellee prove an actual eight hun-

dred dollars valuation, that is, that he spent the sum of five hundred and eighty dollars in addition to the two hundred and twenty dollars purchase price to make up the said eight hundred dollars. Such a line of contention is without legal merit for in the assessment of damages for injury to, or destruction of, personal property, it is not the actual cost of said property that must be ascertained but rather its market value, if any, at the time of the injury.

> "One who is injured in his property by the wrongful act of another may recover for any pecuniary loss sustained by reason of such injury. He is also generally entitled to recover compensation for discomfort, annoyance, and personal inconvenience, *where these are the proximate result of the defendant's wrong*. . . . The remuneration must be commensurate with the plaintiff's interest in the property, and hence will vary accordingly. In ascertaining the damages to be allowed, the jury may consider all the circumstances connected with the injury. . . .
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> "Ordinarily the measure of damages for the loss or destruction of property is its *market value,* if it has a market value, and in such case no recovery can be had on the basis of its value to the owner individually, apart from its market value. In order to say of a thing that it has a market value, it is necessary that there shall be a market for such commodity; that is, a demand therefor, and an ability from such demand to sell the same when a sale thereof is desired. Where, therefore, there is no demand for a thing, and no ability to sell the same, then it cannot be said to have a market value. If the market value would not be a fair compensation to the plaintiff for his loss, he is sometimes permitted to recover the value to him based on his actual money loss. The fact that property has no market value does not restrict the recovery to nominal damages only, but its value or the plain-

tiff's damages must be ascertained in some other rational way, and from such elements as are attainable. In such case the proper measure of damages is generally its actual value, or, as is sometimes said, its value to the owner, *taking into account its cost and such other considerations as may affect its value in the particular case. . . .*" 8 R.C.L. *Damages* §§ 42, 48, at 479, 487 (1915). (Emphasis added.)

"The measure of damages for the loss or destruction of personal property is, as a general rule, its reasonable value at the time of the loss, and under the rules applicable to the recovery of interest generally, interest from the time the cause of action accrued may in some jurisdictions be included." 17 C. J. *Damages* § 182, at 876 (1919).

Whilst it is true that one whose property is endangered or injured by the negligence of another must exercise reasonable care to protect it from further injury, especially where due notice of the wrong or injury is brought home to him who seeks redress for such injury, and while a proven failure on his part to do so has a tendency to cause him to lose whatever damages he may claim or may otherwise have been entitled to, or in some case to minimize said damages; yet we are of the opinion that where, as in this case, the person whose property is injured can show that he exercised every possible reasonable care to protect said injured property from further injury or total loss, he will have done all that is required of him. 13 Cyc. of Law & Proc. 75 (1904). In this case appellee put forth every possible effort through correspondence with appellant to protect said damaged property from further injury and even to have appellant undertake the possible repairs of said damaged car. This correspondence discloses an indisposition on the part of appellee towards litigation, preferring a reasonable settlement out of court; but this attitude appeared not to have been appreciated by appellant since it claimed it was not liable.

Under these circumstances, appellee was left with no alternative but to abandon said car to appellant.

Taking into consideration the purchase price of the car and the several efforts and expenditures to put it into usable condition, we are of the opinion that an assessed market valuation of the sum of eight hundred dollars is neither excessive nor unreasonable.

We find ourselves unable and unwilling to agree with the assessment and award of damages by the jury confirmed by the court under count two of appellee's complaint which sets up a claim for deprivation of the use of the car as a result of the injury caused by appellants' driver. The verdict of the jury does not specify or even show by what process of computation the assessment of $2,275.00 was made, especially where the complaint of the plaintiff, now appellee, laid claim for damages at the rate of ten dollars per diem for the time he was deprived of the use of his car. We are not willing to agree that appellee clearly and cogently proved the amount of damages awarded under said count two of his complaint because there is a positive provision in our statutes that where special damages are relied upon they must be specifically pleaded in the complaint and proved at the trial. 1 Rev. Stat. § 237; Stat. of Liberia (Old Blue Book) tit. I, § 37, at 27, 2 Hub. 1521. Having pleaded that he was injured by the appellant through deprivation of the use of his car and having asked for damages to be awarded in the sum of ten dollars per diem, the verdict of the jury should have responded to this count by showing how much appellee was awarded per diem and for what period. It is not sufficient to leave the court with speculative calculations and conjectures.

Because of this apparent gross irregularity and defect, we are of the opinion that the verdict of the jury and the corresponding judgment respecting count two of the complaint of plaintiff, now appellee, be set aside and a new trial awarded with instructions that the lower court take

evidence only in proof or disproof of the damages claimed in said count two of the complaint, count one having already been settled in favor of appellee. Said lower court is hereby authorized in its judgment in the new trial thus awarded, if for the appellee, to include the already sustained damage for the loss of the car; costs are ruled against appellant; and it is hereby so ordered.

Affirmed in part.