#### Dennison *vs.* Smith.

It is too late to object at the trial that a bill of particulars is not properly verified by the oath of the party. The party upon whom a bill of particulars is served, if he is not satisfied with it, either because it is defective in form or substance, or because it is not verified by the plaintiff, should immediately return it, or move the court for a further or amended bill.

It is too late to move for a new trial after the expiration of four days from the rendition of judgment, unless an order extending the time has been procured.

The facts are stated in the opinion of the court.

*By the Court,*

Bennett, J.

The defendant applied to the plaintiff for a bill of particulars of his demand. This was made out by the plaintiff’s attorney, and served upon the attorney for the defendant, but it was not verified by the plaintiff as required by statute. The cause was referred, and upon the hearing before the referee, the defendant objected to any evidence being given by the plaintiff to prove the items specified in the hill of particulars, for the reason that the same was not verified by the oath of the plaintiff. The referee sustained the objection, and nonsuited the plaintiff. The court, on motion, set aside the report of the referee, and ordered the cause to be reinstated on the calendar.

[\*438](#p438)The report of the referee was properly set aside. If the defendant was not satisfied with the bill of particulars, because it was defective, either in form or substance, or because it was not verified by the plaintiff, he should have immediately returned it, or moved the court for a further or amended hill. Having kept it in his hands until the moment of the trial, it was too late to object on the ground that it was not verified.

The cause was again tried, and judgment rendered in favor of the plaintiff on the 20th day of January, 1851. Ho order extending the time for the purpose of moving for a new trial was made; but on the 19th day of February, one month after the judgment was rendered, the defendant moved the court for a new trial. The motion was made at too late a day, and the court decided correctly in denying it. By our statute a motion for a new trial must be made within four days after judgment. *{See. 252 of Practice Act of* 1850.) The judgment must be affirmed.

Ordered accordingly.