INSURANCE COMPANY OF AFRICA, by and thru its Vice President, GIZAW H. MARIAM, Defendant/Appellant, *v.* **ALFRED K. GIPLI,** beneficiary under Insurance Policy No. 2125, issued in favor of JOSEPH NAH GIPLI, deceased, Plaintiff/Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: October 15, 1984. Decided: November 22, 1984.

1. A bill of exceptions should be specific in its assignment of errors and specify the basis for the alleged errors, and not place the burden on the Court to search the records and guess the errors complained of by the appellant.

2. As a trial court has the right to overrule or sustain questions and pleadings, an aggrieved party should be specific in the assignment of errors.

3. In amending a pleading, the pleader must, as a precondition thereto, file a notice of withdrawal of the previous pleading, pay all accrued costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleadings, and substitute the withdrawn pleading with an amended pleading.

4. A motion, being an application for an order granting relief incidental to the main relief sought in an action, must be entertained before the basic suit or issues raised in the action.

5. Where a motion to dismiss an amended answer is granted and the amended answer dismissed, the court is under no legal duty to pass upon the other issues of law allegedly raised in the amended answer.

6. Issues of fact are to be determined solely by the jury on the greater weight and sufficiency of testify as against a greater number of witnesses to the contrary.

7. The Supreme Court has no authority to question the wisdom of the jury who heard the evidence and arrived at a decision in a case where conflicting evidence was

presented.

Appellee Alfred K. Gipli, beneficiary of an insurance policy taken by the decedent, Joseph Nah Gipli, sued out an action of damages for breach of contract after the defendant, Insurance Company of Africa, had refused to pay the benefit under the insurance policy following the death of the decedent. The decedent had gone to a town in Grand Kru County to get married, but had reportedly taken ill and died. Following the burial of the decedent, the beneficiary notified the appellant company of the death and requested payment of the benefit as stipulated by the policy. When the defendant refused to pay, the instant suit was commenced.

At the trial, evidence was presented regarding the death and burial of the decedent, some of which were in conflict with others, especially as to the date and place of birth of the decedent and as to the death of the decedent. The jury, after hearing the evidence, returned a verdict in favor of the plaintiff, awarding him $30,000.00 as special damages and $15,000.00 as general damages. In its final judgment, the trial court confirmed the verdict. From this judgment, an appeal was taken to the Supreme Court.

On appeal, the Supreme Court held the judgment of the trial court to be correct. The Court dismissed counts one and four through nine of the bill of exceptions, holding that the counts had failed to set out specifically the errors allegedly made by the trial court and the basis for the assignment of the errors. The Court also held that the trial court was justified in dismissing the appellant's answer and ruling the appellant to a bare denial. As to the verdict of the jury, the Court held that the jurors were the judges of the facts, and that as the evidence warranted the verdict of liable arrived at by the jury, and the award made thereunder, the same would not be disturbed. The Court there-fore *affirmed* the judgment and ordered enforcement thereof.

McDonald Krakue appeared for the appellant. *Johnnie N. Lewis* appeared for the appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Sometime prior to March 20, 1980, one Joseph Nah Gipli, now deceased, made a life assurance proposal to the defendant/ appellant, the Insurance Company of Africa, for

insurance of his life. The proposal was accepted and a policy duly issued by the defendant/appellant in favor of the life assured, Joseph Nah Gipli, with Alfred K. Gipli, the plaintiff/appellee, as beneficiary.

On June 4, 1980, while Joseph Nah Gipli, the life assured, was on a social trip to Grand Cess, Kru Coast Territory, now Grand Kru County, he took ill and died. On June 13, 1980, Alfred K. Gipli, plaintiff/appellee, the beneficiary of the policy, by letter, with a certificate of death issued by the Ministry of Health and Social Welfare attached, duly informed the defend-ant/appellant of the life assured's death, and of his claim to the proceeds under the insurance contract.

The defendant/appellant refused to honor its side of the con-tract. Accordingly, on October 6, 1980, Alfred K. Gipli, plaintiff herein, instituted an action of damages for breach of contract against the defendant/appellant. The appellant subsequently filed an answer which, on October 27, 1980, was responded to by the plaintiff/appellee filing of a reply and a motion to dismiss the answer.
Some two months later, the defendant/appellant withdrew its answer with reservation, and on the following day, filed an amended answer. To the amended answer, plaintiff/appellee filed an amended reply and a motion to dismiss. The defendant/ appellant filed a resistance to the motion to dismiss, but subsequently withdrew same, with reservations, and filed an amended resistance. The court below sustained the plaintiff/appellee's motion, dismissed the amended answer of the defendant/ appellant, and ruled the defendant/appellant to a bare denial of the facts contained in the plaintiff/appellee's complaint.

During the March, A. D. 1984 Term of the People's Civil Law Court for the Sixth Judicial Circuit, a jury trial was held. After its deliberations, the jury returned a verdict in favor of the plaintiff/appellee, unanimously awarding $30,000.00 as special damages and $15,000.00 as general damages.

The defendant/appellant excepted to the verdict of the empaneled jury and filed a two-count motion for a new trial. The motion was resisted, and after arguments *pro et con*, the same was denied by the trial judge. Final judgment was thereupon rendered, confirming and affirming the verdict of the empaneled jury. Exceptions having been noted and an appeal announced and perfected, the case is before this Court for final review and adjudication,

based upon a nine-count bill of exceptions.

In counts four, five, six, seven, eight and nine of the bill of exceptions, the defendant/appellant merely averred that alleged errors and irregularities were committed by the trial court with-out stating specifically the basis for the exceptions. Civil Procedure Law, Rev. Code 1 :51.7; *Quai v. Republic,* 12 LLR 402, 404 (1956); *Mourad v. OAC,* 23 LLR 183, 187-188 (1974); *Jantzen v. Johnson,* 31 LLR 343 (1983).

We deprecate this loose manner of preparing a bill of exceptions which places the burden on this Court to search the records and guess the errors complained of by the appellant and referred to us for review. As the trial court has the right to overrule or sustain questions or pleadings, an aggrieved party should be specific in the assignment of errors and specify the basis of the errors in accordance with the requirements set out by the authorities cited above, as would enable the appellate court to easily recognize the errors and review same. This was not done by the defendant/appellant in this case. We intend, however, to continue to adhere to the statutes and the precedence of this Court. Accordingly, count one and counts four to nine of the bill of exceptions are not sustained.

The contention of the appellee for non-payment of accrued costs as a ground for abatement of a pleading was conceded by the defendant/appellant, but it maintained that the accrued costs were paid as a prerequisite for the amendment. The records in this case show the opposite. The reply to the defendant's amended answer and the motion to dismiss, in which the defendant/ appellant was attacked for non-payment of accrued costs, were filed on the 8th day of January, 1983. Counsel for defendant/ appellant frankly admitted that he paid the accrued costs on the 9th day of January, 1983. This was subsequent to the filing of the reply and the motion to dismiss and after defendant/appellant was attacked in the motion to dismiss and the reply for failing to pay the accrued costs.

The statute, together with numerous opinions of this Court, are vocal on the matter of payment of accrued costs as a precondition to amending a pleading. We maintain the same position in this case under the principle of *stare decisis*. The practice in this jurisdiction, consistent with the statute, is that in amending a pleading, the pleader must file a notice of withdrawal of the previous pleading, pay all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleadings, and substitute the withdrawn pleading with an amended pleading. These requirements are usually met simultaneously, but

not subsequent to being attacked, as was done in this case. Civil Procedure Law, Rev. Code I :9.10.

It is also the practice, consistent with our Civil Procedure Law, that a motion, which is an application for an order granting relief incidental to the main relief sought in an action, is entertained before the basic suit or issues raised therein. Therefore, where a motion to dismiss an amended answer is granted, and the amended answer thereby dismissed as against the resistance, the court is under no legal duty to pass upon the other issues of law allegedly raised in the amended answer; for, should the court so act, its action would be inconsistent and contradictory. Count two and three of the defendant/appellant's bill of exceptions, which raised the issue that the lower court erred in failing to rule on the several points of law raised in counts two and three of the amended answer, are therefore overruled.

It is admitted by both parties in this case that the deceased, Joseph Nah Gipli, did procure a life insurance policy, No. 2125, on the 20th day of March 1980, for $30,000.00 from the Insurance Company of Africa, the defendant/appellant in this case. It is also conceded by the parties that Alfred K. Gipli is the sole beneficiary under the policy. The only dispute is whether the insured died so as to render the condition of the policy enforce-able. To resolve this issue, we have decided to review the evidence in this case as it relates to the death of the insured.

In substantiation of the fact that the life assured was dead, the plaintiff/appellee not only had three witnesses testify to this fact, but consistent with the Public Health Law, Rev. Code 33: 51.2 and 51.9, produced a certificate issued by the local authority of Grand Cess Territory, where Joseph Nah Gipli died, as well as a certificate of death, No. 397/80, dated June 12, 1990, issued by the Ministry of Health and Social Welfare. These were testified to, identified, marked by court, and admitted into evidence, without objections from the defendant/appellant.

Plaintiff/appellee submitted that under the provisions of the New Public Health Law, "any copy of a vital statistics record of a birth or of a death or any certificate of registration of any birth, when properly certified by the local registrar or the principal registrar, shall be *prima facie* evidence of the facts therein stated in all courts and places and in all actions, proceedings or applications, judicial, administrative or otherwise, and any such certificate of

registration of birth shall be accepted with the same force and effect with respect to the facts therein stated as the original record of birth or a certified copy thereof."

The first witness for the defendant/appellant was Gizah H. Mariam, executive vice president of the Insurance Company who admitted receiving the certificate as proof of the death of the insured. He stated that the plaintiff in this case presented a claim to recover as the sole beneficiary under the policy. Another witness was Dr. Rosse Willaruel. He had examined the insured prior to the policy being issued, but he stated on the witness stand that he could not say whether the insured was alive or dead. The third witness for the defendant/appellant was Kai Freeman of Virginia, Montserrado County, an employee of I. T. C. He testified that he was not a claim adjuster, and therefore he could not discuss the report of the claim adjuster. However, he did testify that in his capacity as a representative of the defendant/appellant, he went to Grand Cess along with others, and that he met one Blamoh whom he asked to take him to Mr. Nah. The witness testified further that having been introduced; he stated the purpose of his mission. He stated further that he was told that Mr. Joseph Nah Gipli had gone to the town to select a wife, and that unfortunately, after a short time there, Mr. Joseph Nah Gipli, who was without any evidence of sickness, was found dead by the town people when they returned from their farms. The witness stated also that he, along with others, were taken to the cemetery where the deceased was buried. He also stated that the family of the deceased told him and others that the deceased was born in Ghana by a Ghanian mother and a Liberian father. The witness said further that they (he and others) also talked with the chief who signed the death certificate and who happened to be one of the members of the extended family of the decedent. He (the witness) also said that they were able to meet the superintendent of the territory who told them that he knew nothing about the death of a stranger in that town.

Counsel for defendant/appellant argued that there was a conflict between the documents submitted by the insured and the evidence that was gathered by its investigators with respect to the place of birth and the age of the insured. In *Liberian Oil Refinery Company v. Mahmoud,* 21 LLR 201 (1972) this Court held:

"An issue of fact is to be determined solely by the jury on the greater weight and sufficiency of the evidence, and such preponderance of the evidence may be established by a single witness who may testify against a greater number of witnesses to the contrary."

In this case, the jury, which is the sole trier of facts, had heard the alleged conflicting evidence between the testimony of the investigators of defendant/appellant and the written evidence introduced by the plaintiff/appellee with respect to the age and date of birth of the insured, and after due consideration, had rendered a verdict in favor of the plaintiff/appellee. There is no error complained of by the defendant/appellant as having been com-mitted with respect to the admissibility of any documentary evidence regarding the age and place of birth of the insured to warrant the setting aside of the verdict by this Court. Under the circumstances, we have no authority to question the wisdom of the jury who heard the evidence and arrived at its decision. There is no evidence whatsoever adduced at the trial by the defendant/ appellant showing that the insured was not dead; nor was there any proof that the death of the insured was suicidal as would render it inconsistent with any of the provisions of the insurance policy.

Therefore, we hold that the trial in the court below was regular and that there is evidence before this Court to sustain the recovery of the amount of $30,000.00 as special damages and $15,000.00 as general damages, aggregating $45,000.00 awarded by the trial court. Accordingly, the judgment of the court below is *confirmed* and *affirmed*. Costs to be paid by the defendant/ appellant.

The Clerk of this Court is instructed to send a mandate to the trial court ordering it to resume jurisdiction in the case and proceed to enforce its judgment. And it is so ordered.
Judgment affirmed.