INTRUSCO CORPORATION, by and thru its President, WILLIAM MERRIAM, JR., Appellant, v. **FIRETEX INCORPORATED,** by and thru its President, SAMUEL B. GRIFFITHS, Appellee.

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

Heard: March 20 & 21, 1984. Decided: May 10, 1984.

1. This court will not, and cannot, consider any issue of fact or law not raised in the pleadings, passed upon by the trial court, excepted to and contained in the bill of exceptions, neither will this court consider any issue raised in the bill of exceptions and not pleaded and supported by the record of appeal, nor take cognizance of any argument not supported by the bill of exceptions or consider any issue in the bill of exceptions not argued in the brief.

2. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

3. Cases must be dismissed only on statutory grounds and not for mere technicalities.

4. The non-payment of the successful counsel's fee is no legal ground for dismissal of the complaint, or any action for that matter.

5. Dismissal of a complaint on account of venue is erroneous.

6. The appearance of the defendant is equivalent to personal service of summons upon him.

7. When a complaint, and not an action as filed, is dismissed without prejudice, the defendant is still effectively under the jurisdiction of the court. Therefore, when a new complaint is filed, the issuance and service of a new writ of summons upon a new written directions is unnecessary.

8. When a defendant who has not been served with summons pleads to the merits of a case

by filing an answer to the complaint and simultaneously files a motion to dismiss, it is deemed to have voluntarily brought itself under the jurisdiction of the court, even if the initial writ of summons had not been issued. It cannot there-fore raise the issue of personal jurisdiction.

9. Denial of a balance owed on a debt does not constitute the affirmative plea of accord and satisfaction contemplated by the law.

10. No general denial in a responsive pleading, whether expressed or implied, shall be construed to be an affirmation of any fact such as time or other affirmative matter of the intention to prove which the other party ought, in fairness, to have notice.

11. This court will not reverse the judgment of a lower court simply because the evidence has not been summarized therein, unless there is statutory law to support such action.

12. An answer, which both denies and avoids, is dismissible for inconsistency.

13. If a creditor seeks to avoid a contract of accord on the ground of want of consideration, fraud, or the like, and the amount paid in satisfaction is conceded to be due in any event, he is not required to tender back that amount paid before bringing his action upon the original claim, for the law will not require a person to pay over a sum, which is his in any event, in order that a judgment may be rendered in his favor for that very sum. All that is necessary is that the debtor receives credit for the amount paid.

14. A party bringing suit on a contract or other obligation is not required to anticipate a defense of accord and satisfaction and therefor assert it when alleging its cause of action.

15. Every defense, in law or fact, to a claim or counterclaim, shall be asserted in the responsive pleading.

16. The failure of a trial court to summarize the evidence in a judgment is not sufficient legal ground to reverse the judgment.

In September 1986, the appellant entered into a verbal agreement with the appellee to investigate a fire incident which occurred on August 23, 1980, damaging the premises of several clients of the appellant. The appellant sent a letter to the appellee, dated November 17, 1980, confirming the verbal agreement. On December 4, 1980, the appellant sent the appellee a check of $10,000.00. Shortly thereafter, on December 15, 1980, the appellee submitted to the appellant a bill for $314,500.00, less the $10,000.00 already received. The appellant wrote a very lengthy letter to the appellee on December 17, 1980 in which it denied owing the balance of $304,500.00, yet the appellant paid appellee an additional $18,000.00 on December 22, 1980. In the memo section of the check stub, the appellant noted inter alia that the $18,000.00 would constitute "full and final settlement" for services rendered by the appellee, and requested that the appellee contacts the appellant promptly if the notification on the stub was incorrect. The appellee promptly informed the appellant that there remained a balance of $286,500.00 on the contract, and when the appellant denied any further obligation on said contract; the appellee brought this action of debt for recovery of the aforesaid balance.

Judgment was entered in the debt court against the defendant corporation, to which it excepted and announced an appeal to the Supreme Court. In its seven-count bill of exceptions, the appellant contended that the trial court had erred in respect of the following: (a) denial of appellant's motion to dismiss the case because of the appellee's failure to pay accrued costs upon filing a new complaint following the trial court's dismissal of appellee's earlier complaint, as well as the improper verification of the new complaint by a lawyer who had not signed the complaint; (b) denial appellant's challenge to the jurisdiction of the court because no summons was issued and served on appellant at the time the new complaint was served; (c) failure by the trial court to consider appellant's plea of accord and satisfaction; (d) failure of the trial court to summarize the evidence of the parties in rendering judgment; (e) failure of the trial court to take into consideration certain species of evidence offered by appellant and not denied by appellee; and (f) awarding of damages to appellee contrary to the evidence.

The Supreme Court rejected all of the foregoing contentions. With regards to the first contention that accrued costs had not been paid, the Court held that the appellant had not denied appellee's allegations that accrued costs were paid to and received by it, even though no bill of costs had been prepared and the amount paid had not included successful

counsel's fee. The Court noted that the other costs having been paid, the non-payment of successful counsel's fee was not a legal ground for the dismissal of the complaint.

Addressing the issue of the jurisdiction of the trial court, the Supreme Court held that not only did the trial court have territorial and subject matter jurisdiction since the action was one for debt and was instituted in the Debt Court for Montserrado County, but also that personal jurisdiction over the appellant had been secured by appellant's pleading to the merits of the case by the filing of an answer and a motion to dismiss. As such, the Court said, the appellant was estopped from challenging the jurisdiction of the court.

On the question of the lack of service of summons when the new complaint was served, the Court noted that it was the original complained that had been dismissed and not the entire action. The summons which conferred jurisdiction of the court over the appellant remained in court following the dismissal of the complaint, and the parties remained under the jurisdiction of the court. Hence, there was no need for a new summons to be issued and served had not been dismissed.

Regarding the question of the alleged improper verification of the affidavit, the Court observed that the lawyer who signed the complaint and the lawyer who signed the affidavit were from the same law firm which represented the appellee. Accordingly, it said, the lawyer who signed the affidavit, being a member of the firm which represented the appellee, had full knowledge of the allegations set forth in the complaint and therefore could properly verify the complaint by signing the affidavit attached thereto.

With respect to the failure of the trial judge to summarize the evidence of the parties in his judgment, the Supreme Court held that while it was true that in actions tried upon the facts in a court without a jury the court must find the facts specially and state separately its conclusion, it was clear from the judgment that the trial court was convinced regarding the evidence upon which it based its judgment. The judgment, therefore, had fulfilled the requirements of the law, and the lack of a summary of the evidence by the trial judge did not provide a sufficient legal ground for the reversal of the said judgment.

Lastly, the Court opined that it was satisfied that the evidence adduced at the trial supported the judgment, especially as that appellant had not denied the items enumerated by the appellee on its list, which formed the basis for the award. The Court there-fore affirmed the judgment of the trial court.

Henry Reed Cooper and B. Mulbah Togbah for appellant, John A. Dennis for appellee.

MR. JUSTICE SMITH delivered the opinion of the court.

According to the record certified to us in this case on appeal, there is no denial of the fact that the appellant, Intrusco Corporation, at the time represented by its president, Rudy Knothe, by a verbal agreement, and without agreeing on any specific amount as charges for services to be rendered, hired the appellee, Firetex Incorporated, represented by its president, Samuel B. Griffiths, to undertake an investigation into the causes and circumstances leading to a fire incident which occurred in the City of Monrovia, Montserrado County, resulting in substantial damages to the premises and property of O. A. C., and to submit its bill for ser-vices rendered. This verbal agreement was, however, confirmed by a letter dated November 17, 1980, addressed to the appellee by the appellant's president, Rudy Knothe, which reads in part as follows:

"This is to confirm our verbal instruction given to you in the beginning of September, 1980, with respect to the extensive fire damage that occurred on Water Street on August 23, 1980.

As explained to you we had appointed claims adjusters already, and you were simply requested to look into the circumstances and spread of the fire, where you indicated that you had special knowledge.

"The clients insured by Intrusco, sometimes under more than one policy, are as follows:

1. General Sales
2. Ajami Brothers
3. M. Fardoun
4. Ibrahim Ayoubi & Sons
5. C. Khanafer
6. Continental Trading
7. M. Fardoun II
8. C. Khanafer II
9. M & A Nasser Bros.

Since you had previously promised us to let us have a report on your findings by the end of September, this is to reiterate our instructions that you are not to act as our claims adjuster, but as a fire expert. Your report must be received by our office on November 30, 1980".

There is also no denial of the fact that a bill of charges in the total amount of $314,500.00 for services rendered was submitted to the appellant corporation by the appellee on December 15, 1980, and received by the appellant following the initial payment of $10,000.00, which amount, having been deducted, as reflected in the bill, shows the balance of $304,500.00 at the time the said bill was submitted. It is also not denied that an additional payment was made by the appellant in the amount of $18,000.00 and received by the appellee on December 22, 1980.

The controversy leading to the institution of the debt action arose when, on the 22nd day of December, 1980, the appellant forwarded a check to the appellee in the amount of $18,000.00 and on the check stub wrote the following:

"Detach and retain this statement, the attached check is in payment of items described below. If not correct please notify us promptly. No receipt desired."

In the description column of the said stub, this is written:

"Full and final settlement of Messrs. Firetex Incorporated services rendered. This payment settles all obligations of Firetex's including invoice dated 12/15/80."

In keeping with the record, the invoice dated December 15, 1980, is in the amount of $304,500.00, the amount which the appellee claimed the appellant owed at the time.

Upon receipt of the check of $18,000.00 by the appellee on December 22, 1980, the following letter was addressed to the appellant on the same date. It reads in part, thus:

"Intrusco Corporation
P.O. Box 292
Monrovia, Liberia
Attention: Mr. Rudy Knothe

Dear Sir:
I acknowledge receipt of your check dated today's date in the amount of $18,000.00 which was signed for by me. At the 2nd sheet of the check, after signing receipt of same, I discovered at your description column that the check settled all obligation of Firetex, including invoice dated 12/15/80.

For your information, I consider this to be fraud, and under no circumstances will my company relinquish the balance of $286,500.00 which is outstanding.

Please note that in the verbal conversation we had, you simply asked me to accept $18,000.00 as part payment until your principal makes available funds to settle all claims pertaining to O.A.C. building, Water Side, which is approximately over 3 million dollars.

Secondly, during our telephone conversation today, after I discovered your description column, you made it very clear to me that the balance will be paid in due course after all claims to the following clients which were insured by your company in keeping with your letter dated November 17, 1980:

1. General Sales
2. Ajami Brothers
3. M. Fardoun
4. Ibrahim Ayoubi & Sons
5. C. Khanafer
6. Continental Trading
7. M. Fardoun II
8. C. Khanafer II
9. M. A. Nassar Bros.

Thanking you for your usual cooperation and looking forward for our balance payment in due course.
Yours faithful,
/s/ S.B. Griffiths
PRESIDENT"

Prior to the payment and receipt of the check in the amount of $18,000.00 on December 22, 1980, appellee had on the 15th day of December, 1980, called the attention of appellant to the settlement of the balance $304,500.00 and the appellant in a very lengthy letter dated December 17, 1980, denied owing any amount to Firetex, the appellee having previously paid the amount of $10,000.00 which, according to the said letter, was the final payment for the services rendered by Firetex in connection with the fire incident. For the benefit of this opinion, we quote three relevant paragraphs of the letter under the signature of the appellant corporation's president, Rudy Knothe. They read thus:

"Messrs. Firetex
P.O. Box 1089
Monrovia, Liberia
Attention: Mr. S.B. Griffiths

Dear Sir:
We refer to your letter of December 15, 1980, and your enclosed invoice in the amount of $304,500.00 for services rendered in connection with your investigation of the fire at the old Water Street premises of Messrs. O.A.C. on August 23, 1980."

". . . In the presence of our Mr. Gibbons, we suggested a final payment of $10,000.00 for the report dated November 28, 1980. This amount appears quite sufficient in 1ight of our written instruction of November 17, 1980, and the actual contents of the" report which deal almost exclusively with the circumstances (i.e. cause) and spread of the fire as requested by us. Mr. Griffiths seemed to accept these arguments and consequently Intrusco issued check No. A16974 in the amount of $10,000.00 in the name of Firetex and handed it over to Mr. Griffiths on December 4, 1980. The only outstanding question which was deferred were such additional expenses that would occur to Firetex as a result of the trial of the four defendants charged with the crime of arson.

"In view of instructions received from our head office on December 9, 1980, by telex, we told Mr. Griffiths on December 10, 1980, to cease all investigations in the matter of this fire claim on behalf of our company. Since only the fire report had in fact been specifically

requested by us, and to the extent as mentioned earlier in this letter, the bill for that service had been the subject of a compromise and immediate payment by our company; we are left wondering what we could possibly owe Messrs. Firetex.

Very truly yours,
/s/ Rudy Knothe
President"

This matter remained unsettled up to the time the appellant's president, Rudy Knothe, who made this arrangement with the appellee, left Liberia. He was succeeded by William Merriam, who held that according to the record he found, the claim of Firetex Corporation during the incumbency of his predecessor, Rudy Knothe, had been settled. Firetex, the appellee, thereupon brought this action in the Debt Court, Montserrado County, for the recovery of the balance $286,500.00. Judgment was entered against the appellant, to which it excepted and appealed to this forum of last resort on a seven-count bill of exceptions, which reads as follows:

"1. Because defendant says that when this case was first dismissed without prejudice to plaintiff, plaintiff re-filed his complaint without paying all the costs in keeping with the law and in keeping with said ruling. Defendant filed a motion to dismiss the case on this ground but Your Honour denied said motion as well as overruled count 2 of defendant's answer raising this identical issue.

2. When you dismissed the initial complaint, the parties were no longer under the jurisdiction of the court. Yet when the plaintiff refiled the complaint no writ was issued to bring the defendant under the jurisdiction of the court. Defendant raised it, but your Honour denied.

3. Because Your Honour overruled defendant's count three of the answer and count three of the motion to dismiss which two counts attacked the verification of the complaint contrary to law.

4. Because Your Honour failed to consider defendant's count nine of the answer where the plea of accord and satisfaction was raised to the effect that plaintiff has accepted the sum of $28,000.00 in such settlement of the claim. The receipt to this effect specifically mentioned the invoice of December 15, 1980, which is the original claim submitted by plaintiff.

5. Because Your Honour in your final judgment failed to summarize the evidence of both the plaintiff and the defendant presented during the trial and to cite any law in support of

your judgment. Defendant cited several legal authorities in support of the plea of accord and satisfaction which were countered by other legal citations cited by plaintiff in support of his claim, all of which Your Honour ignored and did not cite any legal authority in support of your final judgment.

6. Because defendant filed an amended answer introducing documents as newly discovered evidence and plaintiff did not file an amended reply; therefore, he accepted all of the documents to be true. Among the documents were two lease agreements showing that plaintiff had leased a suite in Hotel Africa as well as a villa for the International Auto-mobile Company for a period far beyond the period of the investigation conducted for the defendant. The claim of plaintiff for accommodation could not have been considered, but you failed to take into consideration such important piece of evidence in arriving at a final judgment.

7. Because Your Honour found for plaintiff awarding him the $286,500.00 sued for even though there was no evidence produced by plaintiff in support of the bill of particulars or statement of account."

In discussing these issues as contained in the bill of exceptions, we would first of all like to observe here that Messrs. Firetex had submitted a statement, or bill of charges, to Intrusco Corporation on December 15, 1980, for the services rendered in the amount of $314,500.00, less the amount of $10,000.00 initially paid by Intrusco Corporation on December 4, 1980, which statement shows a claim balance in the amount of $304,500.00. Two days after the receipt of Firetex's bill, Mr. Knothe wrote a letter to Messrs. Firetex, dated December 17, 1980, contending that the $10, 000, 00 paid on December 4, 1980 represented final payment according to a compromise they had reached, and that he was left wondering as to what could Intrusco possibly owe Messrs. Firetex. If this is the case, what then necessitated the payment by Intrusco of the additional $18,000.00 on December 22, 1980, five days after its letter to Firetex?

As we now proceed to discuss the appellant's complaint against the trial court, which constitutes the basis of its appeal, it is well to note here that this Court will not, and cannot, consider any issue of fact or law not raised in the pleadings, passed upon by the trial court, excepted to and contained in the bill of exceptions; neither will this Court consider any issue raised in the bill of exceptions and not pleaded and supported by the records on appeal, nor take cognizance of any argument not supported by the bill of exceptions, or consider any issue in the bill of exceptions not argued in the brief. See for authority Weeks v. Ketter and Gurley, 13 LLR 546 (1960); Elliott v. Dent, 3 LLR 111 (1929); Johnson v. Powell, 4 LLR 221 (1934).

Counsel for the appellant contends in count one of the bill of exceptions, as contained in its answer and motion to dismiss filed in the court below, and strongly argued at this bar, that the trial court erred when it denied defendant's motion to dismiss on the ground of non-payment of all of the costs by plaintiff before refiling the case which had been dismissed previously with costs, but without prejudice, in that, the successful attorney's fee was not paid.

Counsel for the appellee argued that cost(s) in the amount of $11.00 was paid to the appellant and there is no approved bill of costs from the court to determine what all the cost was, and which portion was allegedly not paid by the appellee prior to the refilling of the complaint. The payment of $11.00 as costs was not denied by the appellant.

The records of this case reveals that when the action of debt was initially filed, the venue of the complaint was laid as follows:

"In the People's Civil Law Court, Debt Court, Montserrado County, sitting in its August Term, A.D. 1980. Before His Honor Francis N. Pupo, Debt Court Judge."

The written directions was addressed to the clerk of the People's Debt Court, before His Honour Francis N. Pupo Judge of the People's Debt Court, Montserrado County, sitting in its August Term, A. D. 1980. The writ of summons was accordingly issued from the debt court by the clerk of said court. The appellant, as defendant in the court below, attacked the plaintiff's complaint as being venued, according to the answer, in the "People's Civil Law Court, Debt Court, Sixth Judicial Circuit, Montserrado County, sitting in its August Term, A. D.1980".

By reason of this venue clause of the complaint, the defendant contended that the entire complaint should be dismissed because it was not venue before any particular court. The trial judge heard the issues of law raised in the pleadings and ruled, concluding as follow:

"Therefore, and in view of the foregoing, the plaintiff's com-plaint is hereby dismissed for want of jurisdiction without prejudice with costs against the plaintiff. AND IT IS HEREBY SO ORDERED."

In view of the ruling of the trial court, the question that has arisen is whether the jurisdiction, the want of which the com-plaint of the plaintiff was dismissed, was of the subject matter, territorial or personal?

It could not be jurisdiction of the subject matter because the action of debt, as filed, was only cognizable before the Debt Court for Montserrado County. Neither could it have been territorial because the action was brought in the Debt Court for Montserrado County which issued the writ, and the parties were all residents of Montserrado County; nor could it have been personal jurisdiction because the writ of summons was issued from the Debt Court for Montserrado County by the clerk of said court, served and returned served, thereby bringing the appellant under the jurisdiction of the Debt Court for Montserrado County. Moreover, the challenge to the jurisdiction of the court could not have been on account of the venue because under the Civil Procedure Law, Rev. Code 1:1.3, there is only one form of action, as the distinction between actions at law and suits in equity and the form of those actions and suits heretofore existing are abolished. The Debt Court for Montserrado County is a civil law court having exclusive civil jurisdiction over debt actions only, the subject matter of the suit. It is not a criminal court. The inclusion in the venue clause of the words "Sixth Judicial Circuit", in our opinion, was a harmless error which could have been corrected by the court since no substantial rights of any of the parties were affected thereby. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. Civil Procedure Law, Rev. Code 1:1.5.

In the case Ernest v. McFoy as reported at 2 LLR 295, 297 (1918), Mr. Justice Johnson, speaking for this Court and quoting from Lord Justice Bowen in the case Coffer v. Smith (Chancery Reports) said:

"It is a well established principle, that the object of courts is to decide the rights of the parties, and not to punish them for mistakes in the conduct of their cases by deciding otherwise than in accordance with their rights. I know of no kind of error or mistake, which is not fraudulent or intended to overreach, a court ought not to correct if it can be done without injustice to the other party. The courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy . . . ."

The principle is in harmony with the spirit of our statutory laws and several opinions and decisions of this Court in a number of cases, that cases will not be dismissed for mere technicalities. Cases must be dismissed only on statutory grounds.

The grounds for a motion to dismiss are governed by the following statutory provisions:

"Time: Grounds. At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:

(a) That the court has no jurisdiction of the subject matter of the action;

(b) That the court has no jurisdiction of the person;

(c) That the court has no jurisdiction of a thing involved in the action;

(d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia;

(e) That the party asserting the claim has not legal capacity to sue". Civil Procedure Law, Rev. Code 1:11.2.

There is no other ground for which a case may be dismissed in the trial court. However, what the statute contemplates is the dismissal of an action—one or more claims for relief asserted against a party in a complaint or counterclaim—but not a pleading. A complaint is the initial pleading in an action. Since under our statute a demurrer to pleading is abolished, the ruling of the trial court, quoted supra, dismissing the initial complaint on account of venue, was erroneous. However, since the appellee had yielded and refiled his complaint, we only make mention of this simply in passing. However, this Court will not countenance an illegal ruling of any subordinate court, made contrary to the statute, to support a contention thereunder.

Regarding the issue of non-payment of all the costs, as contended in count one of the appellant's bill of exceptions, it is our opinion that the amount of $11.00 having been paid by the appellee and received by the appellant, the non-payment of successful counsel's fee is no legal ground for dismissal of the complaint or any action for that matter. The costs may be paid nunc pro tunc. Ernest v. McFoy, 2 LLR 295 (1918). Count one of the bill of exceptions is therefore not sustained.

In count two of its bill of exceptions, the appellant corporation raised the issue of personal jurisdiction, that the court was without jurisdiction over the person of the appellant because no writ of summons was issued and served when the complaint was refiled following the dismissal of the initial complaint without prejudice by the court below. Countering this contention, counsel for the appellee argued that it was the complaint, which is a pleading, that was dismissed and not the action of debt as filed. He argued that the action not having been dismissed, the writ issued and served, which brought the appellant under the jurisdiction of the court, remained there undisturbed, especially where the ruling dismissing the complaint did not quash the writ of summons.

In our opinion, the defense of counsel for the appellee on this point is tenable because it is not a complaint or the filing thereof that brings a defendant under the jurisdiction of the court; rather, it is the writ of summons issued and duly served that places the defendant under the jurisdiction of the court. Therefore the ruling having only dismissed the complaint without prejudice, and not the action as filed, the appellant was still under the jurisdiction of the trial court, and the issuance and service of a new writ of summons upon new written directions were unnecessary.

Further, the appellant corporation had served an answer to the new complaint and simultaneously filed a motion to dismiss which constitutes an appearance by the appellant. Under our statutes, appearance of the defendant is equivalent to personal service of summons upon him. Therefore, since the writ of summons initially issued and served was not quashed and, consequently, the action of debt was not dismissed, the court below did not uphold the issue of personal jurisdiction as asserted in the defendant's answer and motion to dismiss. Hence, we sustain its position. Civil Procedure Law, Rev. Code 1: 3.61 and 3.63.

Counsel for the appellant argued that they could not file only the motion without filing an answer within the time allowed by statute. The statute referred to and relied upon by the learned counsel reads thus: "At the time of service of his responsive pleading, a party may move for judgment dis-missing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds . . ." Civil Procedure Law, Rev. Code 1:11.2. Regrettably, the grounds of the motion made by the appellant to dismiss were not based on any of the grounds contemplated by this section of the statute. It was a demurrer to the pleading which is abolished under our statute. Nevertheless, a motion served before the service of a responsive pleading under section 11.2 referred to supra, postpones the time within which such pleading must be served. Here is the statute:

"Time for answer after denial of motion. The making of a motion for summary judgment before a responsive pleading is due under the provisions of section 9.2(3) postpones the time within which such pleading must be served after denial of the motion until five days after service of notice of the court's action." Civil Procedure Law, Rev. Code 1:11.3(10).

We therefore hold that by pleading to the merits of the complaint by the filing of an answer, the appellant corporation voluntarily brought itself under the jurisdiction of the court, even if the initial writ of summons had not been issued, and hence it cannot raise the issue of personal jurisdiction. Count two of the bill of exceptions is therefore not sustained.

The appellant raised in count three of the bill of exceptions the issue of improper

verification of the appellee's pleading, contending that Counsellor John A. Dennis, who signed the complaint, did not verify it; instead, it was Counsellor Joseph W. Andrews (another lawyer in the same firm) who verified and signed the affidavit.

Recourse to the records showed that both lawyers worked for the Morgan, Grimes, & Harmon Law Firm, which represented the appellee and had signed the complaint. The statute relating to verification reads as follows:

"Person required to verify. The verification shall be made by: (a) the party serving the pleading, or, if there are two or more parties united in interest and pleading together by at least one of them; or (b) by the attorney of such party; provided, however, that the complaint in an action to secure an injunction or in a prohibition proceeding shall in every case be verified by the party himself." Civil Procedure Law, Rev. Code 1: 9.4(2).

In our opinion, since the Morgan, Grimes & Harmon Law Firm was the counsel of record for the appellee, and Counsellor Andrews was one of the members of said law firm having knowledge and information of the allegations contained in the complaint, the appellee's complaint cannot be said to have been improperly verified. Hence, the contention contained in count three of the bill of exceptions is not sustained.

In count four of the appellant's bill of exceptions, it is therein contended, and counsel for the appellant strongly argued before us, that the trial court failed to consider the plea of "accord and satisfaction" as raised in count nine of their amended answer, to the effect that the appellee accepted the sum of $28,000.00 in full settlement of the claim. For the benefit of this opinion, we quote said count nine of the amended answer which reads, as follows:

"9. And also because defendant says that the $18,000.00 paid December 22, 1980, was not intended as part payment thereby leaving a balance or $286,500.00 as outstanding due plaintiff by defendant as has been erroneously and falsely alleged in count four of the complaint, but rather said $18,000.00 payment represented full and final settlement as is contained in the invoice mentioned supra and marked as defendant's exhibit 'C.'"

According to Black's Law Dictionary, "accord and satisfaction" is defined, as follows:
"An agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action different from, and usually less than, what might be legally enforced. When the agreement is executed, and satisfaction has been made, it is called 'accord and satisfaction '."
BLACK'S LAW DICTIONARY 33-35 (4th ed.)

And so when such agreement is performed, it is a bar to all actions upon this account.
Under our statute, 'accord and satisfaction' is an affirmative defense which is permitted and must be pleaded affirmatively. A party cannot deny and at the same time avoid without being inconsistent, which would render such pleading dismissible for inconsistency. An affirmative defense such as the plea of "accord and satisfaction", which appellant contended was pleaded in count nine of its amended answer, is a plea in confession and avoidance permissible under our statute of pleadings; it admits the truthfulness of the allegation made, by implication or expression, but sets forth facts which tend to avoid the legal consequences attendant upon bare admission.

But in this case, the appellant is saying, according to the said count nine referred to supra, that the $18,000.00 was a full and final payment of the debt as contained in the invoice of December 15, 1980, marked exhibit "C" to its answer, when indeed and in truth the amount of the said invoice is $304,500.00.

We have not found anywhere in count nine, or in any other count of the amended answer, where the plea of accord and satisfaction was raised in the manner contemplated by law. What the appellant averred in said count in response to count four of the complaint is simply a denial of the existence of a balance of $286,500.00, it having paid $18,000.00 which was, according to the appellant, in full payment of the invoice of December 15, 1980. If the invoice of December 15, 1980, was for the amount of $304,500.00, the balance would be $286,500.00.

In the case Clark v. Barbour, reported in 2 LLR 16 (1909), this Court said:
"The fundamental principle upon which pleadings are conducted is that of giving notice to parties of all matters of fact or law relied upon in the defense, hence the defendant should plead in such a manner as would present a triable issue, since the dispute between the parties should be set forth in the pleading."

Under our statute, in pleading to a preceding pleading, a party must set forth affirmatively accord and satisfaction and such other matter constituting an avoidance or affirmative defense. Civil Procedure Law, Rev. Code 1:9.8(4). "Accord and satisfaction is an affirmative defense which the defendant, in the absence of any circumstances indicating waiver of the requirement when sued upon the original obligation, must plead specifically if he wishes to avail himself of the defense. One who brings suit on a contract or other obligation is not required to anticipate a defense of accord and satisfaction and assert it when alleging his cause of action. Most modern practice codes and rules of practice specifically require that affirmative defense such as accord and satisfaction be pleaded, and declare that such defense is not available unless pleaded. In pleading a defense of accord and satisfaction the plea or

answer should set forth the essential elements of a good accord and satisfaction, but it will be construed liberally with a view of substantial justice between the parties. It should aver execution of the accord, or that there was a new promise, based on a consideration, which was accepted in satisfaction . . ." 1 AM. JUR. 2d, Accord and Satisfaction, § 53.

In the case West & Company v. Lomax, reported in 3 LLR 147, 148 (1930), this Court, speaking through Mr. Justice Grigsby, said:
"It is an indispensable duty of every court to keep before it the pleadings of litigants, as they alone will enable it to guide itself aright throughout the trial and ultimately arrive at transparent justice to all concerned."

No general denial, whether expressed or implied, shall ever be construed in an answer or a reply to be an affirmation of any fact such as time or any other affirmative matter of the intention to prove which the other party ought, in fairness, to have notice. The fundamental principle upon which all complaints, answers, or replies shall be construed shall be that of giving notice to the other party. In this case the appellant not having pleaded or raised the plea of accord and satisfaction as contemplated by law, and having put up a denial and avoidance at the same time, the trial judge could not have considered the plea during argument. Hence count four of the bill of exceptions is not sustained.

The next issue, which was raised in count five of the bill of exceptions, is that the trial judge failed to summarize in his judgment the evidence of both the appellee and the appellant as presented during the trial, and to cite law in support of said judgment. The appellant further maintained that the trial judge ignored the several legal authorities cited by appellant to support the plea of accord and satisfaction. Appellant seemingly relied on the Civil Procedure Law, Rev. Code 1: 23.3(2), which reads thus:
"Form of decision. In actions tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct entry of the appropriate judgment. If an opinion or memorandum of decision is filed it will be sufficient if the findings of fact and conclusion of law appear there-in . . . ."
For the benefit of this opinion, we quote the judge's final judgment, as follows:

"COURT'S FINAL JUDGMENT

This Honourable Court is convinced after carefully weighing the evidence adduced at the trial of this case, both oral and written, that the defendant herein is indebted to the plaintiff in the sum of $286,500.00, same being the principal amount sued for by the plaintiff.

In view of the foregoing, this Court has no alternative but to adjudge the defendant liable to

the plaintiff through this Honorable Court in the full and just sum of $286,500.00, the amount sued for, plus interest of six percent. The defendant is hereby ordered to pay the costs of these proceedings. The clerk is therefore hereby ordered to prepare the necessary bill of costs to be placed in the hands of the sheriff for service on counsels of both plaintiff and the defendant to be taxed and approved, thereafter to be presented to defendant for settlement of said bill of costs. And it is hereby so ordered.

Given under my hand and seal of this Honourable Court this 17th day of October, 1983.
/s/ Francis N. Pupo, Sr.
Judge, People's Debt Court, Mont. Co."

In the first place, we find no reason why this Court should go any further to discuss the plea of accord and satisfaction which was not pleaded at all and, even where it was pleaded, it should have been done affirmatively. Therefore, there was no need for the trial judge to have ruled thereon.

Whilst it is true that in actions tried upon facts without a jury the court shall find the facts specially and state separately its conclusion, we are of the opinion that the above quoted final judgment shows that the court was convinced of the evidence adduced at the trial upon which the conclusion of the court was based. Therefore, the failure by the trial court to summarize the evidence in the judgment does not furnish any legal ground to reverse the said judgment. According to the Civil Procedure Law, Rev. Code 1: 41.1(a): “A money judgment is an interlocutory or final judgment or any part thereof, for a sum of money or directing the payment of a sum of money.” In our opinion, the judgment quoted supra fulfills the intent of the law, and where the statute does not provide for a reversal of a judgment because the evidence is not summarized therein, this Court will not reverse a judgment founded on plain evidence. Count five of the bill of exceptions is therefore not sustained.

In the sixth count of the bill of exceptions, the appellant contends therein, and its counsel has strongly argued, that the failure of the appellee to serve an amended reply in response to the amended answer is an admission of the facts alleged in the amended answer. The amended answer, according to the record, was based on newly discovered evidence upon a motion which was granted by court. The said evidence is documentary and marked defendant's exhibit "E", which is a lease agreement between Hotel Africa and the International Automobile Company of which Samuel B. Griffiths, President of Firetex, is also President, for suite Nos. 230-231; exhibit "F" is also a lease agreement between the said Hotel Africa and the International Automobile Company for villa #42; exhibit "G" is a letter from the Head of State addressed to the President of Hotel Africa enclosing copy of a letter

to Samuel B. Griffiths, ordering him to vacate and leave the villa by 12:00 noon, on October 9, 1981; exhibit 'H' is a letter addressed to Samuel B. Griffiths from the Head of State to vacate the villa; exhibit "I" is a statement of account submitted to Samuel B. Griffiths for the amount of $8,961.28 covering electricity, rent, water and sewer, and exhibit "J" is a receipt issued by Hotel Africa to Samuel B. Griffiths when he paid the bill for $8,961.28. This evidence was the basis for the motion for newly discovered evidence and the amended answer after pleadings had rested. The appellee, as plaintiff in the court below, did not file and serve an amended reply.

For the benefit of this opinion, we quote hereunder the bill of charges submitted to the appellant by the appellee and referred to in the letter of appellant's president, Rudy Knothe, of December 17, 1980, as invoice of December 15, 1980; the bill reads as follows:

"The International Trust Company
P.O. Box 282
Broad Street
Monrovia, Liberia
15th December, 1980

STATEMENT
BILL OF CHARGES IN RESPECT OF THE INVESTIGATION SURROUNDING THE CIRCUMSTANCES OF THE FIRE INCIDENT AT THE OLD O.A.C. BUILDING, WATER STREET, MONROVIA

INVESTIGATORS	1 883 hours @ $75.00	$66,225.00
3 2588 hours @ $60.00		$155,280.00
1 791 hours @ $50.00		$39,550.00
ACCOMMODATION	88 days @ $40.00	$3,520.00
	89 days @ $60.00	$5,340.00
	89 days @ $35.00	$3,115,00
	81 days @ $35.00	$2,835.00
FOOD ALLOWANCE	88 days @ $30.00	$2,640.00
	264 days @ $25.00	$6,560.00
	80 days @ $15.00	$1,200.00
TRANSPORTATION	88 days @ $100.00	$8,800.00
	88 days @ $80.00	$7,040.00
DRIVERS	176 days @ $10.00	$1,760.00
$303,865.00		
INCIDENTALS 3.5%		10,365.00
$314,500.00		

LESS ADVANCE 10,000.00

$304,500.00"

The emphasis in this count of the bill of exceptions is on the accommodation item. But nowhere in the amended answer was this item specifically denied and challenged. The appellant corporation only contended in its answer and from its questions on the cross-examination during trial, that the appellee's report of the fire investigation was not satisfactory. If this is the defense relied upon why then was the advance of $10,000.00 made, followed by an additional payment of $18,000.00? And why was the report accepted and Firetex told to stand by in the prosecution of the criminal charges levied against certain persons involved in the fire incident, according to Mr. Knothe's letter of December 17, 1980, in evidence? The relevant portion of this letter reads as follows:

". . . and whilst we dare ready to believe that Firetex's report of November 28, 1980, had given the State addition-al evidence on which to prosecute, it is nevertheless true that Intrusco had played no role in bringing this matter to court. Neither had we given instructions to anyone including Firetex for such a cause of action. Since Firetex was, however, involved in the court case, we agreed to consider reimbursing the firm for such costs as would seem reason-able in the circumstances."

The bill herein above quoted was submitted by a fire expert based on expert knowledge and experience. Investigation into the causes and circumstances leading to a fire incident resulting in the destruction of property and damages to several persons who have insured their properties, involves special care, time, special knowledge and secrecy which in our opinion cannot be strongly emphasized. Nevertheless, the bill was itemized, submitted, and received by the appellant, but none of the items therein mentioned was challenged in the amended answer, except that the appellant denied being indebted to the appellee and contended that the debt was paid in full.

From the bill of charges referred to supra, we have found no item relating to rent upon the lease agreements proffered with the amended answer. Also, we have not found any item or items relating to electricity bill, water bill or car rent in keeping with the appellant's exhibit "I" to form the basis for the contention and the new evidence for which an amended reply would have been necessary. In our opinion, such evidence bears no relation to the claim of the appellee and hence irrelevant to claim our consideration. Count six of the bill of exceptions is therefore not sustained.

The seventh count of the bill of exceptions, which is the final contention of the appellant, challenged the judgment of the trial court, claiming that it is not supported by the evidence.

We cannot bring ourselves to agree with the appellant that there is no evidence to support the appellee's claim. We cannot discredit the undisputed written evidence and give credence and weight to the appellant's contention. There was a valid contract between the appellant, Intrusco Corporation, and the appellee, Firetex Incorporated, to investigate, for consideration, the cause and circumstances leading to the fire incident of August 23, 1980, in which several clients of Intrusco Corporation were affected. The contract was executed on part of Firetex by con-ducting the investigation and submitting its report on schedule together with its bill of charges for services rendered, all of which were accepted and not rejected by the appellant. The contract therefore became executory on part of Intrusco Corporation to pay the bill of $314,500.00 submitted by Firetex which was not challenged as to the items of expenses stated therein. In fact, Intrusco commenced payment of the bill by advancing the amount of $10,000.00 on December 4, 1980, followed by an additional payment of $18,000.00 on December 22, 1980. Under these circumstances, it is our considered opinion that the judgment of the trial court is in harmony with the evidence, and therefore count seven of the bill of exceptions is not sustained.

One issue which the appellant did not plead affirmatively in its amended answer or make part of its bill of exceptions for our consideration, but erroneously argued before us by both counsel, is the question of a release allegedly issued by the appellee to the appellant. This alleged release was written by the appellant in the description column of the check stub which the appellee signed. It reads as follows:

"Full and final settlement of Messrs. Firetex Incorporated for services rendered. This payment settles all obligations of Firetex, including invoice dated 12/15/80."

On the second sheet attached to the said check, the following was written by the appellant:

"Detach and retain this statement, the attached check is in payment of items described below. If not correct please notify us promptly. No receipt desired."

By this statement in the description column of the check stub, quoted supra, the appellant argued that it had been released by the appellee and therefore the appellee is estopped from maintaining this suit against the appellant.

We have already mentioned in this opinion that all affirmative defenses must be pleaded affirmatively and not otherwise. An answer which both denies and avoids is dismissible for inconsistency. In several counts of the amended answer, particularly in count seven, the appellant denied being indebted to the appellee in the amount of $304,500.00 as contained in

the appellee's bill of December 15, 1980, and averred that not only had the appellee failed to perform its services satisfactorily, but that the amount claimed by the appellee was never previously agreed upon.

The appellant further averred in said amended answer that it had paid to the appellee on December 22, 1980, a check of $18,000.00 and had written in the description column of the check stub the statement, quoted supra, and thereupon argued the doctrine of estoppel which was not affirmatively raised in the amended answer nor contained in the bill of exceptions. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim or counter claim, shall be asserted in the responsive pleading. Further, the issue of release or doctrine of estoppel is not contained in the bill of exceptions, and was therefore erroneously argued. This Court has held that appellant must confine himself only to the complaint set out in his bill of exceptions. Civil Procedure Law, Rev. Code 1:9.8(1)(4), and Richards v. Coleman, 6 LLR 285 (1938). However, since the check stub containing the statement is in evidence and referred to in the argument of both counsels, we will review said evidence to determine its validity and sufficiency. It should be noted that the two statements on the check stub were written by the appellant corporation and not the appellee. In accordance with the last statement on the second sheet of the check stub aforesaid, the appellee promptly notified the appellant corporation by telephone call and by a letter dated December 22, 1980, the same day, to the effect that the check in the amount of $18,000.00 was not the full and final settlement of the bill of $304,500.00 and charged that this act of the appellant, paying only $18,000.00 against the bill and stating that it was full and final settlement, was fraudulent and therefore the appellee was demanding the payment of the balance of $286,500.00. The appellee was thereupon assured that the balance would be paid upon the receipt of remittance from the appellant's reinsurers.

It is an accepted legal principle that "if the creditor seeks to avoid the contract of accord on the ground of want of consideration, fraud, or the like, and the amount paid in satisfaction is conceded to be due in any event, he is not required to tender back that amount paid before bringing his action upon the original claim, for the law will not require a person to pay over a sum which is his in any event in order that a judgment may be rendered in his favor for that very sum. All that is necessary is that the debtor should have credit for the amount paid." 1 AM. JUR. 2d., Accord and Satisfaction, § 25, p. 324. In this case, the appellee submitted a bill of charges to the appellant for services rendered in the amount of $314,500.00 less $10,000.00 paid in advance, leaving a balance of $304,500.00. When indeed the $18,000.00 paid in advance was less than the amount the appellant owed and the appellant did not state any reason why the amount constituted full and final payment of the $304,500.00, except that the appellee should notify the appellant promptly as to the correctness or incorrectness of the payment, the appellee promptly did. In our opinion, therefore, the $18,000.00 was not

a final settlement, neither will the giving of notice to the appellant of the incorrectness of the statement constitute a release and justify the invocation of the doctrine of estoppel. Under the circumstances, the appellant's argument on the point of release and estoppel is not conceded.

In view of all that we have narrated herein above, and the legal authorities cited, we are of the opinion that the judgment of the court below should not be disturbed. The judgment should therefore be, and the same is hereby, confirmed and affirmed, with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.