CLARATOWN ENGINEERS, INC., et al., Appellants, *v.* ARTHUR TUCKER, Appellee.

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

Argued October 25, 1974. Decided November 15, 1974.

1. A trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only without ruling on all the issues of law raised by the pleadings.

In an action for personal injuries the pleadings progressed to the reply. The trial judge ruled that the answer was inconsistent and evasive, but he did not rule on all the issues of law and merely rested his opinion on one point. The Court, Mr. Justice Horace dissenting, found this to be a basic violation of the practice requiring all issues of law to be ruled on before ordering the case to trial. Being held to a bare denial, as the defendants were, constituted error on the part of the trial court. The jury trial which awarded a sum of money to plaintiff led to a judgment, which was reversed for the reason aforesaid and the case was remanded to the lower court to be dealt with in accordance with the opinion of the majority. The judgment was *reversed* and the case *remanded.*

Toye C. Barnard and *Moses K. Yangbe* for appellants. *M. Fahnbulleh Jones* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

This is a case instituted by appellee against appellant for injuries done to his person. Pleadings were conducted to the reply, in which several legal issues were

raised by both parties. During the disposition of the issues of law, Judge E. S. Koroma restated the issues and dismissed the entire answer on the ground that when an answer both denies the truthfulness of the complaint and sets up the plea of justification, it is evasive, contradictory, and, therefore, improper. Defendants' answer was, therefore, dismissed on the ground of inconsistency and evasiveness, thus ruling them to a bare denial of the facts contained in the complaint and the reply. A trial was had by jury, resulting in a verdict in favor of appellee, awarding him the amount of $8,101.00. Judgment was rendered thereon, confirming the verdict of the jury. Exceptions were noted and an appeal announced to this forum for review, based upon a bill of exceptions containing twelve counts.

When the case was called for argument before us, appellants' counsel in arguing count one of his bill of exceptions contended that the trial judge had committed reversible error when he failed to pass upon all the issues of law raised in the answer but proceeded casually to refer to them and thus dismissed the answer in its entirety with the exception of count one.

Because of the importance we attach to the issue raised in count one of the bill of exceptions, and considering that the logical order of procedure is to first determine the issues of law, which is imperative and mandatory on the part of trial judges before trial of the facts, we asked appellants' counsel to restate the issues of law which appear in his answer and the bill of exceptions which were never passed upon by the trial judge. They were many and varied.

These were issues raised in the answer and responsively replied to by plaintiff's counsel in fourteen counts. It was, therefore, incumbent upon the trial judge to comment and pass upon them. Further, it was made his sole responsibility even more to pass upon the issues because the defendant raised the contention of inconsistency in

the complaint. Yet Judge E. S. Koroma failed to perform a legal duty. To the contrary, he dismissed the answer as inconsistent and evasive without specifically stating what counts in the reply were sustained against which counts in the answer. We cannot understand upon what principle of law he relied and ruled as he did. Moreover, there is no showing that the issues in the pleadings are absolutely incompatible in point of fact. If the judge was of the opinion that the answer had alleged a great variety of facts and collateral facts which confused the pleading, and did not aid in the formation of the issues, he should have so stated. It was within his legal competence to have commented on each issue raised in the pleadings and thereafter, if warranted, dismissed the answer.

> "One criterion for determining inconsistency of defenses, at least under the common law system, relates to the different modes of trial of the issues raised. If different pleas or defenses in an action raise issues triable by different methods or by different counts, they are regarded as inconsistent. Again, defenses may be said to be inconsistent when one in point of fact contradicts the other or where proof of the one would necessarily disprove the other, thus making them mutually destructive. On the other hand, defenses are not inconsistent where they may all be true, and they may be pleaded together where they are not absolutely incompatible in point of fact. If the inconsistency arises by implication of law, it is not objectionable. Defenses are not necessarily repugnant because one may be more perfect than the other and may require a different class or degree of proof, as where, in an action for damages, one defense contests all liability whatever, and another seeks to establish a limited liability. If the statutory allowance of several defenses were to be limited by the strict logic of the old special pleas in bar, all special defenses would be cut off when

the cause of action was denied, for such special defenses are supposed to confess and avoid, although in fact they may not confess at all. Such an interpretation of the statute should not be adopted if there is any other that will give a party his clear right to several defenses.

"The rules stated in the foregoing sections as to the joinder of pleas and defenses have received various applications. They have been construed as permitting the joinder of general and special pleas, or of several issues.

"The plea of the general issue under comomn law practice, or a general or special denial under modern code practice may also be coupled with other defenses, as with a special answer, and cross bill.

A denial of the allegations of the complaint and an allegation of new matter as a defense thereto in the nature of confession and avoidance are not necessarily so inconsistent as not to be pleadable together. The defendant may plead by way of denial and also plead the statute of limitations, prescription, payment of damages, fraud, and other such matters. In one plea, the defendant might plead fraud in bar of the action, and in another plea he could ratify the sale and claim damages for breach of the agreement or a deceit practiced upon him." 41 AM. JUR., *Pleading,* §§ 163, 164.

Appellee's counsel, while arguing the failure of the trial judge to pass upon all the issues of law, stated that contributory negligence is a plea in bar of other defenses that are not consistent with such plea, for it admits of the correctness of all issues raised in the complaint. That the trial judge did not have to rule, count by count, the issues raised in the answer when, in the first instance, the answer was evasive and inconsistent.

In support of the position taken by him, he has relied on *Clarke* v. *Snyder,* 9 LLR 111, 115 (1945).

"An answer of a defendant, however well and ably it is framed and presented, must crumble before a reply that effectively attacks a legal defect therein found, and so also must a complaint fall before an answer that successfully attacks its legal sufficiency."

But the learned counsel has studiously avoided referring to the other portion of the paragraph in which the above quotation appears.

"With this in view it is always necessary that a judge, in passing upon pleadings in a case, make his ruling so comprehensive that it embraces every material issue involved."

Furthermore, this Court held in *Zakaria Bros.* v. *Pierson,* 19 LLR 170 (1969), that in ruling upon the pleadings in an action, the trial court must make its ruling so comprehensive as to embrace all the material issues raised by the pleadings, and where this has not been done, the case will be remanded for proper disposition in the lower court.

To the same effect see also *Wright* v. *Richards,* 12 LLR 423 (1957); *Johnson* v. *Dorsla,* 13 LLR 378 (1959); *Thomas* v. *Dayrell,* 15 LLR 304 (1963).

Mr. Justice Shannon once commented on this point.

". . . The trial judge overlooked all other pleadings subsequent to the answer of defendant, which subsequent pleadings appear to have presented worthy and interesting issues necessary to be passed upon; and the failure of the judge to have done so was error."

On the point of a trial judge approving a count in the bill of exceptions without any observation being made thereon, the learned justice had a comment, as well.

"The approval of this count by the trial judge without any protest or any observation whatever leads us to conclude that there was an omission to pass fully upon all of the pleadings in the case as contended. And this conclusion would further be supported by

> the ruling of said trial judge wherein is shown no effort on his part to pass upon any of the pleadings subsequent to the answer of the defendant."

And so with the case at bar. The trial judge duly approved the bill of exceptions without any observation, thereby admitting his failure to pass upon all the issues of law in the pleadings.

Nevertheless, appellee in attempting to support his point of view, argued the case of *Caulcrick* v. *Lewis,* decided during the March 1973 Term of this Court.

> "The first issue raised is whether the trial judge erred in dismissing the appellant's answer for being inconsistent and evasive in that it denied the truthfulness of the complaint, and yet raised the pleas of the statute of limitations, fraud, estoppel and illegitimacy of the appellees. These are all affirmative defenses constituting an avoidance which are required to be specially pleaded under our Civil Procedure Law."

Reading the two opinions referred to by appellee's counsel and comparing them, we are of the opinion that the circumstances in those cases are quite dissimilar in nature, incompatible with the issues raised in the answer before us. They should not be confused. The opinions are not analogous and therefore inapplicable to the given case; for the issues in the *Caulcrick* case were not based on the trial judge's failure to pass upon all the issues of law. It has nothing to do, as herein, with the judge's failure to pass upon all the issues of law in the case. We must assume that he did pass upon the issues of law and commented on each count in the pleading, thereafter concluding his ruling by a dismissal of the answer on the ground of inconsistency and evasiveness.

To the same effect, see also *Shaheen* v. *CFAO,* 15 LLR 278 (1958), and *Butchers' Assoc. of Monrovia* v. *Turay,* 15 LLR 365 (1959).

As earlier mentioned by the authority therefor cited, we must remind our subordinate judges that this Court

has consistently held that when a defendant denies both the law and the facts the questions of law shall first be disposed of.

A cursory examination of the lower court's ruling clearly shows that all issues of law were not treated and, therefore, the court was in error.

Our distinguished colleague, Mr. Justice Horace has disagreed with us in the findings and the conclusion reached in this matter, but, lest we forget, according to authority, courts must enforce legal obligations and redress injuries to legal rights. Their province is to try issues framed by the pleadings according to rules of procedure. In modern jurisprudence, a court remains passive until issues are framed and its judgment must respond to such issues. A judgment is the sentence of the law upon the record. It is the application of the law to the fact and pleadings.

A court must determine all questions properly presented. It cannot refuse to exercise a power with which, by the Constitution and the laws, it has been clothed: In exercising this power it is the duty of the court to facilitate and not to retard the determination of litigated causes.

This Court shall continue to stand by its precedents and not disturb settled principles or points of law, its object being the salutary effect of uniformity, certainty, and stability in the law.

This principle is grounded on public policy and, as such, is entitled to great weight and must be adhered to, unless the reasons therefor have ceased to exist, and they are clearly erroneous, or are manifestly wrong and mischievous, or unless more harm than good will result from doing so, which is not the instant case. As a matter of fact, a court cannot disregard a former holding conformable to legal principles and upheld by authority.

As interesting as we may consider the issues in this case, some involving issues which this Court would like very much to settle once and for all, we find ourselves

unable to do so, because the trial judge has erred in refusing to pass upon all the issues of law raised in the pleadings as is required by our law. In view of the foregoing, we are compelled to reverse the judgment rendered in the case and to remand it with instructions to the court below to resume jurisdiction immediately and dispose of all the issues of law raised in the pleadings of both parties and thereafter proceed with the case as the law directs. Count one of the bill of exceptions is, therefore, sustained.

Reversed and remanded.

MR. JUSTICE HORACE dissenting.

My disagreement with my colleagues in this case is not on the point that all issues of law must first be disposed of before a case be heard on the facts, for that is a rule clearly set forth in a long line of opinions of this Court. My disagreement with them is on what constitutes disposition of the issues of law or even all issues of law.

In the case before us, appellee instituted an action of damages for injuries sustained by him due to being hit by a vehicle owned by Claratown Engineers, Inc., and insured by INTRUSCO. The action was instituted against both the owner of the vehicle and the insurer.

In their answer to the complaint defendants raised several defenses. The first issue was that the writ of summons was defective because it directed that Emmett Harmon and James G. Gibbons be summoned as individuals and not in their capacities as President of the corporation and Vice President of INTRUSCO, respectively, although the caption of the case clearly showed that they were being sued in their official capacities. The next point raised was that of contributory negligence on the part of appellee, because he had not taken the necessary precautions he should have taken when crossing the road, appellant thereby conceding the act but

avoiding liability. Appellants then asserted other defenses: (1) challenging the ruling of the Traffic Court which had ruled Claratown Engineers, Inc.'s driver guilty of reckless driving, which ruling plaintiff had made profert of with his complaint; (2) challenging the traffic charge sheet whereon the driver of the vehicle that hit plaintiff had been charged by the Traffic Police; (3) challenging the findings of the Traffic Court because of a lack of a fair and impartial trial; (4) challenging plaintiff's claim for missing articles as being speculative and uncertain; (5) disclaiming responsibility for the payment of plaintiff's hospital bills, because plaintiff's injuries were due to the risk he assumed and his own negligence; (6) claiming that plaintiff's statement regarding his salary was contradictory; (7) disclaiming any liability for what plaintiff claimed as a loss of income of $2,000.00 based on his services to be rendered to M. Fahnbulleh Jones in Cape Mount, supervising construction of his house, the injuries preventing compliance; (8) asserting misjoinder of parties defendant, because the driver of the vehicle had no connection with co-defendant INTRUSCO; (9) declaring plaintiff's complaint unmeritorious because his claim for damages was "arbitrary, valueless and neither just, logical or sensible," and merely speculative.

Plaintiff's reply traversed the answer, the last count herein set forth.

> "Plaintiff says that the answer of defendants should be dismissed and they be made to rest on a bare denial of the complaint because of the violation of the law controlling pleadings and practice as legally accepted in this jurisdiction, in that defendants having pleaded 'contributory negligence,' which is a plea in confession and avoidance and, therefore, an affirmative plea, they should not have traversed any of the issues as to hospital bills, salary income, parol contract with Mr. Jones, specification and value of missing articles,

traffic court judgment and a charge sheet, as they have done. The law of pleadings states that where a party relies on a plea of confession and avoidance, or any affirmative plea, he must first of all admit and then give reasons, but to plead hypothetically is a bad plea which does not give color and will render said pleading dismissible. The answer of defendants is contradictory, inconsistent and evasive . . . for while they admit colliding with plaintiff they raised issues inconsistent with their plea of contributory negligence."

The trial judge upheld plaintiff's contention that defendants' answer was inconsistent and evasive and, therefore, ruled them to a bare denial of the facts contained in the complaint and reply. I do not think it necessary to quote the judge's ruling.

A trial was properly held, a verdict returned in favor of the plaintiff, and judgment rendered. One peculiar aspect of the trial was that although the defendants were placed on a bare denial they were permitted to produce affirmative evidence during the trial. They had the driver of the vehicle that hit the plaintiff and the person who was riding with the driver take the stand and testify to what they considered the negligence of the plaintiff by failing to take due precaution at the time he was hit. Since the case has not been determined on its merits, I only mention this in passing.

Appellants, defendants in the court below, perfected an appeal to this Court. The case was heard and my distinguished colleagues, as expressed in the majority opinion, held that the trial judge erred for passing on the issues of law as he did. Their contention is that the law requires a judge to pass on all the issues of law before trial of the facts and that the trial judge in this case failed to do so when he upheld appellee's contention that appellants, having pleaded contributory negligence, could not assert the other pleas in their answer because they

were inconsistent with their plea of contributory negligence. My colleagues have not said whether the trial judge was right or wrong in his ruling on the point of the answer being inconsistent and evasive. They have said, because he did not pass on all the issues of law, the case should be remanded. With this view I disagree.

In their argument before us, appellants' counsel cited several opinions of this Court where it was clearly stated that a judge must pass on all issues of law framed by the pleadings of the parties before a trial of the facts by a jury can be held. Counsel also cited the common law in an attempt to show that the plea of contributory negligence is not necessarily inconsistent with other defenses. Counsel further cited our Civil Procedure Law, 1:9.8(4), of the Liberian Code of Laws Revised.

I have carefully analyzed not only the cases cited in the Supreme Court reports but also other cases on the point, which is that a judge should pass on all the issues of law before trial of the facts, and I must say that in none of the cases have I been able to find a case remanded or dismissed because a trial judge ruled an answer of a defendant contradictory, evasive, or inconsistent. In all of the cases I have read, the cases were remanded because the judge either refused or neglected to pass on the issues of law before trial of the facts. *Wolo* v. *Wolo,* 8 LLR 36 (1942); *Horace* v. *Harris,* 8 LLR 73 (1942); *Johns* v. *Witherspoon,* 8 LLR 462 (1944); *Reeves* v. *Knowlden,* 11 LLR 199 (1952); *Johns* v. *Johns,* 11 LLR 312 (1952); *Geeby* v. *Geeby,* 12 LLR 20 (1954); *Wright* v. *Richards,* 12 LLR 423 (1957); *Johnson* v. *Dorsla,* 13 LLR 378 (1959).

As stated before, in none of these and other reported cases on this point have I been able to find where this Court has remanded a case because the trial judge had ruled out an answer for being contradictory, inconsistent, and/or evasive without passing on other issues of law framed by the pleadings.

To my mind it would be a useless exercise for a trial judge to traverse all the issues of law and then finally rule out a pleading on one plea either in bar or in avoidance. There is precedent for my position in this respect.

In *Kparnee* v. *Tano-Freeman,* 18 LLR 159, 166 (1967), this Court held, after quoting a portion of the ruling of the trial judge presiding over the Civil Law Court for the Sixth Judicial Circuit that "moreover, a plea in bar when raised supersedes all other issues of law raised in the pleadings and must be given priority in all cases."

In order to understand more fully this Court's position as stated above, I deem it necessary to quote the Circuit Court ruling of Judge Azango, now Mr. Justice Azango of this Court, at page 160 of the case cited.

> "Again, our Supreme Court has said, in *Thomas* v. *Dennis,* 5 LLR 92, that hence, whenever a pleading is amended, whether it be that of plaintiff or defendant, or a case having been dismissed, plaintiff desires to refile, the cost must *first* be paid previous to the amendment or refiling, as the case may be. Also in *Davies* v. *Yancy,* et al., 10 LLR 89, the Court said that, under our statutes, a plaintiff may amend his complaint once, or withdraw it and file a new one; but if he withdraws his complaint he must pay the costs of the action up to the time of such withdrawal.
>
> *'Though there are many other interesting legal issues which we would like to pass upon, because of the violation of the statutes relating to amendment, withdrawal, and refiling of cases, which the plaintiff in this case did not conform to this case is, therefore, dismissed with costs against the plaintiff, who is forever barred from reinstituting the within case. And it is so ordered.'* [Emphasis supplied.]"

Our law reports, beginning with *Ditchfield* v. *Dossen,* 1 LLR 492 (1907), to the last case on the subject, *Caulcrick* v. *Lewis,* decided April 26, 1973, have consistently

held that an answer which both denies and avoids is dismissible and should be dismissed. *Clarke* v. *Snyder,* 9 LLR 111 (1945).

In the last case cited, it was shown that the trial court had ignored all other pleadings of the plaintiff subsequent to the answer and had thereupon proceeded to dismiss the case. It was held that there were other salient points in the pleadings subsequent to the answer which should have been passed upon; the case was remanded because of this.

It is true that modern practice has become more lax in the matter of the defenses which can be pleaded in an answer. However, the fundamental principles of the effect of pleas in bar and pleas in avoidance have not been abrogated. Besides, pleadings are now mostly controlled by statutory provisions. In any case, pleas that deny and then seek to justify are frowned upon and affirmative pleas in most jurisdictions must be specially pleaded.

> "Upon the theory that contributory negligence implies or admits negligence on the part of the defendant, it is said in some cases to be a plea in confession and avoidance. Some authorities have qualified this view to some extent and hold that a plea of contributory negligence when properly pleaded in the alternative with a general denial, does not admit negligence. What the defendant says by such a plea, coupled with a general denial, is that he is not guilty of the negligence charged, but that, if he is, the plaintiff, by his or her own negligence, contributed to the resulting injury, and for that reason cannot recover.
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> "The authorities are in conflict as to whether contributory negligence must be pleaded in order to be available as a defense. Many courts assert that the defense of contributory negligence cannot be raised under a general denial, and that a plea of contributory negligence is an affirmative defense and must be spe-

cially pleaded in order to render evidence admissible or authorize the submission of the question to the jury. The matter may be affected by statute. According to the practice of some courts, if the facts are consistent with care on the plaintiff's part, it is essential that the plea should color the equivocal facts by supplying the conclusion that the plaintiff's conduct was negligent. It is the prevailing rule that the defense of imputed contributory negligence must be raised by a special plea. Moreover, many cases have stated generally that the defense of assumption of risk involves an affirmative issue which the defendant must raise by a special plea. The Federal Rules of Civil Procedure require that contributory negligence and assumption of risk be set forth affirmatively.

"A plea in bar sets up matter wholly defeating the cause of action. Such pleas are sometimes called pleas to the action or issuable defenses. They are addressed to the merits of the claim, and, in order to constitute a good plea, the matter pleaded must, if true, afford a full and complete answer to the action and bar a recovery on the claim asserted in the declaration, complaint, or petition. A plea in bar is bad where it admits plaintiff's right to recover in part." 61 AM. JUR., 2d, *Pleading,* § 158.

"While it has been held that pleas in bar include pleas by way of traverse or denial and pleas by way of confession and avoidance, it has also been held that a plea in bar is a special plea whose office is to confess the right to sue, avoiding that right by other matter, and giving plaintiff an acknowledgment of his right independent of the matter alleged by the plea." 71 C.J.S., *Pleading,* § 140.

Appellants argue that according to our Civil Procedure Law they could set up several affirmative defenses without being inconsistent, as they had done when they pleaded both "contributory negligence" and "assumption

of risk," and the trial judge's failure to pass on the "assumption of risk" phase of their answer was erroneous. I do not agree. Let us examine the statute.

> "Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, injury by a fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense." Rev. Code 1:9.8(4).

I feel that all that paragraph of the section quoted does is to enumerate the several affirmative defenses one may plead. Obviously, some of the affirmative defenses listed would be inconsistent with others also listed in the same section. But more important to me is that I feel that the trial court could rule out the answer if any of the affirmative defenses pleaded were inconsistent with the other defenses pleaded.

Since the case is being remanded, the question could be advanced, why dissent? I feel that the case should not have been remanded but rather we should have decided it on its merits. I also feel that when the trial judge ruled as he did he did dispose of the issues of law. I am more convinced that my position in this regard is correct because it has been settled in this jurisdiction that judges, in passing on issues of law, should do so in reverse order. That being so, why should a judge in ruling on pleadings deal with all the issues of law when a single issue in the last pleading is sufficient to overturn the entire case? Or, as in this case, place a defendant on bare denial? Besides, since we have no precedent for the majority position, I feel strongly that it would have been a useless exercise to deal with the other issues framed by the pleadings.

Since the case is being remanded and might come before us again, I refrain at this time from stating what I

feel the position of this Court should have been in the final determination of the case. However, for the reasons above expressed, I have withheld my signature from the judgment remanding this case for the trial court to pass on all the issues of law presented by the pleadings and, therefore, have prepared and filed my dissent to the decision of the majority of my brethren of the bench.