RIAD MOURAD, Appellant, *v.* OOST AFRIKAANSCHE COMPAGNIE (OAC), Appellee.

APPEAL FROM THE DEBT COURT, MONTSERRADO COUNTY.

Argued October 21, 1974. Decided November 15, 1974.

1. A party who would dismiss one or more claims against him must so move at the time of service of his responsive pleading and not thereafter.
2. Whenever a party has several claims or defenses which may appropriately be made or raised in the same action, he may state them all, but assert them in separate counts or paragraphs.
3. A corporation, domestic or foreign, has the capacity to sue or be sued, subject to the provisions of the Associations Law.
4. A civil action may be brought in the county or district where either of the parties resides.
5. The Supreme Court deems it improper for a trial judge to approve a bill of exceptions presented to him, by merely stating: "Approved so far as is supported by the records."
6. The Supreme Court will not give consideration to any count in a bill of exceptions when the ground therefor is not distinctly set forth.

The appellant was sued in debt by attachment, brought by the appellee in the Debt Court, Montserrado County. After some confusion over the release of the defendant under bond in another county, trial was conducted in Montserrado County by the judge without a jury. On February 14, 1974, he rendered judgment against defendant, with interest on the principal sum found owing. A motion to dismiss the complaint had been made by defendant before trial and after service of plaintiff's reply, but it was denied by the court. An appeal was taken from the judgment.

The Supreme Court in its opinion dealt primarily with the right of the trial court to require a bond before his release after arrest, when a colleague had approved a prior bond in another county, and with the failure of the defendant to move properly to dismiss the action at the time of his responsive pleading, in this case the answer.

The Court found the facts sufficient to support the judgment rendered. The judgment was *affirmed*.

Clarence O. Tunning for appellant. *Samuel E. H. Pelham* for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The record certified to us reveals that appellee on November 13, 1973, instituted an action of debt by attachment in the Debt Court of Montserrado County against appellant, a Lebanese trader doing mercantile business in the City of Greenville, Sinoe County, to recover from the latter the amount of $8,338.08.

Appellant having been brought under the jurisdiction of the court by service of process, pleadings progressed to plaintiff's reply. A motion to discharge from attachment, a motion to dismiss, and a motion for a change of venue were all filed before the court of origin, heard and denied. Thereafter issues of law were disposed of and the case ruled to trial on its merits. This having been done, final judgment was rendered against appellant on February 14, 1973, to which exceptions were noted and an appeal announced to this tribunal for review upon a bill of exceptions containing twelve counts.

Count one alleged that the trial judge had authorized a colleague in Sinoe County to determine sufficiency of bond, which Judge Clarke did, approving the bond later allegedly disavowed by the trial judge, who ordered defendant arrested again, to be kept in custody until a sufficient bond was posted. This count was reinforced during argument, appellant contending that Judge Harris had reversed himself by denying the authority he had first given to Judge Clarke.

A portion of the letter from Judge Harris, the Debt

Court judge for Montserrado County, to Judge Clarke is set forth below.

"Please have your Sheriff serve these precepts against payment of his fees, and cause him to make returns to my court.

"Attorney Roosevelt S. T. Bortue of the Mississippi Law and Accounting Firm, counsel for plaintiff in the respective causes will present the documents to you to be served by your Sheriff. He is instructed to return with the document to us."

We are unable to find any indication, implication, inference or otherwise, wherein Judge Harris did ever empower Judge Clarke to perform his duty. We, therefore, hold that Judge Harris did not err when he disallowed or cancelled the attachment bond approved by Judge Clarke, Judge of the Debt Court for Sinoe County, who had neither acquired jurisdiction over the subject matter of the action nor the person of the defendant.

Count one of the bill of exceptions is not, therefore, sustained.

Count two excepts to denial on December 19, 1973, of a motion to dismiss the complaint, apparently brought on subsequent to the filing of a reply to the answer.

This count of the bill of exceptions cannot be sustained under our Civil Procedure Law.

"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 not jurisdiction of the subject matter of the action;

"(b) That the court has not jurisdiction of the person;

"(c) That the court has not 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." Rev. Code 1:11.2(1).

We take the view that appellant should have followed these legal requirements and at the time of the filing of his answer moved to dismiss, not in a subsequent motion after the filing of a reply to his answer.

Count three objected to the court's ruling on counts one and two of the answer in the action on January 28, 1974. Count one alleged lack of capacity to bring suit because of limited power of attorney, and denial that any money was owed.

This Court has held that "Whenever a party has several claims or several defenses which may appropriately be made or raised in the same action, he may state them all, listing them in separate counts or paragraphs." *Tunning* v. *Green,* 15 LLR 137, 140 (1963).

Defendant having averred that the General Manager of OAC lacked the capacity to sue, and in the meantime contending that the amount sued for had been paid, it is our holding that these are two separate and distinct defenses which should not have been pleaded in one and the same paragraph.

As to count two of the answer and to the inability of the General Manager to sue, it is provided by our Civil Procedure Law that "Any corporation, domestic or foreign, has the capacity to sue or be sued in Liberian Courts, subject, however, to the provisions of the Associations Law." Rev. Code 1:5.17.

The trial judge, therefore, did not err when he ruled out counts one and two of defendant's answer and sustained count two of the reply which held that OAC is a corporation which acts by and through its agents.

In count four of the bill of exceptions, appellant excepted to denial of a motion for a change of venue.

Appellant's counsel requested the court below to grant

a change of venue to the Third Judicial Circuit Court in Sinoe County, because he resided there as did his material witnesses and he is also engaged in mercantile business in the City of Greenville, Sinoe County; and counsel feared an impartial trial would not be accorded to his client in Montserrado County.

Appellee's counsel argued that a civil action may be brought in the county or district where either of the parties resides. In the instant case the plaintiff resides in Montserrado County and the Debt Court for Montserrado County has assumed jurisdiction over the person and of the subject matter.

We are in agreement with the trial judge of the Debt Court of Montserrado County, who sits alone and adjudicates matters that are within his competence. Count four, therefore, is not sustained.

Counts five through ten of the bill of exceptions set forth objections to various rulings on admissibility of evidence, both oral and documentary. The trial judge is also charged with bias in count ten.

We have observed that the above counts of the bill of exceptions are loosely and vaguely stated. We wish to reemphasize that there is a tendency on the part of counsel and of trial judges to shift responsibility to this Court. Hence we must again point out, not only is counsel required to set forth distinctly in the bill of exceptions the ground upon which an exception is taken, but the trial judge may not properly approve a bill of exceptions by stating: "Approved so far as is supported by the records." It is improper to place upon this Court the burden of searching the records in order to discover the exceptions taken and the grounds therefor. This Court will not consider any exception in a bill of exceptions when the ground is not distinctly set forth. A bill of exceptions must state distinctly the ground upon which the exception is taken. *Sampson* v. *Republic,* 11 LLR 135 (1952). In many opinions of this Court, it has held that the statute

governing this Country, and the manner by which cases are to come here, is plain, and those who fail to meet its requirements cannot expect to receive its benefits. When a bill of exceptions fails to indicate the grounds of exceptions to rulings by the trial court upon admissibility of testimony, an appellate court may decline to review such rulings. *Bokai* v. *Republic,* 13 LLR 400 (1959).

In view of the foregoing circumstances, we find it difficult to review the objections overruled or sustained by the trial judge, since appellant's counsel has failed to distinctly bring them to our attention. In his bill of exceptions counts 5, 7, 8, 9, and 10 are, therefore, not sustained.

In count 6 of appellant's bill of exceptions he contended that "The trial judge overruled his objections to the admission into evidence of plaintiff's documents marked by Court P/1 and P/2, being the statement of account and the power of attorney." It is our view that the trial judge did not err in admitting into evidence these documents, for this Court has held that all documentary evidence is material to the issues of fact raised in the pleadings, and which is received and marked by the court should be presented to the jury. *Walker* v. *Morris,* 15 LLR 424 (1963). In the instant case, the Debt Court judge was both judge and jury, since neither party requested a jury trial. Count six of the bill of exceptions is, therefore, not sustained.

Having closely examined the final judgment of the Debt Court, we found ourselves in complete agreement with his conclusion.

When a trial is conducted properly and the evidence is clear and cogent, a judgment will not be disturbed.

In view of the foregoing, the judgment of the Debt Court for Montserrado County adjudging appellant liable to plaintiff in the amount of $8,338.08, with interest at the rate of 6% per annum, should be and the same is hereby affirmed.

The Clerk of this Court is hereby ordered to send a

mandate to the court below informing it of this judgment with instructions that the judge immediately resume jurisdiction and enforce the judgment. Costs are ruled against appellant. It is so ordered.

Affirmed.