UNIVERSAL PRESS CORPORATION, represented by and thru its General Manager, HASSEN M. FAHS, Petitioner/Appellee, *v.* HIS HONOUR WILLIAM H. KENNEDY, Judge, Debt Court, and SCAI SCAMBI et al., Respondents/Appellants.

PETITION FOR RE-ARGUMENT

Heard: March 25 & 29, 1982. Decided: July 8, 1982.

1. In a petition for re-argument, the Court is limited to only points of law or facts which were specifically raised and argued, but through some palpable mistakes, were inadvertently overlooked by the Court.
2. The purpose for re-argument is not to question the soundness or the wisdom of the opinion and judgement in a case, but only to ascertain as to whether certain material issues of law or facts that were expressly raised and argued, but palpably and inadvertently overlooked by the court.
3. One of the concurrent justices in the opinion of the Court must order the filing of the petition for re-argument.
4. A court or justice is bound to take judicial notice of its own records whether or not its attention has been called thereto.

During the October Term of the Supreme Court, on December 21st 1979, the Supreme Court handed down an opinion in a prohibition proceeding wherein the Court granted the petitioner's petition for a writ of prohibition. Respondents in the said prohibition proceeding petitioned the Supreme Court for re-argument contending that the Court inadvertently overlooked an important issue of mixed law and fact, in that the agreement between the parties was for the payment for the goods sold in US dollars, and that the bank draft bought by appellants was issued on an Italian bank, which meant that this would result to payment in Italian liras, contrary to the intent and spirit of the agreement. The Supreme Court held that the points of law or facts raised and argued in the prohibition proceedings were fully traversed and decided upon by the Court, and that the contention raised in the petition for re-argument by the petitioner was never raised in the

petition for prohibition and argued before the Court. The petition for re-argument was therefore *denied.*

Julius Adighibe for appeared for appellee. *Christian Maxwell* appeared for appellant.

MR. JUSTICE YANGBE, delivered the opinion of the Court.

This is a petition for a re-argument, growing out of a petition for prohibition that was decided by this Court on the 21st of December 1979.

The relevant portion of the petition for re-argument reads, thus:

> "That the Court in deciding the case inadvertently overlooked an important issue of mixed law and fact; that the agreement between the parties was for payment for the goods sold by the appellees to the appellants to be made in US dollars as is contained in the respondents Scai Scambi's complaint filed on January 31, 1978; and that the subsequent bank draft bought by appellants from Tradevco Bank and issued on another Italian bank in Milano, Italy, would result in payment of the draft in Italian liras, contrary to the intent and spirit of the agreement of sale between the parties."

The documents relied upon by petitioner in count two of the petition for re-argument quoted *supra*, are not part of the amended petition, or the amended returns in the prohibition; nor is mention made of it in any of the pleadings of the prohibition. It is therefore obvious that the points of contention stated in count two of the petition, as a basis for the re-argument, were never raised before. The question that has presented itself is, logically speaking, whether or not a point can be re-argued when it was never before raised and argued? The answer is certainly no.

In a petition for re-argument, the Court is limited to only points of law or facts which were specifically raised (not by implication) and argued; but though some palpable mistakes were inadvertently overlooked by the Court. *See* Revised Rules of the Supreme Court, Rule IX. The appellate court shall

examine a case upon the record only and shall hear no additional evidence. Civil Procedure Law, Rev. Code 1:51.15.2.

Consequently, the references made by petitioner to the sales agreement and to the complaint filed on January 31, 1978, have no legal significance in this case because of their non-availability in the records to support the averment and our review.

In count four of the amended returns to the petition for prohibition, respondents stated that:

> "Respondents deny that the issue in dispute is that the check should be re-issued in the name of the sheriff of the debt court as petitioner has conveniently stated, rather the issue is, as was stated on the records of the trial court on March 21, 1978, that: 'the defendant in an attempt to make part payment of the judgment debt, issued a check payable in Milan, Italy, when the case was tried in Liberia. And the party plaintiff is represented by an attorney-in-fact, in the person of Counsellor Christian D. Maxwell.'
>
> Respondents, plaintiffs in the lower court, then suggested that all payments be made in the name of and to the sheriff of the debt court, the proper ministerial officer of the said court who will disburse the same. The court accordingly so ordered."

Here is what the court said in deciding this point raised and argued:

> "As to the issue of whether the bank draft was legally sufficient to satisfy the judgment, we hold that it was because a bank draft is a negotiable instrument, and in view of the international character of the law merchant, it is settled that if the instrument is for the payment of money only, it is not material whether it is the money of one country or another country.
>
> We also find the following authority on the issue: "A bill on note payable in specific foreign money is negotiable, even though the instrument is payable in one country in the money of another country. An instrument is payable in foreign currency, may be payable in such currency, or in dollars measured by the foreign country". 11 AM. JUR. 2d., *Bill & Notes,* § 154.

However, where the draft is presented and is not accepted or is dishonored by the drawee and the judgment remains unsatisfied, the maker of the instrument is still liable to make payment in satisfaction of the judgment in addition to whatever damages the payee may have incurred as a result of the non-acceptance or non-payment of the instrument; and in this case, the debtor being a Liberian corporation, the lower court did have jurisdiction to enforce its judgment. In the instant case, the draft was never presented for payment, and therefore, the question of non-satisfaction of the judgment in a foreign currency is not in issue.

In view of the foregoing, we find nothing wrong with or improper about satisfying the judgment by a bank draft drawn on an Italian creditor corporation domiciled in Italy. Similarly, if the amount had been paid in cash that too would have been in order. The appellant would have raised suspicions if both parties were domiciled in Liberia, and the judgment debtor had attempted to satisfy the judgment in a currency other than that of Liberia.

There is no doubt that a court has authority to issue such orders as may be necessary to effectuate its judgment, but we are not convinced that the circumstances in this case warrant the orders given by the lower court. The ruling of the Chambers Justice is, therefore reversed, the peremptory writ of prohibition is granted, and the Clerk of this Court is ordered to send a mandate to the court below commanding it to resume jurisdiction over this matter and proceed to enforce its judgment in conformity with this ruling."

It is important to observe here that the purpose of re-argument is not to question the soundness or the wisdom of the judgment in the case, but to only ascertain whether certain material points of law or facts were expressly raised and argued, but palpably inadvertently overlooked by the Court.

It is easily observed that all the points of law or facts raised and argued in this case were fully traversed upon and fully decided by this Court in the opinion and judgment referred hereinabove.

According to the *Revised Rule IX* of this Court, one of the concurring Justices in the opinion of the Court must order the filing of the petition for re-argument. The records in this case do not show that this procedure was met and, in our opinion, that procedure is vital as it is jurisdictional. Hence, during the argument before us, the Court *sua sponte* asked whether one of the concurrent Justices in the opinion had ordered the filing of the petition. Counsel for petitioner answered in the affirmative, but explained that the note from the Justice to the Clerk, ordering the filing of the petition was in the case file and that the entire court's file could not be found. Therefore, he further claimed, the certified copies were made and distributed. It was at this point that counsel for respondents in the prohibition proceedings contended that he had raised the issue that the petition for re-argument had been filed without authority when the case was argued during the 1980 March Term of this Court, but that no opinion was rendered because of the military takeover in Liberia on April 12, 1980.

In *Phelps* v. *Williams,* 3 LLR 54 (1928), it was held that a court of justice is bound to take judicial notice of its own records whether its attention has been called thereto or not.

Upon this authority, we had recourse to the minutes of this Court and discovered that the petition for re-argument was argued before this Court on the 18th of March 1980, but there was no showing that any contention had been raised by either party or the Court concerning the non-approval of the filing of the petition for re-argument by a Justice of this Court.

From all indications, it is clear that the argument of counsel for respondents in prohibition that he had raised the issue of non-approval of the filing of the petition for re-argument by a concurring Justice is a misrepresentation for the sole purpose of deceiving us. He is therefore fined in the sum of $500.00, to be paid within forty-eight (48) hours from the date of this opinion and the flag receipt exhibited to the Justice in Chambers by the Marshal of this Court; otherwise, the Clerk of this Court should issue a commitment for imprisonment of counsel for respondents to remain in the county jail of Montserrado County until said amount is fully paid and evidence thereof shown as stated *supra*.

Accordingly, the petition for re-argument of this matter is denied and the judgment and opinion rendered so far in this case, are fully affirmed and confirmed by this Court. The Clerk of this Court is therefore hereby ordered to send a mandate to the lower court commanding the judge therein presiding to resume jurisdiction over this cause and enforce the judgment. And it is so ordered.

Petition denied.