

MADAM MOLLY BOAKAI, Appellant, *v.* **MADAM MARY ZAYZABOY**, Appellee.

APPEAL FROM THE DEBT COURT FOR BONG COUNTY.

Heard: March 29, 1984. Decided: May 11, 1984.

1. A defendant is not compelled to take the witness stand or compelled to place a witness on the stand. Hence, the failure to do so does not shift the burden of proof in an action of debt from the plaintiff.
2. An action of debt will not lie where there are discrepancies in the witnesses' testimonies of the amount actually owed.
3. The doctrine of *lis pendens* will not be sustained to bar an action of debt if it is shown that a criminal case is pending regarding the same facts but the parties in the two cases are not the same. For instance, the Republic of Liberia is the party plaintiff in a criminal matter, while the aggrieved party is the party plaintiff in a civil matter.

The appellant was sued in the Debt Court for Bong County for the amount of \$914.00. During the trial, the plaintiff and her three witnesses gave conflicting testimonies as to the amount the defendant/appellant actually owed. One witness claimed that defendant/appellant owed \$600, another \$900 and, yet another \$914. Nonetheless, the judge found for the plaintiff indicating, among other things, that the defendant did not appear for the trial and did not produce witnesses to testify on her behalf. In her bill of exceptions, the defendant/appellant also noted that in her answer she had invoked the doctrine of *lis pendens*, since a theft of property case was pending regarding the same matter, but the count was overruled by the judge.

The Supreme Court addressed only the fourth of the four-count bill of exceptions, overruling the first three for vagueness. The fourth count essentially charged that the judgment rendered by the judge was not supported by the weight of the evidence. The Supreme Court agreed and *reversed* the decision of the lower court, concluding that the decision was based on a "lack of proof."

G. Bona Sagbeh for appellant. *John A. Dennis* for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The appellee filed an action of debt in the Debt Court for Bong County, claiming the sum of

\$914.00 from the appellant. An answer was filed to the complaint and pleadings rested thereat. During the disposition of issues of law, the answer was abated. As a result, the case was then assigned for production of evidence on the allegation stated in the complaint, thereby precluding the appellant from producing evidence of an affirmative nature. The trial ended with a final judgment in favor of appellee, awarding her the sum of \$914.00. Appellant has appealed from the judgment to this Court for review.

The bill of exceptions in this case contains four counts, three of which are vague and do not show the ruling of the judge and the basis for the exceptions noted to the ruling as required by the Civil Procedure Law, Rev. Code 1:51.7. Because of the unskillful manner in which the first three counts of the bill of exceptions are framed, we cannot understand the real issue raised therein which the Court is expected to decide. Hence, the said counts are overruled and we will only address ourselves to count four of the bill of exceptions, in which it is charged that the judgment rendered by the judge is not supported by the weight of the evidence. We will now review the evidence adduced at the trial.

The first witness who testified for the appellee was John Fatah. He stated that he was the first man who investigated the complaint of appellee against the appellant and, according to him; the amount claimed by appellee was \$600.00. The second witness was Daniel Saye who stated that appellant owed appellee \$900.00. The third and last witness was Barber Dogma who said that appellant was indebted to appellee in the sum of \$600.00, but later after the case reached the magisterial court, the magistrate was informed that appellant owed the appellee \$914.00. The lonely testimony of the last witness for appellee on the \$914.00 is hearsay, which is not admissible. Civil Procedure Law, Rev. Code 1:25.7.

The trial court well summarized the evidence, and realized the material variance in the figures testified to by the appellee and her three witnesses, but the judge opined that appellant did not appear in person and testify or produce evidence to refute the evidence of appellee. Therefore, the court awarded the \$914.00, notwithstanding the conflicting evidence of appellee summarized herein above.

In *Salami Brothers v. Wabaab*, 15 LLR 32 (1962), this Court held that:

"Dismissal of a defendant's pleading restricting the defendant to a bare denial of the facts alleged by the plaintiff does not deprive the defendant of the right to cross-examine as to proof, and does not shift the burden of proof."

Therefore, in our opinion, the fact that the appellant did not appear in person and testify, nor produce evidence in the trial court, as well as the abatement of her answer, did not shift

the burden of proof from the plaintiff/appellee in the trial court. The fact that the plaintiff/appellee and her witnesses presented conflicting evidence in court as to the amount of indebtedness does significantly effects the outcome of the case. Moreover, even if appellant was physically present in court with her witness or witnesses, she was not bound to take the witness stand herself, or put witness or witnesses on the stand.

In the answer, appellant alleged that based upon the same state of facts and circumstances in the action of debt, appellant was indicted for theft of property and the case is still pending in the Ninth Judicial Circuit, therefore, appellant invoked the doctrine of *lis pendens* which the trial court overruled.

The purpose of criminal prosecution is to punish the wrong-doer, whereas in a civil action, the object is to redress the wrong done, or compensate the complainant, and in either case, the parties are not alike. The private prosecutrix is the appellee in this action of debt, but she is not a party in the theft of property case. The Republic of Liberia, instead, is the party plaintiff in the action for theft of property against the appellant, who is the party defendant. Therefore, in our view, *lis pendens* will not lie to bar the action of debt. It is superfluous to mention that, on the one hand, a defendant convicted and sentenced to serve time for a crime involving government revenues, remains in jail until restitution is made, as it constitutes part of the sentence. On the other hand, where restitution is required as part of the punishment for crimes not involving government revenues, the defendant is released after serving the sentence, even if restitution has not been made. Consequently, the private prosecutor is left with the option to recover restitution in an action of debt.

From the records certified to this Court, it is not shown that the plaintiff presented sufficient evidence in the court below to justify a decision in her favor. Therefore, the judgment of the court below is hereby reversed for lack of proof. Costs are disallowed. And it is so ordered.

Judgment reversed.