

FAHN DORMAH, Appellant, v. **SAMUEL PIERCE**, Appellee.

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

Argued November 6-7, 1950. Decided February 2, 1951.

1. An action of debt is an action to enforce the payment of a sum of money which the defendant has contracted to pay to the plaintiff.
2. Two causes of action, one in debt and the other in detinue, cannot be joined in one complaint.

Appellee sued appellant in debt in the Court of the Justice of the Peace, Montserrado County. The court ordered the personal property involved to be delivered by the appellant to the appellee, cancelled the claim for rental, and ordered appellant to pay costs. On appeal to the circuit court, the judge ruled that the case be tried de novo and rendered judgment for sixty-five dollars in appellee's favor and ordered appellant to return the property to appellee. On appeal to this Court, *judgment reversed* and appellant discharged of any liability.

T. G. Collins for appellant. *Momolu S. Cooper* for appellee.

MR. JUSTICE REEVES delivered the opinion of the Court.

The certified records transmitted to this appellate Court from the court below in the case now under review reveal the following facts :

On October 8, 1948 Fahn Dormah, the above-named appellant who owned a cane patch adjoining another belonging to one Zoul, his brother-in-law, and Zoul approached Samuel Pierce, the appellee, requesting that they rent appellee's cane mill in order to grind their cane. Being successful in obtaining said cane mill, appellant and his said brother-in-law, Zoul, carried it to his town. About two and one-half months elapsed before appellee, receiving no benefit from the rented mill, instituted an action of debt in which he filed the following complaint against said appellant before Justice of the Peace Raulin L. Kennedy of Crozierville, Montserrado County :

"The undersigned S. P. Pierce Plaintiff, complains of Fahn Defendant, that said Defendant is justly indebted to him in the sum of sixty-five dollars (\$65.00) for the

rentage of one cane mill on the 8th day of October, A.D. 1948; said Defendant did rent from Plaintiff one cane mill at the rate of twenty-six dollars (\$26.00) per month for two and a half months from October the 8th 1948 to December the 23rd A.D. 1948, which amounted to Sixty-five dollars (\$65.00) ; and said defendant having promised to pay Plaintiff the sum of money here set forth. Upon command made for payment has failed so to do. "Wherefore Plaintiff demands judgment for said amount. Dated this 17th day of March, A. D. 1949.

[Sgd.] S. P. PIERCE,
Plaintiff."

Based upon said complaint, the justice of the peace issued a writ which read as follows:

"Republic of Liberia, Robert N. Gross, constable or to any other constable for said county, greeting :

"You are hereby commanded to summon Fahn Defendant to appear before me, a Justice of the Peace for the County of Montserrado, at Crozierville at 10 o'clock a.m., on the 17th day of March, A.D. 1949, to answer the complaint of S. P. Pierce Plaintiff, in an action in which he complains substantially as follows: S. P. Pierce Plaintiff, complains of Fahn Defendant, that said Defendant on the 8th day of October A.D. 1948 rented one cane mill from Plaintiff, at the rate of Twenty-six dollars (\$26.00) per month and for two and a half (2 1/2) months, from October to December the 23rd A.D. 1948, which amounted to Sixty-five dollars (\$65.60) and upon demand made for payment and the delivery of said mill he has failed so to do wherefore Plaintiff demands judgment for said amount and the delivery of said mill. And to notify him that upon his failure to appear Judgment will be rendered by default. And have you there this Writ.

"Issued this 17th day of March A. D. 1949.

"[Sgd.] RAULIN L. KENNEDY
Justice of the Peace, Montserrado County."

On April 14, 1949, when all parties were present, Justice of the Peace Kennedy had the case called for trial and, according to his findings endorsed on the back of said writ, rendered the following judgment :

"This within case having been called up, parties present and ready for trial, Defendant

plead not guilty of the within complaint. After carefully examining the witnesses, I found that the mill is still in the possession of the Defendant. Therefore, the Court rules that the mill be delivered to Plaintiff. The amount claimed for rentage be cancelled and Defendant is ruled to pay the cost of this court.

"[Sgd.] R. L. KENNEDY

Justice of the Peace for Montserrado County."

We find no mention made of an appeal in said endorsement. Nevertheless, there is in the records an approved appeal bond, dated April 26, 1949, and subsequently on July 12, 1949, His Honor Judge Monroe Phelps, Assigned Judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, had the said appeal case called and tried de novo. Appellant pleaded *nil debit* and *nil detainer*. Witnesses *pro et con* deposed during said trial and it was clearly brought to light that the said appellant did rent appellee's mill, not for any cash rental, but upon the usual toll system, that is, one-third of whatever quantity of gin was distilled ; but before any cane was ground, appellee Pierce, apparently dissatisfied, three weeks after went out to their place and turned said mill over to Zoul with instructions that he keep said mill and rent it out to anyone applying for same.

Witness Zoul testified as follows on cross-examination :

"Q. Now Mr. Fahn has told this court that when Mr. Pierce went to your working place and did not meet him, the defendant, he, Mr. Pierce, took the mill from Fahn, turned it over to you and said that you were responsible for it, to give it to anybody you wish to and that Fahn was no more responsible for it. What have you to say to this?

"A. Mr. Pierce went there one day. He did not meet Fahn but met me. He said, 'Zoul, the mill is in your charge. If anybody wants to rent it, you may do so.' The next day he went to Fahn's town, and told Charlie Washington that he had turned the mill over to Zoul and Fahn had nothing to do with it, and Fahn asked him why he has turned the mill over to Zoul. He said yes.

"Q. How long has the mill been with you and Fahn as you say Mr. Pierce turned it over to you alone to manage?

"A. After three weeks."

The answers to these questions corroborated the statement made by appellant Fahn in an answer to a question put to him during the cross-examination, to wit:

"Q. You are sued by Mr. Pierce for the rent of his mill for the period of two and a half months to the sum of sixty-five dollars and for detaining his mill. Please tell the court all the facts in connection with same?

"A. Not so. One day I went to Mr. Pierce to rent his mill, going out to the cane patch which my brother-in-law and I have, and said, 'I came to rent your mill to grind our cane.' I went along with Zoo Kpapa to get the mill. Mr. Pierce agreed to let me have the mill and he told us if we carry the mill and completed the work, he was to get one out of every three tins of rum we would distill. Mr. Pierce agreed to deliver the mill, and said that, 'When your rum is ripe, come for the still,' saying that we should not distill our rum by any other still but his. We carried the mill, put it down, and before we could start grinding, Mr. Pierce went there one day and asked for me, but I was out. He told Mr. Zoul then, 'Tahn brought my mill but would not cut his cane; take charge of the mill and safe keep same.' On my return, in my presence, Pierce told Washington that since I did not want to cut my cane, he would turn the mill over to Zoul. It was then that I asked Mr. Pierce, 'Have you taken your mill and turned it over to Zoul?' He said, 'Yes. Zoul is using the mill now.' I never saw the mill since."

In continuing our perusal of the records, we find this statement of appellant further corroborated by witness Conrad in answer to a question put to him, viz.:

"Q. Do you know, or has it come to your knowledge from either of the parties in this suit, how it [meaning the mill] came in the possession of Zoul?

"A. Yes. One day I was at Charlie Washington's place and there we met Mr. Pierce. I heard him ask Charlie Washington, where was Fahn, and Charlie Washington said that Fahn was at his place. Mr. Pierce said Fahn got his mill to takeoff cane and he would not work, but trace [*sic*] out his wife. He said further, 'I will sue him.' In that I asked Charlie Washington and Fahn what was the trouble between Fahn and Mr. Pierce concerning the mill. They outlined to me that Fahn went to Pierce and got the mill to take-off their cane, and that Pierce had gone and turned the mill over to Zoul, saying that they should keep it until they finish taking-off their cane because he had three mills in his possession. Two days afterward, I saw a writ on Fahn and he said that Pierce had sued him on the 5th day of March for one hundred and twenty-seven dollars." .

An action of debt as defined by our statute is an action of contract. "An action of debt is an action to enforce the payment of a sum of money, which the defendant has contracted to pay to the plaintiff." Rev. Stat. § 256. It became necessary, therefore, for plaintiff Pierce, now appellee, to prove by unimpeachable evidence the contract existing between Fahn and himself with respect to the rental of the mill. Upon his failure, Justice of the Peace Raulin Kennedy was legally correct and justified in cancelling the amount of sixty-five dollars claimed for the rental of the mill. This Court finds itself unable to support the judge of the circuit court in the judgment he rendered adjudging the payment of the amount of sixtyfive dollars. The findings of the justice of the peace cancelling said debt are hereby upheld.

Coming to the second plea of appellant of *nil detainer*, our statute declares that no two separate causes of action can legally be joined in one complaint. "Every complaint must contain a distinct and intelligible statement in writing, of a sufficient cause of action within the scope of the form of action chosen, otherwise the action may be dismissed." Stat. of Liberia (Old Blue Book) ch. IV, § 3, 2 Hub. 1536. There may be other causes joined in the same complaint, but they must be suited to the same form of action. Appellee filed his complaint for debt, but we find the complaint set forth in the writ of summons contains also a count in detinue. It is unexplained how this happened, whether the justice of the peace made such an amendment without authority or whether he was instructed by the plaintiff to do so. However, the presumption that the Justice of the Peace did so of his own accord prevails because plaintiff's complaint is sworn to by him when the writ carries no oath. We must therefore consider it Justice of the Peace Kennedy's amendment. This amendment made the complaint in the writ that of debt and detinue and thus conflicted with the statute above cited because the actions of debt and detinue are two separate and distinct actions, and cannot under the statute be joined in the one and same complaint without making said complaint bad, unintelligible and a proper case for dismissal had the defendant raised said issue in a demurrer during the trial before the justice of the peace.

From the statements in the record of witnesses Zoul, appellant himself, and Conrad, appellant Fahn was not in possession of the mill when this action was instituted against him. The law required a plea of such a nature to be made at the trial, as was done. Having done so and having produced witnesses in support of said plea, appellant was entitled to a dismissal of said action with judgment in his favor, for according to the records appellee produced no witnesses to refute, rebut, or impeach appellant's witnesses. The Court cannot conceive by what process of reasoning both the justice of the peace and the judge of the lower court adjudged that appellant

return said mill. Without a doubt, such judgment was partial, illegal and unfair, because it derived its authority from the conclusions of the justice of the peace and the judge of the lower court and their biased minds, contrary to the evidence produced and to appellant's written complaint.

The Court takes this opportunity to denounce the actions of the justice of the peace and of the judge of the lower court, who were judicial officers sworn to administer justice without sale or venality.

In view of what has been said above, it is the opinion of this Court that the judgment of the lower court be reversed, and that the said appellant be discharged from any further liability in the case. Costs against appellee; and it is so ordered.

Reversed.