

**REPUBLIC OF LIBERIA, Appellant, vs. THE ESTATE OF W. S. ANDERSON,
Appellee.**

LRSC 6; 1 LLR 97 (1878)

[January Term, A. D. 1878.]

Appeal from the Court of Quarter Sessions and Common Pleas,

Montserrado County.

An action of debt is the proper form of action to be chosen when the action is one growing out of contract expressed or implied, other than for non-performance, damages or injunction.

Upon the examination of this case, an action of debt, brought up on appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, we find that on motion of defendant, now appellee, of the following tenor,—"that the case be dismissed and the plaintiff ruled to costs, because the action of debt is not the proper action to be brought in this case, as the defendant, W. S. Anderson, was an officer of the government, and as such was under contract with the government," the court below decided that "plaintiff in this action should have brought an action of contract against the defendant, according to law; that not being done, the motion is sustained and the case dismissed with costs."

That this cause of action is one growing out of contract is very clear indeed; as much was implied in the defendant's motion to dismiss the case. It has become our duty to find to which of the several subdivisions of 'actions growing out of contracts,' as set forth in our statutes, the present case should properly be referred. Confining ourselves to the record, as is our duty, nothing was apparent to show that the plaintiff, having sustained an injury by reason of a non-performance of some contract, sought for damages; or that it was a proper case for the application of an injunction, or that a specific performance, other than for the payment of money, was sought to be enforced.

The action of debt lies for a sum of money certain due by the defendant to the plaintiff, whether it has been certain by contract between the parties, or by judgment, or by statute. (2 Bouv. Inst. sec. 3455.) It lies upon contract without specialty, either expressed or implied. It is a more extensive remedy for the recovery of money than assumpsit or covenant, for it lies to recover money due on legal liabilities, as for money lent, paid, had and received, or due on an account stated, or upon simple contracts, expressed or implied, whether oral or written, whenever the demand is for a sum certain or it is capable of being reduced to a certainty. (2 Bouv. Inst. sec. 349.)

Our statutes define it to be "an action to enforce the payment of a sum of money which the defendant has contracted to pay to the plaintiff." The action, as appears from the records, is for a sum certain, which the plaintiff, now appellant, claims that the defendant, now appellee, had contracted to pay, and having failed to do so, an enforcement of the payment was sought, and in the view of this court is properly brought as an action of debt.

The court therefore adjudges that the judgment of the lower court is reversed, and the case is remanded to said court for trial, costs to follow.

Key Description: Actions (Nature and Form, Error as to character or form)