

JANICE N. BOYD WALLACE, Appellant, v. **I. W. WALLACE**, Appellee.

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

Heard: November 1, 1982. Decided: February 3, 1983.

1. A party litigant who concedes the legal soundness of his adversary's point of view on an issue of law or fact, automatically forfeits his right to contest the point in issue.

2. When the appellee concedes the legal soundness of appellant's exceptions to a judgment appealed from, the Supreme Court shall reverse the judgment with costs against the appellee.

Appellee brought an action of divorce for incompatibility of temper against his wife, Janice, appellant, who moved the trial court to dismiss the entire complaint on the doctrine of lis pendens, among other defenses, contending that she had earlier filed an action of divorce for adultery which was still pending undetermined. The motion to dismiss was denied, trial conducted and a judgment rendered against appellant from which she noted her exceptions and appealed to the Supreme Court. At the call of the case in the Supreme Court, appellee conceded the doctrine of lis pendens as raised by appellant, withdrew all other defenses he had depended upon and prayed the Court to remand the case, to which appellant resisted, urging the Court to reverse the judgment in view of the concession. The Supreme Court reversed the judgment with costs against appellee.

J. Emmanuel R. Berry appeared for appellant. S. Edward Carlor appeared for appellee

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

I. W. Wallace, appellee, plaintiff in the trial court, on the 22nd day of May, A. D. 1979, instituted an action of divorce for incompatibility of temper against his wife, Janice N. Boyd Wallace, defendant/appellant, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, alleging, among other things, that after living together for four peaceful years, appellant in 1976, suddenly became unmindful of her marital vows by becoming extremely pugnacious and unbearable, so much so that living with her became dangerous. In counts 2 and 3 of her answer, appellant requested the court to dismiss the entire complaint raising among other issues, the doctrine of lis Pendens. She contended that in the December Term, 1978, of the said court, she filed an action of divorce for adultery against her husband, I. W. Wallace, and that the action was still pending undetermined.

Appellant also attacked the complaint for failing to show in what manner she had become pugnacious and unbearable in August 1976 as alleged. Pleadings rested at plaintiff's reply.

During the disposition of the law issues, the court dismissed counts 2 and 3 of appellants answer which related to the principles of lis pendens and Notices respectively, to which ruling exceptions were duly noted. Later appellant's motion for continuance was filed, heard and denied. Appellee and his single witness thereafter testified and, at the end of the case, the judge charged the jury who returned a verdict in favour of the appellee granting him the requested divorce. Appellant excepted and filed a motion for a new trial which was also heard and denied. Consequently, a final judgment was rendered affirming the verdict to which exceptions were noted, and appeal announced and perfected. Thus, the case is before us now for review on a six count bill of exceptions. In sum, the appellant contended that the trial judge committed a reversible error when he overruled the issue of lis pendens as raised in count 2 of the answer to which there was no denial on the part of appellee anywhere in the records. Notwithstanding the perfection of the appeal, the appellee's counsel, by permission of the court, requested the court's permission to make a submission at the call of the case before this Bench. We quote below the relevant portions of said records submitted:

"Counsel for appellee requests the court's permission to make the following records: That this case having been argued several times before this Honourable Court, without any opinion and judgment owing to the doctrine of lis pendens as raised and strongly contended by appellant in her brief, same is hereby conceded by counsel for appellee, while at the same time the other defenses in that line are also withdrawn, with the prayer that the case be remanded. And submits.

"Counsel for appellant says that the doctrine of lis pendens as raised in appellant's appeal, having been conceded by counsel for appellee, prays this Honorable Court to reverse the judgment of the court below and not to remand the case as requested by appellee's counsel. And respectfully submits."

From this factual background the issue that presents itself for our consideration is:

Whether or not an appellee, having conceded the validity of appellant's contentions as raised on the appeal, could succeed in his request to the appellate court that the case be remanded rather than have the lower court's judgment which was in his favour reversed?

According to BLACK'S LAW DICTIONARY, concession is the voluntary yielding to a claim or demand and abandonment is the relinquishment of all rights with the intention of

not reclaiming them. It includes both the intention to abandon and the external act by which the intention is carried into effect. In determining whether or not one has abandoned his rights, intention is the first and paramount object of inquiry; for there can be no abandonment without the intention to abandon.

In our view whether the concession was a contractive withdrawal or abandonment on the part of appellee, who at the call of the case conceded the legal soundness of appellant's point of view, he thereby automatically forfeited his right to contest the point in issue; for it has been held by this Court that a judgment by confession is more than an admission of a debt by default. 15 C.J.S., Confession; 2 C.J.S., Admission; Commercial Bank of Liberia, v. Tip Top Tools, Inc., 24 LLR 397 (1975); Civil Procedure Law, Rev. Code, 1: 25.8 ; Stereo Hotel v. S & A Construction and Trading Co., 21 LLR 415 (1973). Further-more, inasmuch as nonappearance of an appellee in this Court entitles the appellant to judgment by default by dismissing the case, West & Company v. Marbu, 3 LLR 250 (1931), it goes without saying that whether or not appellee's concession is a withdrawal or abandonment of his defenses, the intention by such acts can be gathered in point of time to be abatement of the case.

From the principles of law outlined above, it can be concluded that appellee, who had conceded the legal soundness of appellant's contentions as raised in the appeal, cannot succeed in his request to this Court that the case be remanded rather than have the lower court's judgment, which had been rendered in his favour, reversed. The appellee's counsel having conceded the legal points raised by counsel for appellant and having also consequently withdrawn the other defenses he had relied upon to support the case, cannot now ask this Court that the judgment from which appellant appealed, be remanded. The contention of the appellant to reverse the lower court's judgment is therefore sustained as against the appellee's request for a remand and the judgment of the court below is thus reversed with costs against the appellee. And it is hereby so ordered.

Judgment Reversed.