MUSU BONAH and MOMOLU MANO BALLAH, Petitioners, *v.* HON. JAMES KANDAKAI, Presiding over the Ninth Judicial Circuit, Bong County, August Term, 1971, and JARSO McGILL, Respondents.

PETITION FOR A WRIT OF PROHIBITION.

Decided September 29, 1971.

1. A court may correct its record or judgment at any time before it is made final, provided notice is given to the parties.
2. A court may not entertain a matter when such matter is pending in another court of concurrent jurisdiction.

While an action between the same parties over the same subject matter was pending in the Sixth Judicial Circuit, plaintiff in that action commenced another suit in the Ninth Judicial Circuit, which had not been established as a judicial circuit at the time the original action was commenced. The judge in the Ninth Judicial Circuit denied a motion to dismiss the complaint on the ground that the matter was pending before another court of concurrent jurisdiction. The defendants therein applied for a writ of prohibition. The petition was *granted*.

Appearances not indicated.

PIERRE, C. J., presiding in chambers.

When the statute establishing the new counties was passed in 1963, the Ninth Judicial Circuit Court was also established in Bong County, which was previously known as the Central Province of the hinterland administration. Before this, in 1949, Momolu Mano Ballah, one of the petitioners herein, had filed an action of ejectment in the Sixth Judicial Circuit Court, Montserrado County,

against Jarso McGill of Kakata, involving fifty acres of land in the Kakata area. A public land sale deed for the aforesaid fifty acres was signed by the President on July 6, 1948, and a copy of this deed was made profert with plaintiff's complaint in the action of ejectment.

Previous to the establishment of the four new counties in what had been the three provinces of the interior, all civil and criminal matters arising in these provinces were filed in and heard and determined by the circuit court nearest the province in which the case arose. Thus, cases arising in Bong County, which was the Central Province, were heard and determined in the courts in Montserrado County. This was the reason for the ejectment action for land in the Central Province having been filed in the Civil Law Court, Montserrado County.

The case progressed through the pleadings and the appointment of a board of arbitrators, consisting of three surveyors, who filed their report on January 14, 1950. There is no record of any further development in the case, and there matters stood in respect of this case when the statute abolishing the provinces and establishing counties was passed into law in 1963. According to a certificate of the clerk of the Sixth Judicial Circuit Court filed with the petition in these certiorari proceedings, no judgment had been rendered in the case.

While this action of ejectment was still pending determination before the Sixth Judicial Circuit Court in Monrovia, Jarso McGill, who is plaintiff in the undetermined suit in Monrovia, filed another action of ejectment for the same property in the Ninth Judicial Circuit Court, Bong County, and has named Musu Bonah, wife of Momolu Mano Ballah, who is defendant in the case pending in Monrovia, as defendant. At this point Momolu Mano Ballah filed a motion to intervene as a co-defendant, since he had not been joined in the second action of ejectment filed in Bong County.

In the motion for intervention and in his answer to the

complaint, he raised the principle of *lis pendens*. The judge denied the relief thereby sought by holding that prior jurisdiction in another court had not been established.

To satisfy the judge's desire for proof of the pendency of the ejectment action in Monrovia, the intervenor produced a certificate from the clerk of the Sixth Judicial Circuit Court, listing all of the documents found in the file of the ejectment action in Monrovia, marked "A" to "R," which action is still pending. Notwithstanding the judge denied the motion. Hence, the application for a writ of prohibition.

The returns filed by the respondents have not denied any of the averments of the petition, but rather have relied upon, and sought to defend, points on which the judge denied intervenor's motion.

Within the term of the court over which a circuit judge presides, he may correct any decisions made by him, and any rulings entered. The fact that he had already passed on the issues of law during the term over which he was presiding is no excuse for him to evade a plain duty to take notice of the fact that a like case involving the same parties and the same subject matter was already pending before another court with concurrent jurisdiction.

> "It is settled law that a court may correct its records or judgments during term time. A court may alter its judgment at any time before it is entered or if it is entered before it is made final. But it should not be allowed without notice to both parties." *Yangah* v. *Melton,* 12 LLR 178, 181 (1954).

It should have been clear to the respondent judge that his civil jurisdiction in Bong County not being superior to the Sixth Judicial Circuit Court's in Montserrado County, he could not take jurisdiction over, pass upon or determine any issues pending before another court with like jurisdiction. If the judge could have claimed ignorance of the pendency of the other action in ejectment filed

in Montserrado County, involving the same subject matter and the same parties, his refusal to vacate jurisdiction might have been excusable. But the certificate of the clerk of the Sixth Judicial Circuit Court was sufficient notice to him of the pendency of the first ejectment case in Montserrado County.

According to Bouvier, *lis pendens* is the control which a court of competent jurisdiction has over property in litigation until judgment has been rendered. BOUVIER'S LAW DICTIONARY. What a confused state of affairs there would be if several courts were allowed to hold hearing and determine jurisdiction over the same case. There would be no end to litigation, and there would be no protection to the rights of the parties. Other authorities state the matter at length.

> "Basis of Doctrine. Two different theories have been advanced as the basis of the doctrine of *lis pendens*. According to some authorities, a pending suit must be regarded as notice to all the world, and pursuant to this view it is argued that any person who deals with property involved therein, having presumably known what he was doing, must have acted in bad faith and is therefore properly bound by the judgment rendered. Other authorities, however, take the position that the doctrine is not founded on any theory of notice at all, but is based upon the necessity, as a matter of public policy, of preventing litigants from disposing of the property in controversy in such manner as to interfere with execution of the court's decree. Without such a principle, it has been judicially declared, all suits for specific property might be rendered abortive by successive alienation of the property in suit, so that at the end of one suit another would have to be commenced, and after that, another, making it almost impracticable for a man ever to make his rights by a resort to the courts of justice." 34 AM. JUR., § 3, 3634.

And constructive notice is provided for by statute.

> "A notice of pendency may be filed in any action in a court of the Republic of Liberia in which the judgment or order demanded would affect the title to, or the possession, used or enjoyment of, real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or encumbrancer against, any defendant against whose name a notice of pendency is indexed. A person whose conveyance or encumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as if he were a party." Civil Procedure Law, L. 1963–64, ch. III, § 791.

In this case the parties to both ejectment actions are the same, so the notice of pendency only reminded the respondents that an action of ejectment had been filed previous to the filing of the second case in Bong County, and that the case was still pending in the Sixth Judicial Circuit, Montserrado County.

It has been contended in argument before this bar that failure of the plaintiffs in the action filed in 1949 to proceed, was an indication of abandonment of the said case. The peculiar situation showing in this case would seem to indicate that there was a lack of interest on both sides, by failure to have moved the court to render judgment on the award of the arbitrators. Either side might have so moved, but neither did.

According to the respondent judge's own words he should "have been convinced if the defendant or intervener had brought, or by some showing indicated Jarso McGill had been brought under the jurisdiction of the Montserrado County Court." That proof was evidenced by the certificate of the clerk of the Sixth Judicial Circuit Court, as aforesaid.

It has also been contended that with the establishment of Bong County in 1963, the Sixth Judicial Circuit Court

lost jurisdiction which it had acquired by law and, therefore, the case could not be determined by the Sixth Judicial Circuit Court. All writers agree that jurisdiction is properly acquired only by law, and that once a court acquires competent jurisdiction over a cause, it retains such jurisdiction until rendition of judgment, unless jurisdiction is acquired by a superior tribunal. Bouvier's Law Dictionary adequately defines jurisdiction.

> "The authority by which judicial officers take cognizance of and decide causes. . . . The power to hear and determine a cause.
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> "The test of jurisdiction of a court is whether or not it had power to enter upon the inquiry; . . .
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> "The right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials: First, the court must have cognizance of the class of cases to which the one to be adjudicated belongs; second, the proper parties must be present; and third, the point decided upon must be, in substance and effect, within the issue. . . .
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> "Jurisdiction is given by law; and cannot be conferred by consent of the parties; nor can silence or positive consent of parties confer on a federal court jurisdiction denied by statute. . . .
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> "Jurisdiction given by law of the sovereignty of the tribunal is held sufficient everywhere, at least as to all property within the sovereignty; and as to persons on whom process is actually and personally served within the territorial limits of jurisdiction, or who appear and by their pleadings admit jurisdiction."

In this case all of the parties admitted jurisdiction of the Sixth Judicial Circuit, by the pleadings which they filed and which progressed as far as the surrebutter. It would be strange, therefore, that parties who admitted the jurisdiction of one court should attempt to confer upon another court of concurrent jurisdiction control over the same subject matter.

Ample relief is provided for the issues herein, as well, by the Civil Procedure Law, L. 1963–64, ch. III, § 1102(1d):

> "At the time of service of his responsive pleading, a party may move for judgment dismissing one or more claims for relief asserted against him in a complaint or counterclaim on any of the following grounds:
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> "(d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia."

In view of the foregoing, it is ordered that the Clerk of this Court send a mandate to the judge now presiding in the Ninth Judicial Circuit, commanding him to immediately surrender jurisdiction over the case of ejectment out of which these proceedings have grown. The Clerk will also send a copy of this ruling to the judge now presiding in the Sixth Judicial Circuit, and have him call the ejectment case now pending before him involving the parties herein, and determine the matter without further delay during the present sitting of the September Term, 1971. Costs are ruled against the respondents.

Petition granted.