

DAILY vs. CAREY.

1 LLR 22; LRSC 2 (1864) (1 January 1864)

[January Term, A. D. 1864.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. Injunction.

A review of the case of Daily vs. Carey on injunction has presented to the court such features as would lead this court to place it in such a position as that both parties may have the benefit of the common law. It could not be considered just under the conflicting circumstances and the manner in which the case was tried, that a final adjudication be had in the premises. The question and matter itself in all its bearing appears to be mixed, hence it is highly proper that an opportunity be afforded for an unravelling of the several issues by the proper authority. The design of the law and its restrictions is to remedy evil, and allow every person full and adequate opportunity to prove and maintain whatever right he or they may regard as having been suppressed, or about to be, by any person or persons. The power and authority of the court to issue and perpetuate the injunction cannot be questioned. But that the court should bind or keep bound such parties, that have been arrested by its mandate when the matter could have been adjusted at common law, does not appear to be correct. The law is created to ensure peace and good will between all men whom it superintends, but to construe it so as to keep parties in an unsettled condition, is not what the law intends. The court should always follow the proper remedy, and allow each party, by law and opportunity, to prove or dispose his claim. There is no dispute as to the decision of the court below, as regards the incompetency of said court at Marshall to try and determine a case involving an amount more than thirty dollars, and it is duly confirmed by this court. It would have been proper, however, for the Court of Pleas to have had the case before it in such a form as to render both parties competent to defend themselves with such facilities as may have been convenient to them.

The court is of opinion that as the case was not tried by the court below, but only checked indefinitely, which if continued would prove injurious and unsatisfactory to those concerned, it is hereby ordered that the injunction shall be so dissolved as to allow the parties to enter their claims at common law, in such courts as may have jurisdiction to try and determine such cases; also that the relief from the pressure of the injunction shall not enable the party having the benefit in the Provisional Court to follow the decision of said court. The case is hereby remanded to the Court of Quarter Sessions to be disposed of as directed by this decision, and a mandate and a true copy of this decision is hereby directed to the Court of Pleas and Quarter Sessions of Montserrado County.