

SIPO LOGGING INTERNATIONAL, by and thru its President, NAOMI A. GOODING, Informant, v. HIS **HONOUR DAVID D. KPOMAKPOR**, Associate Justice presiding in Chambers, **TIMBER INVESTMENT AND MANAGEMENT COMPANY**, by and thru its President, GUS KOUWENHOVEN, et al., Respondents.

INFORMATION PROCEEDINGS

Heard: January 20, 1988. Decided: February 25, 1988.

1. The issuance of a temporary stay order by a justice in chambers gives him jurisdiction over the matter and over the parties.
2. The Supreme Court *en banc* does not have original jurisdiction over petitions for remedial writs, but when the justice in chambers, on receipt of a petition filed by the petitioner, issues a stay order, jurisdiction is conferred on the Supreme Court to hear the case on appeal from his refusal to issue the writ or his action in dissolving the temporary stay order.
3. The justice in chambers is the only gateway through which relief might be sought from the Supreme Court.
4. The Supreme Court *en banc* has appellate jurisdiction over all appeals from rulings of a Justice of the Supreme Court presiding in Chambers, including a refusal to issue remedial writs.
5. A party waives his right to question a decision of a Justice in Chambers where, being aware of the mandate from the justice, he fails to take advantage of the statute.
6. Every person against whom any final judgment is rendered has the right to appeal from the judgment of the court except from a judgment of the Supreme Court. The decision of the Supreme Court is absolute and final.
7. The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolate.
8. An appeal shall be taken from a judgment by an oral announcement in open court. Such announcement may be made by the party himself if he represents himself or by the attorney representing him, if he is represented by an attorney.
9. The granting of injunctive relief rests within the judicial discretion of the judge to

whom the application is made for relief.

10. When injunctive relief relating to realty is sought, title must be clearly established as well as the irreparable nature of the injury which is sought to be avoided, and for which a remedy at law is rendered inadequate.

11. As a condition for granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant to give a bond, in an amount to be fixed by the court, and with the intent that the defendant will pay to the plaintiff any loss sustained by reason of vacating or modifying the injunctive order.

12. Where a party has an adequate remedy at law, equity will not lie or interfere by way of an injunction unless the party applying for the relief shows to the court that the injury threatened to be done is irreparable or that it is incapable of being pecuniarily compensable.

13. The court cannot grant a writ of prohibition or an injunction in response to the mere fears and apprehensions of individuals; the individuals must show that the acts against which they seek protection will in all probability be committed to their injury.

14. A temporary restraining order having been granted, the law provides that a motion to vacate is the appropriate pleading in response thereto; as such, no answer, returns or resistance is necessary to be filed.

15. A trial court is not necessarily required to specify in its written opinion all the grounds upon which its decision is based.

16. Equity will not consider as irreparable any injury subject to legal redress or compensable by an award of damages by a court of law.

17. The statute permitting a preliminary injunction to remain in force pending disposition of an appeal applies only to respondents that are defendants in the action pending.

18. The province of a court is to decide real controversies, and not to discuss or give opinions on abstract propositions of statutes other than those involved in the case before it.

The informant, Sipo Logging International, plaintiff in the trial court, had filed an action of damages against the co-respondents, Timber Investment and Management Company (TIMCO) and the National Port Authority, simultaneously with a motion for a preliminary injunction. The trial judge presiding, upon receipt of the motion, ordered the issuance of a writ of injunction and a temporary restraining order, pending a hearing on the motion. The other co-respondent, International Enterprises and Modern Timber Company (IEMOTCO), upon a motion, had been permitted by the trial court to intervene in the action.

The trial court, after hearing arguments on the motion for a preliminary injunction, denied the same. From this ruling, the informant announced an appeal to the Supreme Court. In the meantime, the informant made application to the trial court for the injunction to remain in effect pending disposition of the appeal. This application was also denied. From this denial, the informant petitioned the Justice in Chambers for a writ of prohibition.

The Justice in Chambers ordered the issuance of a temporary stay order and cited the parties to a conference to determine whether the alternative writ of prohibition should be issued. Following the conference, the Justice in Chambers refused to grant the alternative writ, proceeded to revoke the temporary stay order, and order that a mandate be sent to the trial court informing it of the decision and ordering it to proceed with the matter before it. From this decision of the Justice in Chambers, the informant filed a bill of information with the Court *en bane*, joining the Justice in chambers as a co-respondent.

The Supreme Court dismissed the information, holding that while it had jurisdiction to hear an appeal from the Chambers Justices refusal to issue the alternative writ of prohibition prayed for by the informant, the informant had waived its right by not taking advantage of the statute and announcing an appeal from the action of the Chambers Justice. The Court noted that the right of an appeal, except from decisions of the Supreme Court, is held inviolate and guaranteed by both the Constitution and statutes of Liberia. Under this guarantee, the Court said, appeals may be taken even from all rulings of the Justice in Chambers, including even the Justice's refusal to issue a remedial writ. The Court opined however, that in order for such appeal to be heard, the aggrieved party must have made an oral announcement of the appeal. This had not been done by the informant in the instance case. Hence, it had waived the right of appeal.

On the question of the denial by the trial court of the motion for a preliminary

injunction, the Supreme Court opined that in order for such motion to be granted, the applicant must show that real injury irreparable in nature was likely to ensue from the acts of the defendants, and could not be based on the mere fears and apprehensions of the movant. Moreover, the Court noted that the writ of injunction could not be granted where there existed an adequate remedy at law. In the instance case, it said, there was no showing that the informant could not be accorded an adequate remedy at law.

On the question of the injunction remaining in force pending the disposition of the appeal announced by it from the ruling of the trial court, the Supreme Court held that the statute in question was only applicable to appeals by defendants and not to appeals taken by a party plaintiff. The Court concluded therefore that the trial court had properly applied the statute, and that he had acted legally and properly in dissolving the injunction notwithstanding the appeal. Accordingly, it affirmed the ruling of the trial court.

Johnnie N Lewis of the Lewis & Lewis Law Firm and *S. Raymond Horace Sr.* of the Horace & Horace Law Firm appeared for the informant. *Charles Walker Brumskine* appeared for the respondents.

MR. JUSTICE JUNIUS delivered the opinion of the Court.

On October 5, 1987, informant/petitioner filed an action of damages against co-respondent Timber Investment Management Company (TIMCO), as well as a motion for preliminary injunction against said co-respondent and against co-respondent National Port Authority, of Buchanan, Grand Bassa County. Three days later, the co-respondent Judge, His Honour Hall W. Badio, presiding over the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, ordered the issuance of a "writ of injunction and temporary restraining order", ordering the respondents "to appear and show cause why the motion for preliminary injunction should not be granted." The respondents were ordered to appear on October 18, 1987.

The respondents having been duly served, on October 9, 1987, co-respondent TIMCO filed its answer in the damages suit and simultaneously filed a motion to vacate the temporary restraining order and dismiss the motion for preliminary injunction tendering its bond which was duly approved. The temporary restraining order was therefore accordingly vacated by His Honour Hall W. Badio.

Co-respondent IEMOTCO thereafter filed a motion to intervene, an answer to the

damages action, and a motion to vacate the temporary restraining order and notice of preliminary injunction. In its pleadings co-respondent IEMOTCO stated, *inter alia*, that although it was the rightful owner of the forest as contended by both the Informant and Co-respondent TIMCO, it had assigned same to TIMCO, and that assignment was duly approved by the Forestry Development Authority.

The motion to intervene was granted and the intervention permitted. Subsequently, on October 26, 1987, His Honour Hall W. Badio entertained and heard argument pro et con on the motion for preliminary injunction. Following the hearing, the motion for the preliminary injunction was denied. Informant excepted to said ruling and announced an appeal therefrom. The exception was noted and the appeal granted. Following the courts ruling vacating and dissolving the preliminary injunction, informant/petitioner informed the court of its desire to spread upon the minutes of the court that consistent with section 51.20 of the Civil Procedure Law, the preliminary injunction should remain in force pending the determination of the appeal. However, because the co-respondent judge, His Honour Hall W. Badio, refused to grant the permission sought, the petitioner's counsel was constrained to file a formal application to the effect. The application was resisted by the respondents and denied by the co-respondent judge, who then proceeded to confirm his previous ruling denying the application. Informant/petitioner thereupon gave notice of its intention to take advantage of the statute. The announcement was noted and the matter suspended.

Thereafter, informant/petitioner petitioned the Chambers of His Honour Justice David Kpomakpor for the issuance of a writ of prohibition against the co-respondent judge, alleging that while the co-respondent judge had jurisdiction over the subject matter, he proceeded and was proceeding contrary to known rules which should be observed at all times. Mr. Justice Kpomakpor, Justice presiding in Chambers, ordered a stay of further proceeding pending a conference on whether or not to order the writ issued.

The conference was held on November 2, 1987. Upon a review of the petition, Justice Kpomakpor determined that it was devoid of legal merit and accordingly refused to issue the alternative writ. Justice Kpomakpor the ordered the Acting Clerk of this Honourable Court to communicate same to His Honour Hall W. Badio with the instruction that the parties be informed thereof. It is from the refusal of Justice Kpomakpor, presiding in Chambers, to grant the alternative writ that informant/petitioner has filed a bill of information to the Court *en banc*, naming our colleague, Justice Kpomakpor as corespondent. The respondents filed their returns

along with a motion to dismiss the information. Informant subsequently filed a submission in which it alleged that the respondents had disregarded the stay order from the Supreme Court and that the co-respondent TIMCO was proceeding with its operation.

Upon the call of the case, this Court decided that all of the pleadings be consolidated and argued so as to have the matter expeditiously determined. Several issues were submitted by the parties for consideration of this Court in determining the bill of information and the other pleadings mentioned supra. Informant/ petitioner has submitted the following issues of law for our consideration:

1. Does this Court, sitting *en banc*, have jurisdiction to review the act of a Justice presiding in Chambers where he refuses to issue a writ of prohibition which has been applied for?
2. What remedy is available to a petitioner where the Justice presiding in Chambers refuses to make formal and written his decision refusing to issue a remedial writ of prohibition which had been applied for?
3. Can prohibition lie to restrain a circuit court judge from whose ruling vacating and dissolving a preliminary injunction, an appeal is taken, from enforcing said ruling pending the determination of the appeal?
4. Can a circuit court judge legally vacate and dissolve a preliminary injunction where the respondents have failed to file an answer, resistance and/or returns to the motion for the preliminary injunction?"

Respondents in their counter argument have also submitted the following for consideration:

1. Does the Supreme Court have jurisdiction over the bill of information and every other proceedings emanating therefrom?
2. Should the Justice in Chambers exercise of his discretion to grant or refuse to grant a remedial writ be questioned by the parties?
3. Whether a writ of prohibition is granted as a matter of right?
4. Whether an appeal from a Justice in Chambers can be accomplished by a bill of

information?

5. Can a preliminary injunction, a harsh and one of the strongest equitable remedies known to our system of law, be established by implications as opposed to the expressed ruling of the trial judge?

6. Whether the Civil Procedure Law, Rev. Code I: 51.20 is applicable to an appeal announced by a plaintiff in view of the plain and unambiguous language of the status?"

It is our opinion, however, that while many issues are raised on a regular appeal, for the purpose of these proceedings we will consider only two issues, viz: (1) Can the Chambers Justice exercise of discretion in determining to grant or refusing to grant a remedial writ be questioned by the parties; (2) does the Supreme Court have jurisdiction over this matter?

Starting in the reverse order, informant/petitioner argued that the Supreme Court has jurisdiction. On the other hand, respondents strongly contended that the act of refusal of the Justice in Chambers to order the issuance of the writ of prohibition, which was applied for by the informant/petitioner, cannot and should not be reviewed by this Court.

Informant/petitioner applied for the writ of prohibition. The Justice presiding in Chambers ordered a temporary stay of the ruling of His Honour Hall Badio on the preliminary injunction and cited the parties to a conference. The parties appeared, a conference was held, and the Acting Clerk of Court was ordered to communicate with Judge Badio to the effect that the writ of prohibition had been denied and that the temporary stay order had been revoked.

Informant/petitioner's counsel argued and referred this Court to section 2.2 of the New Judiciary Law, which provides that: "The Supreme Court shall have jurisdiction of all appeals from courts of record and from ruling of justices of the Supreme Court presiding in Chambers on application for remedial and extraordinary writs, including refusal to issue synch writs." Judiciary Law, Rev. Code 17:2.2.

Informant/petitioner's counsel informed the Court that the issue raised and the application thereto of the cited provision of the New Judiciary Law were being raised for the first time, and that as the issue had never before been determined by this Court, the Court was obligated, by force of the cited provision, *supra*, to review the

act of the Chambers Justice.

Respondents' counsel contended to the contrary that the issue had in fact been previously decided by this Court. He referred this Court to *Brown et. al. v. Republic and Lewis*, 22 LLR 121 (1973). In that case, quite different from the case at bar, the Chambers Justice refused to grant the issuance of the alternative writ upon presentation of a petition; therefore, no issue was joined. In this case, the Chambers Justice, upon presentation of the petition, ordered a temporary stay of the trial judge's ruling pending the holding of a conference. It was only after the conference was held, that he revoked the order and directed that the trial judge to proceed with the hearing of the case. In such a case, the issuance of the temporary stay order gave the Justice jurisdiction over the matter and over the parties. The Supreme Court does not have original jurisdiction over petitions for remedial writs, but when the Justice in Chambers has acted aforesaid, definitely the Supreme Court does have jurisdiction. From the act of the Justice in Chambers, enumerated *supra*, an appeal could be announced to the full bench. The Justice in Chambers is therefore the only gateway through which special relief might be sought from the Supreme Court, and when the Justice in Chambers opens the gate, party litigants must be allowed to pass through. We hold therefore that this Court has jurisdiction to review the act of the Justice in Chambers.

Informant/petitioner has asked us to answer the question "What remedy is available to a petitioner where the Justice presiding in Chambers refuses to make formal and put into writing his decision refusing to issue a remedial writ of prohibition which had been applied for?" As noted *supra*, the Supreme Court has appellate jurisdiction over "all appeals . . . from rulings of Justices of the Supreme Court presiding in Chambers, on application for remedial and extraordinary writs including refusal to issue such writs," informant/petitioner strongly contended that Justice Kpomakpor violated the Civil Procedure Law, Rev. Code I: 41.2, which states that "All judgments shall be announced in open court."

The Acting Clerk of the Supreme Court was instructed to inform His Honour Judge Badio of the decision that the writ of prohibition prayed for by informant/petitioner had been denied and that the temporary stay order had been revoked, which instructions she carried out. Informant/petitioner claimed that the instructions, as indicated in the letter of the Acting Clerk of the Supreme Court to His Honour Judge Badio, was not communicated to them; yet, in count 8 of the bill of information it is clearly stated: "That following the discovery of the Acting Supreme Court Clerk's letter of November 2, 1987, addressed to co-respondent Judge Hall W. Badio, one of

counsel for informant, in person of Counsellor S. Raymond Horace, Sr., sought audience with Mr. Justice Kpomakpor, and requested that whatever decision he had reached be made formal and written, so that adequate advantage may be taken of the statute, in such cases made and provided; but the co-respondent Associate Justice has failed, neglected and refused to so comply, thus the only remedy available to the informant is by information, which is now being filed."

Informant's counsel has admitted that he did see copy of the Acting Clerks letter, quoted hereunder:

"November 2, 1967

His Honour Hall W, Badio, sr.,

Resident Circuit Judge

Sixth Judicial Circuit

Civil Law Court

Monrovia, Liberia

May It Please Your Honour:

His Honour David D. Kpomakpor, Associate Justice presiding in Chambers, Supreme Court, directs me to inform you that the petition for a writ of prohibition prayed for SIPO Logging International by and thru its President, Naomi A. Gooding of the City of Monrovia, Liberia, in the case:

SIPO LOGGING INTERNATIONAL by and thru its President, Naomi A. Gooding of the City of Monrovia, Liberia, Petitioner Versus TIMBER INVESTMENT COMPANY by by and thru its President, Gus Kouvenhoven and his Honour Hall W. Badio, Assigned Circuit Judge, Sixth Judicial Circuit, Montserra do County, Respondents PETITION FOR A WRIT OF PROHIBITION

has been denied.

In view of the above, Justice Kpomakpor further directs me to inform you that the stay order of October 29, 1987, sent to Your Honour by this Honourable Court ordering you to stay all further proceedings into the said matter has been revoked; and that you should inform all the parties concerned accordingly.

With kindest regards,

Respectfully yours,

Sgd. Emily N. Badio

ACTING CLERK, SUPREME COURT, R.L."

How more formal did he want the decision of the Justice in chambers to be? The informant saw the mandate from the Justice in Chambers to the lower court; however, he contended that the co-respondent Judge, Hall W. Badio, did not inform him. The question is how did he see it. Whether or not the judge formally informed him, the crux of the matter is that he knew about the mandate and failed to take advantage of the statute. The Civil Procedure Law, Rev. Code I: 51.2 provides that:

"Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court except from that of the Supreme Court. The decision of the Supreme court shall be absolute and final."

We therefore conclude that Justice Kpomakpor was in order when he instructed the Acting Clerk to notify the trial judge of his refusal to grant the said writ of prohibition. We concluded also that the Justice neither did he violate Article 20 (b) of the 1986 Constitution of Liberia, nor the Civil Procedure Law, Rev. Code I: 41.2, 51.6 and 7.5, all of which are quoted hereunder:

Article 20 (b)

"The right of an appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal.

Sec. 51.6. of the Civil Procedure Law, under the caption Announcement of taking of the appeal, states:

"An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose."

Sec. 7.5., also of the Civil Procedure Law, under the caption *Effect of judgment for defendant on order granting provisional remedy*, states:

"An order granting a provisional remedy is annulled immediately on judgment for the

defendant unless an appeal is taken. The taking of an appeal continues a provisional remedy in effect until final judgment is rendered."

Informant/petitioner has also asked us to answer the question "Would prohibition lie to restrain a circuit court judge from whose ruling vacating and dissolving a preliminary injunction an appeal is taken, from enforcing said ruling pending the determination of the appeal?" Before answering this question, let us take recourse to the Civil Procedure Law, Rev. Code 1: 16.21 (3), under prohibition, and see what our statute says. The section referred to states: "Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein. According to our statute, "When a petition for a writ of . . . or prohibition is made to a Justice of the Supreme Court, such Justice shall issue or cause the Clerk to issue a citation to the parties named respondents. If the urgency of the situation warrants the Justice may issue, in lieu of his citation, an alternative writ requiring the respondent (a) to do an act or to refrain from proceeding a judicial action . . ." Under the same statute, *supra*, it says: "at the conclusion of the hearing the Justice shall dismiss the citation or quash the alternative writ if such a writ is issued. . ." *Id.*

This Court held in the case *Jackson et. al. v. Irons et. al.*, 21 LLR 328 (1972) that "The granting of injunctive relief rests within the judicial discretion of the judge applied to for relief." The informant/petitioner has argued that the preliminary injunction should have remained in force pending determination of the appeal. This we fail to see, for in the *Jackson case* we said: "When injunctive relief relating to realty is sought, title must be clearly established as well as the irreparable nature of the injury to be thus avoided for which the remedy at law is rendered inadequate." *Ibid.* This Court says that the injury anticipated to be irreparable, as informant/petitioner has argued, is not so, since the respondents had filed a bond as a pre-requisite to vacating the preliminary injunction. This is what our law says: "As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant to give a bond, in an amount to be fixed by the court, that the defendant will pay to the plaintiff any loss sustained by reason of the vacating or modifying order." Civil Procedure Law, Rev. Code I: 7.65 (3). Additionally, it is a known fact that the FDA knows the quantity of all logs extracted from a forest or a designated area by any company or companies, and as such, at the conclusion of the case, this information, as may be requested of the FDA, can easily and readily be supplied. Moreover, our law says that he who comes to equity must come with clean hands. In the instant case, equity will not lie because there is adequate remedy at law, informant/petitioner having sued respondents in an action

of damages currently awaiting trial. Under the principal just quoted, this Court made it clear in the case *Kilpatrick v. Oost Afrikaansche Compagnie (OAC)*, 10 LLR 88 (1949) that "under the principles that 'equity aids the law' and 'equity follows the law', we are of the opinion that the invocation of equity in a pseudo attempt to aid the law but in truth to supplement or evade express statutory provisions would be a travesty of justice and therefore should not be encouraged."

It is a well settled principle of equity jurisprudence that where a party has an adequate remedy at law, equity will not interfere by way of injunction, unless the party applying for relief shows to the court that injury threatened to be done is irreparable, that is to say, that the injury is incapable of being pecuniarily compensated. Such a showing was not made in either the complaint or the petition for the writ of prohibition. Nor was it alleged that the respondents were insolvent and would therefore not be able to respond in damages.

The Court cannot grant prohibition in response to the fears and apprehensions of individuals. They must show that the acts against which they seek protection will in all probability be committed to their injury. *Francis v. Anderson*, 12 LLR 269 (1956).

Informant/petitioner's counsel in submitting at the conclusion of the argument has asked this Court to answer this question: "Can a circuit judge legally vacate and dissolve a preliminary injunction where the respondents have failed to file an answer, resistance and/or returns to the motion for the preliminary injunction?" The counsel argued that the notice of injunction required the respondents to answer and "to show cause, if any they might have, why the motion for preliminary injunction should not be granted and the writ of injunction ordered issued." Instead, the informant says, the respondents appeared but failed to file either an answer, a resistance or returns to the motion for preliminary injunction. The respondents, the informant argued, elected they took advantage of section 7.65 (2) of the Civil Procedure Law, Rev. Code I, and hence filed only a motion to vacate the preliminary injunction. informant/petitioner's counsel argued that the co-respondent judge was in error in vacating and dissolving the preliminary injunction, such action being contrary to section 51.20 of the Civil Procedure Law which states that "On announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary in junction, such preliminary injunction shall be in force pending decision on the appeal."

Respondents argued that under our law, a party litigant, i.e. a plaintiff in an action, cannot seek such right. Informant is in fact plaintiff in an action of damages, in which it filed a motion for temporary restraining order and notice of preliminary injunction. Upon the filing of informant's motion for temporary restraining order and notice of injunction, the co-respondent trial judge granted a temporary restraining order. The temporary restraining order having been granted, the law provides that a motion to vacate is the appropriate pleading in response thereto. As such, respondents say, no answer, returns or resistance was necessary to be filed. Civil Procedure Law, Rev. Code 1: 7.65(2), upon which defendants/respondents relied, states:

"2. *Temporary restraining order.* On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers on which it is based, it is filed with the clerk and served upon the plaintiff."

Respondents concluded by saying that the co-respondent judge rightly denied the motion for preliminary injunction.

This Court holds that the co-respondent judge rightly denied the preliminary injunction, for preliminary injunction will not be granted when there is an adequate remedy at law. *Paterson, Zochonis & Co., Ltd. v. Cooper et. al.*, 13 LLR 348 (1959). In that case, this Court said, at Syl. 3 and 5:

"3. A trial court is not necessarily required to specify, in its written opinion, all the grounds upon which its decision is based.

5. Equity will not consider as irreparable any injury subject to legal redress or compensable by an award of damages by a court of law." .

Section 51.20, cited *supra*, upon which informant/petitioner's counsel relied in asserting that the co-respondent judge should have permitted the preliminary injunction to remain in force pending the determination of the appeal does not apply to informant/petitioner. Informant/petitioner is plaintiff in an action pending, and the statute cited *supra* applies to respondents that are defendants in the action pending. We hold therefore that proper interpretation should be given to the statute: "It is the duty of the courts to construe statutes, for the purpose of determining whether a particular act done or omitted falls within the intended inhibition or

commandment of such statute, and, in general, for the purpose of enabling the enforcement of the statutes with reasonable certainty. However, in accordance with the general rule that the province of a court is to decide real controversies, and not to discuss or give opinions on abstract propositions or moot questions, a court will not construe provisions of a statute other than those involved in the case before it." 50 AM. JUR., *Statutes*, § 219. In the instant case, the co-respondent trial judge properly applied the Civil Procedure Law, Rev. Code 1: 51.20 and 7.65 (2).

For the reasons stated herein before, we have no alternative but to dismiss the information. And it is hereby so ordered.

Information dismissed.