HENRY J. R. COOPER, Sr., Appellant, v. **RICHARD MACINTOSH**, boat carpenter, Harper, Maryland County, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued December 4, 6, 7, 1944. Decided December 15, 1944.

1. The title of a case need not necessarily be stated in the body of the affidavit, especially where the affidavit sufficiently describes the deponent as a party to the suit.

2. To warrant the allowance of an injunction it must clearly appear that some act has been done or is thereby threatened which will produce irreparable injury to the party asking an injunction.

3. A court should not grant an injunction to allay the fears and the apprehensions of individuals.

Appellant filed a suit for an injunction against trespass. On appeal from decision in favor of appellee, *judgment affirmed.*

D. Bartholomew Cooper for appellant. *A. Dash Wilson, Jr.,* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The records in this case disclose that on June 22, 1943 appellant saw fit to file a complaint in equity against appellee in an injunction proceeding against trespass. Appellant stated that he is owner of a piece of real property in the city of Harper, Maryland County, filing as evidence thereof a copy of a deed ; that appellee had unjustly entered upon said land and was forcibly using a portion thereof, which was unlawful, injurious, and damaging to appellant's right and interest; that appellant was about to commence and institute an action at law in vindication of appellant's claim and legal right to said property, but that in the interval of doing so and pending the trial of the right serious irreparable damage and injury could be done to the aforesaid piece of real property which would be injurious to the plaintiff and not in contemplation of either law or equity.

Defendant, now appellee, in his answer set up several defenses, among which are the following :

1. That appellant's averment of intention to file an action of ejectment was misleading in that appellee was there under lease from the trustees of the estate of the late Teah Tobey who had used said property for a number of years without question by the said appellant.

2. That the land in question was bought by the late Teah Tobey from appellant who was not only the vendor but also the surveyor, and who led the said Teah Tobey to believe that that was the identical piece of land paid for by him. (Appellee also filed a copy of his deed as evidence of the title of the said trustees, his landlords.)

3. That it is not within the function of an injunction or of a court of equity to decide title to real property. Appellant should first file his action of ejectment.

4. That his use of the premises under a verbal arrangement with the trustees of the estate of the late Teah Tobey, who claim fee simple right to said property, was only to carry on operations in the exercise of his profession as a boat carpenter.

Appellee concluded with a prayer that the injunction be dissolved. Those are the principal questions raised in the pleadings which extended to the sur-rejoinder.

The records further disclose that appellee also filed an application for permission to remove his personal property, the boat then in process of construction and other materials connected therewith, from the land which is the subject of these proceedings, and offered to file a bond indemnifying appellant for any loss or damage he might sustain by reason of such removal. Appellant's counsel, on the other hand, resisted said application on the ground that it was not supported by a proper affidavit, pointing out what he considered the defects therein. He also objected to the filing of a bond by appellee, but contended that the personal property should remain on the land, that appellant would give a bond indemnifying appellee from all loss or damage appellee might sustain by reason thereof. The said bond was prepared and filed.

The bill of exceptions in which this appears is before us. It consists of two counts which read as follows :

"Appellant submits that the following errors were committed of said action, namely :-

"1. Defendant filed a Renewed Application for Order of Court to Remove Personal

Property. Said application was objected to by plaintiff because of reasons substantially stated and appears in the record, as follows, to wit :— "Because the affidavit thereto containing issues of fact not of record is seriously defective and bad, for the reason it does not refer to the title of the action as is provided by law. "And also because it does not appear by the affidavit that the defendant in said cause is the identical and same person who swore as deponent, in that, the defendant in this action is known to the court as 'RICHARD MACINTOSH, Boat Carpenter, Harper, Md. Co., defendant,' whereas one R. A. Macintosh signs as deponent who swore to the affidavit . . . whether the R. A. Macintosh as deponent is the defendant known to the court in these proceedings.

"Plaintiff insisting that for such defects the affidavit should have been rejected and simultaneously the application upon which it was founded, or which it purported to support, citing *L. Van Der Werf v. Logan,* L.L.R. 521. The court overruled the objections and plaintiff excepted, as appears from the Clerks' record herein.

"2. Defendant filed an application for dissolution of the Injunction on the 2nd day of July A.D. 1943, whereupon plaintiff resisted said application by citing the court's attention to the law controlling on that score. "That Court overruled plaintiff's resistance and accordingly proceeded to render Final Decree dissolving the Injunction, as appears from the Clerk's record herein, which also shows the plaintiff excepted and entered a Notice of appeal to the Supreme Court of the Republic of Liberia at its April Term A.D. 1944."

With reference to the first point in the bill of exceptions, upon an inspection of the copy of the application and its supporting affidavit we do not see that the contention of appellant is tenable and hence we are in full accord with the trial judge who ruled *inter alia:*

"When it comes to the first objections of the plaintiff and a recourse to said affidavit in question, said affidavit shows the title of the case upon its face, and since there has been produced no law showing that the title of the case must be stated in the body of the affidavit the court finds itself unable to concede the point."

We have also to sustain the ruling of the judge with reference to the second point that the affidavit sufficiently describes the deponent as a party to the suit.

As regards the second count of the bill of exceptions, we are of the opinion that the court did not err in dissolving the injunction for in the first instance it is fundamental

law that an injunction is not an action to try and to determine title to real property. From the records and from the pleadings in this case it appears that appellant filed a suit for an injunction to prevent a trespass upon land, the title to which was in dispute, without first filing his action of ejectment.

"Where the right of a party is doubtful, an injunction will not in general be granted to prevent an interference therewith until the right is established at law. Nothing is better settled as a rule of equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on a disputed question of law, and which question has never been adjudged in his favor by a court of law. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not, without a decision of the courts at law establishing such principles, grant an injunction. So if the facts on which the right to the injunction is based are in dispute the injunction will not be granted. . . ." 16 Am. & Eng. Encyc. of Law *Injunctions 359-60 (1900).*

Appellant further applied for the injunction because of some apprehension or fear that irreparable injury could be done to the property pending his filing an action of ejectment and the termination of such an action. This is not ordinarily a ground for the granting of an injunction unless it is clear that some act is being done or is threatened which will produce irreparable injury. Nowhere in the record did appellant make it clear that any irreparable injury would happen to the property which was only being used by appellee for the building of a boat.

"To warrant the allowance of a writ of injunction it must clearly appear that some act has been done, or is threatened, which will produce irreparable injury to the party asking an injunction. Unless this be made to appear, an injunction should be denied. If, however, the injury threatened be irreparable, chancery will interfere by injunction. An injury is irreparable either from its own nature, as when the party injured cannot be adequately compensated therefor in damages or when the damages which may result therefrom cannot be measured by any certain pecuniary standard, or when it is shown that the party must respond is insolvent, and for that reason incapable of responding in damages.

"The court cannot grant an injunction to allay the fears and apprehensions of individuals. They must show the court that the acts against which they ask for protection are not only threatened, but will in all probability be committed, to their injury. . . ." *Id.* at 360. We are of the opinion that the decree of the court below

dissolving the injunction should be affirmed, with costs against appellant; and it is hereby so ordered.

Affirmed.