

H. W. ERSKINE, Appellant, vs. THOMAS SMITH,
Appellee.

LRSC 3; 1 LLR 69 (1874)

[January Term, A. D. 1874.]

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

Equity jurisdiction—Injunction.

The equity jurisdiction of the Court of Quarter Sessions and Common Pleas is separate and distinct from its jurisdiction in law. Under the Statute of 1870 the judge of the Court of Quarter Sessions and Common Pleas has authority to convene the equity jurisdiction of said court at any time, whether in or out of its regular term time, to hear injunctions and writs of ne exeat.

The court, having had under careful consideration this case, decides:—

1st, That the equity jurisdiction of the Court of Pleas and Quarter Sessions is separate and distinct from its jurisdiction in law. Courts, therefore, in the exercise of equity jurisdiction, have a right to issue injunction, to stay proceedings at law when it is made to appear that such proceedings are fraudulent.

2d, The court below had a right to appoint any legal day, in or out of the term, at which an action of injunction is entered; for it was the intention of the Legislature in the Act

of 1870 to give the courts the power to dispose of injunctions and writs of ne exeat as speedily as the ends of justice may require. It was not error, therefore, in the court below, when it named a day to hear the injunction, although said day was out of the term at which the action was entered.

The record shows that on the 8th of January, 1873, the court met for the hearing of the injunction, at which time, upon the motion of the plaintiff to postpone the hearing of the same on account of the absence of a material witness in the case, Mr. Arthur Parker, the court, in consideration of the motion, entertained it, and postponed the hearing of the injunction until February 1st, 1873, at which time the court met to hear and determine the same, according to appointment. And it is strange to say that although this day was appointed for the purpose of allowing the plaintiff to introduce his witness to prove the fraud alleged, it does not appear anywhere upon the record that the plaintiff made any mention of him on that day, February 1st, 1873. It shows only this fact, that he had argued the question as to the right of the court to hear and determine the injunction out of the term for which it was entered. And even after this question had been determined against him, he brought no proof to establish the alleged fraud. The law, therefore, must have raised the presumption in the mind of the court that there

was no fraud committed; upon which the court had a right to consider the case as it stood before it, upon the truthfulness of the pleadings as sworn to by the parties, and decide the same thereupon. We hold, therefore, that the decree of the lower court ought to be affirmed.

The decree of the court below is hereby affirmed, the appellant to pay all costs.