

KETURAH FISKE, RACHEL F. WILLIAMS, by her Husband, AARON D. WILLIAMS, **SARAH E. LEWIS**, by her Husband, CHARLES LEWIS, Surviving Heirs of the Late ELLA VICTORIA FISKE, and **JULIUS CAESAR**, Appellants, v. **SARAH ANN ARTIS**, formerly UREY, **J. T. H. ROSE, SAMUEL BROWN**, and **E. Y. NIMLEY**, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL
CIRCUIT, GRAND BASSA COUNTY.

Argued April 14, 15, 1953. Decided May 29, 1953.

1. Where the trial judge in an injunction action, wherein no issue of title was raised by the pleadings, ruled that determination of title to real property constituted the main issue, and dissolved the injunction, it was proper for appellants, plaintiffs below, to except to the ruling and appeal to the Supreme Court
2. An issue not raised by the pleadings may not properly be adjudicated.
3. The issue of title is foreign to an action of injunction.
4. The respective natures of an injunction action and an ejectment action are so distinct that the two forms of action cannot be combined or blended.

Appellants sought to enjoin appellees from leasing real property to which appellants claimed title pending the outcome of an ejectment action previously instituted in the circuit court. The lower court held that the injunction action involved title to real property, which could not be decided in such a proceeding, and therefore dissolved the injunction, although no issue of title had been raised by the pleadings. Appellants excepted to the ruling and appealed to the Supreme Court. On appeal, *ruling reversed* and injunction perpetuated.

L. Morgan for appellants. *Richard A. Henries* for appellees.

MR. JUSTICE REEVES delivered the opinion of the Court.

The appellants instituted an injunction proceeding against the appellees, alleging that the appellants owned a tract of land, therein described, situated in the township of Owensgrove, Grand Bassa County, with dwelling houses thereon, and that Sarah Ann Artis, formerly Urey, one of the appellees, intended to lease the said property to J. T.

Rose and the other appellees, and to receive from them a yearly lease of three hundred dollars which the said appellees ought not to do since the property aforesaid belonged to the appellants. They therefore prayed that the aforesaid appellees be enjoined therefrom pending determination of an action of ejectment previously instituted in the Circuit Court of the Second Judicial Circuit. In an amended answer the appellees set forth three defenses as follows :

1. The complaint was defective for non-joinder of parties-appellees, since one of the appellees, Albert D. Peabody, who held title to three-quarters of an acre of land within the said tract of land was not named as one of the parties-appellees.
2. The complaint did not refer to a piece of land formerly owned by Sarah Ann Artis, an appellee under whom the other appellees held title.
3. The appellants not having held title to land described by appellees, and the same not being the land claimed by appellants, they cannot enjoin and legally restrain the said appellees in the use of this land.

The appellants filed a reply to the amended answer, raising the following issues :

1. The appellees improperly filed an amended answer without withdrawing their first answer, since the document filed, entitled : "Former Withdrawal," was addressed to the August term of Court which had then terminated.
2. Albert D. Peabody was not a necessary party to the injunction action, as he had not participated in the acts which the injunction was aimed to prevent.
3. The land set out in the answer was the same referred to in the complaint.
4. Although the said Albert Peabody's deed referred to land in Grand Bassa, it was probated in Marshall for the sole purpose of withholding such notice to the public as the probate of deeds is meant to provide, and the appellees should not be permitted to benefit from this attempted deception.

The issues raised by the pleadings were tried before Judge J. Dossen Richards, assigned to the Circuit Court of the Second Judicial Circuit, who deemed it necessary to consider only the following two issues :

1. The issue of non-joinder of parties raised by the appellees in their answer. This

issue was decided in favor of the appellants.

2. Whether the main issue in the case was one involving real property. In deciding this issue in favor of the appellees, the learned circuit judge wrote :

"The main point in the case being an issue involving title to real property, we are of the opinion that the plaintiffs must first have their right or title settled and established at law in order to justify the interposition of a court of equity. There are a few other points raised in the pleadings, but we do not consider them of sufficient legal importance or merit to dilate on here. In view of the foregoing we are of the opinion that the injunction should be dissolved with costs against plaintiffs."

From the above-quoted ruling the appellants properly excepted and prayed an appeal to this Court. That the judge of the lower court flagrantly erred in making this ruling is beyond dispute. Since actions involving title to property are possessory actions, and actions of injunction are prohibitive actions, they are distinct in character. The issue of title is foreign to the instant action. Moreover, it is settled law that the courts will decide only such issues as are joined between the parties and set forth in the pleadings.

For the purpose of clarifying the issues herein we quote from *American Jurisprudence* as to the definition and purpose of ejectment:

"In a general way, it may be said that ejectment is a form of action in which the right of possession to corporeal hereditaments may be tried and the possession obtained. In some states it is defined by Statute as 'an action to recover the immediate possession of real property.' At common law ejectment is a purely possessory action; and even as modified by statute, and though based upon title, it is essentially of that nature. The action may doubtless involve both the right of possession and the right of property, and in at least one jurisdiction it has been said to be the proper, if not the only, mode of trying a title to lands. But the true purpose of the remedy is to obtain the actual physical possession of specific real property, . . ." 18 Am. Jur. 7-8, *Ejectment*, § 2.

From *Corpus Juris* we quote the following definition of a preliminary injunction, such as the injunction in the present case :

"An interlocutory or preliminary injunction is a provisional remedy granted before a hearing on the merits, and its sole object is to preserve the subject in controversy in

its then existing condition, and without determining any question of right, merely to prevent a further perpetration of wrong or the doing of any act whereby the rights in controversy may be materially injured or endangered, until a full and deliberate investigation of the case is afforded to the party." 32 C. J. 20, *Injunctions*, § 32.

It follows that the nature of an injunction action is distinct from the nature of an ejectment action. The two actions cannot be combined or blended; and the court below erred in attempting to do so. The ruling of the lower court is therefore reversed, and the injunction as prayed for is perpetuated. Costs are ruled against appellees; and it is hereby ordered.

Reversed.