LEROY E. FRANCIS, Appellant, v. **BENJAMIN J. K. ANDERSON**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 7, 1956. Decided June 29, 1956.

1. An injunction will not lie where there is an adequate remedy at law for the injury complained of.

2. Injunctive relief should not be granted absent proof that the petitioner's legal rights are about to be invaded by the acts sought to be enjoined, that these acts would cause irreparable injury to the petitioner, and that no other adequate remedy is available.

Appellee, as lessor of real property, cancelled a lease on the ground that appellant, as lessee, had breached the lease agreement. Appellant sued in the court below for damages by reason of appellee's termination of the lease, and at the same time applied to the court below for an injunction restraining appellee from interfering with appellant's possession of the demised premises. The court below issued a temporary injunction which was subsequently dissolved. On appeal to this Court from the decree dissolving the injunction, the *order* of the court below was *affirmed.*

MR. JUSTICE HARRIS delivered the opinion of the Court.

This is an appeal from an order entered against Leroy Francis in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. For a clear understanding of the case it is necessary to give a statement of the surrounding facts and circumstances.

Leroy Francis, the appellant in this case, entered into a lease agreement with Benjamin J. K. Anderson, the appellee, for a portion of Lot Number 69, situated on Carey Street in the City of Monrovia, stipulating to pay rents as therein stated for the use of the property.

Count "4" of the lease agreement reads as follows :

"It is further agreed and understood by and between the parties hereto that the party of the second part shall erect a permanent building upon the herein demised premises within fifteen years from the date of the signing of this agreement by both

parties hereto, and further that this agreement can be cancelled only upon failure by lessee, or of the said party of the second part, to pay the lease money as hereinbefore stipulated and/or failure to construct a permanent building within the time hereinbefore stipulated, and only after the notice of one calendar year shall have been given by the party of the first part or the party of the second part in writing."

Count "7" of the agreement reads as follows :

"It is hereby also mutually agreed and understood between the parties hereto that either party to this agreement hereby reserves to himself the right of entering an action of damages against the other party for the violation by either party of any and all of the terms of this agreement in an amount not to exceed the sum of fifteen thousand dollars ($15,000), but nevertheless, in case of any alleged violation on the part of either party, at least three months' notice of such alleged violation shall be served upon him by the other party, and in case said violation be not amended and/or corrected, then the said party making such violation may be sued by the other party for recovery against him in damages." Appellant having failed to pay the rent for the leased premises when it became due, appellee, through his counsel, in view of Counts "4" and "7" of the agreement as quoted above, addressed the following letter to appellants :

"THE 'EXCELSIOR' LAW FIRM
"September 20, 1954
"MR. LEROY FRANCIS
"ASHMUN STREET, MONROVIA.

"DEAR MR. FRANCIS:
"In consequence of your continued violation of the agreement of lease entered into by and between you and our client, Mr. B. J. K. Anderson for one-eighth (1/8) part of his premises situated lying and being on Carey Street, Monrovia, we have been requested to serve on you due and timely notice as in keeping with the terms of the agreement of lease, Count `7,' on notice. Please, therefore, take notice that it is the intention of Mr. Anderson to cancel the agreement.

"Meanwhile, we are to request that you remit through this office the sum of $283.35 in payment for the time you have occupied the said premises, on or before the 30th instant.

"It is a decided question with .us that no rehabilitation of the agreement can be

considered since you have flagrantly forfeited and failed on two consecutive occasions to make good your side of the contract.

"Faithfully yours,
[Sgd.] PETER AMOS GEORGE
Attorney at Law

"Certified copy of the copy filed.
[Sgd.] ROBERT B. ANTHONY
Acting Clerk of Civil Law Court."

Following the above letter, and in keeping with Count "7" of the above quoted agreement, the appellant instituted this action of injunction against the appellee who appeared and filed his answer as well as a motion for dissolution of the injunction. Trial of the law issues raised in the pleadings was held, and the injunction was ordered dissolved. From this order of the trial court the appellant, after exceptions noted, has appealed to this Court upon a bill of exceptions containing two counts. The first count contains exceptions to the order dissolving the injunction. The second count excepts to the issuance of the order dissolving the injunction at a time when the main action had been instituted. When the case was called for trial before this Court, the appellant neither appeared nor filed any brief. The appellee argued his side of the case and submitted.

Since the holding of the court below was grounded wholly upon points of law, let us see if the dissolution of the injunction is in keeping with applicable principles of law.

The appellant, as plaintiff below, filed a complaint containing seven counts with a prayer, which we quote hereunder:

"1. That on April 14, 1955, plaintiff and defendant entered into a lease agreement for a portion of Lot Number 69 Carey Street, Monrovia, for the erection of a theatre, a copy of which agreement is herewith made profert, marked Exhibit 'A,' and made a part of this complaint.

"2. And the said plaintiff complains and further shows that he entered into the lease agreement with the defendant in good faith, but the defendant did not, in that defendant surveyed and set the points of said leased premises on both private and public lands not belonging to him.

"3. And the said plaintiff further complains and most respectfully shows that, notwithstanding the several requests made by plaintiff to defendant for the settlement of the disputes between the owners of the land he fraudulently leased to plaintiff, also the government, defendant sat down as though nothing whatsoever happened, and willfully neglected to take the necessary steps to rectify same.

"4. And the said plaintiff further complains, and most respectfully shows, that plaintiff called defendant's attention to the damages he was sustaining as a result of his fraudulent actions, and that growing out of said actions, that is to say, the giving of lands not belonging to defendant, the owners of said land threatened to enjoin your plaintiff except he break that portion of the building which was already constructed on land defendant claimed to be his. The Department of Public Works and Utilities also wrote strong letters to your plaintiff commanding that operations be stopped and that ten feet of the front of the structure which is government's be broken down. Your plaintiff called the attention of defendant to the above mentioned facts and demanded that he be protected; but said request was in vain. Your plaintiff on another occasion, after the Department of Justice officially stopped the operations, called the attention of the defendant to said order and informed defendant that the irregularities should be clarified before any further money be expended on the structure or against lease payments, and to the further fact that your plaintiff had spent more than $20,000 towards said project. Defendant conceded the point, but requested that he be advanced $100 against the last year's payment, for which your plaintiff willingly accepted and paid.

"5. And the said plaintiff further complains and most respectfully shows that, notwithstanding the foregoing, as well as the further fact that a permanent structure was not supposed to be erected before fifteen years after the signing of the agreement, and that the agreement could not be cancelled unless a notice of one calendar year in writing be given, and that only in the event said one year notice was given and plaintiff failed before steps can be taken, defendant received a cruel letter signed by Attorney P. Amos George, a disgruntled member of the Labor Congress of Liberia (which your plaintiff heads), which said letter states, among other things, that your plaintiff, and not defendant, had violated the lease agreement, and that it is a decided question with them that no rehabilitation of the agreement can be considered. Said letter in your plaintiff's opinion is designed to get blood money from plaintiff, especially so that your plaintiff is developing the property of defendant and already spent more than $20,000 on said project, and that he, defendant, has damaged and is still continuing to damage plaintiff because of the fradulent manner in which he commenced and is still continuing to do. A copy of said letter is herewith made

profert, marked Exhibit '13' and made a part hereof.

"6. And the said plaintiff further complains and most respectfully shows that, after a request was made by him for a new survey of the parcel of land which defendant leased to your plaintiff, it was discovered that the land defendant leased to your plaintiff was less on the deed but more on the lease agreement. Plaintiff approached defendant requesting that he perform his part of the contract by giving him the land as specified in the lease agreement. Defendant appealed to your plaintiff to leave the matter alone since they were friends, and that he would make a compromise agreement with government for the said portion of land not specified on his original deed.

"7. And the said plaintiff further complains and most respectfully shows that the said defendant ought not to even attempt such a procedure in the face of the above-mentioned, but in truth and in fact, defendant should be made to, ordered and compelled to settle the disputes which his actions brought your plaintiff, and to be made to pay all damages your plaintiff sustained. Plaintiff still reserves the right to bring an action of damages against defendant for the losses he sustained and to ask the court to interpret the said agreement so that its life can be peaceful thereafter.

"Wherefore plaintiff respectfully prays this Honorable Court to grant unto him, plaintiff, and to cause to issue and be served upon the above named defendant, a writ of injunction, enjoining, restraining and prohibiting said defendant or his agents and any or all persons whomsoever from doing any of the acts enumerated herein on penalties prescribed by law until this Court shall have made further order in the premises, namely:

"(a) Enjoining, restraining and prohibiting defendant to desist and refrain from molesting plaintiff, or from entering in and upon a certain piece and parcel of land or any portion thereof situated on Carey Street, City of Monrovia, County and Republic aforesaid, same being a portion of Lot Number 69, which the said defendant has leased to plaintiff in keeping with lease agreement dated April 14, 1953, or from doing or performing any act in connection with said agreement.

"(b) Restraining him, or any other person or persons acting directly or indirectly under him, from doing the above mentioned, until this Court shall have made further orders in the premises ; and that Your Honor will be further pleased to have named in said writ of summons a day and time suitable unto Your Honor when said defendant may appear at court, sitting in equity to show cause why (if indeed they

can) said writ of injunction should not be perpetuated. And that Your Honor will be pleased to further grant unto plaintiff such other and further relief in the premises as to justice, equity and right doth appertain. All of which your humble plaintiff as in duty bound will ever pray and stand ready to prove."

Appellee appeared as aforesaid and filed an answer containing seven counts, the second and third of which we regard as pertinent to the determination of this case, since they present points of law upon which the injunction was ordered dissolved. Count "2" reads as follows :

"2. And also defendant further submits that an action of injunction is an ancillary suit and therefore cannot stand by itself. Defendant contends that it is an elementary principle of law that injunction does not or will not lie generally to restrain and prohibit the institution of an action or suit where there is an adequate remedy at law for the party sued to appear and defend himself. Defendant avers that, even where it was defendant's intention to bring plaintiff to court to compel him to perform his portion of the lease agreement entered into between them, or even to offer to cancel it, plaintiff still has sufficient remedy at law to appear and defend himself.

"3. And also defendant submits that plaintiff has chosen the wrong form of action; for, if defendant had injured plaintiff in the face of a lease agreement entered by and between them, his action should have sounded in damages for breach of contract, or specific performance to compel defendant to perform his side of the contract. Defendant avers that, in keeping with equity, same does not lend aid to fraud."

Now let us see if the appellant, plaintiff below, was entitled to injunctive relief upon the allegations contained in his complaint. The applicable statutory provision reads as follows :

"An action of injunction is an action in which the plaintiff seeks to compel the defendant, to permit matters to remain in the present state, either in pursuance of a contract, or because of a right growing out of the general principles of law. It is classed with actions founded on contract as a matter of convenience, although it is capable of being applied in cases, where the wrong is not, precisely, a breach of any contract." 1841 Digest, pt. II, tit. II, ch. I, sec. 8; 2 Hub. 1525.

In our opinion, none of the allegations contained in the above complaint entitled the appellant to injunctive relief, either in pursuance of the contract entered into between him and the appellee, or by reason of any right under general principles of law; but

on the other hand, these allegations if true, show that plaintiff has an adequate remedy at law. We are therefore of the opinion that Count "3" of the answer is well taken, and it is therefore sustained.

"If the allegations of the petition do not show plaintiff to be entitled to equitable relief, as where it is apparent that he has an adequate remedy at law, the bill will be dismissed." 22 CYC. 948 *Injunctions.*

Again :

"As bearing on the effect of an adequate remedy at law as a bar to relief by injunction, the distinction between legal actions and the remedy afforded by a court of chancery should be borne in mind. The former are designed to afford redress for injuries already inflicted and rights of persons or property actually invaded. Equitable relief, however, by way of injunction is preventive in character. But equity is chary of its powers, and ordinarily employs them only when the impotent or tardy process of the law does not afford that complete and perfect remedy or protection which the individual may be justly entitled to. Where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction, and the legal remedy is sufficient, an injunction will not be granted." 1.4. R.C.L. 340-42 *Injunctions* ∫ 44.

The act of appellee in giving notice of appellant's breach of the contract entered into between them, and of appellee's intention to cancel the said agreement, is not sufficient ground for the granting of an injunction, especially since appellant had ample time to correct any default in keeping with the terms of the agreement, or to defend himself. The appellant did not appear when the case was called for trial, nor did he file any brief, which non-appearance we may rightly regard as an abandonment of his case. Even had he appeared, his failure to file a brief is tantamount to waiving the points raised in his bill of exceptions; yet we have considered it wise to make the above comment for the sake of clarification.

We are therefore of the opinion that the order of the lower court should be, and it is hereby affirmed with costs against the appellant.
Order affirmed.