EVERETT J. GOODRIDGE, Appellant, v. **ANGELA DENNIS-BROWN**, Appellee.

APPEAL FROM DECREE IN EQUITY.

Argued March 23, 1949. Decided April 22, 1949.

1. It is in the bill and not in the caption that the nature and extent of the wrongs complained of and the relief sought are usually given.

2. To have entitled the proceedings as a "bill in equity for relief" and to have shown in the body of the bill the nature of the wrongs complained of with a prayer for relief is no defect sufficient to affect the merits of the pleadings.

3. When a party suffers from undue advantage taken of him through the unfair, illegal, or unwarranted acts of an opposing party, equity will give the necessary relief.

On appeal from a decree in equity in favor of petitioner, now appellee, *judgment affirmed.*

Momolu S. Cooper for appellant. *A. B. Ricks* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

From a decree entered against appellant, respondent below, in a suit entitled "Bill in Equity for Relief," this case is now before us on a bill of exceptions containing four counts. The pleadings in the case certified to us primarily involve issues of law.

The first count of the bill of exceptions is based upon an exception to the trial judge's ruling on plea one of respondent's answer, which plea attacked the legal sufficiency of petitioner's bill on the grounds that "it has failed to state plainly and clearly in the caption of the bill the wrongs for which she has come to equity for relief." Referring to the title of the cause we find that it is styled as a bill in equity for relief and whilst we may not be fully in accord with the trial judge in the development of the reasons assigned for his conclusion on this point, we certainly are in harmony with said conclusion because it is in the bill and not in the caption that the nature and extent of the wrongs complained of and the relief sought are usually given. Therefore, in our opinion, to have entitled the proceedings as a "bill in equity for relief" and to have shown in the body of the bill the nature of the wrongs

complained of with a prayer for relief is no defect sufficient to affect the merits of the pleadings.

Count two of the bill of exceptions is submitted in the following manner :

"And also because on the aforesaid 12th day of July 1948, Your Honour overruled counts 2 and 3 of respondent's answer against the showing in said counts contained that if it is the performance of a contract that the petitioner seeks, she should have brought her case in the same division of court—Equity—for specific performance of a written contract, or in law for a breach of contract and not 'bill in equity for relief', to which ruling of your Honour respondent through his counsel then and [there] excepted."

We find this count is not in harmony with pleas two and three of respondent's answer in that whilst said pleas in the answer were definite in the contention that from the facts pleaded in the petition the wrong form of action was chosen, and suggested in plea two specific performance as the proper form of action and in plea three an action at law for the violation of a written contract, the definiteness of the contention was apparently abandoned for another position founded upon the hypothesis shown in the submission in count one of the bill of exceptions. It appears that this change in the manner of contention was actuated by the strong resistance by appellee, petitioner below, in counts four and five of her reply and by the duplication of pleas in counts two and three of the answer. There seems to us weakness in this manner of pleading, so that the ruling of the trial judge in refusing to sustain this position of the appellant, respondent below, was correct.

The contention of appellant which appears to be the crux of the case is submitted in count three of the bill of exceptions which reads as follows :

"And also because on the 12th day of July 1948 your Honour in ruling on the issues of law raised stated that counts 3 and 4 are not tenable in the opinion of the court since the intendment of the contracting parties as is evident in count 5 of said agreement of lease is to the effect that should at any time petitioner return from the United States of America where she at the time was about to make a trip, she would be given by lessee a certain portion of her demised premises as living quarters, in the opinion of the court the prime objective was to secure living quarters for petitioner on her return to Liberia at any time, against the showing petitioner was only entitled to said living quarters in the said premises upon her return from the United States of America where petitioner herself admitted she up to the time of the institution of

her suit had not gone; but that petitioner having made the attempt to go to the United States of America as set out in her petition, and even up to now still having in mind and exerting all efforts to go to the United States of America, which said admission of petitioner forms the subject matter of count 5 of her reply. To which ruling of your Honour, respondent through his counsel then and there excepted."

The salient undisputed facts stated in the pleadings are as follows : Petitioner desired to reach the United States of America in search of health and leased her premises for a term of ten calendar years. This was obviously done with a view of raising funds to augment what she may have already had in her possession. After the execution of the lease agreement petitioner made efforts to reach the United States and in the process reached Freetown in the colony of Sierra Leone, but was there handicapped because of restrictions then placed upon prospective travellers to America. Because of this she had of necessity to return to Liberia. Sometime after reaching home petitioner applied to the respondent for the enjoyment of the privilege reserved to her under the terms of count five of the lease agreement between them which reads as follows:

"It is mutually agreed that should at any time upon the return of the lessor from the United States of America where she is about to take a trip, upon her application, the lessee shall assign her and the lessor shall agree to receive a certain portion of the above granted demised premises as living quarters for the said lessor; she of course is to live in said assigned portion personally and not permitted to assign it to any person or persons whomsoever."

This application was made on January 21, 1947, and a day after she received a letter from the respondent through his lawyer, turning down the application on the grounds as he claimed that "the condition envisaged in the ultimate clause of the lease agreement between you two made on the 12th day of September 1945 has not arisen." The said letter made the following proposal:

"[T]o avoid unnecessary palava making, Mr. Goodridge suggests that you will pay him the amount of six hundred dollars ($600.00), less rental for one year, commencing January 12, 1946, upon receipt hereof, and he will in turn comply with your demand, thereby terminating the life of the lease agreement in question."

Petitioner made efforts to raise the amount, since such a suggestion was never anticipated, and upon getting it she sent it to respondent with a covering letter indicating her acceptance of the proposal. To her surprise the amount was returned with a covering letter, again through respondent's counsel, wherein it was stated that

"Mr. Goodridge intends taking full advantage of the lease agreement between him and Mrs. Brown" because Mrs. Brown, petitioner, was slow in complying with the terms of the proposal, which said slowness they characterized as a waiver of that offered privilege and because of which "Mr. Goodridge felt free to make other arrangements for the renting of the premises."

With this impasse created, petitioner felt herself with no alternative but to invoke the arm of the law through equity for relief; hence these proceedings.

It requires no great effort or strain, upon review of the facts stated above, to characterize the acts of respondent as grasping. He seems to unreservedly yield the point that appellant, petitioner below, is, under the provisions of the lease agreement, entitled to living quarters in the leased premises but not until she will have gone to, and returned from, the United States of America, unsuccessful efforts on her part to do so to the contrary notwithstanding.

It is upon such unfair, illegal, and unwarranted practices that equity frowns so that without further dilating upon the law and facts in the case we find ourselves with no alternative but to affirm the ruling of the court below with costs against appellant; and it is hereby so ordered.

Affirmed.