A. L. MOORE, Appellant, v. **ALFRED MENSAH**, **STEPHEN LAWSON**, and **CHARLES C. CHEEKS**, Appellees.

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

Argued March 18, 1953. Decided May 29, 1953.

1. One who seeks an injunction to prohibit an invasion of real property must prove his title or interest in the property.

2. Equity will not grant an injunction to prohibit an invasion of real property where the petitioner's title is uncertain.

Appellant instituted a suit to enjoin appellees from surveying property to a portion of which appellant claimed title after pleadings were filed. Appellees moved for dissolution of the writ, and the Circuit Court granted the motion. On appeal to this Court, *judgment affirmed.*

T. Gyibli Collins for appellant. *Richard A. Henries* for appellees.

MR. JUSTICE SHANNON delivered the opinion of the Court.

This is an appeal from the Civil Law Court of the Sixth Judicial Circuit, Montserrado County. Appellant instituted an action of injunction seeking to prohibit the appellees from performing a survey which appellant alleged was aimed to cut off a portion of her property.

We quote as follows from the petition by which the instant proceeding was commenced :

"A. L. Moore, plaintiff, complains that she is the lawful owner of two blocks of land situated in the settlement of Upper Johnsonville, in the County and Republic aforesaid, the same being one ten-acre block and one twenty-five-acre block, both containing rubber, and both of which pieces of property she is at present operating for livelihood ; and that the above-named defendants intend to survey said tracts of land in order to cut off the said twenty-five-acre block without any just cause whatsoever.

"Wherefore she, the said plaintiff, prays this court to enjoin and restrain the said defendants from doing the said act or acts which they intend to do as aforesaid."

After the writ of injunction as prayed for had been duly issued, the appellees appeared and filed an answer alleging that the twenty-five-acre block of land which they in-tended to survey had been regularly and legally acquired from the estate of the late John M. Moore, who, during the argument of the case before us, was shown to have been the husband of the appellant A. L. Moore. It was also shown that the deed executed by the estate was signed by the said A. L. Moore as a co-administrator. Furthermore the appellees alleged as follows in their answer:

"And also because defendants submit that an injunction may not properly be issued without proof of title; and, in the prayer of plaintiff's petition, there appears nothing tending to establish the plaintiff's ownership of the twenty-five-acre block referred to. The complaint should therefore be dismissed, and the defendants so pray. Plaintiff should have filed a main suit in which she could show title to the property she now seeks to enjoy unlawfully."

Despite the nature of the answer the appellant filed only a general reply worded as follows :

"A. L. Moore, plaintiff, denies that the allegation contained in the answer filed by the defendants to her complaint, as relating to the twenty-five acres of land alleged to have been bought by Stephen Lawson from the administrators of the late John M. Moore's estate, as evidenced by a purported copy of deed marked Exhibit 93' of the said answer, furnishes a sufficient defense to this action ; and also denies the truth of the allegations."

This Court finds it difficult to understand why, in view of the answer, wherein an administrator's deed from the estate of the late John M. Moore, which deed appears on its face to have been signed by the appellant as one of the administrators, was adduced, the appellant elected to file only a general reply, without pleading a special traverse.

The appellees moved the court for dissolution of the injunction, as provided by our statutes and supported by common law. 1 Rev. Stat. 460, sec. 344 ; 43 C.J.S. 977-78, *Injunctions, §§ 240-55;* 28 Am. Jur. 831, *Injunctions, § 318;* 14 R.C.L., 466-67, *Injunctions,* § 167. This motion was heard and granted.

Our statutes declare :

"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. . . ." 1841 Digest, pt. II, tit. II, ch. I, sec. 8; 2 Hub. 1525.

Under the well-known equitable maxims that "He who comes to equity must come with clean hands," and "He who seeks equity must do equity," it cannot be gainsaid that, before the powers of a court of equity can properly be exercised, there must exist some specifically equitable right to such relief, particularly in the case of an injunction, which has always been characterized as the "strong arm of equity." This principle is in perfect harmony with our statutory definition, *supra,* of an action of injunction. In the present proceeding the appellant seeks to enjoin the appellees from surveying a portion of land over which the said appellant claims ownership but without alleging the nature of such ownership. The bare allegation that "she is the lawful owner of two blocks of land situated in the settlement of Upper Johnsonville, in the County and Republic aforesaid," without stating the nature and character of her ownership, gives her no right either in law or in equity.

"Injunctions, like other equitable remedies, will issue only at the instance of a suitor who has sufficient title or interest in the right or property sought to be protected. . . . An impending or threatened invasion of some legal right of the complainant, and some interest in preventing the wrong sought to be perpetrated must be shown. It is always a ground for denying Injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought—in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of disputes respecting title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary." 28 Am. Jur. 516-17, *Injunctions, §* 26.

This principle of law has the support of virtually all leading authorities. In the case before us the appellant failed to show title to the property; and, consequently, no court could properly apply the powers of equity in her favor. In answer to questions from the bench seeking information as to her title, her counsel sought to explain that

she derived it from her late husband, but was silent as to how the said title had passed to her.

Counsel for appellant apparently assumed that the ruling of the trial judge dissolving the injunction rested upon the theory that an action in ejectment should have been filed. In so assuming, counsel lost sight of several other pertinent issues and made the following the only point of his brief :

"Where there is an ouster of one party and possession of another, ejectment can only be maintained by one out of possession."

The appellee rightly contended that there should have been a principal action to try title to which the appellant's application for an injunction should have been ancillary. But such an action need not necessarily have been one of ejectment.

We therefore affirm the decree of the trial judge with costs against the appellant, plaintiff below, without prejudice to other actions or remedies; and it is hereby so ordered.

Affirmed.