AKAPOE TOGBA, et al., Appellants, *v.* FRANK Y. SMITH, et al., Appellees.

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

Argued November 20, 1975. Decided January 2, 1976.

1. The sole object of a preliminary injunction is to preserve the status quo until the merits are heard.
2. It is reversible error for a trial court to decide the merits of a case without holding a hearing thereon, employing the record in the case as the sole basis for determining the factual merits.

Appellants sought an injunction to restrain appellee from proceeding with the eviction from premises occupied by them. Appellees moved to dissolve the preliminary injunction granted against them and asked the judge to deny a final injunction. The motion was granted and appellants appealed from the judgement, contending the court had not considered all the evidence in the case.

The Supreme Court agreed with appellants' argument and held it was improper for the judge to have solely relied on the record of the case and not to have heard all the evidence at a hearing thereon. The judgment was *reversed* and the case *remanded* to the lower court.

J. Dossen Richards for appellants. *Richard A. Diggs* for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

Appellants sought an injunction against the appellees herein aimed at enjoining and prohibiting the said defendants "together with any and all persons under their authority, directly and indirectly, from ousting and evicting the plaintiffs from the said demised premises and

from doing or attempting to do any and all acts tending to disturb the quiet and unmolested occupancy of the plaintiffs." Appellees were duly served and filed a motion to dissolve the preliminary injunction and deny appellants a final injunction.

The judge granted the motion vacating the preliminary injunction, granting the motion in all respects, without holding a hearing upon the facts.

In his argument counsel for appellants contends "that the trial judge in this case was utterly wrong to have dismissed or dissolved the injunction without first hearing evidence."

In *Raynes-Frederick* v. *Foday,* 14 LLR 593 (1961), this Court held that dissolution of an injunction on the initiative of the court without a hearing is an abuse of discretion.

In count one of appellees' answer it is contended "that the entire action is bad and defective and irregularly and illegally obtained, in that the statutes in vogue provide that a preliminary injunction may be granted only upon notice to the defendant." There being no showing that such notice was given, the trial judge would have been justified in dismissing or dissolving the preliminary injunction upon this ground only.

> "There is no inflexible rule as to the effect of the dissolution of an injunction on subsequent litigation between the parties. Ordinarily, however, dissolution of the case is presumptively not an adjudication on the merits, and is not conclusive of any question affecting the merits in subsequent proceedings in the suit or another suit involving the same cause of action, unless it appears that the court founded the order of dissolution on the decision of such a question. Therefore, where a decree simply dissolves an injunction, and does not otherwise dispose of the case, it is not regarded as final. And where a bill in equity prays for other relief besides an injunction, it is error, when dissolv-

ing the temporary injunction on motion, to also dismiss the bill, when it states a case which would, if proved on the final hearing, entitle the complainant to the other relief prayed for, since the dissolution of the injunction does not deprive the complainant of the right to any other further proceedings which may be necessary to obtain a final determination on the merits." R.C.L., *Injunctions,* § 169 (1916).

BOUVIER'S LAW DICTIONARY defines preliminary injunction.

"Preliminary or interlocutory injunctions are used to restrain the party enjoined from doing or continuing to do the wrong complained of, either temporarily or during the continuance of the suit or proceeding in equity in which such injunction is granted, and before the rights of the parties have been settled by the decree of the court in such suit or proceeding. The sole object of a preliminary injunction is to preserve the status quo until the merits can be heard. The status quo is the last actual peaceable uncontested status which preceded the pending controversy, and a wrongdoer cannot shelter himself behind a sudden or recently changed status, though made before the chancellor's hand actually reached him."

Counsel for appellee in his argument said that the trial judge properly took judicial notice of the agreement. Judge Bouvier defines judicial notice.

"A term used to express the doctine of the acceptance by court for the purposes of the case, of the truth of certain notorious facts without requiring proof. . . . Judicial notice is not conclusive. That a matter is judicially noticed means merely that it is taken as true without the offering of evidence by the party upon whom the burden of proof ordinarily rests. But the opponent is not prevented from disputing the matter by evidence, if he believes it disputable."

Further, eminent authority asserts the same position.

"Courts take judicial notice of those things which are common knowledge to the majority of mankind, or to those persons familiar with the particular matter in question. But matters of which courts have taken judicial knowledge are uniform and fixed, and do not depend upon uncertain testimony; as soon as a circumstance becomes disputable, it ceases to fall under the head of common knowledge, and so will not be judicially recognized. A matter properly a subject of judicial notice must be 'known,' that is, well established and authoritatively settled, not doubtful or uncertain. In every instance the test is whether sufficient notoriety attaches to the fact involved as to make it safe and proper to assume its existence without proof." 15 R.C.L., *Judicial Notice*, § 2 (1917).

It is obvious that the trial judge failed to conform to the law of preliminary injunctions, in that he passed upon the merits of the case without first taking evidence; as exhibits proferted were not in themselves sufficient evidence.

Therefore, in view of the foregoing, it is our considered opinion that the ruling of the trial judge in this case should be and the same is hereby reversed and the case remanded, with instructions that the assigned judge of the Sixth Judicial Circuit to whom this case will be referred for rehearing resume jurisdiction and dispose of the case in conformity with this opinion, costs to abide final determination. And it is so ordered.

Reversed and remanded.