# CATHERINE UREY-HOLDER, et *al.,* Appellants,

r. JOSEPH G. DENNIS, ef nf., Appellees.

APPEAL FROM Tf£E CIRCUIT COURT OF Tf£E SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNT.

Argued November 6, 7, 1962. Decided February 8, l96J.

1. When a defendant in an injunction action becomes entitled to indemnification upon the court’s denial of relief to the plaintiff, the proper procedure for en- forcing such right to indemnification is by motion to the court, and not by a separate action for damages.
2. There is no such action as an “action for damages on injunction bond and for wrongful injunction.”

## On appeal from a judgment awarding appellees dam- ages in an “action for damages on injunction bond and for wrongful injunction,” jtidptnenf *reversed.*

*Henries law Firm* for appellants. *T. G yibli Cl ollins*

## for appellees.

MR. JUSTICE HARRiS delivered the opinion of the Court.

This case has grown out of two injunction suits insti- tuted in '943- by the Urey heirs of Careysburg, Mont- serrado County, plaintiffs below, now appellants, against Joseph G. Dennis and Willie A. Dennis of the same place,

defendants below, now appellees. The first suit was filed against Joseph G. Dennis alone ; and after said suit was dismissed, the second was filed against the said Joseph G. Dennis and Willie A. Dennis jointly by the above appel- lants. An indemnity bond of $ oo was given in the first suit, and a similar bond of $zoo was given in the second suit.

# Appellees alleged that, by reason of the restraining

## orders granted in said injunction suits, the appellees, their

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agents and all persons acting di rectly or indirectly under them, were restrained, prohibited and enjoined under penalty of the law f rom operating or entering upon the properties specifically described in plaintiffs’ complaint, meaning ap pellees’ f arm land, thereby causing damage to appellees far beyond the amounts laid in the injunction bonds. ) udge Smallwood granted the first injunction. Subsequently, Judge Randolph Gibson dismissed it, but then rescinded his ruling and granted the second inj unc- tion, which ) udge Witherspoon subsequently dismissed, leaving the e jectment suit on the docket. The main suit was finally dismissed by this Court on appeal, thereby bringing that matter to a close. Appellants having filed indemnity bonds conditioning payment of damages to the appellees not exceeding the amounts laid in the bond should they be adjudged not entitled to the demand sought by means of the injunction, and judgment having been rendered against them in both injunction proceedings, the appellees filed an actfon entitled: “Action of Damages on Injunction Bond and for Wrongful Injunction.” The matter was tried by ) udge John A. Dennis, presiding over the Circuit Court of the Sixth ) udicial Circuit, Mont- serrado County; and that court awarded the a ppellees the sum of $7"'» as damages. To this judgment, the appel-

lants excepted and prayed an a ppeal before this Court of

last resort for final determination upon a bill of exceptions containing one count. At the call of the case for hearing, the clerk informed this Court that an amended motion had been filed by the appellants. The amended motion was ordered read, and we quote the same hereunder:

“And now come Catherine Urey-Holder, ef of., appellants in the above-entitled cause and respectfully move this Honorable Court to reverse the judgment for the following reasons, to wit:

“i. Because appellants say that the title of the action as instituted by the appellees, is not one author- ized by our statutes. Appellants submit that

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# the proper and authorized title of an action for redress of a breach of a contract is an action of contract or an action of damages. The title of the action, as employed by the appellees, is an innovation into our judicial practice and pro- cedure. Therefore, the trial court was without jurisdiction over the subject matter. And this the appellants are ready to prove.

And also because appellants say that the pro- cedure authorized by statute for recovery of damages resulting from the institution of an in- junction is a motion by the defendant for indem- nification under the terms and conditions of the bond executed by the plaintiff in securing the writ of injunction. The appellees having elected to adopt a procedure not authorized by statute, the trial court lacked jurisdiction over the subject matter. And this the appellants are ready to prove.

“Appellants respectfully move and pray this Hon- orable Court to reverse the judgment and dismiss the action for want of jurisdiction on the part of the trial court over the subject matter with all costs against the appellees.”

The appellees filed no resistance, thereby adiriitting the legal soundness of the amended motion.

That the plaintiff in an injunction proceeding has to indemnify the defendant against any loss he might sustain by means of the injunction is evident from the fact that the plaintiff is required to give a bond. The controlling statute reads as follows:

“The judge shall require the plaintiff to give a bond with two or more legally qualified sureties before granting a writ of injunction. The bond shall be in the amount set by the judge and shall be to the effect that the plaintiff will pay the defendant such damages, not to exceed the amount named in the bond, as he

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may sustain by reason of the injunction if the court finally decides that the plaintiff is not entitled to the relief demanded in the complaint.” \*9s6 Code, tit. 6, § i o8 I.

## Since the law requires the defendant to be indemnified if the plaintiff fails in his action and is adjudged not entitled to the relief demanded in the complaint, let us see what procedure he is to adopt to obtain such damages. “If the court or judge finally decides that the plaintiff is not entitled to the relief he has demanded

in the action, the defendant, upon motion made under the provisions of section io8 i above, shall be indemni- fied by the plaintiff and his surety for the damages he has sustained thereby. The amount of damages sus- tained by the defendant shall be fixed by the judge upon a hearing before him in chambers in which wit- nesses shall be examined. An appeal may be taken from the decision upon the amount of the damages.”

## \*9s6 Code, tit. 6, § io88.

From the foregoing, it is clearly seen that the procedure

followed for the obtaining of any damages due to the de- fendant by reason of the plaintiff having been adjudged not entitled to the relief demanded in his complaint is by a motion made to the court, and not by a separate and distinct action of damages. Moreover, an action entitled “action of damages on injunction bond and for wrongf u1 injunction” can nowhere be found in our Civil Procedure Law, and hence is unauthorized. We are of the opinion that the reason for the law not authorizing a separate and distinct suit for recovery of such damages is that, since injunction proceedings are cognizable before the equity division of the court, equity does not encourage a multi- plicity of suits, and hence directs that a motion be made for the award of such damages, thus affording complete relief. We are therefore of the opinion that the defend- ants below, now appellees, having elected to pursue a course unauthorized by law, the judgment of the lower

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## court should be reversed with costs against the appellees. The clerk of this Court is hereby ordered to send a man- date to the court below informing it of this judgment; and it is so ordered.

*R ezersed.*