HAWAH KAIZOLU, Appellant, *v.* VAEMUYAL CORNEH, attorney in fact for the tribal authorities of VAI TOWN, for himself and the people of VAI TOWN, Appellees.

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

Argued October 11, 1967. Decided January 19, 1968.

1. The mere filing of a caveat, with nothing further done to test its legality, does not give rise to a cause of action for damages to real property based upon cancellation of a lease agreement by a third party.
2. No redress can be sought for a wrong by way of an action for damages, until loss has been sustained.
3. Judges in courts of concurrent jurisdiction may not overrule each other, but dissatisfied parties to a ruling are to be directed to appellate relief, as the law provides.

After a lease agreement with a third party was entered into and signed, and part payment made pursuant thereto, a caveat was filed against the real property by the defendant, against whom an action for damages to real property was brought by plaintiff, claiming the loss of the entire rental period as damages. The complaint was dismissed by the trial court, the agreement never having been offered for probate, from which judgment the plaintiff appealed. The *judgment* of the trial court was *affirmed.*

MacDonald Perry and *Lawrence Morgan* for appellant. *Nete Sie Brownell* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

Hawah Kaizolu of Vai Town, Monrovia, sued on an action of damages for injury to real property in the Circuit Court, Sixth Judicial Circuit, Montserrado County, June 1967 Term, against Varmuyah Corneh, of Vai Town,

individually and as attorney-in-fact for the tribal authorities of Vai Town and the people of Vai Town.

Her complaint, in brief, alleges that she is the fee simple owner and entitled to the lawful possession of a piece of property situated on the left-hand side of the United Nations Drive Road leading to the Monrovia Free Port, a portion of which she and her family presently occupy by virtue of a decree of court dated October 27, 1964, and by virtue of this decree vesting in her title to and ownership of the said piece of property, and that the defendant has greatly embarrassed her in the exercise of her right over the said piece of property by the filing of a caveat against the probate and registration of any instrument or document in connection with the said land. In consequence of the said caveat filed she lost a valuable contract with one Issam S. Saad, who had entered a lease arrangement with her for a portion of the property in question. The filing of the caveat was not merely damaging to the plaintiff in her peaceful possession of her property, but was also an outright defiance of the decree of the Circuit Court, which had not been altered nor changed by this appellate court, and which caused plaintiff to lose the agreed-upon rental in the lease entered into between herself and Issam S. Saad, in the sum of two hundred thousand dollars over a stated period of twenty years, and the amount of depreciation of the property at the time of surrender. Moreover, she had been required by the lessee to return to him twenty-one thousand dollars already paid her for three years' rent, at the rate of seven thousand dollars per annum. With the complaint, she made profert of all of the relevant documents, including the decree of the court which vested her with title to the property in question, copies of correspondences between lessor and lessee concerning the purported contract and the return of the twenty-one thousand dollars, a copy of the contract, and a copy of the receipt tendered to the lessor on refund of the twenty-one thousand dollars.

The defendant, on being summoned, appeared and answered in seventeen counts, averring that plaintiff, being a *feme covert,* could not sue in her own right without making her husband a party to the suit in damages, unless she was engaged in a commercial business; that she had chosen the wrong form of action, because in such actions as the one at bar the plaintiff must allege trespass with force, or by entry upon the realty and breaking the close, thereby committing some damage to the physical structure of the tenements, but an implied violation of an alleged inchoate interest, which a caveat does not offer, does not grant the right for damages to real property. He further denied the truthfulness of plaintiff's allegation contained in her complaint, of being the "fee simple owner" of the particular tract of land, because the tribal title deed, couched in the ruling of the judge below, was a legal fiction and denial of the law, since the judge was not authorized to issue a title deed out of a leasehold agreement. He said further in his answer that the mere filing of a caveat in the Monthly and Probate Court for Montserrado County does not constitute any damage to real property to warrant a claim of two hundred thousand dollars as damages, when no instrument was ever offered for probate, and objections filed, resulting in actual loss to plaintiff's real property. He also said that the decision of the Supreme Court referred to by the plaintiff in her complaint did not decide the validity of the title deed in question; nor was the contract entered into with Issam by plaintiff legal, because it imposed on the right of the tribal authorities whose leasehold with plaintiff for the said land terminates in the year 1970, whereas plaintiff was endeavoring to lease the said property for a period of twenty years, a time over and above the period of time for which the property was leased to her by the tribal people of Vai Town.

The foregoing and many other grounds were alleged in defendant's answer, to which the plaintiff replied, as pleadings rested at the point of the rejoinder.

The issues of law were heard at the June Term of the Circuit Court by Judge Joseph P. Findley, and a very extensive ruling handed down by the court on July 3, 1967, dismissing the case, concluded as follows:

"In our opinion, plaintiff's complaint is baseless and her interest in the property has not accrued in keeping with the tribal deed exhibited with the complaint; secondly, nothing in the pleadings shows any false representation by both the caveat or the letter to Saad by defendant, to the injury of plaintiff.

"We also take judicial notice of the deed, the original lease between plaintiff and the Vai people, which are all filed in this court and not denied by the parties. The answer in respect to the validity of the tribal title deed is sustained with its fortifying rejoinder. The complaint and reply overruled in this respect, and the action dismissed, with costs against plaintiff.

"And it is hereby so ordered.

"Given officially in open court this 3rd day of July, 1967.

"[Sgd.] JOSEPH FINDLEY,
Circuit Judge."

Upon rendition of the foregoing final decree, plaintiff, now appellant, excepted and prayed for an appeal to this appellate court by her bill of exceptions which we shall set forth in its entirety:

"Hawah Kaizolu Wahhab, plaintiff-appellant in the above entitled cause of action, being dissatisfied with your Honor's ruling on the law issues, made on the 3rd day of July, 1967, and having excepted thereto and prayed an appeal to the Supreme Court of Liberia, sitting in its October 1967 Term, now tenders this as her bill of exceptions for your Honor's approval in keeping with law and procedure, for the following reasons, to wit:

"1. Because your Honor's entire ruling, in the opin-

ion of the appellant-plaintiff, is not in keeping with law, that is to say, your Honor ruled that:

" 'In our opinion plaintiff's complaint is baseless and her interest in the property has not accrued in keeping with the tribal title deed exhibited with the complaint; secondly, nothing in the pleadings shows any false representation by both the caveat, as well as the letter to Saad by defendant, to the injury of plaintiff. We also take judicial notice of the deed, the original lease between plaintiff and the Vai Town people, which are filed in this court and not denied by the parties. The answer in respect to the validity of the tribal title deed is sustained with its fortifying rejoinder. And it is hereby so ordered.'

"Plaintiff-appellant submits that by means of the said ruling, your Honor rendered inoperative and ineffectual the tribal title deed relied upon in the complaint despite the fact that validity thereto had been given by both Hon. Roderick N. Lewis, and confirmed by the Supreme Court of the Republic of Liberia, to which ruling of your Honor dismissing the entire complaint and reply of plaintiff-appellant, she then and there took exception and prayed an appeal to the Supreme Court of the Republic of Liberia sitting in its October 1967 Term.

"2. And also because appellant-plaintiff says that your Honor sustained the pleas raised by the defendant appellee in his answer as well as his rejoinder."

On reviewing all of the records in this case, as well as the entire ruling handed down by the trial judge on the issues of law raised in the pleadings, it appears to us appropriate to first ascertain the sufficiency or insufficiency of the case.

The appellant has based her case upon the filing of the caveat in the Monthly and Probate Court for Montserrado County, by which she claims to have lost two hun-

dred thousand dollars from one Issam S. Saad, as aforesaid. The legal validity of the form of action settled upon rests exclusively on the mere filing of the caveat. A caveat in law is defined as a notice of the intention of a party to object to probate of a document such as a will, a deed, or a contract, so that the caveator preserves his interest against an illegal invasion. In the instant case, the agreement that the appellant claims was canceled by her lessee because of the mere filing of the caveat was never offered in probate and, hence, the merits of the caveat were never put to a legal test to determine whether or not the appellee's objections were sound. This not having been done, no trespass on the property right of the plaintiff occurred. Had the plaintiff put the matter to a legal test by offering her contract to probate, then a cause of action could have arisen. But the mere correspondence between the caveator and defendant acknowledging that he did file the caveat, was absolutely insufficient in law to authorize the filing of plaintiff's action. Moreover, the purported contract itself was of no legal effect because it lacked probate; therefore, no losses could have been sustained for which redress can be gotten under the law. Plaintiff was possessed of no course of action.

The following definition of accruals of causes of action applies:

> "The coming or springing into existence of a right to sue. In the case of an act causing an injury, if the injury however slight is complete at the time of the act, a cause of action accrues at that time. But if an act is not legally injurious until certain consequences occur, it is not the mere doing of the act that gives rise to a cause of action, but the subsequent occurrence of damage or loss as the consequence of the act and in such a case no cause of action accrues until the loss or damage occurs." BALLENTINE'S LAW DICTIONARY, *Causes of Action.*

The plaintiff has styled her case as an action of damages

to real property, yet she has failed to aver any physical destruction or waste done to the property; nor had any cause of action accrued when she brought the action. Therefore, this Court agrees with the ruling of the trial judge in that respect. But another question presents itself, whether the trial judge was allowed to review the act of Hon. Roderick N. Lewis, his colleague, with whom he exercised concurrent jurisdiction over all matters in the court, when he ruled on the tribal title deed under which plaintiff claims ownership and possession of property which is the subject of this case. Although the doctrine of *res judicata* does not apply in this case, yet, our minds have not been satisfied that in a matter pending before a court and on which a final decree was rendered and a substantive right adjudged in favor of either one of the parties concerned, that the self-same subject matter can be reviewed by one holding concurrent jurisdiction. In *Freeman* v. *Twe, et al.*, 7 L.L.R. 227 (1941), the Court held that final judgment puts an end to a suit unless an appeal is taken. Otherwise jurisdiction cannot be resumed without an order from a higher court.

If Judge Roderick N. Lewis exceeded his authority by ordering a lease contract reformed into a title deed, the parties concerned had a right to avail themselves of their right to appeal. The decree of Judge Lewis stands as *stare decisis* and cannot be interfered with nor reviewed by a court of concurrent jurisdiction.

In the instant case, the ruling made by the trial judge below when he undertook to set aside the tribal title deed ordered issued by Judge Lewis, is void and reversed insofar as it relates to the action taken against the deed. Besides, we are of the opinion that a court of law is not the proper forum to determine validity of the deed in question but, rather, if fraud or collusion was observed even in the smallest aspect, defendant should have availed himself of his right in chancery.

It has been made clear that plaintiff was without a cause

of action at the time she instituted her case in the Circuit Court, because none had accrued when she filed and no injury had been done to her property as a result of the filing of the caveat, and we are of the opinion that the trial judge did not err in dismissing the case. Hence, with the modification made above in regard to the tribal deed, the ruling of the court below is hereby affirmed, with costs against the appellant.

And it is hereby so ordered.

Affirmed, as modified.