TOM BEON NIMLEY, Appellant, *v.* JAMES COLE, JAMES REEVES, *et al.*, Appellees.

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

Argued March 31, 1959. Decided April 24, 1959.

An application for an injunction should be denied unless the applicant clearly shows that some act has been done, or is threatened, which will produce an injury which cannot, under the circumstances, be adequately compensated in damages.

On appeal from a decree dissolving an injunction, *decree affirmed.*

O. Natty B. Davis for appellant. *Lawrence Morgan* for appellee.

MR. JUSTICE HARRIS delivered the opinion of the Court.*

This action of injunction was commenced by the plaintiff, now appellant, against the defendants, now appellees in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Thereby said plaintiff seeks to enjoin, restrain and prohibit the defendant-appellant, and all persons claiming under him directly or indirectly, from entering upon and operating on Lot Number 61, situated on Randall Street, City of Monrovia. The pleadings ended with the answer of the defendant, who filed a motion praying the court for the dissolution of the injunction. The same was resisted by the plaintiff, and arguments *pro et con* were heard, after which the trial Judge entered a decree dissolving the injunction, to which the plaintiff below took exceptions, and has brought the case before

* Mr. Justice Pierre was absent because of illness and took no part in this case.

this Court for a final hearing and determination upon a bill of exceptions containing three counts, as follows:

"1. Because plaintiff says Your Honor most ridiculously and prejudicially erred when Your Honor undertook to, and in fact did, dispose of an injunction suit without a motion to dissolve as per the notice of assignment, issued out of the office of the clerk, dated February 25, 1957, and further without reasonable notice as required by statute, when indeed there was no motion to dissolve said injunction and after Your Honor's attention was called, on February 28, 1957, through the submission of counsel, praying for continuance because he did not receive any further notice of assignment as mentioned in his submission of the 28th aforesaid. Your Honor ruled that plaintiff should always be ready for his case, therefore refused to grant the continuance, contrary to the law controlling. To which plaintiff then and there excepted.

"2. And also because plaintiff says Your Honor further erred in ruling that, because plaintiff has filed an action of ejectment, therefore he had a remedy at law, and so equity would not lend aid, when indeed the building of the house on plaintiff's premises by the defendant would be prejudicial to his interest, more so if plaintiff did not stop defendant from building pending the ejectment suit now before this court. Because plaintiff feels that injunction, being an ancillary suit, when supported by a main suit, ought not to be dissolved pending the basic suit, he then and there excepted.

"3. And also because plaintiff says that Your Honor grossly erred in ruling that plaintiff has an adequate remedy at law, when indeed there was no way for plaintiff to stop the construction of the house on his premises except by aid of equity pending the determination of the disputed title to

the same, to which plaintiff then and there excepted."

Counsel for the appellant, in his argument before this Court, attempted to argue many issues not couched in his bill of exceptions, but was confined to the points laid in the bill of exceptions; hence we shall not mention or expatiate on them. We shall now address ourselves to the points raised in the bill of exceptions, commencing with Count "1" of the said bill, which alleges that the trial Judge (a) dissolved the injunction in the absence of any motion for such relief, (b) disposed of the case without reasonable notice to the plaintiff, and (c) denied plaintiff's request for a continuance without notice of reassignment.

With reference to no motion for the dissolution of the injunction being filed by the defendant, recourse to the record certified to this Court from the court below reveals that a motion for dissolution was filed by the defendant on February 26, 1957.

With reference to the Judge disposing of the case without reasonable notice to the plaintiff, it is apparent upon the face of the record that a notice of assignment was issued and served on the plaintiff on February 25, 1957, and that the decree of the court dissolving the injunction was not entered until March 5, 1957, being eight days after the service of the notice of assignment, which this Court regards as reasonable. With reference to plaintiff not having received further notice of assignment, and therefore having prayed a continuance of the case, this court is of the opinion that, plaintiff having been once notified, there was no need for any further notice. Count "1" of the bill of exceptions is therefore rejected.

With reference to Count "2" of the bill of exceptions, it is an established and well settled principle of equity jurisprudence that, where a party has an adequate remedy at law, equity will not interfere by way of injunction unless the party applying for relief shows to the court that the

injury threatened to be done is irreparable, that is to say, incapable of being pecuniarily compensated. Such a showing has nowhere been made in the complaint of the plaintiff, nor has it been shown that the defendant is insolvent and would not be able to respond in damages.

As this Court has pointed out in *Cooper* v. *Macintosh,* 8 L.L.R. 400, 404–05 (1955):

> " 'To warrant the allowance of a writ of injunction it must clearly appear that some act has been done, or is threatened, which will produce irreparable injury to the party asking an injunction. Unless this be made to appear, an injunction should be denied. If, however, the injury threatened be irreparable, chancery will interfere by injunction. An injury is irreparable either from its own nature, as when the party injured cannot be adequately compensated therefor in damages or when the damages which may result therefrom cannot be measured by any certain pecuniary standard, or when it is shown that the party must respond is insolvent, and for that reason incapable of responding in damages.
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> " 'The court cannot grant an injunction to allay the fears and apprehensions of individuals. They must show the court that the acts against which they ask for protection are not only threatened, but will in all probability be committed, to their injury. . . .' "

Count "2" of the bill of exceptions is therefore also rejected.

Coming now to Count "3" of the bill of exceptions, this Court is of the opinion that the authorities quoted, *supra,* are applicable to Count "3," and therefore the said count is rejected.

We are of the opinion that the decree of the court below dissolving the injunction should be affirmed with costs against appellant, and it is hereby so ordered.

Decree affirmed.