C. L. SIMPSON and T. EDWIN LOMAX, legal guardians of CHRISTIAN C. MOORT, Appellants, *v.* GEORGE OBEIDI, and all persons acting directly or indirectly under him in the construction of a building at designated premises, Appellees.

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

Argued October 26, 1967. Decided January 18, 1968.

1. To warrant the issuance of the writ of injunction it must clearly be shown that some act has been done, or is threatened, which will produce irreparable injury to the party seeking the injunction.
2. An injunction will not be issued to allay the fears and apprehensions of parties. It must be shown that the acts against which protection is sought are not only threatened, but will in all probability be committed, to their injury.
3. An injury to be irreparable, under the requirement for issuance of a writ of injunction, must appear to be so 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 that the party who must respond in damages is incapable of it.
4. Where the facts or the law on which the right to injunctive relief is based are in doubt, equity will not grant a writ of injunction, but will first require determination thereof in a court of law.

During the life of a leasehold on real property entered into between the defendant and the plaintiffs' predecessors in interest, fire destroyed the leased buildings, which defendant was in the course of replacing when a temporary writ of injunction was obtained by plaintiffs against defendant, who moved to dissolve the injunction. The motion was granted by the lower court. On appeal, the *ruling* of the lower court was *affirmed.*

C. L. Simpson, Sr. and *M. F. Jones* for appellant. *Joseph W. Garbor* for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

C. L. Simpson and T. Edwin Lomax, legal guardians of Christian C. Moort, all of Monrovia, appellants herein, sued on an action of injunction against George Obeidi and all persons acting directly under him in the construction of a building situated and being on the corner of Gurley and Broad Streets, in the City of Monrovia, County of Montserrado, and bearing the number 123. The action was brought in the Circuit Court of the Sixth Judicial Circuit, sitting in its Equity Division, December 1965 Term. The facts are as follows:

Sarah Jean Moort, widow of the late Isaac Moort, and Rev. J. D. K. Baker, trustee for Christian C. Moort, instituted a lease agreement for the lease of lot number 123 in Monrovia, with George Obeidi, for a certain number of years. The building located on these premises was destroyed by fire in the month of December 1964, during the life of the leasehold, which incident was not traced to any act of the defendant.

When George Obeidi began construction work on the premises to build a more improved building, plaintiffs forbade his doing so unless he entered into another agreement, regardless of the fact that the life of his agreement had not expired. They claimed he was operating under an agreement that was of no legal effect, since Sarah Moort, one of the lessors, had no right to execute a lease for the property because she did not own title thereto, and Rev. J. D. K. Baker was only clothed with legal authority to protect and preserve the real and personal properties of the said Christian C. Moort, who suffers from some disability.

The defendant appeared and answered, and we quote herein counts four, five, six, and seven of his answer:

> "4. And also because defendant says that plaintiffs, as guardians for Christian C. Moort, have through their present counsel, the Simpson law firm, recognized the validity of the lease agreement which they now inconsistently seek to impeach and repudiate, for

they, in a letter dated June 1, 1965, in their capacity as guardians for Christian C. Moort, directed defendant George Obeidi to pay to one Melinda Simpson-Grass the monthly rental for the premises which he had paid to the late Sarah Jean Moort, a copy of which is marked exhibit 'A,' and made profert herewith as a part of this answer.

"5. And also because defendant says that plaintiffs, though admitting in count 2 of their complaint that Sarah Jean Moort and J. D. K. Baker, as trustee for Christian C. Moort, did execute the lease agreement in question, alleged that J. D. K. Baker, as trustee, had no authority to lease this property, should have made profert of a copy of the document appointing J. D. K. Baker as trustee for Christian C. Moort, from which plaintiffs concluded that J. D. K. Baker as trustee had no authority to dispose of the said property in the manner done in order to notify both the defendant and the court what they intended to prove in this connection.

"6. And also because defendant denies that Sarah Jean Moort, who according to law had a life interest in the property together with J. D. K. Baker as trustee of Christian C. Moort had no legal authority to deal with defendant as they did.

"7. And also because defendant denies that destruction of the building by fire extinguished his leasehold rights as is indirectly suggested in count 3 of the complaint."

Subsequent to the filing of this answer, the defendant filed a ten-count motion to dismiss the suit for an injunction, which the plaintiffs opposed.

Hon. Joseph P. Findley, then presiding over the Sixth Judicial Circuit, heard the motion and made the following ruling on November 10, 1965:

"By virtue of 32 AM. JURIS. § 216, the lessor has a right to protect his property after its destruction, by

fire or otherwise, against the lessee who seeks to enter upon the premises and build. In this instant, the court does not grant ordinary injunctive relief. It goes further, in the nature of specific performance, that is to get the parties to some understanding whereby the lessee might enjoy the balance of his leasehold right, if the same has not yet terminated, as in this instant case. For the destruction of the building upon the devised premises, does not of itself terminate the lease. (See relevant portion of Section 828.) So we called in the parties and they agreed to certain terms as our minutes show, and as the document marked by court 'CI' will show, in connection with the injunction, which was mainly to stop the defendant from carrying on the work of the building. It is elementary to state these stipulations are binding on the parties with respect to the stopping of the work on the building. The court, however, in its disposition to discourage a multiplicity of suits, made it clear that if they were agreed, then all the other actions should be withdrawn. This morning, one of the parties, counsellor C. L. Simpson, also of counsel for plaintiffs, brought up another matter. Sarah Jean Moort, by and through her attorney, C. L. Simpson, plaintiff, *v.* George Obeidi and Lloyd Insurance Company of London, to pay the $25,000.00 subject to counsellor Simpson's submission, and counsel held that unless this payment is made to plaintiffs they will not sign the stipulations; well, it is a different matter altogether, and the court sitting in chancery, may compel parties to perform acts which they have stipulated to perform, the statute of frauds notwithstanding. (See Pennoh *v.* Pennoh, 13 L.L.R. 480 (1960).) Moreover, the court will not require plaintiffs' counsel to withdraw his suit for injunction upon receipt of this $25,000.00, and/or other matters that he may have filed, in keep ing with our last order with respect to the stipulations,

for the matter of withdrawal is only permissive and not mandatory, but this court will surely have the parties sign under the terms which they have agreed upon. This court therefore, rules that the injunction filed on October 29, 1965, be and the same is hereby dissolved and that defendant be and he is hereby further required to continue the construction of this building, as the said stipulations show that the parties to the lease and occupancy of this property are satisfied, notwithstanding the matter of the $25,000.00, which is open to judicial determination at any time.

"We have already said that examining the matter from all aspects of both law and equity, except for this $25,000.00, which is a distinct matter altogether, the interests of both parties, that is to say, the lessor and lessee, in our modest opinion are very well satisfied and so they may sign the stipulation. Costs of these proceedings to be borne by the parties. And it is hereby so ordered."

To this ruling plaintiffs noted exceptions and brought their appeal before this Court on a bill of exception, tantamount to appellant's complaint, consisting of one count, which reads as follows:

"The appellees filed their answer and motion to dissolve said injunction and appellants filed their opposition accordingly on November 3, 1965. The court adjourned the hearing to meet both parties, and thereafter the court adjourned the hearing to meet on Friday, November 10, 1965. When the court resumed hearing on the matter it delivered its ruling dissolving said injunction, which ruling appellants considered materially prejudicial to their interest and then and there excepted to said ruling and gave notice of appeal to the Supreme Court of Liberia, March 1966 Term."

Notwithstanding that this bill of exception presents no traversable issues, but rather attacks the ruling of the

court below itself, yet we have endeavored to give it full consideration.

Before undertaking to determine the appeal, we will set forth the contents of a letter written to George Obeidi, defendant in this case, by one Mr. Fahnbulleh Jones, counsellor at law for the Simpson law firm, dated January 1, and prior to the institution of these injunction proceedings.

"Dear Mr. Obeidi:

> "On behalf of our clients, C. L. Simpson and Mr. T. Edwin Lomax, legal guardians of Christian C. Moort, we are requesting that the amount of $200.00 dollars paid monthly to the late Sarah Jean Moort as per agreement, be now paid to Mrs. Malinda Simpson-Grass, who is now responsible for taking care of Mr. Christian C. Moort. We expect that you will confirm this request without any hindrance or delay."

This letter is found in the record of this case and forms a part thereof. It is self-explanatory and acknowledges the genuineness of the lease right of the defendant to the tract of land bearing number 123. It also acknowledges the right vested in Sarah Jean Moort and Rev. J. D. K. Baker to lease the said property. Yet thereafter the identical guardians undertook to institute this action in chancery, predicated upon the fact that the lessors were without legal authority to lease the premises in question, which is contradictory to the first position.

A further probe into the record shows that when this case was called in the lower court for ruling, counsellor C. L. Simpson, speaking for the plaintiffs, made the following statement prior to the entering of the court's ruling:

> "The plaintiffs appreciate the position taken by the court in this matter, which we think is very excellent in behalf of the plaintiffs and the defendant. However, my attention has been called to the fact by some of my colleagues, as well as members of the Moort

family, to the effect that though they are in agreement substantially with the other points agreed to, nevertheless, a case of injunction was filed in January of this year and in addition to that we communicated with lawyers of the defendant, which will be found as exhibits 'G' and 'H' in the cancellation proceedings. The said communications are dated October 1, 1965, and October 5, 1965, relating to the sum of $25,000.00, for which the house owned by the Moorts was insured with Lloyd Insurance Company, Monrovia. Inasmuch as the defendant is entitled to the sum of $80,000.00 covering his personal effects, the plaintiffs are entitled to the sum of $25,000.00 on behalf of the Moorts, which represents the sum for which the building was insured.

"If the defendant is prepared to take care of this item, we shall be prepared to withdraw all of the cases filed in these proceedings, that is to say, the injunction filed in January last year, the ejectment proceedings. As soon as this point is settled, we shall be prepared to sign up."

Now that we have opened and examined all of the record brought on appeal, we feel ourselves competent to proceed into the merits thereof.

In the first place, we would like to make it plain and clear that an injunction suit is ancillary to some main suit because it does not determine title. Again, the law dictates that where an adequate remedy is available at law, the court may dissolve an injunction suit at any stage, even independently of a motion made by defendant for the purpose.

This is a case in which an appeal has been brought against the ruling of the trial judge for dissolving the injunction. The wording, of course, of the ruling of the court from which the appeal has been brought is involved, but we shall reach this point later in this opinion. The injunction was sued out to prevent the defendant from

constructing a building on the premises for which he held a leasehold right from the lessors, and if, as alleged by plaintiffs below in their complaint, the lessors were incompetent to lease the said premises, this was purely and simply a question to be determined by law and not in equity, or in equity by cancellation. In *Cooper* v. *Macintosh,* 8 L.L.R. 400 (1944), at p. 404, Mr. Justice Barclay, speaking for this Court, said, and I quote:

> "Where the right of a party is doubtful, an injunction will not in general be granted to prevent an interference therewith until the right is established at law. Nothing is better settled as a rule of equity procedure than that the complainant is not entitled to a preliminary injunction to protect a right which depends on a disputed question of law, and which question has never been adjudged in his favor by a court of law. When the principles of law on which rights are disputed will admit of doubt, a court of equity, although satisfied as to what is the correct conclusion of law upon the facts, will not, without a decision of the courts at law establishing such principles, grant an injunction. So if the facts on which the right to the injunction is based are in dispute the injunction will not be granted. . . ."

The Court continued at pp. 404, 405:

> "To warrant the allowance of the 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 for injunction. Unless this be made to appear, an injunction should be denied. If, however, the injury threatened be 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. . . ."

In this case, defendant George Obeidi held a leasehold right in the property for a certain term of years. Before

the expiration of this right, the building on the aforesaid lot number 123 was burnt by fire. He started to construct a more durable and modern building on the aforesaid premises, which involved no irreparable injury to the property. Plaintiffs brought suit for an injunction to restrain him and all persons working directly or indirectly on the construction, though it promised improvement to the value of the property, and no injury to it could have resulted from the construction. This fact the law cannot be blind against.

If, in the opinion of the plaintiffs, the lessors did not have the right to lease the property, they should have gone to law and there sought their rights, for chancery cannot and will not restore rights which are without its province to do.

> "Injunctive relief is granted to protect some property or other right of the complaining party, from actual or impending injury that is otherwise irremediable." 28 AM. JUR., *Injunction,* § 282.

Considering the ruling of the court below on which the bill of exceptions was brought, there was no necessity for the trial judge to have explored the rights of landlords and tenants or lessors because this was exclusively the duty of a court of law, and dissolving the injunction was in harmony with the law and equity and must be affirmed.

The bill of exceptions is, therefore, not sustained, because of the adequate and complete remedy available at law to the appellants. Therefore, the ruling of the court below is hereby affirmed, with costs against appellants. And it is hereby so ordered.

Affirmed.