PATERSON, ZOCHONIS & CO., Ltd., a British Firm Transacting Mercantile Business in Liberia, by and through its Agent, H. THOMPSON, Appellant, *v.* CHARLES H. COOPER, *et al.,* Appellees.

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

Argued March 19, 1959. Decided April 24, 1959.

1. Only such points of law as are expressly raised by an appellant will be considered in determining an appeal.
2. An equitable remedy will be granted only where no adequate remedy exists at law.
3. A trial court is not necessarily required to specify, in its written opinion, all the grounds upon which its decision is based.
4. Equity will not grant an injunction with respect to a matter under litigation in a court of law unless irreparable injury would otherwise ensue.
5. Equity will not consider as irreparable any injury subject to legal redress or compensable by an award of damages by a court of law.

Appellant instituted an action of ejectment against appellees in the court below. During the pendency of the ejectment action, appellant applied for an injunction restraining appellees from occupation of the real property in dispute. Appellees obtained a decree from the court below dissolving the injunction. On appeal from the decree of dissolution, the *decree* was *affirmed.*

Albert D. Peabody for appellant. *M. M. Johnson* for appellees.

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court.*

Asserting lease hold rights to Lot Number 253 of the City of Monrovia, held under a contract executed on February 28, 1954, appellants in these proceedings first insti-

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

tuted an action of ejectment against the appellees in an effort to evict them from a portion of said lot on which the appellees were charged with erecting a building. Appellants claimed this to be encroachment on the property in question, being that of the late Juah Weeks Wolo, from whom the appellants had leased the same.

It appears from the answer filed in the ejectment suit that appellees claimed ownership to said property, thereby joining issue as to who is the rightful owner.

The answer of appellees to the complaint in injunction, as well as their application for dissolution, not having disclosed the filing of an action of ejectment by appellant as a basic action to which these injunction proceedings is ancillary, we assume that such an action at law had been filed before the filing of the action on injunction.

Let us now see why, before the termination of the ejectment suit, appellant invoked the extraordinary jurisdiction of a court of equity to restrain appellees from continued occupation of piece of property, the rightful ownership of which being in dispute was still *sub judice.*

Counts "2" and "3" of appellant's complaint in injunction, setting forth the reasons why, read as follows:

> "And the plaintiff further complains that defendant and/or their agents have undertaken to erect a building thereon, and the erection of said building has encroached upon plaintiff's premises; and despite the fact that their attention has been called to said encroachment, they have, in flagrant defiance of plaintiff's right, continued the erection and construction of said building without making settlement of the issue of dispute between plaintiff and themselves, and have undertaken to continue said operation in flagrant disregard of plaintiff's right and title."

And in Count "3," appellant further alleged:

> "And plaintiff further complains that he leased said premises for his business purposes, and that the construction of a building not conducive for the operation

of his business would work a serious hardship against his business, and he fears that, without the injunction, he would have no relief."

Appellees, having appeared on record, filed an answer consisting of five counts. In Count "1" the validity of the title which appellant is claiming is attacked. In Count "2" they set up that, even if appellant has a valid title, theirs, the appellee's on which they claim, is an older one. In Count "3" they contend that the parcel of land on which appellant is claiming, as the metes and bounds show on the face of the documents made profert with appellant's complaint, is not identical with that of appellees. Count "4" alleges that the title of Juah Weeks Wolo, on the strength of which she is alleged to have leased said property to appellant, had, prior to the execution of said lease agreement, been alienated to Mr. P. G. Wolo in the form of a deed of gift by the said Juah Weeks Wolo, and that subsequently he, the said P. G. Wolo, conditionally sold said property to the J. J. Roberts Educational Fund of the First Methodist Church of Monrovia. In Count "5" appellees set up a bona fide right and title to said property against the adverse claim of the appellants, as seen from an exhibit made profert with their said answer.

Appellants made reply to said answer succinctly reviewing and denying the sufficiency of appellees' answer to defeat their right of action. Appellees then moved for the dissolution of said injunction, predicating this motion on the answer filed, and upon appellees' absolute obedience to the condition set forth in the restraining order of the court below, but also contending that, since the institution of said injunction proceedings, appellants had repeatedly done everything on said premises prejudicial to their interest and in violation of the spirit and intent of the law in such cases.

On October 9, 1956, His Honor, William E. Wardsworth, then presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, made ruling dis-

solving said injunction; to which ruling appellants excepted and brought the matter to this Court for review. Appellants filed a bill of exceptions consisting of only one count.

The Revised Rules of the Supreme Court provide as follows:

"V. Bills of Exceptions

"1. *Contents of*—The appellant shall state in his bill of exceptions the points of law to be especially relied upon in support of his appeal; and the bill of exceptions shall contain only such statements of facts and only such papers as may be necessary to explain the rulings upon the issues or question involved, and the appellant shall state distinctly the several matters of law in the charge of the court below to which he excepts." R. Sup. Ct. V, 1 (2 L.L.R. 665).

The provision of this rule has been religiously upheld in many opinions handed down by this Court, and we find ourselves in complete agreement in upholding the interpretation that only such points of law as are specifically relied upon in support of an appeal, and stated in the bill of exceptions, can have the consideration of this Court in final determination of an appeal.

Moreover, it is well settled that the powers of a court of equity are exercised only if the remedy sought is not possible to be obtained in a court of law; and where an action in law has been filed to determine rightful ownership to property in dispute, the powers of a court of equity can be successfully invoked only if the property or thing in dispute is in danger of irreparable loss. We will, later in this opinion, cite law in support of this principle.

Turning to the bill of exceptions, we have the following:

"1. Because plaintiff says that, after hearing arguments on both sides of defendants' motion and the resistance to said motion of September 27, 1956,

> Your Honor on October 9, 1956, entered final judgment or court ruling dissolving the injunction, which said final judgment or court ruling is expressly in opposition and contrary to the law and legal procedure which prescribes the legal grounds upon which an injunction may be dissolved. Plaintiffs submit that, although the motion filed by the defendants is entitled: 'Defendants' Application for the Dissolution of the Injunction,' nowhere therein did they state any legal grounds to support the title of the said motion or application; nor is a request to dissolve the injunction made in any of the counts or prayer of said motion or application. Instead, the court undertook to give the defendants that which they, the defendants, did not even attempt to do for themselves or ask for. To which plaintiffs duly excepted."

This count is subdivided into two parts. We will treat them separately. The part more fully elaborated on in appellants' brief, and in his argument before this Court, contends that not only did the court below illegally dissolve said injunction on an application which did not set up sufficient grounds justifying said decree, but that the trial Judge should have stated the grounds on which the decree of dissolution was based. We will therefore recite word for word the ruling of the trial Judge as complained of by appellants:

> "Application for the dissolution of the writ of injunction herein had the attention of the court; and upon hearing counsel for defendants in favor of said application, and counsel for plaintiffs in opposition thereto, it is hereby ordered that said writ of injunction be, and the same is hereby discharged without prejudice to the final decision of the above-entitled cause."

The contention of appellants that it was imperative on the part of the trial Judge to have stated in his ruling rea-

sons for dissolving the injunction, apart from being ordinarily reasonable, is legally meritorious; but would such an error or omission be grounds for reversal of said ruling where the facts and circumstances involved in the issue on which the ruling is based do not effect the substantial rights of the parties?

A ruling of a trial Judge, in form or substance, merely expresses an opinion on the issue presented by the parties; and where it is not contended or disclosed by the record that either of the parties was prevented from putting in evidence the facts or law on which they relied in support of their respective positions, as in the instant case, the error complained of by appellant does not exist; however, in the case under review, the ruling of the Judge just recited states in its essential part:

> "... and upon hearing counsel for defendants in favor of said application, and counsel for plaintiffs in opposition thereto, it is hereby ordered. . . ."

This goes to show that the contention, raised in said application, and contested by the appellants had the consideration of the trial court before the ruling granting said application was made.

Coming to appellant's contention that it was error for the Judge to rule on grounds not raised in the answer of appellee, though he did not specifically state said grounds we quote the following:

> "It has been held, however, that if the court, in looking at the proofs, found none of the matters which would make a proper case for equity, it would be the duty of the court to recognize that fact and give it effect, though not raised by the pleadings nor suggested by counsel." 14 R.C.L. 337 *Injunctions* § 40.

Taking together the contentions of both parties, the issue would seem to center around one point, on consideration of which alone this appeal can be legally determined, namely: after the filing of a basic action at law, that is to say, that of ejectment, would the encroachment of the

appellees on the property in question as charged, by erecting a building on said property, they the appellants being in adverse possession, threaten irreparable injury to the property rights of the appellants not possible to be redressed in a suit at law?

Though not particularly set out or sufficiently stated in argument before this Court, no specific act of trespass threatening damage or loss to said property is complained of, except that appellants had leased a piece of property, Lot Number 253 in the City of Monrovia, for the purpose of constructing buildings thereon, and that appellee Benjamin Garnett, on the claimed title of appellee Charles H. Cooper, was erecting a temporary building on said land, thereby encroaching and trespassing on said land.

As to the sufficiency or insufficiency of appellants' claim to justify equitable interposition, we quote the following:

> "In cases of threatened irreparable injury courts of equity assume jurisdiction to grant an injunction on the ground of the inadequacy of the remedy at law. In fact the converse of this proposition ordinarily determines the right to grant this relief. It must, as a general rule, appear to the satisfaction of the court that the injury, for the prevention of which equitable aid is invoked, is of such a character. Thus, where the question is one of damage to individual or property rights, the damage, in order to warrant the court of equity in the assumption of jurisdiction, must be in its nature irreparable, or coupled with some other independent matter of equitable cognizance. Courts do not enjoin the construction or use of public utilities and improvements at the suit of private individuals unless the damage is both serious in amount and irreparable in character. Where an injury is in its nature irreparable, no allegation of insolvency is necessary in the complaint.
>
> "The term 'irreparable' has acquired in the law of injunction a meaning which, perhaps, is not quite in

keeping with the derivation of the word or its literal signification. There are injuries incapable of being repaired which a court of equity does not regard as irreparable. And, on the other hand, there are injuries which may be repaired which it will nevertheless treat as irreparable, if the person inflicting or threatening them be insolvent or unable to respond in damages. As ordinarily used the term means that which cannot be repaired, restored, or adequately compensated for in money, or where the compensation cannot be safely measured. . . . Where, however, there is a full, complete and adequate remedy in a court of law for an injury, it is not irreparable; and if full compensation can be obtained by damages in an action in that form, equity will not apply the extraordinary remedy by injunction." 14 R.C.L. 345–47 *Injunctions* §§ 47, 48.

We could quote many other authorities at common law, as well as opinions handed down by this Court in support of this principle. However, the foregoing would seem to suffice in interpreting the functions of injunction proceedings and the circumstances under which a party is entitled to invoke the powers of equity.

Finalizing this opinion, and predicated on the law as shown above, as well as upon a fair and equitable consideration of the contentions raised in the pleadings certified to us from the court below, we are of the unanimous opinion that the ruling dissolving said injunction should be, and the same is hereby affirmed with costs against appellants. And it is so ordered.

Decree affirmed.