THOMAS YOUNG, ARMLAHBAH and MESARMAH, Appellants, *v.* REVINGTON L. EMBREE, Representative of the FOREIGN MISSION OF THE METHODIST EPISCOPAL CHURCH, Appellee.

CONTEMPT PROCEEDING.

Argued April 17, 22, 26; November 26; December 9, 30, 1935; April 30, May 4, 1936. Decided May 15, 1936.

1. In legal proceedings every party should be designated by his proper name and title, and should be legally made a party plaintiff or defendant.
2. Hence, if it is sought to make several parties defendants in an action, some of whom are named, and the others referred to as "et al.," those thus described as "et al." will not be considered as having been under the jurisdiction of the court.
3. Injunction does not lie where title to real property is an issue involved; more especially where the party sought to be enjoined sets up adverse possession to said land.
4. In order to authorize punishment for the violation of an injunction, the acts complained of must be clearly embraced within the restraining clause of the injunction.
5. Hence, the language of an order of injunction should not be extended to cover acts not fairly and reasonably within its meaning.
6. One cannot be punished for violating an order of injunction unless it is made to appear that such order was personally served upon him, or that he had actual notice of the making of such order.
7. In citing an adjudicated case as authority one should always be careful to consult the text as he may be led into error by confining himself only to the syllabus.
8. All persons claimed to be privies of another should be shown to be either privies in estate, privies in blood, privies in representation or privies in law.

Plaintiff-appellee obtained injunction to restrain members of the Gola tribe from occupying certain towns alleged to be on plaintiff-appellee's property and subsequently instituted contempt proceedings against defendant-appellants, members of the Dey tribe, for violating the injunction. Judgment for plaintiff-appellant entered in Circuit Court reversed on appeal and case remanded with instructions. 4 L.L.R. 393. On second appeal further instructions given. [Unreported officially.] On return to Supreme Court, *contempt proceedings dismissed.*

Anthony Barclay for appellants. *H. Lafayette Harmon* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

Reduced to its final analysis the crux of the dispute which led to the injunction case, decided in the Circuit Court of the First Judicial Circuit on the 16th day of May, 1933, and upon which decision these contempt proceedings are based is: who is the owner of Kpingbah town, situated in the settlement of New York, within the District of Clay-Ashland in Montserrado County.

Revington L. Embree, Representative of the Foreign Mission of the Methodist Episcopal Church, appellee, claimed that said town was within the limits of a five hundred acre block of land which he, by an undated deed, executed in the year 1926, as per copy sent up in this record, purchased from James B. McGill, Sr.; while, on the other hand, Thomas Young, Armlahbah, and Mesarmah, appellants, claim adverse title to said town as heirs of one Swar, by virtue of a county land deed from the late President Cheeseman, dated January 11, 1896.

Plaintiff, now appellee, without having taken any legal steps whatever to settle the disputed title, filed an action of injunction against "Bye Bathay, a native of the Gola tribe and his people and Darkpannah, defendant," to enjoin them presumably from occupying certain portions of said land as gathered from the final decree, the only part of said case included in the record now before us, and after a hearing of said complaint, His Honor Judge Russell, Circuit Judge, presiding by assignment in the First Judicial Circuit, now Mr. Justice Russell, on the 16th day of May, 1933, entered a final decree enjoining the said Bye Bathay and Darkpannah from "occupying said tracts of land or any part thereof."

On the 28th day of August, 1934, Counsellor H. L. Harmon, attorney for appellees, instituted the present

proceedings complaining that "Armlahbah, Mesarmah and Thomas Young, *et al.*, co-defendants, whose names to the plaintiff are at present unknown, have unlawfully disobeyed the injunction, entered upon said tract and are constantly molesting the 'subjects' of the mission in violation of said injunction."

The Court will remark in passing that it is unable to consider the *"et al.,* whose names to the plaintiff are at present unknown," complained against by said appellee because in legal proceedings every party thereto should be designated by his proper name, and title, and should legally be made a party either by joining in the suit as plaintiff, or by being brought under the jurisdiction of the court by the service of process, or the voluntary and express waiver of service of process, as defendant. 22 Cyc. 322 G; *Tubman* v. *Murdoch,* 4 L.L.R. 179, 2 Lib. New Ann. Ser. 5 (1934).

Confining ourselves then to the parties before the court viz.: Thomas Young, Armlahbah and Mesarmah, appellants, Counsellor Anthony Barclay in behalf of these filed an answer denying that they were Gola people, but members of the Dey tribe, having no connection whatever with Bye Bathay and his people of the Gola tribe; and also contending that they had not entered upon the land of plaintiff, nor molested any person occupying said land, but that all the lands upon which they were operating were theirs in fee simple by virtue of a deed, profert of which they made, dated forty years ago; and that in view of the fact that the title of the land was in dispute an action of injunction had been wrongly instituted, as title can only be legally settled by ejectment.

It was an error to enter upon a trial of the facts without having first settled the issues of law raised; but His Honor Nete Sie Brownell, the trial Judge, evidently realized the error while the first witness, Revington L. Embree, was being cross-examined, and had the following entered upon the record:

"As a result of this ruling an exchange of views between the Court and Counsellors on the point at issue was had. Counsel for plaintiff contending that Kpingbah town which is the centre of the misunderstanding is part of the mission land over which respondents are exercising adverse title. The respondents on the other hand contended that they having not been parties to the original suit, their deed was never taken into account by the Arbitration appointed by the court and Kpingbah town is part of their land, as embraced by the deed made profert of by them. At this stage the court asked the counsels for both sides whether they did not think it useful for them to file stipulations for a surveyor to repair to the spot and make observations taking into consideration the deed made profert of by respondent Thomas Young and his people. To this suggestion of court all parties concerned agreed and promised to file same in court at ten o'clock on the morning of the 21st instant and at which time they hoped to agree on a Surveyor who will make the necessary observations and report to the court. Witness Embree was thereupon discharged with thanks of the court." Records of September 20, 1934, page 3.

Accordingly B. J. K. Anderson, a surveyor by profession, was chosen as sole arbitrator. Several objections however were made to his award which the trial court seemed to have ignored, or, at all events, did not determine; and upon his final judgment confirming said award, and imposing fines upon the defendants, they appealed to this Court at its last April term for a review of the proceedings and final judgment against them.

This Court, after having listened carefully to the arguments on both sides at our last April term, which were as bitter as they were excited, reached the conclusion that an effort was being made in this Court to obscure the real issues as effectively as they had been apparently relegated

into the background in the court below. We therefore issued an interlocutory order to His Honor Judge Shannon, presiding in the court below, directing that a new surveyor be chosen, indicating how he should proceed to make an impartial survey, and that a report be made. 4 L.L.R. 393, 2 Lib. New Ann. Ser. 232 (1935).

At our last November term of Court the returns of the Judge were found unsatisfactory, whereupon a further interlocutory order was issued to the same Judge, and he was kept presiding in the First Judicial Circuit until satisfactory returns had been filed. Unreported officially, 3 Lib. New Ann. Ser. 26 (Dec. 13, 1935). (See *supra,* p. 141.)

This is a brief synopsis of the case before us, and we shall now proceed to consideration of the issues presented by the record for our consideration.

According to the award of the arbitrator, the Rev. Dr. Dunbar, chosen as surveyor by virtue of our interlocutory order of April 26, 1935, the contending parties are contiguous owners, and a correct survey of the two tracts of land owned respectively by appellant and appellee has disclosed that although the town of Golavah, the subject of the injunction in which Bye Bathay and Darkpannah were defendants, was situated entirely within the lands of appellee, Kpingba town, a town of only four houses, the kernel of the dispute in the contempt proceedings, is only partly on the land of appellee, and partly outside of the boundaries of said land, three of the houses being within, and the other houses being without. The record is defective in not having shown even remotely in which part of the town thus dissected by the survey of the Rev. Dr. Dunbar the acts alleged in violation of the injunction occurred.

In view of the foregoing the wisdom of the principle so often enunciated by our predecessors from this Bench, that injunction does not lie where title to real property is an issue involved (See *Johnson* v. *Cassell,* 1 L.L.R. 161

(1883), and *Green and Gray* v. *Turner,* 1 L.L.R. 276 (1895)), is made so much the more plain, since indeed it would not only be unjust, but an absurd paradox for any court of justice to enjoy a party, at the suit of another, from occupying, or exercising other acts of dominion over, lands of which he is the owner in fee simple.

This general rule is more fully stated in 22 *Cyc.* in the following terms:

> "As a general rule a court of equity will not interfere to protect legal rights in property until the complainant has established his title or right by an action at law, especially where the answer denies the title of the complainant to the property sought to be protected. If the legal right or title to property has not been established at law, is not clear or established *prima facie,* or has not been long enjoyed, but is disputed, and the injury threatened is not irreparable or the remedy at law inadequate, an injunction will not issue. So where there is a reasonable doubt as to the right or title of the applicant for an injunction to protect property, equity will not interfere in the absence of emergency until after the right or title has been established at law. For instance it has been held that an injunction will not be granted in cases where the right depends upon the meaning of an ambiguous and uncertain contract, deed, or will; where the principles of law upon which the right depends are doubtful and have not been adjudicated by a court of law; or where complainant has previously attempted and failed in an action at law to establish his title." 22 Cyc. 818–20.
>
> "A court of chancery is not the appropriate tribunal for the trial of title to land, and where the main object of a suit asking for relief by injunction is to determine the legal title to property, or to fix the boundaries of land, equity will not interfere by injunction, but will remit the parties to a court of law. Likewise equity

will not try title to personal property in an injunction suit." *Id.* at 821 (III).

"Equity will not restrain by injunction the commission of a mere ordinary or naked trespass. The nature of the trespass or the injury resulting therefrom must be such as to require equitable interference." *Id.* at 827–28 (II).

More especially is this true where the party sought to be enjoined sets up adverse possession to the land.

All of these principles give cogency to the contention of appellees, first raised in the 5th plea of their answer, that had the right action been brought they would have been able to show conclusively that they were not guilty of contempt by violating the writ of injunction, nor even trespassers upon that portion of the land, the subject of dispute, claimed by appellee to which they, the appelants, were also laying claim by adverse possession.

Another point raised during the hearing at this bar is: inasmuch as the decree in injunction expressly enjoined the parties to that suit from "occupying" the lands of plaintiff, would it be such a breach of the injunction as to support these contempt proceedings for appellants to enter the lands in dispute merely to cut palm-nuts, to cut down coffee trees, or in burning farms on their own lands in such a careless manner as to also burn, and destroy trees and other products of the lands of appellees.

The principle applicable thereto seems to be that stated as follows:

"In order to authorize punishment for a violation of an injunction, the acts complained of must be clearly embraced within the restraining clause of the injunction. And whether or not particular acts constitute a violation of an injunction depends largely upon its special provisions. The language of an order of injunction should not be extended to cover acts not fairly and reasonably within its meaning. An

injunction decree is to be construed with reference to the nature of the proceeding and the purpose of the injunction." 22 Cyc. 1015–1016.

But another and still more important question which we must now address ourselves to is: supposing, for argument's sake, appellants had not been adverse claimants to the land in question, and/or they had committed acts directly in contravention to the restraining order, could they even then have been punished for contempt in violating the injunction without proof that they, not having been parties to the original injunction proceedings, had had actual notice of the issuance, and scope, of the restraining order.

The rule of law is that:

"One cannot be punished for violating an order of injunction, unless it is made to appear that such order was personally served upon him, or that he had notice of the making of such order. Where, however, a party has actual notice of an injunction, clearly informing him from what he must abstain, he is bound by the injunction from that time, and will be punished for a violation thereof, although it may not have been served, or be defectively served on him. And where an injunction has been ordered, a party having knowledge of that order, who deliberately violates the injunction that has been ordered, although not yet issued, is guilty of contempt of court; but in order to convict a person of contempt, under circumstances of that kind, it must be shown clearly that he had knowledge of the order for the injunction in such a way that it can be held that he understood it, and with that knowledge committed a wilful violation thereof." 22 Cyc. 1013–1014.

Unfortunately, it is a source of regret to us that some of our practitioners seem to be developing the habit of citing as authority the syllabi to opinions instead of the text of the opinions themselves. And, for that reason, it

may not be amiss to remark here in passing, that the object of the syllabus is merely twofold: (1) To give at a glance an idea of the principles settled in an adjudicated case; and (2) To facilitate the preparation of the index. Possibly some of our practitioners may, by their error, have been unconsciously led into an erroneous conception of the principle involved by referring merely to the syllabus of *In re Moore,* 2 L.L.R. 97, 1 Lib. Semi-Ann. Ser. 15 (1913), which syllabus reads: "To render a person amenable to a restraining writ it is not necessary that he should have been a party to the suit in which the writ was issued." But delving deeper down into the case itself we find that the Court quotes with approval the following holding of the United States Supreme Court in *In re Lennon,* 166 U.S. 548, 41 L. Ed. 1110 (1897):

> " 'The fact that petitioner was not a party to such suit . . . nor, was served by the officers of the court with such injunction, is immaterial so long as it was made to appear that he had notice of the issuing of an injunction by the court. To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice.' " 2 L.L.R. 97, 101.

Still more explicitly is the principle expounded in the following:

> "Under some circumstances, at least, a party to an injunction suit may be chargeable with notice of the issuing of the injunction so that his violation thereof will render him guilty of contempt, even though he has no actual notice; but it is otherwise as to one not a party. In order to charge such a person with contempt, he must have had actual notice of the injunction prior to the performance of the acts upon which the charge of contempt is based. Thus a stranger to

an injunction, if he has notice or knowledge of its terms, is bound thereby, and may be punished for contempt for violating its provisions; but he cannot be charged with contempt unless a copy of the injunction was served upon him or it is proved that he had knowledge of its provisions. It is well settled that actual notice of the injunction is sufficient to render even one who was not a party guilty of contempt in violating it, and that it is not necessary, if he had actual notice, that he should have been served with a copy of the injunction or the writ." 6 R.C.L. 504, § 16.

There is only left remaining now the necessity of examining the thesis of counsel for appellee contained in the second paragraph of his brief that the parties in these contempt proceedings were in privity with those in the former injunction case.

We have not been able to discover upon what ground the counsellor for appellee bases his contention that there was any sort of privity between the appellants in the case at bar, and the defendants in the former injunction case. For:

"There are privies in estate, as donor and donee, lessor and lessee, and joint tenants; privies in blood, as heir and ancestor, and coparceners; privies in representation, as testator and executor, administrator and intestate; privies in law, as where the law without privity of blood or estate casts land upon another, as by escheat." 32 Cyc. 388, footnote 10.

In view of the foregoing it is our opinion that the contention that there was any privity between Bye Bathay and Darkpannah of the Gola tribe on the one hand and Thomas Young, Armlahbah and Mesarmah of the Dey tribe on the other is unfounded, far-fetched, and erroneous. The judgment of the court below should therefore be reversed; the conviction of contempt against Thomas

Young, Armlahbah and Mesarmah, appellants, should be quashed; and appellee ruled to pay all costs; and it is hereby so ordered.

Proceeding dismissed.

MR. JUSTICE RUSSELL read and filed the following dissenting opinion.

This case is before this Court on an appeal from the Circuit Court of the First Judicial Circuit, Montserrado County, from exceptions taken to the final decree of the trial Judge, and which decree was predicated on an award of the Arbitrator appointed upon the recommendation, suggestion and stipulation of the two contending parties in this case, which stipulations are as follow, to wit:

> "This case having been called, Counsellor H. L. Harmon and Attorney M. Dukuly, appeared for plaintiff, and Counsellor Anthony Barclay for Thomas Young, Armlahbah and Mesarmah, defendants. Upon examination of the matter by the court, Mr. Embree being on the stand, His Honour Judge Brownell observed that in his opinion the examination-in-chief and the cross-examination seemed not to be confined to the real issue before the court; whereupon an exchange of views between the court and counsellors on the point at issue was had, and the following issues were raised by the parties:
>
> "1. Counsel for plaintiff contended that Kpingbah town which is the centre of this misunderstanding is part of the Mission land over which defendants are exercising adverse title, and that a decree by this court perpetuating the former injunction had been disobeyed by defendants and their people. (See decree.)
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> "2. Defendants in contempt proceedings on the other

hand contended that they not having been made parties to the original suit, their deed was never taken into account by the Arbitrator appointed by the Court (His Honour M. Nemle Russell), and Kpingbah town is part of their land.

"STIPULATIONS:

"(a) The parties having nominated and appointed Surveyor B. J. K. Anderson to proceed to the spot in question and make the necessary observations in reference to the two deeds.

"(b) Both parties hereby agree to hand in officially certified copies of their deeds to the Arbitrator whose award shall be accepted as to the ownership of Kpingbah town.

"(c) These stipulations shall be binding upon both parties and the award of the Surveyor shall be accepted as the basis of the Court's decree in these proceedings.

"(d) Copy of these stipulations shall be filed with the Court in its Equity Jurisdiction.

"[Sgd.] H. LAF. HARMON,
Counsel for Plaintiff.

"[Sgd.] ANTHONY BARCLAY,
Counsel for Defendants."

These stipulations having been filed, the court filed the necessary order, appointing the arbitrator-surveyor, and the clerk was ordered to issue the appointment for Mr. Anderson. The survey was done by Mr. Anderson, who filed the following report:

"The undersigned, appointed as Arbitrator in the case: Revington L. Embree, representative of the Methodist Episcopal Church in Liberia, plaintiff *versus* Bye Bathay, a native of the Gola tribe and his people and Darkpannah, defendants, Disobedience of Injunction, for the purpose of determining whether Kpingbah town claimed by both parties to the above

entitled cause is situated on plaintiff's or defendant's land, comparing the deeds of both parties to the suit, begs leave to submit the following:

"1. Kpingbah town located by actual survey was found to lie at a distance of above twenty-five chains within the line North 60 degrees, East running forty chains (40) of M. T. Decoursey's land said line determining the North by East extremity of plaintiff's land and lies in range 4. In relation to the line running South 30 degrees East from the North-east angle of plaintiff's land, the said Kpingbah town was located within twenty (20) chains of said line, and thus lies within the boundaries of plaintiff's land as covered by the deeds.

"2. Upon comparing the deeds of both parties to this section it was discovered that plaintiff's land lie within the range 1, 2, 3, and 4, while defendants' land lies within range 5.

"3. The parcel of land, occupied for some time by defendants, commences at the North-west angle of plaintiff's land, said point being located in range 4. This location would be consistent with the deed if their certificate of survey as contained in their deed, specified their commencement to be at N.W. angle of M. T. Decoursey's land, instead of the one specified therein, which is actually a little less than two miles away from their present location.

"4. In the survey of plaintiff's land in order to locate the position of Kpingbah town, relative to the dispute, it was discovered that not only have the defendants occupied the said town, which as already stated above, lies within plaintiff's land, but it also, it [*sic*] was observed that they are operating upon territory which lies well within

range 2 or just above the middle of the plaintiff's land.

"5. For more detailed information on the above, *see* the attached certificate of survey made by the Arbitrator.

"Respectfully submitted,

"[Sgd.] B. JOSEPH K. ANDERSON,
Arbitrator."

The defendants in these contempt proceedings being dissatisfied with the above award and its supporting certificate, filed the following objections, to wit:

"Thomas Young, Armlahbah and Mesarmah, Objectors to the Award of the Surveyor and Arbitrator in the above entitled cause, respectfully pray that the Award be set aside for the following reasons:

"1. Because when on the 27th day of September A.D., 1934 the said B. J. K. Anderson, Surveyor and Arbitrator, arrived at New York in company with Revington L. Embree, the plaintiff in the above entitled action of injunction, they, Surveyor and Plaintiff, without notifying objectors of their arrival and readiness to make the survey immediately that same afternoon proceeded to survey the land objectors only hearing accidentally of what was going on. This first act on the part of said Surveyor was not in keeping with the spirit, meaning and provisions of the stipulations of the parties. And this the objectors are ready to prove.

"2. And also because on the 9th day of September A.D. 1934 objectors having discovered that about 25 chains of land in range one (1) had been surveyed without the knowledge and in the absence of objectors said land although a part of 400 acres as contained in the deed of the said Methodist Mission, being left thereof for the purpose of extending the boundaries of the said Methodist Mis-

sion land, objectors having protested, received the reply from the said Surveyor 'that he knew what he was doing.' And this the objectors are ready to prove.

"3. And also because when during the survey Objectors requested to see the original deed of the said Methodist Mission, both plaintiff and Surveyor stoutly objected and refused to exhibit said deed to them, the said survey being carried on from a plot which said objectors had never seen and had no knowledge of as to its genuineness and correctness. This act on the part of the said Surveyor showed gross partiality and was not in keeping with the spirit, meaning and provisions of the stipulations signed by the parties. And this the objectors are ready to prove.

"4. And also because when on the 1st day of October A.D., 1934, the objectors having hurried to the place of the survey and where the said Surveyor resided, found that the said Surveyor and plaintiff had already commenced surveying although it was yet early in the morning without them and without allowing sufficient time for them to reach the spot knowing full well that objectors resided at least an hour and some minutes away from the said place. The Surveyor's attention having been called thereto and a protest made, he replied that he did not care, or was not interested in them, or words of like tenor. This also showed partiality on the part of the said surveyor and was contrary to the spirit, meaning and provisions of the stipulations. And this the objectors are ready to prove.

"5. And also because objectors are dissatisfied with said survey and verily believe that said Surveyor acted fraudulently and evinced great partiality in favour of the said Revington L. Embree, repre-

sentative of the Methodist Mission, plaintiff, in that before the said Surveyor left Monrovia, and after he arrived at the place of dispute demanded and endeavoured to compel objectors through their counsel and themselves direct, respectively, to pay to him the sum of Twenty dollars ($20.00) which he said would be used for his expenses but not to be considered as a part of his charges, objectors having refused to pay said sum, and surveyor then evidently became partial and antagonistic to objectors. And this the objectors are ready to prove.

"6. And also because the Surveyor and arbitrator aforesaid not only went up the river to New York, the place of the dispute of title, but resided with the said plaintiff as his guest thereby the said Surveyor became embarrassed as objectors verily believe and could not, even if he desired to, act freely and with that degree of impartiality expected of him as a surveyor and arbitrator in a matter of disputed title to land. And this the objectors are ready to prove.

"7. And also because it was understood that the survey would be done in accordance with the boundaries and descriptions as set out in the original deeds, said Surveyor did not do this, paying no attention whatever to objectors' deed. This was contrary to the spirit, meaning and provisions of the said stipulations. And this the objectors are ready to prove.

"8. And also because objectors say when there is a disputed title to land, the only remedy for settlement is ejectment and not injunction, nor complaints against parties who are never parties to the suit, for disobeying an injunction. That the whole and sole object of the complaint against them who are Deys and not Golas is to deprive

them of their land illegally. Objectors say that only ejectment can legally oust them and not injunction, the said Kpingbah town having been owned and occupied by them undisputedly for a number of years. And this the objectors are ready to prove.

"9. And also because objectors say that the said Surveyor and arbitrator acted on the whole partially, unjustly, arbitrarily and corruptly against their interest and in favour of plaintiff, contrary to the spirit, meaning and provisions of the stipulations of parties. The objectors therefore pray that the Award be set aside and made of nought and a new survey ordered. And this objectors are ready to prove.

"[Sgd.] THOMAS YOUNG, ARMLABAH & MASARMAH,

Objectors, by their Attorneys.

"[Sgd.] ANTHONY BARCLAY,

Counsellor-at-Law.

"Affidavit attached."

The court after hearing evidence as to the alleged failure of the surveyor to notify defendants of his arrival at New York and proceeding at once with the survey, as well as other evidence as to whether abutting land owners were in a position to say that Kpingbah town is on plaintiff's or defendants' land, as found by the award, overruled the objections and rendered a final decree, based on Award of surveyor Anderson. To this decree of the trial court, respondents excepted and prayed for an appeal to this Court and filed a bill of exceptions containing four counts which are as follows, to wit:

"1. Because when on the 22nd day of August A.D. 1934, a complaint having been made by Revington L. Embree, representative of the Methodist Episcopal Church, plaintiff against Thomas Young, Armlahbah and Mesarmah, respondents

for disobeying injunction decree of His Honour M. Nemle Russell, dated 16th day of May A.D. 1933 respondents having shown to Your Honour by verified answer that they were not parties to said injunction directly or indirectly and consequently should not be held in contempt for disobeying said injunction, Your Honour overruled said plea and held them to answer for disobedience to which respondents except.

"2. And also because Your Honour further overruled count five of the Answer of respondents in contempt proceedings which raised the question of title and which set out that where title is in dispute ejectment is the proper remedy and not injunction, to which respondents except.

"3. And also because when on the 21st day of September A.D. 1934 it became apparent during the hearing of the contempt proceedings that the bone of contention was over the ownership or title to land upon which is situated Kpingbah town, and stipulation were filed by both parties for an impartial surveyor and arbitrator to go up and ascertain said fact, upon the report of the arbitrator and surveyor, respondents having on the 4th day of October A.D. 1934, filed objections of law and fact, without calling on said objectors to prove by evidence the allegations of fact stated in said objections to which respondents except.

"4. And also because on the 8th day of October A.D. 1934, Your Honour handed down your final decree to which respondents except.

"THOMAS YOUNG, ARMALAHBAH & MESARMAH,

Objectors and Respondents, by and through their Attorney.

"[Sgd.] ANTHONY BARCLAY,

"Counsellor-at-Law.

"Approved subject to record:

"[Sgd.] NETE SIE BROWNELL,
Resident Judge, First Judicial
Circuit, Mo., Co."

At the April, 1935 term of the Honorable Supreme Court, when this case was called for hearing the contending parties filed another stipulation which is as follows, to wit:

"STIPULATIONS

"It having been apparent that there are irregularities committed on both sides in the progress of this cause, as for example neither side joined issue before the cause was heard in the Circuit Court of the first judicial circuit in the above contempt proceedings; and in order to prevent multiplicity of suits and effect a final settlement of the dispute, it is considered advisable to go beyond the contempt proceedings and ascertain on whose land is situated Kpingbah town and Golahvah, the subject of these proceedings, in order that the parties concerned may have once and for all time their boundaries defined, it is hereby agreed to by and between the parties thereto:

"1. That the services of the disinterested Surveyor H. B. Duncan, or any other Surveyor, who has never been employed by either side for the survey of the said tract or tracts of land, be secured to go up to the spot and make an impartial survey.

"2. That for the purpose of the survey both parties will surrender their title deeds to the Court which will supply authenticated copies thereof to the Surveyor chosen, to be returned by said Surveyor after the survey.

"3. That the survey is to be done from start to finish in the presence of the contending parties, or their representatives, and shall take place as early in May as possible, provided, however, that notice

of at least four (4) days shall first have been given to all parties concerned, before the date for the commencement of the survey. The Surveyor shall immediately thereafter file his report in the Court.

"4. The Surveyor chosen shall be sworn in open Court and in the presence of the parties, to act justly and impartially; and during the period he is employed in carrying out the survey he shall not reside with either of the parties interested, but preferably on the other side of the river.

"5. That the costs of said survey shall be borne by both parties equally and shall be collected by the Court.

"[Sgd.] ANTHONY BARCLAY,
Attorney for Thomas Young,
Armabalahbah and Mesarmah,
Appellants.

"[Sgd.] R. L. EMBREE,
Appellee."

The Supreme Court, accepting the stipulations, ordered an interlocutory order issued by the Clerk of this Court to the court below, commanding the judge thereof to resume jurisdiction and carry out the order of this Court, which interlocutory order reads as follows, to wit:

"Pending the hearing and as a result of questions propounded to the parties from the Bench, it was made clear that the real kernel of the dispute was being lost sight of in the injunction proceedings and the contempt proceedings which grew thereout and were the special subject of this appeal. The parties at that stage applied for a suspension of further proceedings here so as to enable them to prepare and file stipulations that might put a final end to the dispute.

"Said stipulations were duly filed in Court on the 26th day of April, 1935, and are as follow: . . . [See *supra,* 4 L.L.R. 393.]

"The Court permits the said stipulations to be filed,

and decides to suspend further proceedings in said cause pending the execution by the court below of the following order.

"1. The Circuit Court of the First Judicial Circuit shall resume jurisdiction of this cause for the purpose of carrying out the intention of the parties as expressed in said stipulations.

"2. That the said court shall consult the surveyor chosen and parties hereto, before fixing the date of the survey.

"3. That the parties who have signed these stipulations will themselves be present on the scene at the time of the survey in order to personally participate therein.

"4. That the said court will make a report to this Court of all that shall have been done in the premises during our resumed sittings to commence May 20th proximo.

"5. That the Clerk of this Court shall send a mandate to the court below with a copy of this interlocutory order for its information, guidance and direction.

"Given under our hands and the Seal of Court this 26th day of April, A.D. 1935.

"[Sgd.] L. A. GRIMES,

L.S. *Chief Justice, Supreme Court of Liberia.*

"[Sgd.] SAMUEL J. GRIGSBY,

Associate Justice, Supreme Court of Liberia.

"[Sgd.] R. EMMONS DIXON,

Associate Justice, Supreme Court of Liberia."

The interlocutory order of this Court, in my opinion, sets aside the appeal prayed for and granted to appellants, because the points set out in the objections to the award were sustained to the effect that fraud was committed by Mr. Anderson in the survey of the tracts of land in dispute. Upon stipulations of both parties a new survey was ordered by this Honorable Court at its April term,

1935. The trial judge thereupon resumed jurisdiction and upon the recommendation of the contending parties, appointed Surveyor J. F. Dunbar, who surveyed the said tracts of land and made the following as his reports:

"CROZIERVILLE,
May 30, 1935.

"THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT,
REPUBLIC OF LIBERIA.

"HONOURABLE SIR,

"My having been chosen the Surveyor by both parties who signed in the presence of the Honourable Supreme Court stipulation prescribing that a final settlement of their disputes be effected by an impartial survey of the tract or tracts of land which occasioned said dispute, to survey said tract or tracts of land in order to have once and for all time the boundaries of those tracts defined, beg to submit the following report:

"The survey was started on the 23rd instead of the 21st instant for reasons already submitted to the Honourable Court.

"On the day of starting Prof. Embree was present, representing himself; Thomas Young represented himself, Counsellor Anthony Barclay not being present. There were present, also as witnesses for Thomas Young: Messrs. Henry Snetter, Charles White of Millsburg and Henry Harris. The survey took up four days and each of the parties named was present on the line. Many other persons from the nearby towns, some as workmen, and others as lookers-on, followed the survey.

"In keeping with the fourth stipulation signed by the parties, I suffered great inconvenience of walking to my home on my plantation every evening, a distance of about six miles, and of walking back to the spot every morning.

"I enclose diagram showing as near as possible the areas the deeds forwarded me by the court call for. The heavy lines in the diagram show the sides surveyed by me.

"Every consideration was given the views and wishes of both parties which did not affect the actual survey in order to bring about a final settlement of the dispute. The side surveyed (the eastern) was chosen to satisfy Thomas Young although Prof. Embree, Mr. Snetter and I felt that the western side should have been taken because the area (25 acres) bordering on the river starts from the south-east angle of lot No. 41.

"As is observed on the diagram, the point of departure—the corner or angle taken as starting point—was the south-east angle of lot No. 41. To get this starting point the distance between the south-east angle of lot No. 39—an old plum tree—and the south-west corner of lot No. 41 was tested. After measuring the distance between the south-east angle of half of the width of lot No. 77—the whole frontings of the Mission's river block—I started inland.

"The course of bearings of each block and of the whole area of the lands in dispute as is found in the deeds is 30 (thirty) degrees by 60 (sixty) degrees. The blocks owned by the Mission forming one united area of 525 (Five hundred and twenty-five) acres, and this whole block having been surveyed and boundaries fixed by soap trees on some of its sides since over forty years ago, according to the rule of re-surveying such in area, as is given by recognized authorities on surveying, a magnetic variation of at least two minutes for each and every year is to be made or allowed. I therefore adopted 31½ degrees and 53½ degrees as the course for the re-survey made by me. The survey made according to these compass bearings harmonized to a very great extent with the old land marks on the side line of lot No. 47 and on the front

base line of the 400 acres and made a very slight difference of the eastern side where there are no old land marks and where surveyors A. D. Simpson made a survey not many years ago, taking undoubtedly 30 degrees by 60 degrees as his course. The course adopted by me was agreed upon and accepted by both parties before the survey was made.

"The eastern side line was completed on the afternoon of Tuesday, the 28th instant, in the presence of the parties named above and about 32 others representing both interests. The length of this line from the river is 157½ chains.

"The running of this line threw the Golavah town in the Mission area, the distance inward or from the river not being tested, but I judge it to be about 87 chains from the river and about 12 to 15 chains from the side line.

"Kpingbah town consists of 4 houses situated in a somewhat rectangular form. The line by me threw three of the houses, which constitutes the body of the town, in the Mission area, leaving one situated in the eastern angle, outside, . . . chains from the river.

"When the end of this 157½ chain line was reached, I asked the two parties whether I should proceed further by turning westward to run 40 chains, the length of the inland base line of the 525 acres. This 40 chain line had been run by the last surveyors appointed by the Honourable Court, Mr. Joseph Anderson being one of them, and the end of the side line fell only eleven feet from the iron pegs placed on this cross line by Surveyor Anderson and his colleague. Prof. Embree contended that I should survey (rerun) this cross line because Thomas Young refused to accept or be governed by the marks placed on this line by the last Surveyors, which was one of the causes of the Injunction and Contempt proceedings filed in the court by him. I readily agreed to run this line provided both parties agree to pay me my price of one

shilling an acre for the 525 acres. I turned to Thomas Young for his final word. He said in the presence of all the parties present that he was satisfied with the survey made by me up to that point, and that if all the marks placed on the cross line in question by the former surveyors were brought in eleven feet from where they are now resting, he was prepared to accept that line as northern boundary between the Mission land and his land and regard the matter as settled and closed; that if Prof. Embree wanted the line run he was satisfied; only have the stakes or pegs on that line brought in eleven feet. I then appealed to Prof. Embree for his final word. He said he too was satisfied with the survey made by me and that if bringing in the boundary marks on the northern line eleven feet would satisfy Thomas Young and close the question, he was willing and prepared to have it done. I tried to make it clear to all who were present what both parties had said and gave notice that I was reporting this to the Honourable Court. The survey was thereupon brought to a close.

"I was agreeably surprised to find the boundary marks on this northern line, placed there by the last surveyors, so near the end of my side line. Undoubtedly the course taken by these surveyors must have been North 59 degrees East, coming across from the western line. Their work appears to be commendable and might have been accepted by the Honourable Court.

"I also enclose my bill for the work done and hope the Honourable Court will see to it that it be settled without delay.

"I am herewith returning the copies of the deeds sent me for survey.

"I have the honour to be,
Your obedient servant,
[Sgd.] J. F. DUNBAR."

There is nothing in the record to show that after the submission of Surveyor Dunbar's report the trial judge made any decree on said report and that exceptions thereto were thereafter taken by any of the parties in the case, which act alone would have been the authority for this Court to take appellate jurisdiction over this case and render a legal decree. For this Honorable Supreme Court to take the report of Surveyor Dunbar and pass upon it without any decree of the trial court thereon, would in my opinion be tantamount to taking original jurisdiction in the case; which, according to the Constitution of this Republic this Court is strictly forbidden to do so. Lib. Const., Art. IV, sec. 2.

The records of the court below after the interlocutory order were transmitted to it, showed that both parties, to wit: Revington L. Embree (on the 18th January) and Thomas Young for the respondents (on the 13th January, 1936) appeared in the court below and expressed perfect satisfaction at the survey of Surveyor Dunbar. Dr. Dunbar's report; Minutes of the Circuit Court, First Judicial Circuit, January 8, 13, 1936.

For the foregoing reasons assigned and the law supporting same, I have thought it my duty to file this dissenting opinion, whereby I refrain from joining my colleagues of the Bench in taking original jurisdiction over Surveyor Dunbar's report and in reviewing a case in which no exceptions are taken to Surveyor Dunbar's report.

In conclusion, the petitioners and respondents have expressed their satisfaction with Surveyor Dunbar's survey, which says that the respondents who have placed themselves under the jurisdiction of the trial court by pleading or joining issue with petitioners and accepting a resurvey of the tracts of land in question are guilty of contempt, because according to the said survey they are on the Mission land. In re *Ricks* et al., 4 L.L.R. 58, (1934).