# RICHARD DAGBER, Appellant *v.* A. MOLLEY, Appellee.

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

Argued January 23, 1978. Decided February 3, 1978.

1. A lessee wrongfully threatened with eviction by his landlord does not have an adequate remedy at law and is consequently entitled to an injunction to prevent any such action.
2. When fraud is pleaded in connection with a contract, parol evidence and collateral agreements to prove or disprove such allegations are admissible to show that the writing does not correctly represent the actual agreement between the parties.
3. A court commits error in refusing to hear evidence that fraud attended the drafting of an agreement which is the basis for the action before it.

This was an action by a lessee to obtain a preliminary injunction to prevent eviction by his landlord. Plaintiff claimed that the lease had been drafted by the defendant/lessor for one year rather than for two years as agreed upon between them, and that he signed the writing without reading it and believing that it was for the longer period. The lessee had also commenced an action for specific performance of the agreement in which a judgment of dismissal by the lower court was reversed on appeal by the Supreme Court. *Dagber* v. *Molley,* 26 LLR 422 (1978).

The lower court dismissed the suit for a preliminary injunction, and this was an appeal to the Supreme Court from that decision. The Court held that no adequate remedy at law existed in favor of appellant/lessee to protect him from an eviction. It held also that the lower court should have admitted evidence to show that the lease as drafted did not reflect the agreement between the parties. *Judgment* was therefore *reversed* and the case remanded.

Counsellor *Moses K. Yangbe* appeared for appellant. Counsellor *Samuel E. H. Pelham* appeared for appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

Richard Dagber, appellant in this case, entered into a lease agreement as lessee with A. Molley as lessor for a certain premises owned by lessor. The agreement offered in evidence states that the agreement commenced on April 1, 1976, and ran through March 31, 1977, at an annual rent of $1,200 payable semiannually.

According to plaintiff/appellant, the preliminary talks between the parties resulted in an agreement for a lease for two years commencing April 1, 1976, but to his surprise, defendant/appellee, who prepared the written agreement, inserted therein a provision for only one year, contrary to the oral agreement reached by them; and that, because he was extremely busy under a car in his work as a mechanic at the time appellee presented him the document for his signature, he signed it without reading through it. When the defendant/appellee wrote appellant to surrender the premises at the expiration of the one-year written lease agreement entered into between them, appellant sued out an action of specific performance together with this action for a preliminary injunction to restrain appellee from evicting him.

The court below dismissed the specific performance suit under the disposition of issues of law, from which ruling an appeal was announced. The lower court subsequently dismissed the action for a preliminary injunction also. Appellant appealed from this ruling to this Court for review on a three-count bill of exceptions. We shall take up the three counts in reverse order.

In count 3 of the bill it is brought out that the trial judge erred by not allowing production of evidence to prove or disprove the factual issue raised in the pleadings. Of course counsel for appellee in the second paragraph of

his brief impresses upon this Court that appellant has a remedy at law, arguing that "there being no scintilla of evidence produced by the appellant to warrant the extraordinary writ of injunction, the trial judge was legally correct to dismiss the action."

When we speak of "remedy at law" in connection with an action of injunction we must guard our language lest we misstate the law. Injunction, when defined in common language, is an action sued out to restrain an impending act which, if perpetrated, exposes the plaintiff to an injury for which pecuniary compensation or other action is inadequate. To say, therefore, that injunction will not lie because plaintiff has a remedy at law is a fallacy because "remedy at law" is not the same as "adequate remedy." Injunction properly obtains if the remedy at law is inadequate. Suppose, in the instant case, appellant had not appealed from the judgment below. The subsequent summary ejectment proceeding instituted against him in the Magistrate Court would then have ended in his eviction from the premises, and as a result he would have suffered from May 1977 to the present while the appeal in the specific performance case was pending before this Court, and, if the case was remanded, for a period of unknown duration before it would again reach the Supreme Court and be disposed of. Surely, there was a remedy at law, but would that remedy have been commensurate with the inconvenience and injury which would have been suffered by the plaintiff? The answer must be in the negative. Point 1 of the appellee's brief is therefore overruled.

Reverting to the same point of his brief, we find counsel for appellee, instead of seeking to convince the court that appellant has an adequate remedy at law, turning around to confirm the contention raised by appellant that the trial judge failed to hear evidence even though factual issues were raised in the pleadings.

No testimony given by a witness and no argument be-

fore us by counsel for defendant/appellee refuted this contention. It is, therefore, correctly argued that the judge erred in not permitting introduction of witnesses on the trial. Appellant's count 3 is, therefore, sustained. This Court has held that upon an allegation that a party has committed fraud, every species of evidence tending to establish said allegation should be adduced at the trial. *Henrichsen* v. *Moore,* 5 LLR 60 (1936). Professor Corbin in an article entitled "The Parol Evidence Rule," 53 *Yale Law Journal* 603, 622 (1944), writes:

> "The 'parol evidence rule' is not, and does not purport to be, a rule of interpretation or a rule as to the admission of evidence for the purpose of interpretation. Even if a written document has been assented to as the complete and accurate integration of the terms of a contract, it must still be interpreted and all those factors [antecedent agreements and communications] that are of assistance in this process may be proved by oral testimony."

From the above citations of law we conclude that whenever fraud is pleaded in connection with a lease or covenant, parol evidence and collateral agreements relating to the same subject matter are always admissible to show that the writing does not correctly represent the agreement actually made.

Since these are exactly the prevailing circumstances surrounding the case in point, we hold that count 3 of the appellant's bill of exceptions is sustained over point 2 of appellee's brief.

Though not in his brief, counsel for appellee argued before this Court that the trial judge correctly dissolved the injunction suit because, after the dismissal of the cancellation proceeding filed by appellant, the action for an injunction, being an ancillary one, could not stand after the main suit had failed. In other words, he is contending that an action of injunction cannot be sued out independently without connection with a main suit. We re-

fuse to accept this general conclusion, for an injunction suit, in the case of easement of way, may properly lie to restrain an owner-defendant in his attempt to block the only egress and ingress to plaintiff's premises which lie directly behind those of the defendant.

Another contention advanced by appellee's counsel was based on the trial court's ruling, the relevant portion of which we quote here:

> "It is unreasonable therefore to believe that the defendant will take any other position or action during the pendency of the action of specific performance which would render final judgment in said case ineffectual. It is obvious that if the defendant should have taken upon himself to attempt to forcibly evict the plaintiff from the premises during the pendency of an action against him for the same premises, he would have exposed himself to contempt proceedings in the Supreme Court."

In other words, it is argued that the injunction suit was no longer necessary after the court below had ruled out the specific performance proceeding and appellant had announced appeal from said ruling, since the announcement of the appeal stayed all further actions in the entire proceedings, meaning both the specific performance and injunction suits. We wonder if this argument is made in good faith. Since specific performance and injunction are not one and the same action, how could an announcement of appeal from the judgment in one create a stay order in the other? This conclusion, if at all sincere, arrived at by the trial judge and counsel for appellee is erroneous, of course. Its sincerity has already been betrayed by the subsequent filing of a summary ejectment proceeding in the magisterial court by appellee and his counsel against appellant. We maintain that appellant would have been ousted from the premises long ago had he not announced appeal from the judgment entered against him in the injunction suit, and appellee, for so

doing, would not have exposed himself to contempt proceedings in the absence of any such suit. The argument, therefore, carries no weight.

In counts 1 and 2 of appellant's bill of exceptions it is shown that the trial court did not pass upon the factual issues raised in the pleadings which have enabled the appellate court to properly review and either affirm or reverse the judgment. This contention is properly raised. In *Ross* v. *Roberts,* 3 LLR 266, 272 (undated), this court said: "While it is an admitted fact that it is the power of the court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision, yet its decision must be based on some principle of law or fact."

The Court then remanded the case to the trial court in accord with stipulations of counsel for both parties in order that one of the issues, the commission of fraud attending the execution of a deed, on which no evidence had previously been received, might be more fully explored.

In the case at bar, fraud is alleged to have attended the drawing up of the lease agreement, yet the judge below elected not to hear evidence on the issues raised in the pleadings when it dismissed the suit for an injunction. Truly this was a hasty conclusion, and constituted reversible error.

The ruling appealed from is reversed and the case remanded with instructions that it be redocketed to be tried according to law. And it is so ordered.

*Judgment reversed; case remanded.*