

4-1938

Equity-Personal Rights-Contract Not to Molest or Annoy Enforced by Injunction

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>



Part of the [Contracts Commons](#), and the [Family Law Commons](#)

Recommended Citation

(1938) "Equity-Personal Rights-Contract Not to Molest or Annoy Enforced by Injunction," *Indiana Law Journal*: Vol. 13: Iss. 4, Article 6.

Available at: <http://www.repository.law.indiana.edu/ilj/vol13/iss4/6>

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

EQUITY—PERSONAL RIGHTS—CONTRACT NOT TO MOLEST OR ANNOY ENFORCED BY INJUNCTION.—In consideration of the compromise of pending litigation, plaintiff and defendant, sisters, entered into a contract providing in part that

right to income is but extrinsic evidence of one possible result from the exercise of the power retained.

¹⁶ *Welch v. City of Boston*, (1915) 221 Mass. 155, 109 N. E. 174, Ann. Cas. 1917D, 946; *McClellan v. Board of Review of D. County*, (1902) 200 Ill. 116, 65 N. E. 711; *Berry v. Windham*, (1879) 59 N. H. 288, 27 Am. Rep. 202.

¹⁷ See reference hereto in the report of the principal case in 8 N. E. (2d) at page 44.

¹⁸ *Safe Deposit and Trust Co. v. Virginia*, (1929) 280 U. S. 83, 50 Sup. Ct. 59, 74 L. Ed. 180, 67 A. L. R. 86.

the plaintiff should have the privilege of visiting without molestation or annoyance her aged mother, living with the defendant. The plaintiff shortly thereafter obtained an order enjoining defendant from molesting her while visiting her mother and the defendant appealed. Held, that the plaintiff's natural right to visit her mother, fortified by a written contract executed for valuable consideration, was a sufficient basis for injunctive relief.¹

Since the now famous case of *Gee v. Pritchard*² the majority of our courts have clung tenaciously to Lord Eldon's dictum that equity has jurisdiction to protect only property rights.³ Many equity courts have announced adherence to this doctrine simply because the common law did not recognize and protect mere personal rights.⁴ Civil rights statutes and the larger recognition of a right to damages for mental suffering indicate the growth in recent years of personal as distinguished from strictly property rights.⁵ And there seems to be no rational principle forbidding the application to recognized personal rights of the familiar rule that if the remedy at law is inadequate equity will give relief.

As a general proposition equity will assume jurisdiction if the law remedy is inadequate,⁷ and equitable relief will not be denied on the ground that a clear legal remedy exists unless the remedy at law is as practical, efficient and adequate as that afforded by equity.⁸ Courts of equity are in fact protecting and enforcing personal rights either by widening the concept of property and finding a nominal property right involved as a technical basis for jurisdiction,⁹ or by courageously repudiating the old doctrine and asserting jurisdiction of personal as well as property rights.¹⁰ Though no property right exists, the noise of a work shop disturbing the rest and sleep of a sick person,¹¹ the removal of a corpse from a burial lot,¹² and the use of a rifle range until it is rendered free from danger to occupants of adjoining property¹³ have been enjoined. Likewise equity has assumed general supervisory

¹ *Reed v. Carter* (March 23, 1937), 268 Ky. 1, 103 S. W. (2d) 663, Court of Appeals of Ky.

² *Gee v. Pritchard* (1818), 2 Swans. 402.

³ *Ragland, Jr., The Right of Privacy*, 14 Kentucky L. J. 114; *Corliss v. Walker* (1894), 57 F. 434, 31 L. R. A. 283; *Mead v. Stirling* (1892), 62 Conn. 586, 27 A. 591; *Bonifaci v. Thompson* (1917), 252 F. 878.

⁴ "Jurisdiction of Equity to Protect Personal Rights", 14 A. L. R. 295.

⁵ *Ibid.*, p. 295.

⁶ *Chafee, Jr., Extension of Equitable Jurisdiction Beyond Protection of Property Rights*, 34 Harvard L. Rev. 407.

⁷ *McAfee v. Reynolds* (1891), 130 Ind. 33, 28 N. E. 423.

⁸ *Indianapolis Northern Traction Co. v. Essington* (1913), 54 Ind. App. 286, 99 N. E. 757; *Cincinnati B. & C. R. Co. v. Wall* (1911), 48 Ind. App. 605, 96 N. E. 389.

⁹ *Grigsby v. Breckinridge* (1867), 2 Bush (Ky.) 480, 92 Am. Dec. 509; *Vanderbilt v. Mitchell* (1907), 72 N. J. Eq. 910, 67 A. 103; *Munden v. Harris* (1910), 153 Mo. App. 652, 134 S. W. 1076; *Williams v. O'Shaughnessy* (1918), 172 N. Y. S. (Misc.) 574; *Stark v. Hamilton* (1919), 149 Ga. 227, 99 S. E. 861.

¹⁰ *Supra*, Note 3, p. 300.

¹¹ *Dennis v. Eckhardt* (1862), 3 Grant (Pa.) 390.

¹² *Sherrard v. Henry* (1921), 88 W. Va. 315, 106 S. E. 705.

¹³ *Killopp v. Taylor* (1874), 25 N. J. Eq. 139.

authority over the persons, as well as the property, of all citizens who are under any legal disability,¹⁴ as infants,¹⁵ lunatics and idiots.¹⁶

Where a personal right is fortified by a contract, equity unquestionably has jurisdiction to enjoin a breach of the contract where the remedy at law is clearly inadequate. Thus the right of a wife to the sole control of children under a separation contract,¹⁷ the right of a wife to live separate from her husband free from his molestation or visits as covenanted in a deed of separation,¹⁸ and the right of freedom from the noise of church bells during agreed hours¹⁹ have been enforced by injunction. This exercise of equitable jurisdiction to restrain a breach of contract is substantially coincident with its jurisdiction to decree specific performance.²⁰

The present decree may involve the Court in difficulties relative to determining what conduct will constitute molestation and a violation of the injunction; also it will not of necessity improve the relations between the litigious sisters.²¹ Courts have hesitated to take the step of granting an injunction on the ground of molestation or annoyance alone.²² But in addition to molestation the defendant here has broken a valid contract for which there is no adequate remedy at law. Certainly an equity court has jurisdiction of in its sound discretion it believes the injunctive remedy to be practical and effective.²³

In its dictum the Court indicates that even in the absence of any contract it would have protected the plaintiff's natural right to visit her mother without molestation. This is an announcement of cessation from "unintelligent adherence to the dicta of a great judge in the pioneer case."²⁴ There is no valid reason why preventive justice should not extend to protection of personal rights. The instant opinion is in line with the growing tendency to repudiate the theory that equity has jurisdiction to protect and enforce only property rights, and expressly recognizes that personal rights can be protected adequately only by a court of equity.²⁵

J. W. C.

TORTS—NEGLIGENCE PER SE—VIOLATION OF CRIMINAL STATUTE OR ORDINANCE.

—Plaintiff, discovering her house on fire, telephoned the fire department. To reach plaintiff's house, the fire truck had to cross defendant's railroad tracks. On reaching the tracks the trucks were prevented from continuing by a train obstructing the crossing. Plaintiff's son informed the engineer that his home

¹⁴ *Watson v. Watson* (1919), 183 Ky. 516, 209 S. W. 524.

¹⁵ *N. Y. Life Ins. Co. v. Bangs* (1881), 103 U. S. 435.

¹⁶ *McCord v. Ochiltree* (1846), 8 Blackf. (Ind.) 15; *Ashley v. Holman* (1880), 15 S. C. 97.

¹⁷ *Swift v. Swift* (1865), 55 Eng. Reprint 637.

¹⁸ *Sanders v. Rodway* (1852), 51 Eng. Reprint 757.

¹⁹ *Martin v. Nutkin* (1724), 24 Eng. Reprint 724.

²⁰ *Advance Oil Co. v. Hunt* (1917), 66 Ind. App. 228, 116 N. E. 340.

²¹ *Casernote*, 51 *Harvard L. Rev.* 166.

²² *Chappell v. Stewart* (1896), 82 Md. 323, 33 A. 542; *Ashinsky v. Levenson* (1917), 156 Pa. 14, 100 A. 491.

²³ *South Side Motor Coach Co. v. McFarland* (1934), 207 Ind. 341, 191 N. E. 147.

²⁴ *Pound*, "Equitable Relief Against Defamation and Injuries to Personality", 29 *Harvard L. Rev.* 641.

²⁵ *Supra*, Note 3, p. 295.