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# Equity-Jurisdiction of Property Interests

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## RECENT CASE NOTES

EQUITY—JURISDICTION OF PROPERTY INTERESTS.—The appellee sought perpetually to enjoin the appellant from using certain milk bottles in the distribution and sale of its dairy products, which bottles were specially manufactured, marked, and leased by appellee to other dairymen for use in the conduct of their business. The appellant had gathered up many of these bottles and was using them without the appellee's consent. Injunction granted.<sup>9</sup>

The court took equitable jurisdiction of this case (1) because the remedy at law was inadequate, (2) to avoid multiplicity of suits at law, and (3) to protect a property interest. Without relying upon former Indiana cases, the court cited in support of its decision, opinions of the courts of Colorado, Ohio, and Maryland. Indiana cases accord with these decisions. Thus, our court has granted equitable relief when the legal remedy, although "adequate," was "impractical."<sup>1</sup> Likewise, the prevention of a multiplicity of suits is ground for equitable relief when the plaintiff has established his right at law and successive actions involve the same questions of law and fact.<sup>2</sup> Furthermore, equity will take jurisdiction to protect property interests.<sup>3</sup>

\* City Dairy Co. v. Uservo Inc. (1936), — Ind. —, 199 N. E. 457.

<sup>1</sup> "Equitable relief will not be denied on the ground of an adequate legal remedy, unless the remedy at law is as practical and efficient as that afforded in equity." Indianapolis Northern Traction Co. v. Essington (1913), 54 Ind. App. 286, 100 N. E. 765, accord: Michener v. Springfield Engine and Thresher Co. (1895), 142 Ind. 130, 40 N. E. 679; Thatcher v. Humble (1879), 67 Ind. 444.

<sup>2</sup> "Equity has jurisdiction of a case wherein the plaintiff desires to restrain continuing injuries which would result in the bringing of several actions at law therefor." Vandalia Coal Company v. Lawson (1909), 43 Ind. App. 226, 87 N. E. 47.

<sup>3</sup> Protection against patent infringement and intimidation of plaintiff's customers—Shoemaker v. The South Bend Spark Arrester Co. (1893), 135 Ind. 471, 35 N. E. 280.

Restraint against infringement of corporate franchise—Farmer's, etc., Tel. Co. v. Boswell Tel. Co. (1918), 187 Ind. 371, 119 N. E. 513.

Restraint against continuous trespass—Werrick v. Boyles (1910), 45 Ind. App. 698, 91 N. E. 621.

Preventing disclosure of trade secrets—Westervelt v. National Paper and Supply Co. (1900), 154 Ind. 673, 57 N. E. 552.

Injunction against nuisance interfering with property rights and personal enjoyment—Smith v. Fitzgerald (1865), 24 Ind. 316.

Injunction against another corporation using the same name; unfair competition—Minas Furniture Co. v. Ed. C. Minas Co. (1933), 96 Ind. App. 520, 165 N. E. 84.

Equity will protect trade marks and trade names—Hartzler v. The Goshen Churn and Ladder Co. (1914), 55 Ind. App. 455, 104 N. E. 34.

Equity will ascertain, uphold, and enforce rights and duties springing from the real intent of the parties to a contract—State Life Ins. Co. v. Nelson (1910), 46 Ind. App. 137, 92 N. E. 2.

Equity can protect a member of a trade union from unlawful expulsion and can compel reinstatements to membership where "property rights" are involved, jurisdiction applies both to incorporated and unincorporated unions—Gardner v. Newbert (1920), 74 Ind. App. 183, 128 N. E. 704.

Equitable protection of an easement by injunction—Chamberlain v. Myers (1918), 68 Ind. App. 342, 120 N. E. 600.

In England the power of equity was determined to be complete, even prior to the passage of the Judicature Acts.<sup>4</sup> The American decisions have been contra to the English cases,<sup>5</sup> particularly where the question of jurisdiction was raised in cases which did not involve an "orthodox" property interest.<sup>6</sup> But there was no indication that the English courts intended the existence of a property interest to be a jurisdictional necessity.<sup>7</sup> Thus, in Texas with a statute the courts have escaped the artificial limitation of a property interest.<sup>8</sup> Even in the strictest jurisdictions "interests" have become "property interests" at least by definition.<sup>9</sup>

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Injunction to prevent breach of contract where defendant threatens to do so—*Xenia Real Estate Co. v. Macy* (1897), 147 Ind. 568, 47 N. E. 147.

Injunction to prevent unlawful interference with business—*Ex Parte Sherwood* (1908), 41 Ind. App. 642, 84 N. E. 783.

Equity has jurisdiction to protect "property interests" by an injunction where the plaintiff has no adequate remedy at law—*State ex rel. Feeney v. Superior Court of Marion County* (1934), 206 Ind. 78, 188 N. E. 436.

Court of equity has jurisdiction to protect property rights by injunction, where plaintiff has no adequate remedy at law, even though such injunction incidentally restrains enforcement of criminal statutes. Equity can enjoin state officers who under color of authority of unconstitutional legislation, are guilty of trespasses, infringements, or wrongs to the "property" of the plaintiff—*State ex rel. Fry v. Superior Court of Lake County* (1933), 295 Ind. 355, 186 N. E. 310.

See also: 32 C. J. ss. 142, 430, 432, 440.

<sup>4</sup> English Judicature Acts went into effect in 1875, 36 and 37 Vic. c. 66; 38 and 39 Vic. c. 77; 40 and 41 Vic. c. 9 (amendment of 1877), 42 and 43 Vic. c. 78 (amendment of 1879), 44 and 45 Vic. c. 68 (amendment of 1881). Prior to these acts were: *Huggonson's Case* (1742), 2 Atkyns 469; *Du Bost v. Beresford* (1810), 2 Campbell 511, *Burnett v. Chetwood* (1720), 2 Merivale 441; *Gee v. Pritchard* (1818), 2 Swanston 1818, *Dixon v. Holden* (1869), *Law Rep. 7 Eq. Cases* 488, *Routh v. Webster*, 10 Beav. 561.

<sup>5</sup> The English decisions have had a strong influence in the United States; *Prudential Assurance v. Knott* (1875), 10 Chan. App. 142, has been repudiated in England today (*Thorley Cattle Food Co. v. Massam*, 1877, L. R. 6 Ch. D. 582), but the American cases have followed it, repudiating the modern English cases, erroneously attributing them to the common law jurisdiction granted equity courts by the Judicature Acts (note 4, supra), *Boston Diatite Co. v. Florence Mfg. Co.* (1873), 114 Mass. Rep. 69; *Marlins Firearms Co. v. Shields* (1902), 171 N. Y. Rep. 384, 64 N. E. 163, *Kidd v. Horry* (1886), 28 Fed. 773, *American Malting Co. v. Keitel* (1913), 209 Fed. 351; *Richmond v. Dubuque R. R.* (1871), 33 Ia. 422; *Kneedler v. Lane* (1863), 3 Grant Cas. (Pa.) 465; *In re Sawyer* (1888), 124 U. S. 200, the court said, "Equity can protect property interests only."

<sup>6</sup> Note 5, supra.

<sup>7</sup> *Gee v. Pritchard* is a grant of power rather than a limitation upon the courts: 25 Michigan Law Review 389.

<sup>8</sup> *Hawks v. Yancy* (1924), 265 S. W. 233, *Texas Rev. St. art. 4643*, *Ex Parte Warfield* (1899), 40 Tex. Crim. Rep. 413, 50 S. W. 933, the court held that "no property interest" is necessary before equity will take jurisdiction and grant relief.

<sup>9</sup> The courts have indulged in many uses of the word "property," many of which surprise the informed though lay mind. Among those uses of the property concept are the following: "the opportunity to bargain for more favorable terms of employment," *Texas and N. O. R. Co. v. The Brotherhood of Ry. and S. S. Clerks* (1930), 281 U. S. 548; "seniority rights of employees," *Grand International Brotherhood of Locomotive Engineers v. Mills* (1934), 31 P. (2d) 971; "the license to practice a profession," *Sloan v. Mitchell* (1933), 113 W. Va. 506, 168 S. E. 800; "names," *Routh v. Webster*, 10 Beav.

Most courts have agreed that a business advantage is an interest of property;<sup>10</sup> and the instant case is in accord. The case is not, however, without some difficulty. In the cases cited by the court, the results were arrived at under the terms of specific statutory regulation.<sup>11</sup> Apparently in the jurisdictions of these cases their effectiveness was purely statutory and failure to comply with the terms of the statutes would cut off equitable relief.<sup>12</sup> In the *Uservo* case no statute was cited and no allegations of compliance appear in the opinion. *Quaere*, then, as to the authority of the Ohio and Colorado decisions? There is also a further complication. An Indiana statute deals directly with this situation.<sup>13</sup> If the court's failure to mention the statute is intentional, this case may provide an unusual opportunity for Indiana to escape the dilemma and difficulties that have beset sister jurisdictions.<sup>14</sup> Classical equitable jurisdiction was unfettered by the restrictions which ill considered American decision have imposed,<sup>15</sup> and there is no reason why Indiana should follow the latter forever.

Does the approach of the court in the *Uservo* case suggest that in Indiana we will with one bold stroke recognize "complete" jurisdiction which has forever been equity's?<sup>16</sup>

W H. S.

MASTER AND SERVANT—TERMINATION OF RELATION AFTER DISCHARGE.—Plaintiff, an employee, having been laid off, had checked his tools and had been

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561, *Edison v. Edison Polyform Co.* (1907), 73 N. J. Eq. 136, 67 Atl. 392; "cartoon characters," *Fisher v. Star Pub. Co.* (1921), 231 N. Y. 414, 132 N. E. 133, "the writer's interest in letters of no literary value," *Gee v. Pritchard* (1818), 2 Swans. 403, 36 Eng. Rep. 670; "business advantage protected, where there was nothing in the case to show an actual threat of injury to property but the court implied it," *Beck v. Ry. Teamsters* (1898), 118 Mich. Rep. 497, 77 N. W. 13.

For further references, see: Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 Harv. L. R. 640; Fordham, *Self Determination of Equity*, 30 Ill. L. R. 716, *Extension of Equitable Jurisdiction beyond Protection of Property Rights*, 34 Harv. L. R. 407.

<sup>10</sup> *Dixon v. Holden* (1869), 7 Eq. Cas. 488 (Eng.), *Shoemaker v. The South Bend Spark Arrester Co.* (1893), 135 Ind. 471, 35 N. E. 280; *Emack v. Kane* (1888), 34 Fed. 46, *Nat'l Life Ins. Co. v. Myers* (1908), 140 Ill. App. 392; *American Mercury v. Chase* (1926), 13 F (2d) 224.

<sup>11</sup> *Denver etc. Exchange Inc. v. McKinzie* (1930), 87 Colo. 379, 287 P. 868, *Renner Brewing Co. v. Rolland* (1917), 96 Ohio St. 432, 118 N. E. 118: The result reached in these cases and the Indiana case seems to be in accord with the great weight of authority on the point involved, 60 A. L. R. 285, however, there is an interesting Utah case which is contra, *Clover Leaf Dairy Co. v. Van Gerven* (1928), 269 P. 1020, where the court denied relief, saying in substance that "owners of trade-marked bottles, who permit them to go into possession of customers without any attempt to hold the customers responsible for their return, permitting the return of bottles unmarked or marked with the trade-mark of others, cannot enjoin their use by rival merchants without showing that they have not a like number of bottles of such merchants in their possession." See 60 A. L. R. 281.

<sup>12</sup> Colorado Statutes, sec. 3078, 1930 (C. L.), Ohio General Code, ss. 13169, 13169-1, 13169-2, 13169-3 These statutes pertain to the "Registration and Use of Bottles, Trademarks and Tradenames."

<sup>13</sup> 1933 Burns' Ann. St. sec. 66-101, ff.

<sup>14</sup> Note 6, supra.

<sup>15</sup> Note 6, supra.

<sup>16</sup> See, Fordham, *The Self Determination of Equity*, 30 Ill. L. R. 716.