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

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contended that the maxim was applicable to the interest retained by the settlor in the intangibles now held by the trustee in another state so as to give such interest a taxable situs at his domicile. In the latter case jurisdiction to tax the intangibles upon the death of the settlor was expressly denied the state wherein the trustees were domiciled.

However, the instant case does not lack support in principle and authority. Numerous are the decisions asserting that legal title is the test of jurisdiction to tax and allowing the corpus of the trust to be taxed in its entirety by the state of the trustees' domicile. Thus the courts have tacitly admitted the proposition that the taxable situs of the interests in the corpus that are held by other than the trustees must be taken to be at the situs of the trust—that is to say, it follows the situs of the trustees' interest. If this is to be accepted and retained then of course in view of the unconstitutionality of multiple taxation, the maxim must be restricted in so far as it would operate to give the settlor's state jurisdiction to tax.

It should be noted that the peculiar facts of the principal case lend support to the contention that an actual taxable situs exists at the domicile of the trustee. In addition to the presence of legal title in a resident of Colorado, it appeared that the intangibles were kept there, and that the trust had been created and administered in that state. These facts also strengthen materially the position here taken that the general rule of the application of the fiction "must yield to the established fact of legal ownership, actual presence, or control elsewhere, and ought not to be applied if to do so would result in inescapable and patent injustice whether through double [multiple] taxation or not." In short it does not appear unreasonable to contend that the maxim which was adopted to prevent the escape from taxation should be discarded when taxation is assured, and that the fictitious situs which is but a substitute for an actual situs should be cast aside when the property acquires a locality and is subject to the authority of another state.

In conclusion it might be admitted that the question involved in the principal case is a close one, and will never be definitely settled until passed upon by the Supreme Court. However it is believed that in view of the historical development of the law of taxation, and the trend of judicial opinion as evidenced by the recent decisions, that the Court will in all probability sustain the holding of the New York tribunal.

C. D. L.

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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.


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

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,\(^6\) 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.\(^7\) 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,\(^8\) or by courageously repudiating the old doctrine and asserting jurisdiction of personal as well as property rights.\(^9\) Though no property right exists, the noise of a work shop disturbing the rest and sleep of a sick person,\(^10\) the removal of a corpse from a burial lot,\(^11\) and the use of a rifle range until it is rendered free from danger to occupants of adjoining property have been enjoined. Likewise equity has assumed general supervisory

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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.
4 "Jurisdiction of Equity to Protect Personal Rights", 14 A. L. R. 295.
5 Ibid, p. 295.
7 McAfee v. Reynolds (1891), 130 Ind. 33, 28 N. E. 423.
10 Supra, Note 3, p. 300.
11 Dennis v. Eckhardt (1862), 3 Grant (Pa.) 390.
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, as infants, lunatics and idiots.

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, the right of a wife to live separate from her husband free from his molestation or visits as covenanted in a deed of separation, and the right of freedom from the noise of church bells during agreed hours 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.

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. Courts have hesitated to take the step of granting an injunction on the ground of molestation or annoyance alone. 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.

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." 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.

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

21 Casenote, 51 Harvard L. Rev. 166.
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.