Washington University Law Review

Volume 20 | Issue 4

January 1935

Equity—Injunctions—Libel

923. The instant case could have followed the reasoning of *In re Tatham's Estate* (1915) 250 Pa. 269, 95 Atl. 520, in which damages paid to the executors in trust for realty condemned during the widow's lifetime was held to be distributable as realty, and not as personalty.

The court also failed to consider the doctrine of reconversion, which is an imaginary process by which a constructive conversion is countermanded and the converted property restored to its original status in the contemplation of the law, at the election of the parties entitled to the property, or by operation of law. Bishpam, *Principles of Equity,* supra; Chandler, *Reconversion in Missouri,* 12 St. L. L. Rev. 175 et seq. Although the general rule under the doctrine is that *all* of those having a beneficial interest in the property converted must consent to a reconversion (*Wyatt v. Stillman Institute* [1924] 303 Mo. 94, 260 S. W. 73), it has been held that where the direction is for a conversion of money (as for example, the award) into realty (to which the right of dower would unquestionably attach) only *one* of the beneficiaries need elect to reconvert as to her share. *Seely v. Jago* (1717) 1 P. Wms. 389, 24 Eng. Rep. 438. The New York court could have reached a more equitable decision by following *Nall v. Nall* (1912) 243 Mo. 247, 147 S. W. 1006, and *Griffith v. Witten* (1913) 252 Mo. 627, 161 S. W. 708, to the effect that at the option of the beneficiary, property which became money as a result of the conversion may be regarded as realty.

Since it is the policy of the law to protect dower at all hazards, the inchoate right should be preserved under the circumstances of the principal case as well as otherwise. The contrary view should be confined to controversies between the state and the wife of one whose property is condemned; for the reason behind the rule vanishes when the question arises as between the parties to the marriage in connection with the fund which is the substitute for the real property taken. Young and Carswell J. J., dissenting in the principal case. The better view would appear to be for the court to order that one-third of the total award be deposited in trust for the wife contingent on her surviving the husband, with the annual income of the fund going to the husband.

W. F. '37.

EQUITY—INJUNCTIONS—LIBEL.—Counterclaim by defendants alleging that complainant and its servants and agents made false statements as to the quality of its products and that complainant circulated false statements concerning defendant corporation intending to injure the defendants in business and to deceive the public and the defendants' customers. *Held:* Counterclaim dismissed. The Court of Chancery is without jurisdiction to restrain injury to business or property threatened by false representation as to character, quality, or title of property, nor does its jurisdiction extend to cases of libel or slander. *A. Hollander & Son, Inc. v. Jos. Hollander, Inc.,* (N. J. Eq. 1935) 177 Atl. 80.

That equity will not restrain by injunction the threatened publication of a libel, as such, however great the injury to property may appear to be,

has been the universal rule in the United States, and was formerly the rule in England. The present rule in England rests on statute, *Common Law Procedure Act of 1854*, 17 & 18 Vict. c. 125 sec. 78, 81, 82; *Judicature Act of 1873* 36 & 37 Vict. c. 66 sec. 16; for conflicting view see Pound, *Equitable Relief Against Defamation*, (1916) 29 Harvard L. Rev. 665. In most cases of threatened tort to property interests preventive relief is now available, *In re Debs* (1884) 158 U. S. 564; *Beck v. Teamsters' Union* (1898) 118 Mich. 497, 77 N. W. 13; *Shoe Co. v. Saxey* (1895) 131 Mo. 212, 32 S. W. 1106, yet where unrestrained publication may cause irreparable injury, and where legal remedy is totally inadequate, equity denies relief.

The decisions are usually based on one of the following grounds: that the constitutional guarantee of free speech and free publication absolutely precludes an injunction against speaking and writing under any circumstances; *Heat and P. Co. v. Montgomery* (C. C. N. D. Ala., 1909) 171 Fed. 553; *Brandreth v. Lance* (1839) 8 Paige 24; *Marlin Fire Arms Co. v. Shield* (1902) 171 N. Y. 38, 64 N. E. 163; *Mann v. Raimist* (1931) 255 N. Y. 307, 174 N. E. 690; that the issue as to the truth of the publication sought to be enjoined should be tried by a jury; *Fleming v. Newton* (1848) 1 H. L. Cas. 363; Pound, (1916) 29 Harvard L. Rev. 640, 656. The majority of the cases, however, are decided simply on the authority of previous decisions without any attempt at rationalization. *Prudencial Assurance Co. v. Knott* (1874) 10 Ch. App. 142; *Balliet v. Cassidy* (C. C. D. Ore., 1900) 104 Fed. 704; *Vassar College v. Loose Wiles Biscuit Co.* (D. C. W. D. Mo., 1912) 197 Fed. 982; *De Wick v. Dobson* (1897) 46 N. Y. Supp. 390; *Butterick Pub. Co. v. Typographical Union* (1906) 100 N. Y. Supp. 292. The present case was decided upon the basis of prior authority, following the ruling laid down in *Prudencial Assurance Co. v. Knott*, supra, and *Kidd v. Horry* (C. C. E. D. Pa., 1886) 28 Fed. 773, that if the statements do not amount to a libel they are innocuous and justifiable in the eye of a Court of Common Law, and if they are libelous it is clearly settled that the Court of Chancery has no jurisdiction to restrain them.

Although pen service is still paid to the rule, a growing body of cases has established several exceptions or qualifications to the rule. It is now generally recognized that charges of invalidity of a trader's patents and threats to sue his customers, when made under circumstances showing that there is no real intent to bring suit, will be enjoined. *Emack v. Kane* (C. C. N. D. Ill., 1888) 34 Fed. 46; *Farquhar Co. v. National Harrow Co.*, (C. C. A. 3, 1900) 102 Fed. 714; *Adriance, Platt & Co. v. National Harrow Co.* (C. C. A. 2, 1903) 121 Fed. 827; *Racine Paper Goods Co. v. Dittgen* (C. C. A. 7, 1909) 171 Fed. 631; *Sun Maid Raisin Growers v. Avis* (D. C. E. D. Ill., 1928) 25 Fed. (2nd) 303. Again, libelous statements, coupled with advice to customers to break contracts, have been enjoined, although conceivably only the portion relating to the breach of the contract might have been restrained. *American Malting Co. v. Keitel* (C. C. A. 2, 1913) 209 Fed. 351; *Citizens' Light, Heat & Power Co. v. Montgomery Light & Water Power Co.* (C. C. N. D. Ala., 1909) 171 Fed. 553. Still another line of cases stands for the proposition that where a party to a trade dispute has published to cus-

tomers of another or to the trade generally an account of a court proceeding which is misleading, the continuance of such practice may be enjoined. *Asbestos Shingle Co. v. Johns-Manville Co.* (C. C. S. D. N. Y., 1911) 189 Fed. 611; *Rollman Mfg. Co. v. Universal Hardware Works* (C. C. A. 3, 1916) 238 Fed. 568; *Gerosa v. Apeo Mfg. Co.*, (C. C. A. 1, 1924) 299 Fed. 19; *Price Hollister Co. v. Warford Corporation* (D. C. S. D. N. Y., 1926) 18 Fed. (2nd) 129; *Haver Co. v. Sesquicentennial Exhibition Association* (D. C. E. D. Pa., 1928) 26 Fed. (2nd) 821; *Gardner Sign Co. v. Claude Neon Lights, Inc.* (D. C. W. D. Pa., 1929) 36 Fed. (2nd) 827. The courts in creating these exceptions based their decisions on a tenuous property interest in the complainants.

Two recent cases, *Maytag Co. v. Meadows Mfg. Co.* (C. C. A. 7, 1929) 35 Fed. (2nd) 403 and *Dehydro Inc. v. Treotlite Co.* (D. C. N. D. Okla., 1931) 53 Fed. (2nd) 273, held that such actions as these are not actions to enjoin a libel or slander but rather to enjoin a party from committing acts constituting unfair competition, and from destroying the plaintiff's business. See Walsh, *On Equity*, 267. The principal case could have been decided along the same lines. By not doing so the Court seems to be out of line with the modern tendency.

The exceptions tend to show that the courts are not in sympathy with the alleged rule "equity will not enjoin a libel" and they are willing to bring about the opposite result by indirect means. The courts have still failed to take the direct course because of precedent.

O. J. G. '37.

INTERSTATE COMMERCE COMMISSION—EVIDENCE ADMISSIBLE ON JUDICIAL REVIEW OF DECISION.—The Interstate Commerce Commission issued an order prescribing divisions, between northern and southern carriers, of through rates on citrus fruit from Florida points to destinations in official classification territory. The northern carriers sued in equity to enjoin, set aside, and annul these orders on the ground that the prescribed divisions were confiscatory. The court dismissed the petitions but in so doing, held, that in considering the issue of confiscation the court is not limited to evidence introduced before the Commission. It entertained additional evidence upon this issue. *Baltimore and Ohio Ry. v. United States*, (D. C. E. D. Va. 1934) 9 Fed. Supp. 181.

Though at first, in accordance with the Statute, (24 Stat. 384, [1887], 49 U. S. C. A. 16) the Supreme Court gave to the findings of fact by the Commission the effect only of prima facie evidence, *I. C. C. v. Ala. Midland R. Co.* (1897) 164 U. S. 144, it stressed the importance of having all the facts disclosed before the Commission and expressly disapproved any method of procedure on the part of the railroads which led them to withhold part of their evidence from the Commission and to produce it for the first time in the courts. *Cin., N. O. & Tex. Pac. R. v. I. C. C.* (1896) 162 U. S. 184, 196; *Texas & P. R. Co. v. I. C. C.* (1896) 162 U. S. 197. As cases became increasingly numerous the courts realized more and more the expediency of having the Commission pass upon the intricate questions of fact. The Hep-