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Extra-Territorial Jurisdiction of Courts of Chancery

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EXTRA-TERRITORIAL JURISDICTION OF COURTS OF CHANCERY

Do courts of chancery have power to issue decrees against non-resident defendants or where the *res* of the action lies in another state?

An interesting problem presents itself in the matter of equity courts assuming jurisdition and rendering injunctive or other relief where either the property in litigation, the property right claimed violated, or the defendant, is outside the jurisdiction of the court.

The development of the law in such cases, as will be seen, arises from the theory of the "in personam" powers of the equity courts. In most cases, with the exception of one or two, the defendant has been personally served with process within the jurisdiction of the court and consequently has been amenable to the decrees of the court. There has been at least one instance where no service at all was obtained on one of the defendants, and yet a decree was rendered against it.[1]

Out of the maze of jurisdictional questions, there has been established a few basic and well-defined principles which are now being followed in most states and in England. Most well settled of these principles is the power of a court of equity to decree equitable remedies with reference to real estate or lands outside of the jurisdiction of the court.

These remedies include specific performance,[2] reconveyance of lands fraudulently obtained,[3] enforcement of a trust relation,[4] and, in some jurisdictions, bills to quiet title. The

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1 Montgomery Enterprises v. Empire Theater Company, 204 Ala. 566, 86 So. 880, 19 A. L. R. 987 (1920).

2 Farley v. Shippen, 1 Wythe 254 (1794); Guerrant v. Fowler, 1 Hen. & M. 5 (1806). See also Hughes v. Hall, 5 Munf. 431 (1817).

3 Gardner v. Ogden, 22 N. Y. 327 (1860).

4 Prudential Ins. Co. v. Berry, 153 S. C. 496, 151 S. E. 63 (1930).

courts regard the actions as being strictly "in personam" in nature, and it has long been the rule that so long as the parties are before the court, it is incidental that the lands are situated outside of the state or in some other jurisdiction. Perhaps the leading case on this subject is that of *Penn v. Lord Baltimore*.[5] The action was brought in a court of England to compel specific performance of certain articles setting the boundaries of the colonies of Maryland and Pennsylvania. The defendant contested the jurisdiction of the court stating that it was a question for the American courts to decide and not one of England. But Lord Hardwick granted the bill and stated:

"The conscience of the party was bound by this agreement, and being within the jurisdiction of this court, which acts in personam, the court may properly decree it is an agreement, if there is a foundation for it."

The decision of the English court was again followed in the case of *Ardglasse (Earl of) v. Muschamp*.[6] In this case the plaintiff in England sought relief from a rent charge made upon lands in Ireland on the ground that the same was obtained by fraud. The defendant contested the jurisdiction of the English courts inasmuch as the lands were in Ireland. Lord Nottingham granted relief on the principle that it was an "in personam" action and so it was incidental that the lands were not within the jurisdiction of the court.

In this country a similar rule has been well-established. Perhaps the most frequently cited case is that of *Massie v. Watts*,[7] wherein a bill was filed in a circuit court of Kentucky to compel the defendant to convey lands obtained from the plaintiff by fraud. The lands were situated in Ohio. Relief was granted and an appeal was taken to the United States

5 1 Ves. Sr. 444 (1750). Accord: Earl of Derby v. Duke of Athol, 1 Ves. Sr. 202 (1748); Lord Cranstown v. Johnson, 3 Ves. Jr. 170 (1796); Lord Portarlington v. Soulby, 3 My. & K. 104 (1834).

6 1 Vern. 237 (1684).

7 6 Cranch 148, 3 L. Ed. 181 (1810).

Supreme Court. Chief Justice Marshall affirmed the decision of the lower court, and in an often repeated statement said:

". . . where the defendant in the original action is liable to the plaintiff, either in consequence of a contract, or as trustee, or as the holder of a legal title acquired by any species of mala fides practiced on the plaintiff, the principles of equity give a court jurisdiction wherever the person may be found, and the circumstance that a question of title may be involved in the inquiry, and may even constitute the essential point on which the case depends, does not seem sufficient to arrest that jurisdiction."

The principle set out in this case was indicated in *Gardner v. Ogden,*[8] an early case in New York. The complaint therein was also that the defendant had fraudulently obtained title to the plaintiff's lands situated in Illinois. The plaintiff sought a reconveyance of the lands from the defendants, which was granted by a decree of the court. The court held that where equity has jurisdiction of both parties it may compel them to do equity in relation to lands located outside of its jurisdiction and render a decree ordering the defendant to reconvey the lands.[9]

So it appears that, on the theory that the decree is "in personam," it is not always necessary that the *res* be located in the state in which the decree is rendered. The distinction is made in *Taylor v. Taylor,*[10] where it was held that a court of one state cannot make a decree affecting title to real property beyond its territorial limits, but, however, that such a court can make a decree relative to the *acts* of the litigants in relation to the property, and of course, in such event, it is of minor importance where the situs of the property may be. The court renders its decree and the parties themselves effect the transfer of the property, and failing to do so, stand in contempt of the court.

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8 *Op. cit. supra* note 3.

9 See Newton v. Bronson, 3 Kernan 387, 13 N. Y. 587 (1856), holding: "The doctrine established is that the Court of Chancery, having jurisdiction of the person of the defendant, will, by its process of injunction and attachment, compel him to do justice by the execution of such conveyances and assurances as will effect the title of the property in the jurisdiction in which it is situated."

10 192 Cal. 71, 218 Pac. 756 (1923).

It is undisputed that if the title of the lands is directly affected, such lands must be within the jurisdiction of the court.[11] Again, referring to the theory of "in personam," a court of equity would be without jurisdiction to render a decree that would effect a transfer of title on lands situated without its jurisdiction. But in cases of decrees compelling reconveyances, specific performance, injunctions and other remedies commonly sought, the title is affected indirectly and it is in these instances that the courts have authority to exercise extra-territorial jurisdiction in their decrees.[12]

Of more interest and conflict, however, are cases that do not involve real property but pertain to personal property, personal rights, or acts outside of the jurisdiction of the court, where the parties are before the court. Most common among these are bills to prevent a party from going outside of the state to institute suit, and bills to enjoin trespasses from being committed on lands in other states. In these types of cases the act sought to be enjoined is clearly outside the jurisdiction of the court, and the offense, if there be any, is an offense against the laws of the foreign state, and not of the state in which the court granting the decree has jurisdiction.

Touching upon the former of the two above mentioned common complaints, the case of *Royal League v. Kavanaugh* [13] is of comparative recency. Therein the plaintiff, an insurance company, sought to enjoin the defendant, a resident of Illinois, from going into the state of Missouri to institute its suit, on the grounds that the laws of that state were more favorable to the defendant in its contemplated litigation. Injunctive relief was denied on the ground that it could not be assumed that the laws of the state of Missouri were different from those in Illinois, or in any manner un-

11 Bevans v. Murray, 251 Ill. 603, 96 N. E. 546 (1911).

12 See Israel S. Gomborov, Extra-Territorial Jurisdiction in Equity (1933) 7 Temple Law Qr. 468.

13 233 Ill. 175, 84 N. E. 178 (1908).

just; and that the plaintiff's case presented no clear equity that would require the interference of the court to prevent a manifest wrong or injustice. But it is of interest to note that the question of jurisdiction was not raised, and that if the plaintiff had had an equitable claim the court would have granted the injunction.

It is generally conceded that where the parties are citizens of the same state and the plaintiff seeks to prosecute a suit against the defendant debtor in another state merely to evade the laws of the state in which both parties are citizens, equity will enjoin the prosecution of such a suit.[14] Thus in *Wilson v. Joseph* [15] the court restrained the defendant from prosecuting an attachment proceeding in the courts of another state, merely in order to evade the exemption laws of the state of Indiana. But in cases of this type it must be shown that an infringment, violation, or an unconscionable act is being committed, for otherwise the courts will not assume jurisdiction. So where a party brought suit in another state because the statute of limitations was greater in duration in the foreign state and whereas the statute had already run in the state wherein the parties resided, the court refused to restrain the proceedings.[16] Nor will the courts of one state enjoin the prosecution of an action in a sister state upon the sole ground that the foreign courts have established erroneous rules of law.[17]

The distinction is made, therefore, that where a citizen seeks to evade the laws of the state wherein he resides for the purpose of obtaining or gaining an unfair advantage of his adversary, equity will grant relief. But the rule has worked

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14 See Dinsmore v. Nereshcimer, 32 Hun 204 (1884); Sandage v. Studebaker Mfg. Co., 142 Ind. 148, 41 N. E. 380 (1895); Snook v. Snetzer, 25 Ohio 516 (1874); Keyser v. Rice, 47 Md. 203 (1877); Dehon v. Foster, 86 Mass. 545 (1862).

15 107 Ind. 490, 8 N. E. 616 (1886).

16 Thorndike, Adm'r., v. Thorndike, 142 Ill. 450, 32 N. E. 510 (1892).

17 Carson v. Dunham, 149 Mass. 52, 20 N. E. 312 (1889); Cable v. Life Ins. Co., 191 U. S. 288, 48 L. Ed. 188 (1903); Thorndike, Adm'r., v. Thorndike, *op. cit. supra* note 16; 1 High on Injunctions 121.

the other way around, and equity will also intervene in behalf of a creditor to prevent the debtor from going into another state in order to defeat the collection of a judgment belonging to such creditor.[18]

In *Kirdahi v. Basha* [19] the plaintiff obtained a judgment in the city court of the city of New York against the defendant, Abraham Bechewati, who afterward, in order to evade execution, mortgaged his property, located in New Jersey, to the defedant, Basha. This action was brought in equity to set aside the transfer made in New Jersey and to enjoin Bechewati from alienating or incumbering the property pending the action in the New Jersey courts to obtain satisfaction of the judgment out of the land in that state. The court granted the injunction on the grounds that it was equitable to do so, and that it had jurisdiction even though the land mortgaged was outside the territory of the court's jurisdiction. The court relied on the decisions in *Gardner v. Ogden* [20] and *Penn v. Lord Baltimore*.[21]

It can thus be seen that courts of equity have gone far in the exercise of their powers to control litigation and the acts of persons over whom they have jurisdiction, in order to restrain them from taking unfair advantage over each other merely because the acts or offenses committed are outside of the court's jurisdiction. In most cases, the courts are able to exercise such powers because the parties are before them. There has been a case where a court of equity restrained a defendant in a foreign state, on whom no service was ever perfected, either personally or by notice, from violating an agreement with the plaintiff, a resident of the state, for the exclusive display of motion pictures. The court issued the decree on the ground that it had jurisdiction over a nonresident, where the suit concerned an interest in personal prop-

18 Kirdaha v. Bosha, 74 N. Y. S. 383 (1902).
19 *Op. cit. supra* note 18.
20 *Op. cit. supra* note 3.
21 *Op. cit. supra* note 5.

erty within the state, or where the act on which the suit was started was to have been performed within the state.[22] This decision may be criticized, however, on the ground that the defendant was never served with process or notice, and hence was never before the court; that a decree of the court would therefore not be binding on the defendant, and that a violation of such decree could not strictly be held to be contempt of court.[23] These cases illustrate how far equity courts have gone in the matter of territorial jurisdiction over litigation.

There is the second matter of equity courts exercising jurisdiction over persons committing trespasses outside the territorial limits of the courts. The leading and most often cited cases on this subject are the *Salton Sea Cases*.[24] Therein the plaintiff, a resident of California, sought to enjoin the defendant, a resident of New Jersey, from diverting waters from the California River, causing the lands of the plaintiff in Utah to be overflowed. The diverting occurred in Mexico. The action was originally brought in the California courts, but subsequently was transferred to the Federal courts. Relief was granted. The court held that although it was true that an equity court had no jurisdiction to compel a defendant to do anything beyond the territorial limit of the court, especially where the property injured was outside of the jurisdiction of the court, yet, as long as the defendant is amenable to the court's power, the above principle is inapplicable since it would serve to frustrate justice. The person on whom the court must act is within its control and it can therefore restrain such person from committing such acts as are inequitable or in violation of the principles of equity.

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22 Montgomery Enterprises v. Empire Theatre Company, *op. cit. supra* note 1.

23 See State ex rel. Hog Haven Farms v. Pearcy, 41 S. W. (2d) 403 (Mo. 1931), holding that a court of equity is without power to enjoin a nonresident from maintaining a nuisance outside the state, where the defendant has not been served personally or appeared before the court. But in Kempson v. Kempson, 61 N. J. Eq. 303, 48 Atl. 244 (1901), the New Jersey court restrained a husband in New York from proceeding with a divorce suit in North Dakota. Service on the husband was obtained by mail.

24 172 Fed. 792 (1909).

It is to be noted that the basis of the rule applied by the United States Supreme Court is two theories of extra-territorial jurisdiction. The first was that laid down in the case of *Massie v. Watts*.[25] The second was the principle that in criminal cases, although the crime be committed across a boundary, the criminal is nevertheless subject to the power of the court in the jurisdiction where the act took place. But notwithstanding the theory of the court in *Massie v. Watts*, there are a great number of cases that follow the precedent of the Supreme Court rule, although none have made mention of the principles upon which the case was decided.

Illinois has a complex situation with reference to the particular subject. The earliest decision in the matter of extra-territorial jurisdiction to prevent trespasses was that of *Western Union Telegraph Co. v. Pacific and Atlantic Telephone Co.*,[26] decided in 1868. This was an injunction to restrain the defendants from attaching their wires to plaintiff's poles, extending from Chicago into the state of Indiana. The injunction was granted in the lower court, but was reversed on appeal. The court held as follows:

"The jurisdiction of our courts is only coextensive with the limits of our State. They cannot legally send their process into other states and jurisdictions for service. If the exercise of such a jurisdiction were attempted, and an injunction granted, and it should be disobeyed by persons in Indiana, this court would be powerless to enforce the injunction by attachment, and hence the effort to exercise such a power would be defeated. But we are of the opinion that neither the law nor comity between distinct state or national organizations, sanctions the authority of one such body to exercise jurisdiction over the citizens and their property, which both are beyond the jurisdiction of the tribunal in which the proceeding is pending. The courts of this State cannot restrain the citizens of another state, who are beyond the limits of this State, from performing acts in another state, or elsewhere outside of, and beyond the boundary lines of this State. Any other practice would lead to a conflict of jurisdiction."

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25 *Op. cit. supra* note 7.
26 49 Ill. 90 (1868).

This decision seemed to be in line with the criticism of *Poole v. Koons* [27] by Professor Henry Schofield of Northwestern University.[28] In that case an Illinois chancery court granted a bill for specific performance to compel the defendant to convey lands in Arkansas. Professor Schofield was inclined to feel that the master's deed issued by the chancery court was "so much waste paper," and cited the case of *Fall v. Eastin* [29] in his criticism. It cannot be discerned whether he objects to the issuance of a deed by a master or the assumption of jurisdiction by the court although it seems to be the former that is concerned. It is apparently well-estblished in this country that, on the theory that the action is purely one *in personam,* and not *in rem,* a court does have equitable power to make such an order.[30] It may be admitted, however. that the validity of a master's deed in such cases, in states where it is authorized by statute, is a nice question, especially for the courts of the jurisdiction where the property is situated.

But Illinois has subsequently granted equitable relief in cases where the trespass is committed outside of the state. The most outstanding case is *Alexander v. Tolleston Club.*[31] This was a bill for an injunction to restrain the defendant from interfering with the complainant in the use of a certain canal and footpath along its bank, in respect of which the complainant claimed a right of way. The land was located in Indiana, the dispute arising out of a construction of a lease. The court held that it had jurisdiction; that on the well-settled principle that courts can grant specific performance of contracts respecting lands situated beyond the jurisdiction of the state where suit was brought, it could also restrain persons from committing trespasses in such foreign

27 252 Ill. 49, 96 N. E. 556 (1911).
28 6 Ill. Law Rev. 545.
29 215 U. S. 1, 54 L. Ed. 65 (1909).
30 Hart v. Sanson, 110 U. S. 151, 28 L. Ed. 101 (1883).
31 110 Ill. 65 (1884).

jurisdiction where the right of a citizen of the state was violated. In the language of the court:

"The fact that the property which is the subject of the matter in controversy is located in a foreign country, will not prevent the court from exercising jurisdiction, where all the parties to the transaction are within its jurisdiction and amenable to its process."

In line with this case is that of *Great Falls Manufacturing Company v. Worster.*[32] Here the plaintiff sought to enjoin the defendant from interfering with its dam, which was partly in Maine and partly in New Hampshire (the state in which suit was brought). The defendant contested the jurisdiction of the court to restrain it from going into another state and there committing trespass. However, the court granted the injunction on the theory that it would be a great injustice to be done merely because the property was outside of the state. Wherever done, the injustice would still remain as such, and the court has the power to issue injunctions to prevent injustices.

In connection with these trespass cases, it might be of interest to note what authority the courts will exercise where the title of the land is in dispute. The case of *Columbia National Sand Dredging Company v. Morton* [33] involves this point. Here the plaintiff in New York sought to enjoin the defendant in Virginia from removing sand and gravel from the shore adjoining its land in Delaware. The defendant contended that the gravel and sand were removed from the river by virtue of a grant from the Secretary of War. The plaintiff contested this and claimed that the land was accretion. The injunction was granted in the lower court but the upper court reversed this decision. It held that the court had no jurisdiction because the dispute involved title to the property in question; and that the matter was one of accretion to land and was for the law courts to determine. This seems

32 23 N. H. 462 (1851).
33 28 App. D. C. 288, 7 L. R. A. (N. S.) 114 (1906).

to be the rule; [34] but recently there seems to be a tendency to grant a temporary injunction until the litigants have had an opportunity to have the issue of title determined by a common law court.[35] It would therefore seem that in the case involved, the court should have at least sustained a temporary injunction until the question of accretion had been determined, inasmuch as it had already indicated that it had assumed jurisdiction, but that it could not issue a decree as long as the question of title was involved.

Thus the courts have spoken on the matter of issuing equitable decrees and affording equitable relief on nonjurisdictional matters. However, there are a few jurisdictions that do not recognize these principles and have held that a chancery court is without any power whatsoever to extend its jurisdiction beyond the confines of the state. In a recent work on the *Law of Injunctions,* by Lewis and Spelling, the authors have this to say on the question:

"Jurisdiction to grant and enforce injunctions does not extend beyond the state in which the application is made. Jurisdiction is only coextensive with the limits of the state. State courts cannot legally send their process into other states. If the exercise of such jurisdiction were attempted, and an injunction granted to operate in another state and it should be disobeyed by persons in the other state, the court would be powerless to enforce the injunction by attachment, and hence the effort to exercise such power would be readily defeated." [36]

This same line of argument was used in the case of *Armstrong v. Kinsell,*[37] where the plaintiff sought to restrain a nonresident defendant from negotiating two notes given for certain goods. The plaintiff alleged false representation and breach of warranty. Service was obtained by notice; and on

34 Herman v. Mexican Petroleum Corp., 85 N. J. Eq. 367, 96 Atl. 492 (1915); Bicking v. Florey's Brick Works, 53 Pa. Super. Ct. 358 (1913).

35 Waterloo Mining Co. v. Doe, 82 Fed. 45 (1897).

36 At p. 19.

37 164 N. C. 175, 80 S. E. 235 (1913). Accord: Howard v. Berryman, 288 Pac. 605, 69 A. L. R. 1035 (1930).

a special appearance, the court sustained the defendant's motion to dismiss the action on the ground of "no service," saying:

". . . an injunction as to a nonresident is improvident, for it can have no effect, usually at least, except in persona."

These rulings, which are in the minority, are mainly based upon the proposition that it is useless for an equity court to render a decree against a nonresident, for if he should fail to obey it, and though he would therefore be in contempt of the court in such event, that court would be without power to punish him as long as he remained outside of its jurisdiction.

But this is a case of "putting the cart before the horse." No court of equity should anticipate in advance that its decrees will be disobeyed, nor should they expect a disobeyance merely because the person against whom the decree is issued is outside of the state. There are thousands of commonlaw cases wherein judgments are rendered upon which there is no hope of a present monetary recovery, even at the time that the judgment is rendered. Yet a common law court certainly would not refuse to render a judgment merely because it may know of its own knowledge that the judgment cannot be recovered or that a levy would not bring any results.

Therein, the holding of the North Carolina court falls short. It is not within the purview of a court to consider the outcome of its findings in advance and whether or not they are enforceable or will be obeyed. If an equity court has the parties before it, it should consider them permanently in court, without regard to the fact that the defendant may escape punishment for violating the court's decree, by locating himself outside of the court's jurisdiction.

In summarizing, it therefore appears that an equity court can assume jurisdiction in matters and over defendants foreign to its jurisdiction where an unconscionable wrong is done and where the litigation involves matters *in personam*. It further appears that all that is necessary is that the parties be before the court, and the fact that the *res* of the matter in litigation is located in another state does not deprive the court of jurisdiction. Of course, it is assumed that the case has all the elements and requirements necessary to bring it within the scope of equity, and if all these are present, there is no clear reason why relief should not be granted.

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