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Injunction--Unfair Competition--Intervention to Protect Modern Business Interests (Metropolitan Opera Association, Inc. v. Wagner-Nichols Recorder Corp., 101 N.Y.S.2d 483 (Sup. Ct. 1950))

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Interstate injunctions do not, in theory, clash with the right that a husband has to seek in good faith a new domicile, and there obtain the relief afforded by its courts, since such injunctions are premised upon a finding that the husband is, in fact, a domiciliary of the forum. It follows therefore, on principle, that it is immaterial whether the injunction is in form temporary or permanent—in either event it will lose all efficacy if the husband thereafter obtains a new bona fide domicile.[22]

Although an *ex parte* foreign divorce decree based on a sham domicile is as invalid today as it was before the *Williams* case[23] the court, in the instant case, held that the prima facie validity which must now be accorded such decrees constituted a sufficient basis for the issuance of an injunction. No doubt the court was not unaware of the fact that even the so-called void decree before the *Williams* case was not wholly without an injurious effect upon the non-migratory spouse.[24] Whether or not the issuance of interstate injunctions may lead to socially desirable results,[25] it seems clear that the injunctive process will now receive greater use as a means of deterring those spouses whose only intent is to obtain foreign divorce decrees based on a sham domicile.

INJUNCTION—UNFAIR COMPETITION—INTERVENTION TO PROTECT MODERN BUSINESS INTERESTS.—The Metropolitan Opera Association sought to enjoin defendant's unauthorized manufacture and sale of "off the air" recordings of the Metropolitan's opera performances. An intervening plaintiff recording company had, by

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refused to allow the husband to set up in a supplemental answer a Nevada decree procured in disregard of the injunction.

[22] See Note, 13 BROOKLYN L. REV. 148, 161, n. 66 (1946); 28 ILL. L. REV. 295, 296 (1933).

[23] Before the *Williams* case a spouse seeking to impeach a foreign decree had to show that the foreign court lacked jurisdiction over the matrimonial domicile; today it must be proved that the migratory spouse was not domiciled in the foreign jurisdiction. The distinction is in the quantity and quality of proof required to upset the foreign decree.

[24] A direct financial injury might possibly result to the wife even under the void decree. The husband might marry again. If the second "wife" sued for separate maintenance the husband would be estopped from setting up the void decree under the rule of Krause v. Krause, 282 N. Y. 355, 26 N. E. 2d 290 (1940). The husband would then be under a duty to support two wives thus affecting the amount of support the first wife would obtain. For a discussion of other injuries, not financial, which a wife may sustain as a result of a void decree, see Greenberg v. Greenberg, 218 App. Div. 104, 218 N. Y. Supp. 87 (1st Dep't 1926); Comment, 9 FORD. L. REV. 376 (1940).

[25] "In all the cases where an injunction has issued against foreign divorce, there has been an actual family break-up. . . . If anything, it [the injunction] is likely still further to widen the breach." Jacobs, *supra* note 19, at 390.

contract with the Opera Association, the exclusive right to make and sell all such recordings. *Held,* preliminary injunction granted. There is an inherent property right in such a production involving the expenditure of time, effort, money and skill. This property right was not abandoned by broadcasting, and the misappropriation by the defendant was such unfair competition that equity will enjoin it. Moreover, the defendant's acts constituted a wrongful interference with the contractual rights of the plaintiffs. *Metropolitan Opera Association, Inc. v. Wagner-Nichols Recorder Corp.,* 101 N. Y. S. 2d 483 (Sup. Ct. 1950).

Initiated by the *dicta* in *Gee v. Pritchard*[1] there has developed the rule that equity will protect only property rights. Despite the contention by many authorities that this limitation should be abolished,[2] few jurisdictions have permitted the intervention of equity to protect rights of a purely personal or political nature.[3] The courts, however, have mitigated the harshness of the rule by exercising leniency in the determination of the existence of a property right. This relaxation is particularly apparent in cases in which equitable relief has been sought for the protection of business interests.[4] "The rule that a court of equity concerns itself only in the protection of property rights treats any civil right of a pecuniary nature as a property right."[5] It should be noted, however, that relief will not be given merely because it is possible to find a property right on which to attach jurisdiction. In certain cases the courts have declined to find that the plaintiff had an exclusive right in the thing the defendant was appropriating.[6] The basis for many such decisions is the belief that the injury which would result if the defendant's acts were to be enjoined would be greater than the harm occasioned to the plaintiff by their continuance. There is an awareness that if too much leniency is exercised in the finding of a property right the result may be a burden on the type of competition which society desires. Thus, before the courts will find a property right they must be satisfied that the defendant's acts constitute unfair

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[1] Gee v. Pritchard, 2 Swans. 403, 36 Eng. Rep. 670 (Ch. 1818).

[2] See Brandeis, *The Right to Privacy,* 4 HARV. L. REV. 193 (1890); Chafee, *The Progress of the Law, 1919-1920,* 34 HARV. L. REV. 388, 407 (1921); Pound, *Equitable Relief Against Defamation and Injuries to Personality,* 29 HARV. L. REV. 640 (1916).

[3] Stark v. Hamilton, 149 Ga. 227, 99 S. E. 861 (1919); Kenyon v. City of Chicopee, 320 Mass. 528, 70 N. E. 2d 241 (1946).

[4] "The courts have been increasingly inclined to protect business interests even when such interests do not come within strict definitions of property." Allen Mfg. Co. v. Smith, 224 App. Div. 187, 192, 229 N. Y. Supp. 692, 698 (4th Dep't 1928).

[5] International News Service v. Associated Press, 248 U. S. 215, 236 (1918).

[6] Cheney Brothers v. Doris Silk Corp., 35 F. 2d 279 (2d Cir. 1929), *cert. denied,* 281 U. S. 728 (1930); Viavi Co. v. Vimedia Co., 245 Fed. 289 (8th Cir. 1917); Continental Car-Na-Var Corporation v. Mosely, 24 Cal. 2d 104, 148 P. 2d 9 (1944).

competition and are not merely an exercise of the right to free enterprise.

In the past it was not too difficult to prophesy when equity would intervene. There were certain well-established cases where aid would be given, for example, those involving trade secrets [7] or trade-names,[8] and other equally well-established cases in which it would be denied, as was done in the design cases.[9] Along with the advent of the intricacies of modern trade has come, however, an enlargement of the recognition of business assets and interests as property rights. The unprecedented case of *International News Service v. Associated Press* [10] demonstrated the ability and willingness of equity to protect these interests against unfair competition when the remedy at law is inadequate.

In the field of radio, equity has upheld the exclusive right to broadcast the World Series,[11] and a boxing exhibition.[12] In the field of motion pictures it has restrained the unauthorized use of films of a hockey game.[13] The property right of a cartoonist to the exclusive use of the characters which he has made famous has been protected against misappropriation.[14] Recognizing the importance of seniority rights, pensions, and other benefits gained by labor, the courts have held that these benefits when existing under a subsisting contract constitute property rights and are entitled to protection.[15] Even in situations where relief traditionally has obtained,

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[7] Cincinnati Bell Foundry Co. v. Dodds, 10 Ohio Dec. 154 (1887); Macbeth-Evans Glass Co. v. Schnelbach, 239 Pa. 76, 86 Atl. 688 (1913).

[8] Potter-Wrightington, Inc. v. Ward Baking Co., 288 Fed. 597 (D. C. Mass. 1923), *aff'd*, 298 Fed. 398 (1st Cir. 1924); Danton v. Mohler Barber School, 88 Ore. 164, 170 Pac. 288 (1918).

[9] Cheney Brothers v. Doris Silk Corp., 35 F. 2d 279 (2d Cir. 1929), *cert. denied*, 281 U. S. 728 (1930).

[10] 248 U. S. 215 (1918) (the Supreme Court recognized a quasi property right in "hot news" and held that a misappropriation of that right by the defendant warranted the granting of injunctive relief).

[11] Mutual Broadcasting System, Inc., and Gillette Safety Razor Co. v. Muzak Corp., 177 Misc. 489, 30 N. Y. S. 2d 419 (Sup. Ct. 1941).

[12] Twentieth Century Sporting Club, Inc. v. Transradio Press, Inc., 165 Misc. 71, 300 N. Y. Supp. 159 (Sup. Ct. 1937).

[13] Madison Square Garden Corp. v. Universal Pictures Co., 255 App. Div. 459, 7 N. Y. S. 2d 845 (1st Dep't 1938).

[14] Fisher v. Star Co., 231 N. Y. 414, 132 N. E. 133 (1921); see Note, 19 A. L. R. 937 (1921).

[15] In many cases the courts while holding that these rights constitute property rights are unable to protect them. The reason is that ordinarily the contract under which these rights exist has been breached by the employer and the employee seeks to regain these property rights by an action for specific performance of the contract of employment. The court cannot grant specific performance of the contract since it is for personal services and therefore cannot protect the rights arising thereunder. Walker v. Pennsylvania-Reading Seashore Lines, 142 N. J. Eq. 588, 61 A. 2d 453 (Ch. 1948); McMenamin v. Philadelphia Transp. Co., 356 Pa. 88, 51 A. 2d 702 (1947). However, in some cases the contract under which these rights exist is subsisting, but some third party, usually a labor union, by improper acts has deprived the employee of these property rights. In such cases the courts can and do grant relief.

new rules have been developed to meet modern needs. In the instance of trade-names the old view was that injunctive relief was warranted where, in competition with the plaintiff, there was a "palming off" of the defendant's product as that of the plaintiff.[16] Today, realizing the value of the good will that a trade-name can attain through extensive advertising, equity has established a more liberal rule. It has granted relief although no competition existed between the plaintiff's and defendant's businesses, when there was a misappropriation of a trade-name which had assumed a secondary meaning, a good will of its own.[17]

In the principal case there was no allegation of "palming off". Plaintiff, Metropolitan Opera Association, is a non-profit organization, and there was no competition between its business and that of the defendant. Nevertheless, the court recognized the value of the creative element in a skillful opera production, and held that it constituted property and was entitled to equitable protection. The facts in the case are unique and the court's action in enjoining "off the air" recordings is unprecedented. Its correctness cannot be denied. It is illustrative not only of the wide range of interests which equity acts to protect, but also of the extremes to which it will go to find a property right on which to attach jurisdiction when unfair competition is established. Moreover, labeling it "unfair competition" demonstrates the refusal of equity courts to establish any specific prerequisites for injunctive relief. This is to be lauded, for unfair competition can take such a myriad of forms that to limit equity's power to intervene would result in the opening of a door to ingenious wrongdoers who can avoid the necessary prerequisites and nevertheless be guilty of unfair competition. Whether or not there is unfair competition must depend upon the facts of the individual case, but once unfair competition is established, the rules governing equitable relief are sufficiently flexible so as to assure protection.

Heasley v. Operative Plasterers & Cement Finishers International Ass'n, 324 Pa. 257, 188 Atl. 206 (1936); *see* Grand International Brotherhood of Locomotive Engineers v. Mills, 43 Ariz. 379, 31 P. 2d 971, 979 (1934).

[16] See note 8 *supra; cf.* Borden Ice Cream Co. v. Borden's Condensed Milk Co., 201 Fed. 510 (7th Cir. 1912) (injunction denied because there was no competition between plaintiff's and defendant's products).

[17] Hanson v. Triangle Publications, Inc., 163 F. 2d 74 (8th Cir. 1947); Tiffany & Co. v. Tiffany Productions, Inc., 147 Misc. 679, 264 N. Y. Supp. 459 (Sup. Ct.), *aff'd*, 237 App. Div. 801, 260 N. Y. Supp. 821 (1st Dep't 1932), *aff'd*, 262 N. Y. 482, 188 N. E. 30 (1933). "Because an attractive, reputable trade-name can be imitated not for the purpose of diverting trade from its owner, but rather for the purpose of securing some of the good will, advertising, and sales stimulation appurtenant to it, the interest in a trade-name came to be protected against being subjected to the hazards of another's business not in actual competition." Stork Restaurant, Inc. v. Marcus, 36 F. Supp. 90, 93 (E. D. Pa. 1941).