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Equity--Injunction--Restraining Action by Citizen of New York Against Another Citizen of New York in a Foreign Jurisdiction (Paramount Pictures, Inc. v. Ben Blumenthal, 256 App. Div. 756 (1st Dep't 1939))

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employed in the statute when considered in the light of its enactment [20] has nothing to do with financial return, but refers to constant uninterrupted and excessive gaming indulged in during the waking hours normally spent by those intent on maintaining themselves in some peaceable or legitimate vocation, no matter how humble it be." [21] This interpretation gives us a statute which can effectively suppress the activities of the undesirable individual whose day is spent in gaming activity. B. L.

EQUITY—INJUNCTION—RESTRAINING ACTION BY CITIZEN OF NEW YORK AGAINST ANOTHER CITIZEN OF NEW YORK IN A FOREIGN JURISDICTION.—Plaintiff, who owned and controlled certain motion picture theatres located in England, contracted to sell them through defendant, as agent. Both plaintiff and defendant were residents of New York. It was understood, according to defendant, that plaintiff would not deal with anyone else until all negotiations had proved fruitless. Defendant sued plaintiff in England, claiming he was damaged when plaintiff violated this agreement by his negotiations with another. Plaintiff now seeks to enjoin defendant from suing him in England, claiming that since the contract was made in New York, and since all their important witnesses are residents of New York, an action on that contract in England would prove inequitable, vexatious, and oppressive. The Supreme Court of New York granted plaintiff's motion for an injunction *pendente lite*. On appeal, *held,* reversed. In general, New York courts will not enjoin its citizens from prosecuting an action against each other in a foreign jurisdiction in the absence of proof that: (1) the suit in the foreign jurisdiction was instituted in bad faith or motivated by fraud, or (2) there was an attempt to evade the law or public policy of New York. Issuance of equitable relief by injunction in such a case lies within the sole discretion of the court. *Paramount Pictures, Inc.* v. *Ben Blumenthal,* 256 App. Div. 756, 11 N. Y. S. (2d) 768 (1st Dept. 1939), *aff'd,* 281 N. Y. 106, — N. E. — (1939).

Although it is well settled that a court of equity can enjoin one within its jurisdiction from suing in another state or country, the question is, when and under what circumstances it will do so. An early leading English decision [1] held that an injunction should not

[20] Instant case at 943. The court refers to the other subdivisions of N. Y. CODE CRIM. PROC. § 899 which in substance, "is aimed at a course of behavior disadvantageous to society, the violation of which makes one a disorderly person, the abandonment or threat to abandon wife or child; the keeping of bawdy houses or houses for the resort of prostitutes, gamesters or habitual criminals; performances by mountebanks; the keeping upon the public highway of an apparatus for gaming etc."

[21] Instant case at 943.

[1] Love v. Baker, 1 Ch. Cas. 67, 22 Eng. Rep. 698 (1665).

issue. At first, New York followed this decision,[2] and refused to grant an injunction on the grounds of comity or public policy because the foreign jurisdiction had attached first. The cases of *Burgess* v. *Smith*[3] and *Vail* v. *Knapp*,[4] modified the above rule. They held that it was within the court's discretion to grant an injunction in those "special" cases[5] where it was necessary to prevent manifest wrong and injustice. It is now settled that no rule of comity or public policy forbids issuance of an injunction.[6]

When equity enjoins the further prosecution of a suit in a foreign jurisdiction by an *in personam* decree, it is not interfering with the sovereignty of the foreign country or state. Jurisdiction is not based on any judicial or administrative rights abroad, nor does the local court attempt to control, direct, or exercise a supervisory power over a foreign jurisdiction.[7] Two situations must be distinguished: an injunction against the proceedings of the court of a foreign jurisdiction, in which case the court would not have jurisdiction, and an *in personam* decree enjoining defendant from further prosecuting his suit, in which case the court would have jurisdiction.[8] Courts of equity have authority over those within their territorial jurisdiction who act inequitably.[9] The theory relied on is that the state has power

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[2] Mead v. Merritt, 2 Paige 402 (N. Y. 1831); Durant v. Pierson, 12 N. Y. Supp. 145 (1890).

[3] 2 Barb. 276 (N. Y. 1847).

[4] 49 Barb. 299 (N. Y. 1867).

[5] Mitchell v. Colorado Fuel & Iron Co., 117 Fed. 723 (D. C. Colo. 1902); Jones v. Hughes, 156 Iowa 684, 137 N. W. 1023 (1912); Durant v. Pierson, 12 N. Y. Supp. 145 (1890); Burgess v. Smith, 2 Barb. 276 (N. Y. 1847); Vail v. Knapp, 49 Barb. 299 (N. Y. 1867); Claflin v. Hamlin, 62 How. Pr. 284 (N. Y. 1881); Miller v. Myers, 75 Misc. 297, 135 N. Y. Supp. 73 (1912), *aff'd*, 151 App. Div. 938, 135 N. Y. Supp. 1128 (1st Dept. 1912); Guggenheim v. Wahl, 203 N. Y. 390, 96 N. E. 726 (1911); American Express Co. v. Fox, 135 Tenn. 489, 187 S. W. 1117 (1916).

[6] Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269 (1890); Vail v. Knapp, 49 Barb. 299 (N. Y. 1867); Claflin v. Hamlin, 62 How. Pr. 284 (N. Y. 1881).

[7] Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269 (1890); Allen v. Buchannan, 97 Ala. 399, 11 So. 777 (1892); Royal League v. Kavanagh, 233 Ill. 175, 84 N. E. 178 (1908); Sandage v. Studebaker Bros. Co., 142 Ind. 148, 41 N. E. 380 (1895); Dehon v. Foster, 4 Allen 545 (Mass. 1862); Edgell v. Clarke, 19 App. Div. 199, 45 N. Y. Supp. 979 (1st Dept. 1897); Locomobile Co. v. American Bridge Co., 80 App. Div. 44, 80 N. Y. Supp. 288 (1st Dept. 1903); Webster v. Colombia Ins. Co., 131 App. Div. 837, 116 N. Y. Supp. 404 (1st Dept. 1909); Wierse v. Thomas, 145 N. C. 261, 59 S. E. 58 (1907); Portarlington v. Soulby, 3 Myl. & K. 104, 10 Eng. Ch. (1834); 4 POMEROY, EQUITY JURISPRUDENCE (4th ed. 1919) § 1318; 2 STORY, EQUITY JURISPRUDENCE (14th ed. 1918) § 1224.

[8] Dehon v. Foster, 4 Allen 545 (Mass. 1862); Moton v. Hull, 77 Tex. 80, 13 S. W. 849 (1890); Hazen v. Lyndonville Bk., 70 Vt. 543, 41 Atl. 1046 (1898).

[9] Mason v. Harlow, 84 Kan. 277, 114 Pac. 218 (1911); Claflin v. Hamlin, 62 How. Pr. 284 (N. Y. 1881).

A common ground for granting an injunction is to prevent embarrassment, vexation, oppression, harassing, and fraud. Miller v. Myers, 75 Misc. 297, 135 N. Y. Supp. 73 (1912), *aff'd*, 151 App. Div. 938, 135 N. Y. Supp. 1128

to compel its own citizens to respect its laws.[10] As long as one is a citizen of a state, he owes it obedience.[11]

Courts are reluctant to interfere with a resident's right to seek a forum where he can secure the best "bargain" or relief possible. As was held in the instant case, it is defendant's right to seek any forum

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(1st Dept. 1912); Gaunt v. Nemours, 194 App. Div. 668, 186 N. Y. Supp. 92 (1st Dept. 1921); Kittle v. Kittle, 8 Daly 72 (N. Y. 1878); McHenry v. Lewis, 22 Ch. D. 397, 47 L. T. R. (N. S.) 549 (1883).

The fact that the equity defendant derives a more favorable result in his suit in a foreign jurisdiction involving a different procedure, judicial opinion, or a substantive rule of law is not inequitable, calling for restraint when it appears that the proper law will be applied, as equity does not act on the basis of distrust of a second state. Thorndike v. Thorndike, 142 Ill. 450, 32 N. E. 510 (1892); Bigelow v. Old Dominion Co., 74 N. J. Eq. 457, 71 Atl. 153 (1908); Edgell v. Clarke, 19 App. Div. 199, 45 N. Y. Supp. 979 (1st Dept. 1897); Greenberg v. Greenberg, 218 App. Div. 104, 218 N. Y. Supp. 87 (1st Dept. 1926). Instant case at 758.

Equity will also restrain an evasion of the domiciliary laws. Kempson v. Kempson, 58 N. J. Eq. 94, 43 Atl. 97 (1899); Barrett v. Russell, 75 Misc. 226, 135 N. Y. Supp. 34 (1912); Dinsmore v. Neresheimer, 32 Hun 204 (N. Y. 1884).

A resident creditor is restrained from enforcing a claim in a foreign jurisdiction if the attempt deprives the debtor of the local court's exemption. Hager v. Adams, 70 Iowa 746, 30 N. W. 36 (1886); Wierse v. Thomas, 145 N. C. 261, 59 S. E. 58 (1907).

A creditor will be enjoined from evading the insolvency laws of the domicile. Cole v. Cunningham, 133 U. S. 107, 10 Sup. Ct. 269 (1880); Cunningham v. Butler, 142 Mass. 47, 6 N. E. 782 (1882).

Equity, in a proper case, can restrain those within its jurisdiction from proceeding in a matrimonial action in other states. Miller v. Miller, 66 N. J. Eq. 436, 58 Atl. 188 (1904); Richmond v. Richmond, 148 Misc. 387, 266 N. Y. Supp. 513 (1933); Dublin v. Dublin, 150 Misc. 694, 270 N. Y. Supp. 22 (1934); Jeffe v. Jeffe, 168 Misc. 123, 4 N. Y. S. (2d) 628 (1938); Gwathmey v. Gwathmey, 116 Misc. 85, 190 N. Y. Supp. 199 (1921), *aff'd*, 201 App. Div. 843, 193 N. Y. Supp. 935 (1st Dept. 1922); Greenberg v. Greenberg, 218 App. Div. 104, 218 N. Y. Supp. 87 (1st Dept. 1926); Johnson v. Johnson, 146 Misc. 93, 261 N. Y. Supp. 523 (1933). No injunction will issue in a matrimonial action to restrain the defendant's person who is not personally served within the state. May v. May, 233 App. Div. 519, 253 N. Y. Supp. 606 (1st Dept. 1931); Robinson v. Robinson, 254 App. Div. 696, 3 N. Y. Supp. 882 (2d Dept. 1938).

Mere convenience for the equity defendant to be sued in the court of his domicile or ordinary hardship to go abroad will not be grounds for relief. Nor will it be issued for difficulty or inconvenience in proving in the foreign court laws properly applicable. But an injunction may be granted when true hardship is shown. Donnelly v. Morris, 13 N. Y. Supp. 427 (1891); Allison v. Eagle Ins. Co., 144 App. Div. 74, 128 N. Y. Supp. 817 (1st Dept. 1911). Instant case at 760.

The mere fact that the local court may not be able to enforce its decree should be no reason for refusing an injunction. It should nevertheless issue because of its moral force, the threat of contempt proceedings against the violator, and as the court might demand a bond be posted or sequester his property in the state, or enjoin the local enforcement of the foreign judgment. Note (1922) 35 HARV. L. REV. 610.

[10] Hawkins v. Ireland, 64 Minn. 339, 67 N. W. 73 (1896).

[11] 14 R. C. L. (1916) 413.

which obtained jurisdiction over the parties and subject matter.[12] The question when jurisdiction will be exercised is often one of great delicacy,[13] as a conflict of jurisdiction may result by the local court's interference. The power, therefore, is used sparingly,[14] especially, when the foreign court can do as complete justice as the domestic court.[15] The plaintiff has the burden of showing equitable grounds for relief.[16]

In seeking an injunction, it seems that the subject matter[17] and location of the court[18] where the cause of action is pending, is immaterial when there is jurisdiction *in personam.* The purpose of the suit in the foreign jurisdiction and the ends to be attained, however, are of prime importance.

The denial of the injunction was justified because the instant case falls within the general rule that no injunction will be granted unless a clear equity is made out. It does not appear that the foreign suit was fraudulent, instituted in bad faith, or was an attempt to evade New York law.[19] The power of the court to grant such relief in such a case is purely discretionary, and mere convenience is not of sufficient importance to influence the court.

B. R.

EVIDENCE—WIRE TAPPING—FEDERAL COMMUNICATIONS ACT NOT APPLICABLE TO INTRASTATE COMMUNICATIONS.—The defendants were convicted of using the mails[1] in furtherance of a con-

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[12] Royal League v. Kavanagh, 233 Ill. 175, 84 N. E. 178 (1908); Illinois Life Ins. Co. v. Prentiss, 277 Ill. 383, 115 N. E. 554 (1917).

[13] Notes (1928) 57 A. L. R. 77; (1932) 31 MICH. L. REV. 88.

[14] Jones v. Hughes, 156 Iowa 684, 137 N. W. 1023 (1912); Bigelow v. Old Dominion Co., 74 N. J. Eq. 457, 71 Atl. 153 (1908); Carpenter v. Hanes, 162 N. C. 46, 77 S. E. 1101 (1913).

[15] Harris v. Pullman, 84 Ill. 20 (1876); Edgell v. Clarke, 19 App. Div. 199, 45 N. Y. Supp. 979 (1st Dept. 1897).

[16] Carson v. Dunham, 149 Mass. 52, 20 N. E. 312 (1889); Freick v. Hinkley, 122 Minn. 24, 141 N. W. 1096 (1913); Wyeth Hardware Co. v. Lang, 54 Mo. App. 147 (1893), *aff'd,* 127 Mo. 242, 29 S. W. 1010 (1895); Bennet v. LeRoy, 13 N. Y. Super. Ct. 683 (1857); Hymen v. Helm, 24 Ch. D. 531, 49 L. T. R. (N. S.) 376 (1883).

[17] Phelps v. McDonald, 99 U. S. 298 (1878); Williams v. Williams, 83 Misc. 560, 145 N. Y. Supp. 564 (1913); Mead v. Merritt, 2 Paige 402 (N. Y. 1831).

[18] Gage v. Riverside Trust Co., 86 Fed. 984 (D. C. Cal. 1898); Field v. Holbrook, 3 Abb. Pr. 377 (N. Y. 1856); Dainese v. Allen, 3 Abb. Pr. (N. S.) 212 (N. Y. 1867); Carron Iron Co. v. McCaren, 5 H. L. C. 416, 10 Eng. Rep. 961 (1855).

[19] From a study of appellant's brief the above factors do not appear, as defendant contends that the breach of contract giving rise to the suit took place in England where all their important witnesses reside, and the cause of action was brought there in good faith.

[1] 35 STAT. 1130 (1909), 18 U. S. C. § 338 (1934).