

THE JURISDICTION OF EQUITY RELATING TO MULTIPLICITY OF SUITS

One of the classic controversies of the law has long been waged over the rationale and proper application of the doctrine that courts of equity have jurisdiction to restrain actions at law in order to prevent a multiplicity of suits. On the one hand, we have a large body of opinion holding with Professor Pomeroy that the jurisdiction exists in many cases, irrespective of a common interest or title in the subject matter, and irrespective of the right of each individual litigant to resort to equity on other grounds. On the other hand, courts of undoubted respectability have consistently declined to apply the doctrine unless it appeared either that all the parties on one side had some common interest in the matter in dispute, or that the case was essentially one of equitable cognizance. It may be confidently asserted that the alignment follows the familiar line of demarcation that has always separated the devotees of the common law from those who have sympathized with the historic struggle of equity against the rigid rules and formulae of the more ancient system. In other words, the attitude of the advocate for the one theory or the other is referable to his mental attitude toward the common law's boast that it is the perfection of human reason. To those who accept this oft repeated truism as correct, the encroachments of equity upon the preserves of the law have always been looked upon with disfavor if not with alarm. But by those who have come to the conclusion that the principles of the common law are not to be taken too seriously and that for the rigid authority of precedent there should be substituted some standard, grounded in the principles of natural justice as fixed by the enlightened sense of mankind, the advent of equity into the field of jurisprudence was hailed with delight. Naturally, those who look with favor upon the plan of using equity to modify the hardships of the law have welcomed each of its notable advances, and have been ready to seize upon any opportunity to extend its field of influence. On the other hand, those solicitous for the unimpaired authority of the common law, have demanded of equity at each proposed forward step that it justify its action by reference to approved adjudications. Manifestly, no such justification can be shown in every instance, and if it were required there

would be no progress. For every equitable principle was once an innovation, and must have depended for its establishment not upon precedent as declared by the courts but upon the chancellor's conception of natural justice and his view as to the need for reform.

Those who have decried the authority of Professor Pomeroy have found their chief ground of attack in his assertion that the doctrine of his text rests upon the authority of adjudged cases. The able student of the common law, who wrote the opinion of the Mississippi court in the *Tribette Case*,¹ doubtless the leading case in opposition to the Pomeroy doctrine, was able to score heavily against the text of Pomeroy, by showing that many of the cases cited in support of the text could be explained upon principles not at all in harmony with the view that equity would interpose if thereby a multiplicity of actions at law could be avoided, merely because all the suits depend upon the same state of facts and the same principle of law. And so, a large number of courts have implicitly, not to say blindly, followed the lead of the *Tribette Case* and have given themselves much credit for legal acumen and for diligence in research, because they have been able to demonstrate to their own satisfaction, at least, that the text of Pomeroy is not supported by the citations.

Unfortunately, for the cause of sound interpretation and of constructive judicial legislation, the progress of this controversy, with some praiseworthy exceptions, has been notable for zeal in partisanship rather than for a sincere effort to formulate a rule that squares with the great fundamental principles that underly the system which we call equity. Thus we find that the author of the opinion in the *Tribette Case* charges Professor Pomeroy with having been betrayed into error in his zeal to maintain a theory. Without taking issue with Judge Campbell upon this point, we think it but fair to say that the advocates of the opposing theory have been equally zealous in maintaining a theory and consequently equally prone to fall into error. It is usually said that Pomeroy has sanctioned the view that courts of equity have jurisdiction on this ground whenever "there is a community of interest merely in the questions of law or of fact involved." If it is meant to say that equity will always take jurisdiction to prevent multiplicity, if the several law actions grow out of the same state of facts and depend upon a single question of law,

¹70 Miss. 182.

there would seem to be little doubt that the statement is too broad. But it will not do to say, as have many of the opposing belief, that there can be no resort to equity unless each of the parties would individually have had the right to invoke the aid of equity in the assertion of some equitable right or to interpose the bar of an equitable defense. Those who seek to restrict the activities of courts of equity usually lay down this proposition as a postulate. But the force and number of authorities to the contrary almost invariably drive them to an immediate modification of their theory. They admit that equity takes jurisdiction in cases that present nothing but law questions provided there is a community of interest in the subject matter, or a common right or title to the thing in controversy. They do not deny that the jurisdiction may be maintained if the suit in chancery is brought by one who has the right to bring it as a representative of a larger class, whether this right be the creature of statute or of contract, either express or implied. They are forced to recognize the right of taxpayers holding claims for taxes erroneously collected under a single illegal tax to ask the aid of chancery in recovering all these taxes in a single suit. These well established instances of equitable jurisdiction are clearly not referable to the theory that there must be equities which may be asserted by the individual litigants before they can join in one bill. They can not be explained upon any such theory. They are too well recognized to be ignored or overruled; and hence they, in effect, stand, in the mind of the anti-Pomeroy advocates, as exceptions to their theory.

It is equally obvious that it will not do to say that equity will in all cases take jurisdiction merely because the law actions are numerous, and grow out of the same state of facts, and depend upon the same principle of law, though some courts in their blind adherence to the text of Pomeroy have so held. Cases can be found in the books where courts have restrained passengers injured in the same railroad wreck from redressing their grievances at law on the ground that but one issue of fact and one issue of law are involved in all of these cases, and that they should be settled in one suit in chancery. This view wholly ignores the fact that one passenger may be guilty of contributory negligence and another may not; that one may be severely injured and another scarcely at all, and that it is peculiarly for a jury to pass upon the extent of injuries and to settle the correct amount of damages. It is safe to say that equity should never interfere

in such cases, unless it is clear that the cases are plainly without merit, a phase of the matter which will be considered presently.

Many courts, exasperated by the hopeless conflict of authority and wearied by a controversy which promises so little in the way of settling anything, have felt inclined to say: "A pox on both your houses." These courts have apparently enthroned common sense and common justice as criteria, and have assumed or denied jurisdiction as the convenience of the parties or the ends of justice seem to require. This may be taken as the prevailing doctrine of the federal courts, resting upon the authority of the Supreme Court of the United States.² Mr. Justice Peckham takes this view of the matter:

"Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any."

The inferior federal courts have attempted to apply this rule in a number of cases of which *Wyman v. Bowman*³ may be taken as a fair example. In that case Judge Sanborn of the eighth circuit held that, where all the defendants depend upon the same ground of defense, it would not be consistent with the convenience of the parties, and not promotive of the ends of justice, to require the one issue of fact and the one issue of law to be submitted to the arbitrament of nine juries, each under the direction of a different judge. And so, too, we find the United States Supreme Court reiterating the same view in a later case.⁴

This rule which, for the lack of a better designation, we may call the "rule of convenience," is manifestly grounded upon correct principles. Abstractly considered, it is in complete harmony

² *Hale v. Allinson*, 188 U. S. 56.

³ 127 Fed. 257.

⁴ *Bitterman v. L. & N. R. R. Co.*, 207 U. S. 205.

with the avowed purpose of equity to supply the deficiencies of the law. But the trouble with the rule, as with most rules, lies in its application to particular cases. We have undoubtedly advanced very far indeed since the time when the chancellor's conscience was the sole measure of a litigant's rights. Our equity courts, while perhaps slightly less bound by precedent than the law courts, are, yet, by no means free to administer justice untrammelled by precedent. So that the rule announced in *Hale v. Allinson*, while a salutary and useful one, is, like the famous rule of reason, almost as uncertain in its application as are the logical processes of the particular individuals who are called on to administer and apply it.

As we have heretofore intimated, any theory which denies to a litigant the right to have disputed questions of fact in purely legal controversies decided by a jury must be essentially erroneous. For it was certainly not the purpose of equity to interfere with the right of trial by jury in law cases, and any application of the doctrine which brings about this result is demonstrably wrong. But by this statement must be understood no more than that a jury trial must be had when it is apparent that there is, in fact, really something for the jury to decide. We have no reference to that form of jury trial in which a jury is empanelled as a matter of form, and then directed by the court to bring in a certain verdict which the law compels and other than which no court would permit to stand. We think, therefore, we can put aside as excluded from the field of equity jurisdiction those cases in which the rights of the parties are purely legal and which require a separate finding of fact for each litigant upon issues of fact which are in dispute. So far we can go with safety. If but one finding of fact is required to settle the claims of all the parties, the jurisdiction may be more doubtful, but it seems to the writer as the sounder view that equity should not stay the procedure in the law courts unless the machinery of the equity courts provides for a jury trial or permits the chancellor to send the case to a law court for a trial by jury of the single issue of fact. It will, of course, not do to say that chancellors are not every day called upon, without the aid of juries, to decide questions of fact. But they are facts in equitable controversies, not facts in controversies at law.

But a different question arises if the facts are free from dispute and all the cases depend upon the same question of law, or if the facts being in dispute, one certain question of law being decided

disposes of the case however the facts may be found. In such an instance, manifestly the convenience of the parties will be subserved by a single decision on the points of law in dispute. The litigation is ended in one proceeding and no substantial right has been denied to any party. Of such a nature will be found, we think, most of the cases wherein tax payers seek to recover taxes paid under an assessment illegal for any reason, and suits involving trespasses to property, the title to which is usually in dispute and which usually present few, if any, disputed questions of fact.

Particularly is it interesting to note that courts of equity have shown an increasing disposition to interfere when the complainant is threatened with a multitude of suits at law, all of which are obviously without merit. And this power is exercised in cases where there is no pretense that any equitable principle is involved other than to prevent a multiplicity of suits. Nor is there any community of interest in the subject matter nor any common title or right. There is in such cases a question of law which is common to all, and the facts are such that, taken most strongly in favor of the party asserting the right, the court can see that no relief can be given. A case or two of this nature may perhaps be mentioned with profit. In Kansas it appeared that five hundred and forty-two enterprising citizens entered suit against a telegraph company each for a fixed penalty which these plaintiffs claimed under a statute which had been declared void. Certainly, these suits involved no equitable features, and there was no community of interest or common title as among these plaintiffs. But the court held that a court of equity should interfere to prevent the complainant from being harassed with these five hundred groundless and vexatious actions.⁵

In California it appeared that a railroad company was refusing to grant a stop-over privilege in violation of a certain statute. Thereupon, a large number of persons, not in fact desiring to exercise the privilege in good faith, but for the purpose of securing causes of action, demanded the privilege and were refused. As a result, about six hundred cases were brought and about twenty-three hundred were ready for suit. The supreme court of California held that equity had jurisdiction to restrain the prosecution of these suits; that they were without merit, since the statute was designed to protect only those who actually desired to stop-over, not those who asked the privilege in the hope that it

⁵ *Jordan v. W. U. Tel. Co.*, 69 Kans. 140.

would be denied; and that equity would not permit the complainant to be put to the trouble and expense of defending all these baseless actions.⁶

In Kentucky, it appeared that a certain railroad company was charged with remissness in the matter of furnishing cars for the movement of coal from the mines. As a result, it was alleged that the mines could not steadily operate, and that miners could not, therefore, secure steady employment. Fourteen hundred miners concluded to bring separate suits against the railroad upon the theory that, if sufficient cars had been furnished, the mines would have worked; if the mines had worked, the plaintiffs would have been given employment and would have earned certain amounts sued for. Forty-one cases were brought and the others were ready. The court held that it was proper for equity to interfere; that the damages sought were too remote, and hence the law actions were groundless; that the complainant should not be forced to defend this large number of cases at great trouble and expense when it was clear that there was no merit in the cases.⁷

In all these cases, it will be seen that the courts considered the merits of the numerous actions, and finding that all of them involved the same facts; that all depended upon the same principle of law, and all were equally groundless, it was considered that no right of these litigants would be denied if the suits were enjoined, and the litigation ended. These decisions utterly ignore the theory of common right or title. They present but one instance of the proper exercise of jurisdiction where a single principle of law controls, and where no jury questions arise on the facts.

Accepting the doctrine of *Hale v. Allinson* as a sound view of the law, it would seem to be impossible to formulate a better or more practicable working rule by which the principles of that decision can be applied than the one above indicated.

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⁶ *Southern Pac. R. Co. v. Robinson*, 132 Cal. 408.

⁷ 155 Ky. 512.