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Equity--Injunction against an Act Also a Crime

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CASE COMMENTS

EQUITY—INJUNCTION AGAINST AN ACT ALSO A CRIME

The Commonwealth sued on the relation of the Jefferson County Attorney to enjoin defendant from engaging in the business of making loans of $300 or less and charging interest in excess of 6%, without having been granted a license to engage in the small loan business, contrary to Kentucky Statutes 883i-1 to 883i-32, inclusive, which made such act a crime and provided a penalty therefor. Defendant used a life insurance policy device which forced all applicants for loans to obligate themselves to pay to the defendant company a sum amounting to more than 6% of the original loan. From a decree denying the injunction, complainant appeals. *Held:* Reversed and remanded. *Commonwealth ex rel. Grauman* v. *Continental Co., Inc.*, 275 Ky. 238, 121 S.W. (2d) 49 (1938).

Equity will not act to enforce the criminal law by enjoining a crime as such.[1] But the mere fact that an act sought to be enjoined also subjects the actor to criminal prosecution will not serve to exclude the exercise of equity jurisdiction if the facts of the case are such that equitable relief is the proper remedy.[2]

Thus equity has enjoined an act, even though it be a crime, in certain classes of cases, namely, purpresture, irreparable injury to property, or nuisances.[3] Obviously the instant case is not one of irreparable injury to private property nor of purpresture. Thus it would seem that the court is either treating an unlicensed small loan business as a nuisance, or extending the criminal jurisdiction of equity beyond the aforementioned classes of cases.

Kentucky has long recognized the power of equity to enjoin nuisances at the suit of the state.[4] Thus it has enjoined the maintenance of a pool room,[5] of an auditorium for staging prize fights,[6] and of a bawdy house.[7] In those cases the maintenance of such establishments

[1] Atty. Gen'l. v. Utica Ins. Co., 2 Johns. Ch. 371 (N.Y. 1817); Com. v. Kentucky Jockey Club, 238 Ky. 739, 38 S.W. (2d) 987 (1931); State v. Publix Theater Corp. of N.Y., 37 S.W. (2d) 248 (Texas 1931).

[2] In re Debs, 158 U.S. 564, 15 S. Ct. 900, 39 L. Ed. 1092 (1894); U.S. v. Rosoff, 27 F. (2d) 719 (C.C.A. 2d, 1928); State v. Lindsay, 85 Kan. 79, 116 Pac. 207 (1925); State v. McMahon et al., 128 Kan. 772, 280 Pac. 907 (1929); Pomeroy, Equity Juris. (2d ed. 1919) sec. 1894.

[3] Walsh, Equity (1930), pp. 198–212; Pomeroy, Equity Juris. (2d ed. 1919), sec. 1893-4; 2 Story, Equity Juris. (11th ed. 1873), sec. 921 et seq.; Walsh, Equitable Relief Against Nuisance, 7 N.Y.U. Law Rev. 352 (1929); Note, (1931) 20 Ky. L.J. 163.

[4] Com. v. McGovern, 116 Ky. 212, 75 S.W. 261 (1903), and cases there cited.

[5] Respass v. Com., 131 Ky. 807, 115 S.W. 1131 (1909).

[6] Com. v. McGovern, *supra*, note 4.

[7] King v. Com., 194 Ky. 143, 238 S.W. 373 (1922).

is more traditionally a nuisance, directly affecting the health, safety, or morals of the public. On the other hand, the court has enjoined the practice of dentistry without a license,[8] and the operation of a drug store filling prescriptions without employing a licensed pharmacist.[9]

In the principal case much reliance is placed on the case of *Kentucky Dental Examiners* v. *Payne*.[10] In that case a competent dentist who had not obtained a license was enjoined from practicing his profession until he complied with the law and obtained one. The court stated that unlicensed dentistry is injurious to the public health and therefore a nuisance.[11] The case has been criticised because the unlicensed practice by a competent dentist is not directly injurious to health, and thus not within the scope of the traditional nuisance, even though practice by an incompetent dentist could clearly be enjoined.[12] If the state must regulate the practice of dentistry to protect the public health, such regulation is provided for by its criminal law,[13] and if injunctions are granted they merely repeat the prohibitions of the statutes.[14]

Assuming, however, that there is a sufficiently close relation between the licensing of dentists and the public health to permit the court to enjoin practice without a license as a public nuisance, there still does not appear to be any adequate basis for allowing the injunction of the operation of a small loan business without a license. Operation of a small loan business, licensed or not, does not, either directly or indirectly, affect the public health, morals, or safety. The injury sought to be prevented goes rather to the economic well-being of a certain class of citizens. That interest is generalized by the court under the term "the

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[8] Ky. State Bd. of Dental Examiners v. Payne, 213 Ky. 382, 281 S.W. 188 (1926); Jones v. Com., 222 Ky. 173, 300 S.W. 346 (1927); Com. ex rel. Atty. Gen'l. v. Pollitt, 258 Ky. 489, 80 S.W. (2d) 543 (1935). In the Jones case no question was raised as to the propriety of equity jurisdiction. The Pollitt case relied heavily upon the Payne case and the case of Com. v. Brown, *infra*, note 9. In the Brown case, however, the appellant's occupation was imminently hazardous "to the lives and health of the public", and therefore a nuisance.

[9] Com. v. Brown, 239 Ky. 197, 39 S.W. (2d) 223 (1931).

[10] *Supra*, note 8.

[11] 213 Ky. 382, 386; 281 S.W. 188, 190.

[12] See Note, 75 Pa. L. Rev. 73, to the effect that, "It can hardly be contended that the practice of dentistry without a license constitutes a menace to the public health or welfare, in view of the fact that, upon obtaining a license from the board, the very acts now sought to be restrained would receive legal sanction."

[13] The Court in the principal case, at page 250, said, "The prevention of crime is not the primary purpose of the Small Loan Law, but it has for its underlying purpose the protection of the public and the public welfare." And further, "The purpose of the statute was not to create a crime, but to provide for the public welfare." All criminal statutes are enacted, not for the purpose of creating a crime, but to provide for the general welfare. Were this the sole basis of equity jurisdiction, analogously, an injunction should be granted to prevent any and all crimes.

[14] McClintock, Equity (1936), pp. 287-288.

general welfare." But as has been pointed out, although the violation of a statute necessarily affects the public welfare, equity will not ordinarily enjoin such violation unless it is a purpresture, irreparable injury, or nuisance.[15]

The court goes far in the instant case in extending the jurisdiction of equity by allowing the injunction of an unlicensed small loan business. And following the approach that wherever the general welfare is endangered by criminal acts, or criminal procedure is inadequate to prevent crime, equity may relieve by injunction, can lead only to the result that equity could enforce the criminal law as such,[16] in disregard of the constitutional rights guaranteed a defendant in a criminal prosecution.[17]

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VENDOR AND PURCHASER—EJECTMENT BY THE VENDOR.

Plaintiff contracted to sell a house and lot to defendant for the sum of $2,000, of which $100 was then paid, the remainder to be paid in monthly installments of $25. Defendant was placed in possession, agreeing that if he defaulted in his installments, or if he failed to keep up the insurance, the vendor should have the right to enter and take possession, and that any payments made under the contract should remain in the vendor as liquidated damages and rent for the use of the property. Defendant paid only two of the monthly installments and defaulted in the payment of the insurance premiums, whereupon the vendor brought an action of ejectment. The court held for the plaintiff because the vendee's payments did not amount to such a sum that he could be deemed to have acquired a "substantial equitable title" in the land. *Maschinot* v. *Moore*, 278 Ky. 36, 120 S.W. (2d) 750 (1938).

The courts in most jurisdictions will entertain an action of ejectment when the vendee has defaulted in the payment of his contract installments.[1] The action is essentially a possessory one,[2] and its

[15] *Supra*, note 3.

[16] Courts saying that the basis of equity jurisdiction in this class of cases is the inadequate remedy at law include Illinois, in People v. Clark, 268 Ill. 156, 108 N.E. 994 (1915), and Kansas, in State v. McMahon, *supra*, note 2. See, also, 2 Story, Equity Juris. (11th ed. 1873), sec. 924. The Kentucky court also follows that trend of reasoning in the Payne case. But see Note, (1931) 20 Ky. L.J. 340; Note, (1927) 75 Pa. L.R. 73; Dean v. State, 151 Ga. 371, 106 S.E. 792 (1921).

[17] People v. Seccombe, 103 Cal. App. 306, 284 Pac. 725 (1930); State v. Saunders, 66 N.H. 39, 25 Atl. 588 (1889); State v. Diamint, 73 N.J.L. 131, 62 Atl. 286 (1905); State v. Martin, 77 N.J.L. 652, 73 Atl. 548 (1909); Heddon v. Hand, 90 N.J. Eq. 583, 107 Atl. 285 (1919); Note, (1926) 6 Boston U.L.R. 128; and Note, (1920) 20 Col. L.R. 605.

[1] Burnett v. Caldwell, 76 U.S. (9 Wall.) 290, 19 L. Ed. 712 (1869); Goode v. Temple, 221 Ala. 588, 130 So. 202 (1930); Lewis v. Rouse, 29 Ariz. 156, 240 Pac. 275 (1925); Empire Inv. Co. v. Mort, 169 Cal. 732, 147 Pac. 960 (1915); Roller v. Smith, 76 Colo. 371, 231 Pac. 656 (1925); Drollinger v. Carson, 97 Kan. 502, 155 Pac. 923 (1916); Balesh v. Alcott, 257 Mich. 352, 241 N.W. 216 (1932); Rose v. Loyd, 98 Mo. 253, 11 S.W. 622 (1889); Plet v. Wilson, 134 N.Y. 339, 31 N.E. 336 (1892); Credle v.