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A large number of decisions were reported in 1964 in cases originating in the chancery courts but only one appears to establish a significant rule; the others largely clear up procedural problems of equity practice.

I. Injunction

A. *Torts: Protection of Personal Rights*

1. *Violation of the Right of Privacy.*—In 1956 in the case of *Langford v. Vanderbilt University*,[1] the Tennessee Supreme Court recognized the existence of a common law right of privacy. The Court of Appeals, Western Division, in *Kyritsis v. Vieron*,[2] now holds that injunction does not lie to protect a personal right.

The suit arose in the chancery court of Shelby County. Complainant

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1. 199 Tenn. 389, 287 S.W.2d 32 (1956).
2. 382 S.W.2d 553 (Tenn. App. W.S. 1964).

alleged he was pastor of the Saint George's Greek Orthodox Church affiliated with the Greek Orthodox Church of North America and Canada, and that defendant was pastor of the Church of the Annunciation affiliated with the Greek Orthodox Archdiocese of North and South America. Complaint charged defendant with publishing to the community at large and to complainant's parishioners and others in particular a letter from defendant's archbishop that complainant had been unfrocked from that denomination, and further charged that defendant had represented complainant to be unworthy of membership in the Ministerial Association of Memphis. The complainant withdrew his request for damages so as to leave the sole question whether or not injunction would issue. The case was heard on oral evidence and depositions and the chancellor dismissed as he considered the issues to turn on the determination of ecclesiastical questions. On appeal, complainant assigned as the sole error that the lower court failed to grant appellant an injunction restraining appellee from further libel and slander, and in dismissing his bill.

In the court of appeals decision, Judge Bejach quoted from *American Jurisprudence*,[3] that equity in the absence of some independent grounds would not grant an injunction restraining the publication of matter defaming the plaintiff personally, the principal grounds of refusal being equity's traditional limitation of jurisdiction to the protection of property rights and the fear that such relief will violate the constitutional rights of freedom of speech and press, and of trial by jury. The court also held that to determine whether defendant was justified in publishing and circulating the letter it would be necessary to pass on the ecclesiastical actions and decisions of the Greek Orthodox Church and that the courts of Tennessee are without power to do so.

Since Lord Eldon, in *Gee v. Prichard*,[4] remarked that the issuance of an injunction would not turn upon pain to feelings but upon "whether the bill has stated facts of which the Crown can take notice, as a case of civil property which it is bound to protect," American courts and writers have adopted the requirements of a property interest as a requisite for injunctive relief. During the nineteenth and twentieth centuries, courts have extended the range of protectable property interest permitting injunction to become increasingly available to protect what had been previously considered personal rights. Some jurisdictions have rejected the rule outright. Statutes have been important in the undermining and repudiation of the rule.[5] A variety

3. 28 AM. JUR *Injunctions* § 133 (1938).
4. 2 Swan Ch. 402, 36 Eng. Rep. 670 (1818).
5. Orloff v. Los Angeles Turf Club, Inc., 30 Cal. 2d 110, 180 P.2d 321 (1947).

of reasons have been suggested why injunctive relief should not lie, including the public interest in free speech.[6] Before granting an injunction, the court must balance the need of complainant, the interest of the defendant in publishing his ideas, and the interest of the community in having information upon which it may base actions.

The majority American rule is that equity will not enjoin libel or slander. The English courts long ago rejected this rule. In England, an injunction will issue upon request of the plaintiff after a jury determination of guilt. The American courts have recognized the inadequacy of the legal remedy, but have generally held that granting an injunction would violate the defendant's and the community interest in free speech.[7]

In a federal district court case in Tennessee,[8] the court said:

> Generally equity has no jurisdiction to enjoin the uttering of a slander or the writing of libel, but equity may issue injunction if the slander or libel is in bad faith, for the sole purpose of injuring the trade of the person defamed.

The Tennessee Supreme Court in a licensing case had indicated that an injunction would issue for the protection of any right, legal or equitable, upon proper application to chancery court unless the legal remedy of compensatory damages would be full, adequate, and complete.[9]

Judge Bejach and the chancellor cited *Nance v. Busby*,[10] as depriving the civil courts of jurisdiction to adjudicate any ecclesiastical matter. That was a suit to determine right to the possession of a church building after a schism in the congregation and excommunication of the complainants. The supreme court in reversing the decree in favor of complainants held the church alone had the right to determine the validity of its actions in excluding complainants and as the actions claimed to forfeit defendants' rights to the property occurred after the excommunications, the complainants had no right in the property.

The court might have affirmed *Kyritsis v. Vieron* narrowly on the grounds that the denial of injunction was within the chancellor's discretion;[11] that there was a full, adequate and complete remedy at law;[12] that defendant was within the scope of privilege in that de-

6. Praucha v. Weiss, 233 Md. 479, 197 A.2d 253, *cert. denied*, 377 U.S. 992 (1964).
7. Kwass v. Kersey, 139 W. Va. 497, 81 S.E.2d 237 (1954).
8. Starnes v. Success Portrait Co., 28 F. Supp. 711 (E.D. Tenn. 1939).
9. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1946).
10. 91 Tenn. 303 (1892).
11. Spencer v. O'Brien, 25 Tenn. App. 429, 158 S.W.2d 445 (E.S. 1942).
12. Kivett v. Nevils, 190 Tenn. 12, 227 S.W.2d 39 (1950); Wise v. McCanless, *supra* note 9.

fendant's acts were not for the sole purpose of injuring the complainant;[13] or that public policy in this circumstance would favor full and free disclosure.[14] It was not necessary to hold that an injunction will not issue to restrain a libel or to pass on the actions and decisions of the ecclesiastical court in order to decide the case. The question was not whether publishing a letter stating a priest was unfrocked was a libel, but whether defendant was maliciously circulating the letter outside the area of privilege in an unwarranted invasion of complainant's privacy in his personal and professional life for which invasion damages would not be full, adequate and complete remedy.

Injunctions in defamation and right of privacy cases do not necessarily involve the danger to public interest that censorship by a continuing agency does. The defendant is not called on to justify his statement any more than in a damage action although plaintiff may find it easier as it is not necessary to prove substantial injury. The increasing judicial willingness to enjoin business defamation indicates recognition that defendant's protection against restraint of speech is not controlling. Where the danger to plaintiff's reputation is great and the public interest is minimal, it is difficult to see why an injunction should not issue where trial by jury is available to reflect community opinion.

The case illustrates well the difficulties courts have had in developing the right of privacy[15] and demonstrates the need for legislation to protect the right of privacy by issue of injunction after jury trial. The Tennessee case of *Kivett v. Nevils,*[16] and the West Virginia case of *Kwass v. Kersey,*[17] illustrate the problem. In the *Kivett* case, complainant alleged he was being maliciously libeled by exhibition of a forged letter offering settlement of a threatened lawsuit based on illicit relations with a fifteen-year-old girl. In *Kwass,* complainant, an attorney, alleged he was being injured in his profession by the false assertion he had overreached a wife in negotiating the property settlement in a divorce case in which he represented the husband. In both cases, injunctive relief was denied.

B. *Contracts*

1. *Violation of a Non-Competition Covenant.*—In *Federal Mutual Implement & Hardware Insurance Co. v. Johnson,*[18] the Court of Appeals, Eastern District, reversed a decree of the chancery court

13. Starnes v. Success Portrait Co., *supra* note 8.
14. Praucha v. Weiss, *supra* note 6.
15. HART & SACHS, THE LEGAL PROCESS, 472-77 (Tentative ed. 1958).
16. Kivett v. Nevils, *supra* note 12.
17. *Supra* note 7.
18. 382 S.W.2d 214 (Tenn. App. W.S. 1964).

of Washington County holding complainants barred from enforcing the no-competition covenant of employment contract because they came into court with "unclean hands." The lower court had ruled against the complainant because it had breached its promise to give defendant an exclusive territory. Judge Bejach, for the court, held complainant not barred, since the defendant had failed to complain when he learned of another salesman in his exclusive territory, had thus effectively waived strict performance.

The decision reaffirmed the earlier case of *Federated Mutual Implement & Hardware Co. v. Anderson*,[19] holding the limitations as to time and territory were reasonable.[20]

II. Practice and Procedure

A. *Motion To Dismiss*

1. *Complainant's Right To Dismiss Without Prejudice.—National Linen Service Corp. v. Teichnor*[21] clears up the apparent conflict between *Roberts v. N. C. & St. L. Ry.*[22] and *Shelton v. Armstrong*,[23] as to a complainant's right to dismiss without prejudice. Justice Dyer, for the court, overruled *Roberts* holding the chancellor is vested with discretion as to whether complainant may dismiss without prejudice. *Roberts* and *Shelton* were distinguishable by the presence of an agreement to try the case on a day certain and the trial court could have affirmed on that limited question, but they chose this vehicle to clear up the question. On the second question, whether the chancellor abused his discretion, no facts are given on which comment may be made.

2. *Effect of Defendant's Motion To Dismiss.*—Use of a motion to dismiss at the close of complainant's proof to test its sufficiency was disapproved on *Hon v. Varnell*,[24] but the refusal of the chancellor to allow defendants to introduce any proof after ruling on the motion was held to be error. The opinion held the motion to dismiss in equity analogous to a motion for directed verdict in law rather than a demurrer to the evidence and the defendant is not entitled to a ruling on his motion until he rests his case.

B. *Demurrer: Multifariousness*

1. *Improper Joinder of Actions in Proceeding for Correction of*

19. 49 Tenn. App. 124, 351 S.W.2d 411 (E.S. 1961).
20. Two years in six counties.
21. 374 S.W.2d 377 (Tenn. 1964).
22. 6 Ct. Civ. App. 149 (1915).
23. 25 Tenn. App. 305, 156 S.W.2d 447 (M.S. 1945).
24. 382 S.W.2d 535 (Tenn. App. W.S. 1964).

Errors.—The City of Knoxville sought to set aside a default decree in a twenty-seven-year-old action to establish complainant's title to street or to recover compensation. The city sought relief on the dual grounds that complainant was not entitled to relief and that there was a prior settlement. The complainant demurred that the bill of review was in double aspect (1) for error apparent, and (2) to impeach for fraud; the chancellor overruled the demurrer and complainant appealed. The supreme court, by Judge Felts, reversed,[25] holding that the bill of review should have been dismissed, that though complainants might not be given possession of the street, they were entitled to damages for the taking.

C. *Amendment*

1. *Right of Amendment after Dismissal.*—In a case of first impression[26] in the state, the supreme court upheld the chancellor's exercise of discretion in refusing to allow complainant to amend further after ruling on demurrer that complainant's bill should be dismissed. The principal question concerned the right of a judgment creditor to proceed against judgment debtor's insurer for bad faith to settle within policy limits and to recover the excess of the judgment above the policy limits. The court held no harm resulted to the judgment creditor from insurer's refusal to settle,[27] and that insured's cause of action was not assignable, being an action ex delicto.[28]

D. *Declaratory Judgment*

1. *Application of "Clean Hands" Doctrine.*—The decision in *Hogue v. Kroger*,[29] put an end to the fresh milk "price war" in Shelby County where milk had been selling as low as nine cents per half-gallon. The dispute involved the interpretation of the Unfair Milk Sales Act.[30] Complainant objected to defendants' giving trading stamps with milk, reduced his cash price to meet defendant's price less value of stamps, and filed a declaratory judgment action for determination of his right under the statute to do so. The Commissioner of Agriculture filed a cross-bill seeking an injunction against complainant's price reduction, and the chancellor denied the injunction.[31] Defendants denied

25. Emory v. City of Knoxville, 379 S.W.2d 753 (Tenn. 1964).
26. Dillingham v. Tri-State Ins. Co., 381 S.W.2d 914 (Tenn. 1964).
27. Complainant offered to settle for $3,000; after refusal to settle, complainant recovered judgment for $7,500 on which insurer paid policy limits of $5,250, a gain of $2,250.
28. Carne v. Maryland Cas. Co., 208 Tenn. 403, 346 S.W.2d 259 (1961).
29. 373 S.W.2d 714 (Tenn. 1964).
30. TENN. CODE ANN. §§ 52-331, -334 (1956).
31. Hogue v. Kroger Co., 210 Tenn. 1, 356 S.W.2d 267 (1962).

complainant's right to relief because of his participation in the price cutting. The chancellor granted the requested declaratory decree that (a) merchants who give stamps with fresh milk must raise their price by the value of the stamps, and (b) upon their failure to do so competitors may reduce prices in good faith to meet the competition. On appeal, the supreme court modified and affirmed, holding that the "clean hands" defense is not available in a declaratory judgment action, that merchants who give stamps must raise the price of milk the value of the stamps, and that competitors who cannot in good faith meet competitor's unlawful low prices but must seek the relief provided by statute. The last qualification may prove a real burden on dealers in ascertaining the lawfulness of competitor's low prices before meeting competition. The court refused the analogy of trading stamps to "fair trade" pricing, which raises new problems of uniform enforcement for manufacturers selling their fair traded products through retailers, some of whom give trading stamps.

III. Review of Administrative Action

Two interesting statutory interpretation questions were decided in cases which came to the chancery courts by writ of *certiorari* to review administrative determinations. In the case of *Adams v. County Beer Bd.*,[32] the supreme court held that a baptismal site located on petitioner's property and subject to his right to forbid its use was not a public place within the meaning of the licensing statute.[33] In a more important case, the court of appeals reversed the chancellor's holding that the Tennessee Real Estate Commission had no right to disqualify a real estate broker for acts not done in his capacity as a broker.[34] The court, by Judge Shriver, interpreted the statute[35] as allowing revocation of license for fraudulent dealings in real estate though not done in the capacity of a real estate broker.

32. 379 S.W.2d 769 (Tenn. 1964).
33. Tenn. Code Ann. § 57-205 (1956).
34. Real Estate Comm'n v. Godwin, 378 S.W.2d 439 (Tenn. App. M.S. 1964).
35. Tenn. Code Ann. § 62-1301 (1956).