Vanderbilt Law Review

Volume 10
Issue 5 *Issue 5 - A Symposium on Law and Christianity*

Article 16

8-1957

Equity -- 1957 Tennessee Survey

Thomas F. Green Jr.

EQUITY—1957 TENNESSEE SURVEY

THOMAS F. GREEN, JR.*

JURISDICTION

Among what is said[1] to be the largest number of public laws ever passed by a Tennessee Legislature, the General Assembly passed an act which creates a statutory exception to the doctrine that equity will not enjoin the commission of a crime unless the conduct comes within some recognized head of equity jurisdiction. The statute[2] makes barratry a misdemeanor and continues:

> Courts of record having equity jurisdiction shall have jurisdiction to enjoin barratry. Suits for an injunction may be brought by the district attorney general of the district in which the offense is committed.[3]

The statute contains the following definition: "(a) 'Barratry' is the offense of stirring up litigation."[4]

The statute is listed in one classification of the General Assembly's 1957 output as race relations legislation.[5]

EQUITABLE REMEDIES

Hall v. Britton[6] was a suit in the chancery court to enjoin defendants, who were complainant's former employees, from selling a product produced with the aid of complainant's trade secret. Defendant appealed from a decree for complainant. The court of appeals stated that injunctive relief is extraordinary and should be granted with great caution and only after full and ample evidence that it is necessary but held that under the circumstances presented in this action, wherein it was determined that defendants were using complainant's trade secret to produce a competing product, injunctive relief was warranted. It also was held that in a cause tried according to the forms of chancery the appellant is entitled to a re-examination of the whole matter of law and fact appearing in the record. The appellate court will not, however, substitute its judgment as to the credibility of witnesses, if there is nothing else in the evidence, such as documentary evidence or evident self-contradiction of the witness, or irreconcilable impeachment of the witness, or testimony contrary to facts of which the court should take judicial notice or other

* Visiting Professor of Law, Vanderbilt University, 1956-57.

1. Legislative Bulletin (1957), Bar Association of Tennessee, 1.
2. Tenn. Pub. Acts 1957, c. 104, TENN. CODE ANN. §§ 39-3405 to -3410 (Supp. 1957), amending TENN. CODE ANN. § 39-3212 (1956).
3. Tenn. Pub. Acts 1957, c. 104, § 6, TENN. CODE ANN. § 39-3409 (Supp. 1957).
4. Tenn. Pub. Acts 1957, c. 104, § 1, TENN. CODE ANN. § 39-3405 (Supp. 1957)
5. Legislative Bulletin (1957), Bar Association of Tennessee, 6.
6. 292 S.W.2d 524 (Tenn. App. W.S. 1953).

matter to overcome the presumption of correctness of the judgment or decree below.

Nicely v. Nicely[7] was a proceeding to sell for partition certain tracts of land wherein defendant filed a cross-bill alleging that the land should be divided in kind. The court of appeals held that the evidence was sufficient to support a finding that the two tracts were not susceptible to partition in kind among the parties who held title thereto as tenants in common and that it would be advantageous to all parties that the land be sold and the proceeds divided among those entitled thereto. The test for determining whether land should be sold instead of partitioned in kind is whether it will bring more money when sold as a whole than the several shares would bring in the aggregate when sold separately to different purchasers after a partition in kind.

In the case of *Hackett v. Steele*,[8] the Supreme Court of Tennessee affirmed a decree of the Chancery Court, Hamilton County, sustaining the demurrer to a bill to cancel restrictions on lots in a residential subdivision restricted to residences on the alleged ground that there had been such a radical change in the physical condition of the property because of municipal expansion and the spread of the commercial district of Chattanooga that enforcement of the restrictions was inequitable and the purpose for which the restrictions were imposed could no longer be accomplished. The court said that the bill was insufficient because it failed to allege that there had been such a radical change in the neighborhood that the purposes of the restrictive covenants relating to the entire subdivision had become burdensome and were not being maintained for the benefit of the owners of the lots.

In *Preston v. Smith*,[9] Judge Shriver, speaking for the court of appeals, observed that a court of equity has the power and authority to make a decree based upon equitable principles in the light of all the facts and circumstances involved. In this case the court held that husband and wife who acquired title to realty by adverse possession for 20 years without color of title held jointly as tenants in common and not as tenants by the entirety and that after the death of the pair the heirs of each collectively held a one-half undivided interest.

PARTIES IN EQUITY

Maxwell v. Lax[10] deals with standing to sue, holding that a private citizen who sustains an injury to his property may maintain a suit for injunction against continuing an obstruction to a public street or high-

7. 293 S.W.2d 30 (Tenn. App. E.S. 1956).
8. 297 S.W.2d 63 (Tenn. 1956).
9. 293 S.W.2d 51 (Tenn. App. M.S. 1955), discussed in 10 VAND. L. REV. 460 (1957), and Harbison, *Domestic Relations—1957 Tennessee Survey*, 10 VAND. L. REV. 1082, 1093 (1957).
10. 292 S.W.2d 223 (Tenn. App. W.S. 1954).

way. He may sue without first obtaining permission from municipal officials, particularly where his property is on the highway at the point of the obstruction. A decree of a mandatory injunction, requiring the removal of a lighted sign which had been placed on the right-of-way of the street by defendants and which was held to be a nuisance because it dangerously obstructed the view of the traveling public, obstructed the entrance to plaintiffs' land and disturbed plaintiffs by shining in their windows, was affirmed.

CONTEMPT

One of the peculiarities of equity is that its decrees frequently consist of in personam orders. The violation of such an order is contempt of court. Contempts are classified as either civil or criminal.[11] In *Davidson County v. Randall*,[12] the defendant was found guilty of contempt for violating an injunction against the removal and sale, on a commercial basis, of soil from his property located in a district zoned for residential use. His defense to the contempt charge was that he was not selling the dirt. The evidence showed that the soil was being dug by the large machines and vehicles of the same contractor and in the same way as before the injunction issued. The allowing of the removal of the dirt by the commercial dirt hauler was held to be a violation of the spirit of the injunction. In the course of the opinion the statement was made that when one violates an injunction as alleged in the petition the contempt is what is known as criminal contempt and the laws ordinarily applicable in criminal prosecutions apply. It was also said that the defendant is presumed to be innocent and must be proved to be guilty beyond a reasonable doubt but that after conviction the presumption of innocence vanishes and the finding below raises a presumption of guilt which the accused must overcome.

The holding that the case involved a criminal contempt apparently was based on the kind of violation. The court cited as authority an earlier decision of its own.[13] The act of the defendant in the earlier case, however, was of a different character. There the violation of the injunction was the unlawful sale of intoxicating liquor, and the injunction had been issued under a statute authorizing the abating of the particular class of acts as a public nuisance.[14] The acts of the defendants in the two cases were apparently crimes because the violation of a zoning regulation is made a misdemeanor by section 13-411 of the Teunessee Code.

Another, and perhaps better, test by which to determine whether

11. Note, 10 VAND. L. REV. 831, 832 (1957).
12. 300 S.W.2d 618 (Tenn. 1957).
13. State *ex rel.* Anderson v. Daugherty, 137 Tenn. 125, 191 S.W. 974 (1916).
14. TENN. CODE ANN. § 23-302 (1956).

the defendant was charged with civil or criminal contempt is the nature of the proceeding brought against him for the violation of the decree. If the purpose is to get relief for the plaintiff, (e.g., by having defendant imprisoned until he obeys the court's decree),[15] the proceeding is for civil contempt. If the purpose is to vindicate the authority of the court and to punish the defendant for flaunting it, the proceeding is for criminal contempt.[16] In the *Randall* case this test leads to the same result that the court reached—a classification as criminal contempt. The indication, found in the report of the case, which bears on the purpose of the proceeding, is the sentence of the defendant to two days in jail. If the trial judge had considered the proceeding to be for civil contempt, he should have sentenced the defendant to be confined until he ceased having the soil removed by commercial dirt haulers. Had the Supreme Court expressly applied the test of the purpose of the contempt proceeding, it would have avoided giving the misleading impression that such a violation as is alleged in this case can only be a criminal contempt.

In another contempt case, *Matthews v. Eslinger*,[17] it was held that where defendant's bid was accepted by the master at a chancery sale and he failed to comply therewith and defendant was notified of the date of resale but thereafter sought no relief whatever until petition was filed against him, defendant was liable for the deficiency and also was guilty of contempt of court. The court of appeals en banc also held that the ground on which he could be adjudged in contempt was the abuse of, or unlawful interference with, the proceedings of the court. Other points decided were that a person who bids at a chancery sale submits himself to the jurisdiction of the court as to all matters connected with such bid and if his bid is accepted but he does not comply with the terms of the sale the property may be put up for sale again and, if it sells for less, the original high bidder is liable for the difference even though the sale to him had not been reported to, nor confirmed by, the chancellor. He would be guilty of contempt where he made the bid with the idea of inspecting the property before he complied with the terms of the order of sale and in furtherance of his scheme obtained from the master an extension of time from Saturday to Monday to comply with his bid. The opinion also says that the master may allow the highest bidder a reasonable time to comply with his bid which might be a day or a week but should not be so long as to leave no time for readvertising the property.

15. See TENN. CODE ANN. § 23-904 (1956); GIBSON, SUITS IN CHANCERY § 968 (5th ed. 1956).
16. State *ex rel.* Anderson v. Daugherty, 137 Tenn. 125, 127, 191 S.W. 974 (1916).
17. 292 S.W.2d 543 (Tenn. App. 1955) (en banc).

PRACTICE

The 1957 General Assembly[18] amended the practice in chancery courts in Tennessee so as to provide that a sworn answer, when required by a bill of discovery or when the oath to the answer is not waived, shall have no more weight or effect in evidence than the deposition of the defendant filing such answer.

18. Tenn. Pub. Acts 1957, c. 153, TENN. CODE ANN. § 21-628 (Supp. 1957).