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Chapter 5: Equity and Equity Practice

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CHAPTER 5

Equity and Equity Practice

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§5.1. General. During the 1958 SURVEY year, no truly novel or difficult problems in the fields of equity and equity practice were presented to the Supreme Judicial Court. The Court was called upon to reiterate principles previously announced and expounded in the area. In this respect, it should be noted that the common law which our ancestors brought to this country included chancery powers as well as legal powers,[1] all exercised by the same court. It was not until 1877 that original jurisdiction in equity was conferred by statute[2] upon the Supreme Judicial Court. Subsequently the Superior Court also became a court of equitable jurisdiction. Prior to 1877, specific or limited powers were conferred by successive statutes;[3] however, until 1877 the exercise of jurisdiction was limited to cases in which there was no plain, adequate and complete remedy at law.

More than eighty years have thus elapsed since 1877, when the general equity powers were first conferred. The Supreme Judicial Court has in that period been afforded numerous opportunities to consider every facet of equity jurisprudence and equity jurisdiction. In an ever changing society, the immediate problems or transactions with which equity deals will vary; the general rules, the maxims, the principles and the very philosophy of equity, however, remain unchanged. It is, therefore, not surprising to find few if any startling or radical pronouncements in this field.

§5.2. Personal rights: Availability of equitable relief. In *Messina v. La Rosa*[1] the Supreme Judicial Court considered the ownership and exercise of rights in connection with interment, disinterment, cemeteries and commemorative markers. There is no novelty in the fact that relatives cannot agree, even on the matter of burying their dead,

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§5.1. [1] See Parker v. Simpson, 180 Mass. 334, 346-351, 62 N.E. 401, 405-407 (1902).

[2] Mass. Stats. of 1877, c. 178. See, however, Mass. Stats. of 1798, c. 77, which conferred jurisdiction on the Supreme Judicial Court in the matter of foreclosure or redemption of mortgages.

[3] See Jones v. Newhall, 115 Mass. 244, 251 (1874).

§5.2. [1] 1958 Mass. Adv. Sh. 715, 150 N.E.2d 5.

and have resorted to the courts to resolve their disputes.[2] It had been previously ruled that while there is no right of property in a dead body, controversies as to the right of disposing of it are within the jurisdiction of a court of equity.[3] The Court seized the opportunity, however, in *Messina* to state that the case did not involve "an application of any rule of property law, but is a recognition of principles of ethics, proprietary and common decency which equity is peculiarly qualified to enforce." [4]

This case comes within the province of "all cases and matters of equity cognizable under the general principles of equity jurisprudence." [5] It is indeed a recognition that here is a matter of grave concern to certain people; that here exist controversies which a court of law cannot cope with because of its limited remedial power of awarding money damages. Equity with its power of decree and injunction can order the doing or undoing of the act that has affronted the memory of a dear one.

It was once thought that a suit for injunctive relief must be based upon a property right as distinguished from a personal right;[6] today, however, it is taken for granted that personal rights are no less important to the individual than property rights nor are they "less vital to society or less worthy of protection by the peculiar remedies equity can afford than are property rights." [7]

§5.3. **Parties: Indispensable or necessary.** The subject of parties in connection with equity procedure came before the Supreme Judicial Court in *Franks v. Markson*.[1] The case involved a bill in equity which sought to enjoin among other things the right to the use of a trade name. The individual plaintiffs were residents of this Commonwealth, and the corporate plaintiff was incorporated and doing business in Massachusetts. The defendants totaled nineteen in number, and consisted of two individuals and seventeen corporations. Only one individual and one corporate defendant were present in this jurisdiction and were duly served. The issue as to parties was raised by a plea in abatement, a motion to decline jurisdiction, and a plea of forum non conveniens. The Supreme Judicial Court held that these pleadings were properly denied, but that a demurrer should have been sustained because the bill did not set forth a case for equitable relief.

The doctrine that equity procedure requires jurisdiction of all persons whose rights are to be affected by the final decree was re-

2 See Green v. Horton, 326 Mass. 503, 95 N.E.2d 537 (1950); Magrath v. Sheehan, 296 Mass. 263, 5 N.E.2d 547 (1936).

3 Weld v. Walker, 130 Mass. 422 (1881).

4 1958 Mass. Adv. Sh. 715, 718, 150 N.E.2d 5, 7.

5 G.L., c. 214, §1, as amended.

6 Worthington v. Waring, 157 Mass. 421, 32 N.E. 744 (1892).

7 Kenyon v. City of Chicopee, 320 Mass. 528, 533, 70 N.E.2d 241, 244 (1946). See 1956 Ann. Surv. Mass. Law §5.2.

§5.3. 1 1958 Mass. Adv. Sh. 539, 149 N.E.2d 619.

affirmed. "It is a fundamental principle of equitable procedure that a court will not proceed to a final determination, which may affect third persons, without causing them to be made parties to the bill in order that after a hearing, at which they have had their day in court, their claims may be adjudicated." [2]

The *Franks* case again points out the difference between necessary absent parties in contradistinction to indispensable absent parties. Here the Court recognizes that transactions, businesses and human relations are not confined within state boundaries. Justice must not be defeated or denied by the spread of these relationships across state boundaries, and even national boundaries. The principle as to absent defendants is that all parties having a material interest in the subject matter of the suit must be made parties, and a court may then proceed to a decree as to parties before it, even if other persons over whom it has no jurisdiction are absent; if the absent parties are, however, indispensable, then the court must decline to act.[3] The Supreme Judicial Court in *Franks* held that the absence of some defendants did not preclude the court below from proceeding to adjudicate the rights of those who were before it but its adjudication would not affect the rights of those who were not.

§5.4. Unfair competition. Unfair competition is a subject which, it would seem, has been completely and thoroughly examined time and again. It was, nonetheless, again considered by the Supreme Judicial Court during the 1958 SURVEY year. *Franks v. Markson*[1] resulted only in a further refinement of the doctrine that the trade name and good will of a business will be protected from usurpation or piracy by others.[2] The rule, however, further requires that the plaintiff's trade name acquire a secondary meaning before it can expect to obtain protection by decree of a court of equity.[3] It was thus held that the use of the trade names "Jim Clinton" and "Bill Benton" for the same kind of businesses using the same modes of merchandising and advertising would not cause any confusion in the mind of the public nor cause any reasonable person to mistake one name for another.

§5.5. Statutory injunctions: Discretion of the court. In *Skil Corp. v. Barnet*,[1] the statutory provision for injunctive relief under Section 7A of G.L., c. 110 was considered by the Court.[2] This is another ex-

2 1958 Mass. Adv. Sh. at 543, 149 N.E.2d at 622, and cases cited.

3 J. P. Eustis Manufacturing Co. v. Saco Brick Co., 198 Mass. 212, 219-221, 84 N.E. 449, 451-452 (1908); Superior Court Rule 15 (1954).

§5.4. 1 1958 Mass. Adv. Sh. 539, 149 N.E.2d 619.

2 S. M. Spencer Manufacturing Co. v. Spencer, 319 Mass. 331, 66 N.E.2d 19 (1946).

3 Jackman v. Calvert-Distillers Corp., 306 Mass. 423, 28 N.E.2d 430 (1940).

§5.5. 1 1958 Mass. Adv. Sh. 771, 150 N.E.2d 551.

2 General Laws, c. 110, §7A provides: "Likelihood of injury to business reputation or of dilution of the distinctive quality of a trade name or trade-mark shall be a ground for injunctive relief in cases of trade-mark infringement or unfair competition notwithstanding the absence of competition between the parties or of confusion as to the source of goods or services."

ample of statutory jurisdiction in equity over various subjects. In the matter of a specific statutory remedy given in equity, the objection that the plaintiff has a complete and adequate remedy at law is of no consequence, but apparently the question of discretion even in statutory equity jurisdiction still remains an inherent power of the court. The Federal District Court and Court of Appeals have construed this statute as permitting but not requiring injunctions;[3] the Supreme Judicial Court indicated a willingness to go at least as far as the federal court has gone in its interpretation of Section 7A, but was careful to avoid setting the limits of its applicability for the present. Up to now, almost all the cases brought under the statute have been in the Federal District Court for the District of Massachusetts, but this problem of "dilution of a trade-mark," and the "free ride" on the name of a nationally advertised product, will probably result in more cases before the state courts on this matter.

§5.6. Specific performance. Specific performance of contracts comes within the class of cases and matters cognizable under the general principles of equity jurisprudence. Each year, therefore, one or more cases in this field are considered by the Supreme Judicial Court. In *Gromelski v. Bruno*,[1] the plaintiff sought specific performance of an oral contract for a lease of an apartment. The plaintiff had spent some money in repairing and renovating the apartment in consideration of obtaining the lease. The defendant did not plead the Statute of Frauds. The master made a finding that the parties could not live in the same house in harmony. Under these circumstances, it was held that specific performance ought not to be granted, but that the suit should be retained for assessment of damages. Here again is a demonstration of the doctrine that the granting of specific performance is a matter of discretion and not a matter of right. The case also demonstrates that the equity court may exercise its discretion to retain the suit for the purpose of assessing damages.

An interesting case is that of *Orlando v. Ottaviani*.[2] This case does not change or modify the general principle of specific performance. Its interest lies in the fact that an oral agreement to convey land was ordered specifically performed on the ground that the defendants were estopped from setting up the Statute of Frauds by reason of the plaintiff's part performance and change of position in reliance upon the contract.[3] The plaintiff had given up an oral contract of first refusal to purchase the land that the defendants ultimately purchased in consideration of the defendants' promise to convey a fifteen-foot strip to them. There may be some doubt as to the value of what the plaintiff gave up.

3 Esquire, Inc. v. Esquire Slipper Manufacturing Co., 139 F. Supp. 228 (D. Mass. 1956), *remanded*, 243 F.2d 540, 544 (1st Cir. 1957).

§5.6. 1 336 Mass. 678, 147 N.E.2d 747 (1958).
2 1958 Mass. Adv. Sh. 405, 148 N.E.2d 373. For further comment on this case, see §§1.2, 4.3 *supra*.
3 1958 Mass. Adv. Sh. at 408, 148 N.E.2d at 376.

In *Forte v. Caruso*,[4] it was again held that (1) specific performance may be decreed notwithstanding the conveyance of the land to one who was not a bona fide purchaser, and that (2) inchoate interests of dower or curtesy may not be asserted to impair the interest of the sellers under an option to purchase the land. This case merely reaffirms the law heretofore announced with reference to point (1),[5] and logically extends it in connection with point (2).[6]

§5.7. **Legislation.** In the legislative field the Probate Court was given concurrent jurisdiction in equity of controversies over property between divorced persons by Chapter 223 of the Acts of 1958. The Probate Court had jurisdiction of property rights between spouses, but only in conjunction with a pending divorce or separate maintenance action. It would seem proper that the court that is concerned with domestic relations should have the power to resolve property rights of the spouses at any time, whether before or after the divorce.

Statutory jurisdiction to enjoin deceptive or false advertising of merchandise for sale was conferred on the Superior Court by Chapter 217 of the Acts of 1958.[1] The action may be brought in the Superior Court by the Attorney General or any aggrieved party. This act provides for punishment by imposition of a fine. It recognizes, however, that protection of the public requires that preventive measures be taken in advance or at the outset of false or deceptive advertising, as well as providing for punishment after the commission of the prohibited act.

[4] 336 Mass. 476, 146 N.E.2d 501 (1957). For further comment on this case, see §1.6 *supra*.

[5] See Bickford v. Dillon, 321 Mass. 82, 83, 71 N.E.2d 611, 612 (1947).

[6] Flynn v. Flynn, 171 Mass. 312, 315, 50 N.E. 650, 651-652 (1898).

§5.7. [1] Acts of 1958, c. 217, §91B.