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# Equity - Injunctions - Equitable Relief Not Available for Violation of Civil Rights Statute

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quality."[15] Whether or not such a conclusion is true, it is certain that the effects of embezzlement and larceny are identical in so far as the lawful owner of property is concerned; in either case, he has been deprived of his property.

To avoid the confusing distinctions between guilty intent at the taking and after-acquired guilty intent, New York in 1942 recodified into a single theft statute all crimes of a theft nature without reference to the time of forming the guilty intent.[16] While New York's solution to the problem appears to be the most simple, the decision in the instant case appears to be equally effective.

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EQUITY — INJUNCTIONS — EQUITABLE RELIEF NOT AVAILABLE FOR VIOLATION OF CIVIL RIGHTS STATUTE. — Plaintff, a negro woman, brought an action against the operator of a privately owned amusement park to enjoin him from refusing her admittance to the park because of her race. An Ohio statute provides that the proprietor of a place of amusement who denies to a citizen, except for reasons applicable to all, the full enjoyment of the facilities shall be subject to fine and imprisonment, or in the alternative to the payment of damages.[1] The Ohio Supreme Court, two justices dissenting, *held* that the remedy provided by the statute was exclusive and an additional remedy by way of injunction was not available. *Fletcher v. Coney Island,* 165 Ohio St. 150, 134 N.E.2d 371 (1956).

The holding in the principal case is based on the rule that where a statute creates a new right the remedy provided is exclusive. The common law recognizes an exception to this rule where the remedy provided is inadequate, and allows an injunction as an ancillary remedy unless excluded expressly or by necessary implication.[2] Some American jurisdictions have allowed the remedy which would best protect the plaintiff's right irrespective of the fact that the statute did not expressly grant such remedy.[3]

One writer has said that the statutory grant of a right should be considered as distinct from the remedy provided.[4] If this were not true, the possibility

15. Van Vechten v. American Eagle Fire Ins. Co., 239 N. Y. 363, 146 N.E. 432, 433. (1925).

16. See N. Y. Consolidated Law Service, Penal Law, § 1290 (1951).

1. Ohio Rev. Code Ann. § 2901.35 (Baldwin 1953) "No proprietor or his employee, keeper or manager of an inn, restaurant, eating house, barber shop, public conveyance by air, land, or water, theater, store or other place for the sale of merchandise, or any other place of public accommodation or amusement, shall deny to a citizen, except for reasons applicable alike to all citizens and regardless of color or race, the full enjoyment of the accommodations, advantages, facilities or privileges thereof, and no person shall aid or incite the denial thereof. Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars or imprisoned not less than thirty nor more than ninety days or both, and shall pay not less than fifty nor more than five hundred dollars to the person aggrieved thereby to be recovered in any court in the county where the violation was committed."

*Id.,* § 2901.36 "Either a judgment in favor of the person aggrieved, or the punishment of the offender upon an indictment under section 2901.35 of the revised code, *is a bar to further prosecution for a violation of such section.*" (Italics added).

2. Cooper v. Whittingham, 49 L. J. 752 (Ch. 1880).

3. See Amos v. Prom, 117 F. Supp. 615 (N. D. Iowa 1954); Powell v. Utz, 87 F. Supp. 811 (E. D. Wash. 1949); Orloff v. Los Angeles Turf Club, 30 Cal.2d 110, 180 P.2d 321 (1947); Humburd v. Crawford, 128 Iowa 743, 105 N.W. 330 (1905); Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927); Grannon v. Westchester Racing Assn., 16 App. Div. 8, 44 N. Y. Supp. 790 (App. Div. 1897), *rev'd on other grounds,* 153 N. Y. 489, 47 N.E. 869 (1897); Everett v. Harron, 380 Pa. 123, 110 A.2d 383 (1955); Randall v. Cowlitz Amusement Inc., 194 Wash. 82, 76 P.2d 1017 (1938).

4. 1 Lewis, Sutherland on Statutory Construction, 549 (2d ed. 1904).

would exist that if the remedy were misconstrued the right would be denied. That is the effect of the decision in the instant case, unless it could be said that the legislature intended to recognize only a limited right. However, a common sense reading of the complete statute would lead one to believe that Ohio intended to recognize the unlimited right of all citizens to be admitted to privately owned places of public accommodation and amusement on an equal basis.

Modern law is committed to redress injuries to personality,[5] and mental pain and suffering are often a major part of the damages awarded in tort litigation. Public humilitation and injured feelings are the basis for the relatively new tort action of intentional infliction of emotoinal distress.[6] Injunctive relief is available where the remedy at law is inadequate for the protection of personality, even though the harm done or threatened consists of nothing more than injury to feelings of sensibility and honor.[7] The United States Supreme Court in *Brown v. Board of Education*[8] found that racial discrimination caused psychological injury and based its holding at least in part on this factor. Other Courts have repeatedly held that equitable relief is available as an effective and just method of guarantying the enjoyment of civil rights.[9]

The last section of the Ohio Civil Rights act provides that a judgment in favor of the person aggrieved in either a civil or a criminal action "is a bar to further prosecution for a violation" of the act.[10] Although not the basis for the holding in the principal case, this section would seem to indicate that a verdict for the plaintiff is a bar to *any* other action between the same parties even for future violations of the act. In other words the offender would be vaccinated by the needle of the law and thereafter become immune.[11] This paragraph assumed its present form at the codification of Ohio law in 1910,[12] and its constitutionality appears to be a matter of conjecture. The provision might have been designed to preclude equitable relief on the grounds of preventing multiplicity of suits.

The Ohio Supreme Court in the instant case grounded its denial of an injunction on the premise that the statutory remedy is exclusive because a new right unknown to common law was created and therefore strict construction must be applied. However, a rule of construction is only a method to arrive at the purpose of a statute and to reach a just result. It is submitted that

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5. See Pound, *Interests of Personality*, 28 Harv. L. Rev. 343 (1915).

6. Prosser, Torts, 38 (2d ed., 1955); Restatement, Torts § 46 (1948 Supp.).

7. See Henley v. Rockett, 23 Ala. 172, 8 So.2d 852 (1942) (Wife granted an injunction restraining third party from alienating the affections of husband); Blanton v. Blanton, 163 Ga. 361, 136 S.E. 141 (1926) (Court found a property right involved and restrained wife from interfering with or harrassing husband during divorce litigation); Reed v. Carter, 268 Ky. 1, 103 S.W.2d 663 (1937) (Equity will protect plaintiff's right to visit her mother without molestation by third party); Hawks v. Yancey, 265 S.W. 233 (Tex. Civ. App. 1924) (Injunction lies to protect women from a person who is making statements against her and imposing himself upon her in public). For discussions of personal rights in equity see Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 Harv. L. Rev. 640 (1916); Long, *Equitable Jurisdiction to Protect Personal Rights*, 33 Yale L. J. 115 (1923); de Funiak, *Equitable Protection of Personal and Individual Rights*, 36 Ky. L. J. 7 (1947). See Restatement, Torts § 937, comment *a* (1939).

8. 347 U. S. 483 (1954).

9. See Draper v. City of St. Louis, 92 F. Supp. 546 (E. D. Mo. 1950); Lawrence v. Hancock, 76 F. Supp. 1004 (S. D. W. Va. 1948); Orloff v. Los Angeles Turf Club, 30 Cal.2d 110, 180 P.2d 321 (1947); Everett v. Harron, 380 Pa. 123, 110 A.2d 383 (1955).

10. Ohio Rev. Code Ann. § 2901.36 (Baldwin 1953).

11. 165 Ohio St. 150, 158, 134 N.E.2d 371, 377 (dissent).

12. Ohio Gen. Code § 12942 (1910).

equitable jurisdiction should not be determined solely on the basis of a rule of construction but rather on the merits of the case in the light of judicial precedent.[13]

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REAL PROPERTY – JOINT TENANCY – RIGHT OF SURVIVOR WHO FELONIOUSLY KILLS COTENANT. – The heirs of deceased joint tenant brought an action to impose a constructive trust on one-half of the property held by defendant as surviving joint tenant where the defendant while insane killed his co-tenant. It was *held* that insanity of the killer constitutes an exception to the general rule in Minnesota which imposes a constructive trust on property so obtained, and where insanity is established, the general principals of survivorship apply.[1] No constructive trust will be imposed, the insane killer taking the fee simple free of all trusts as the surviving joint tenant. *Anderson v. Grasberg*, 78 N.W.2d 450 (Minn. 1956).

The problem of the killer benefiting from his own wrong has been before the courts in relation to reversions,[2] remainders,[3] individual life insurance,[4] insurance on joint lives,[5] community property,[6] dower[7] and succession,[8] as well as joint tenancy and tenancy by the entireties.[9] In dealing with this situation, four theories have been advanced: certain courts apply only the equitable doctrine which prohibits a wrongdoer from profiting by his wrongful act, and thereby divest the killer of all jointly held property;[10] some courts completely ignore the equities and apply survivorship concepts to allow the slayer to take the fee to the jointly held property;[11] other courts applying the third and fourth theories seem to give equal weight to the equities and survivorship

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13. Note, 37 Iowa L. Rev. 268 (1952).

1. For allowing the defense of insanity, the court is supported by Eisenhardt v. Seigal, 343 Mo. 22, 119 S.W.2d 810 (1938).

2. Eisenhardt v. Seigal, *supra* note 1 (Victim held property on condition that it should revert if the victim predecease the murderer).

3. Wall v. Pfanschmidt, 265 Ill. 180, 106 N.E. 785 (1914); *In re* Emerson's Estate, 191 Iowa 900, 183 N.W. 327 (1921); Blanks v. Jiggetts, 192 Va. 337, 64 S.E.2d 809 (1951).

4. New York Mut. Life Ins. Co. v. Armstrong, 117 U. S. 591 (1886). See also Vance, Insurance § 117 (3d ed. 1951); Grossman, *Liability and Rights of the Insurer When the Death of the Insured Is Caused by the Beneficiary or an Assigns*, 10 B. U. L. Rev. 281 (1930).

5. Spicer v. New York Life Ins. Co., 268 Fed. 500 (5th Cir. 1920) *cert. denied*, 255 U. S. 572 (1921); Merrity v. Prudential Ins. Co., 110 N. J. L. 414, 166 Atl. 335 (1933).

6. Hill v. Noland, 149 S.W. 288 (Tex. Civ. App. 1912).

7. Barnes v. Cooper, 204 Ark. 118, 161 S.W.2d 8 (1942); Owens v. Owens, 100 N. C. 240, 6 S.E. 794 (1888).

8. Atkinson, Wills § 37 (2d ed. 1953); Restatement, Restitution § 187 (1937); Note, 29 Mich. L. Rev. 745, 746 (1931). Several states including North Dakota have a statute prohibiting the murderer from taking under a will of his victim. N. D. Rev. Code § 56-0423 (1943).

9. Although joint tenancy and tenancy by the entireties differ in certain respects, such as the methods by which they can be terminated, the courts generally treat the two types of estate in the same manner in relation to the present problem. *In re* Santourian's Estate, 125 Misc. 668, 212 N. Y. Supp. 116 (Surr. Ct. 1925) (joint tenancy in a bank account); Van Alystyne v. Tuffy, 103 Misc. 455, 169 N. Y. Supp. 173 (Sup. Ct. 1918) (Tenancy by the entireties).

10. *In re* Santourian's Estate, supra note 9 ("[I] am opposed to . . . any doctrine of law which offers a premium to husbands to kill their wives.")

11. Smith v. Greenberg, 121 Colo. 417, 218 P.2d 514 (1950).