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Equity, Injunctions, Violations of Criminal or Penal Statues Not Enjoinable

Wilmer D. Newton

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EQUITY, INJUNCTIONS, VIOLATIONS OF CRIMINAL OR PENAL STATUTES NOT ENJOINABLE

Equity, Injunctions, Violations of Criminal or Penal Statutes not Enjoinable.—Plaintiff, as a member of the State Board of Barber Examiners, brought this action to enjoin the defendant

from barbering without a license. The trial court ordered a dismissal of the action, and the plaintiff appealed. Held, the violation of the laws of North Dakota providing for the licensing of barbers (Laws 1927, Chapter 101; Laws 1931, Chapters 98, 99), and making it a misdemeanor for any person to practice without such license, is not an act or omission which the court of equity will enjoin, for the reason that equity has no jurisdiction to restrain criminal acts unconnected with legal rights, or which do not constitute a public nuisance. Richmond et al. v. Miller, 292, N. W. 633 (N. D. 1940).

The court is well supported in its statement that equity lacks jurisdiction to restrain the commission of crimes when no irreparable injury to some public or private legal right is shown. "A court of equity is in no sense a court of criminal jurisdiction. Its primary province is the protection of property rights. Hence an injunction will not be granted to restrain an act merely criminal, where no property right is directly endangered thereby." 5 Pomeroy's Equity Jurisdiction, (2nd ed. 1919) Section 476. Equity will not lend its aid by injunction to restrain the violation of public or penal statutes in the absence of a showing of threatened injury to property or property rights. Tiede v. Schmiedt, 99 Wis. 201, 74 N. W. 798 (1898); Campbell v. Jackson Bros., 140 Iowa 475, 118 N. W. 755 (1909); State v. Maltby, 108 Neb. 578, 188 N. W. 175 (1922). But equity will not refuse relief merely because the act threatened would be a crime, if a restraining decree is truly merited. Thus, if the threatened act would constitute a public nuisance as well as a crime, equity may well intervene. Village of St. John v. McFarlan, 33 Mich. 72 (1875); Village of Waupun v. Moore, 34 Wis. 450 (1874). Nuisance has its origin in the invasion of legal rights. It is a wrong done which injures or annoys another in the enjoyment of legal rights. Rose v. Sucony Vacuum Corp., 54 R. I. 411, 173 A. 627 (1934). To constitute a nuisance the act or thing complained of must create a danger and inflict injury upon person and property. Brock-Hall Dairy Co. v. City of New Haven, 122 Conn. 321, 189 A. 182 (1937). A public nuisance is anything which interferes with the rights of a citizen either in person, property, the enjoyment of his property, or in his comfort. Thornton v. Dow, 60 Wash. 622, 111 Pac. 899 (1910). An act will not be enjoined as a nuisance merely because it is criminal, and prohibited by statute. Tiede v. Schmeidt, 99 Wis. 201, 74 N. W. 798 (1898); Village of St. John v. McFarlan, 33 Mich. 72 (1875); Olson et al. v. City of Platteville, 213 Wis. 344, 251 N. W. 245 (1933).

It is submitted, however, with all due deference to the opinion of the court and authorities cited by it, that analogies can be drawn from recent court decisions which may establish the privilege to practice barbering as a protected interest, if not a genuine property right, in that courts have held the right to practice law one which may be protected through injunctive recourse against an unlicensed attorney, although the unlicensed practice of law is punishable criminally. Fitchette et al. v. Taylor

et al., 191 Minn. 582, 254 N. W. 910 (1934); Dwarken v. Apartment House Owners Association, 38 Ohio App. 265, 176 N. E. 577 (1931); Unger v. Landlord's Management Corporation, 114 N. J. Eq. 18, 168 A. 229 (1933); Paul v. Stanley, 168 Wash. 371, 12 P. 2nd 401 (1932). Likewise courts have held the practice of medicine and dentistry, interests which will be protected by injunction, although the unlicensed practice is punishable criminally. Sloan et al v. Mitchell, 113 W. Va. 506, 168 S. E. 800 (1933); Kentucky State Board of Dental Examiners v. Payne, 213 Ky. 302, 281 S. W. 188 (1926). If the right to practice law, medicine, and dentistry, is an exclusive valuable privilege, exclusive in that it is restricted to those who, after special training and after examination and determination of special fitness, are accorded the right to follow the profession; and valuable in that it is an opportunity to secure material benefits not given to those outside of the profession, why, then, is not the right to practice barbering in the same classification for the same reasons? In the case under discussion, the court found no legal right threatened, and it specifically decided that the defendant's conduct sought to be enjoined did not constitute a public nuisance, that the acts are "unlawful solely because they are made so by statute." With licensed barbers being subject to health and sanitation regulations prescribed by the Board of Barber Examiners (Laws 1927, Chapter 101), the public is somewhat protected against unsanitary barber shops. Could not such uninspected and unregulated barber shops create a danger to public health so as to constitute a public nuisance? But logical as the above arguments may sound, by the decision in question, if the State Board of Barbers Examiner desires injunctive relief, the Act will have to be amended so as to specifically declare violations a public nuisance. So confirmed was the court in its decisions that it is to be observed that the plaintiff's case was dismissed without an appearance by the party defendant.

WILMER D. NEWTON,
Third Year Law Student,
University of North Dakota.

OUR SUPREME COURT HOLDS

In Truman Hart, Respt., v. Charles Rigler, et al., Defts., and Charles Rigler, Deft. and Applt.

That a party by making a general appearance in an action confers jurisdiction over the person of such party which is complete from the date of such appearance.

That under the provisions of section 7482 of the Compiled Laws, N. D. 1913, a trial court is empowered, "in furtherance of justice and on such terms as may be proper", to grant a motion amending any pleading "by correcting a mistake in the name of a party"; and in doing this, the court is given wide discretionary power.

That even though, on a motion for judgment notwithstanding the verdict or for a new trial, the record may show that there is no evidence to support the verdict, nevertheless, where it is reasonable to believe that the defects