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INJUNCTIONS - DEFAMATION - INJURY TO BUSINESS

Charles E. Nadeau
University of Michigan Law School

INJUNCTIONS — DEFAMATION — INJURY TO BUSINESS — A complaint praying for an injunction alleged that plaintiff, a retail dealer in automobiles, sold defendant an automobile in good condition; that defendant complained of the steering and demanded a replacement of the parts; that upon inspection, the steering apparatus was found to be in good condition and defendant's request was refused; that thereafter defendant carried signs on the car indicating that it was defective and that plaintiff would do nothing about it; and that he did this, knowing that his claims were false, solely for the purpose of injuring plaintiff and to extort money from him. On overruling a demurrer to this complaint and affirming a final decree which awarded an injunction, the court *held* that the owner of a business which is damaged as a result of a continuing course of malicious misrepresentation is entitled to injunctive relief. *Menard v. Houle*, (Mass. 1937) 11 N. E. (2d) 436.

Any injunction against defamation of necessity involves some restriction on freedom of speech and of the press.[1] Though the constitutional right to freedom of speech and press is qualified to the extent that one may be held accountable in damages for its abuse, there is, in general, strong feeling against any form of administrative censorship.[2] Much of the hesitancy in extending equity jurisdiction to include this field is because an injunctive remedy is analogous to censorship.[3] But a complete denial of injunctive relief is bound to work hardship in some cases. In order to alleviate such hardship, modern cases have given relief where there are other grounds for equitable jurisdiction, such as intimidation,[4] nuisance,[5] or breach of a fiduciary obligation.[6] In these cases the courts argue that relief cannot be denied simply because defamation is incidentally present.[7] In the principal case the court announced a broader rule to the effect

[1] Pound, "Equitable Relief Against Defamation and Injuries to Personality," 29 HARV. L. REV. 640 at 652 (1916), lists some of the restrictions on publication.

[2] SPELLING, INJUNCTIONS 267 (1926); Pound, "Equitable Relief Against Defamation and Injuries to Personality," 29 HARV. L. REV. 640 at 654 (1916). Near v. Minnesota, 283 U. S. 697, 51 S. Ct. 625 (1931), held a statute allowing injunctions against defamatory newspapers to be unconstitutional on the basis that the Fourteenth Amendment, in general, guarantees immunity from previous restraints or censorship.

[3] It is interesting to note that in England equity has gone so far as to give interim injunctions against defamation. See BUTTON, LIBEL AND SLANDER 207 (1935). For an explanation of the modern English procedure, see Cowan, "Injunction in Libel," 80 L. J. 146 (1935).

A further cause for this hesitancy by the courts is the feeling that the jury system is peculiarly well adapted to trying defamation. Pound, "Equitable Relief Against Defamation and Injuries to Personality," 29 HARV. L. REV. 640 at 656 (1916).

[4] This often arises in intimidation of employees—Mining Co. v. Miners' Union, (C. C. Idaho, 1892) 51 F. 260; or in illegal boycotts, Beck v. Teamsters' Union, 118 Mich. 497, 77 N. W. 13 (1898). Coercion through threats of prosecution is sufficient. Emack v. Kane, (C. C. Ill. 1888) 34 F. 46.

[5] Sherry v. Perkins, 147 Mass. 212, 17 N. E. 307 (1888), where the placing of banners in front of a person's premises for the purpose of injuring his business and to deter workmen from entering was enjoined as a nuisance.

[6] 18 CAL. L. REV. 88 (1929); 75 UNIV. PA. L. REV. 258 (1927).

[7] SPELLING, INJUNCTIONS 267 (1926). 2 BROOK. L. REV. 61 (1932) suggests

that equity will take jurisdiction where there is (1) a continuing course of unjustified and wrongful attack upon the plaintiff (2) motivated by actual malice, and (3) causing damage to property rights as distinguished from injury to personality affecting feeling, sensibility, and honor. These restrictions call for consideration. Obviously there is no need for an injunction unless the wrong is to be continued. As to the element of malice referred to by the court, it would seem that malice does not change either the injury to the plaintiff or the adequacy of the legal remedy.[8] But a rule which allows an injunction in all cases where there is an injury to a property right would be too sweeping and would fail to take account of the policy factors involved. The vagueness of the concept of malice injects an element of discretion which must ultimately be resolved on broad grounds of policy. The last limitation is historical in that equity traditionally only protects "property."[9] As the courts define "property" it covers a wide range of injuries to economic interests. Consequently, injury to "property" is generally somewhat more measurable than injury to personality. As to the latter, juries can only speculate as to the damages, and one may well argue that the legal remedy is inadequate and equity should take jurisdiction.[10] But an astute court, which is desirous of giving an injunction in a particular case, can ordinarily find an injury to "property" under some definition of the term. The requirements of malice and injury to "property" give the courts a wide range of discretion. Because of the important policy factors involved, the tendency has been to act with excessive caution. But where, as in the principal case, there is little public interest in allowing such statements, much of the policy against censorship disappears. One of the functions of the courts is to furnish such parties as this defendant an adequate remedy in an orderly manner. It is therefore submitted that the court has obtained a desirable result under the facts presented.[11]

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that the vice of this doctrine is that it permits an injunction against not only such publication as is necessary to or expresses the threat or intimidation, but extends to all publications in connection therewith.

[8] In American Mercury v. Chase, (D. C. Mass. 1926) 13 F. (2d) 224, noted in 25 MICH. L. REV. 74 (1926), it was admitted that there was no malice on the part of the defendants but still the injunction issued.

Malice is often said to defeat any immunity because of privilege. HARPER, TORTS 546 (1933). Good and bad faith seems to have become the test as to whether injunction will lie against a warning for infringement of a patent. 75 UNIV. PA. L. REV. 258 (1927).

[9] Historically, libel was a crime and for this reason equity refused to deal with it. The general rule of not enjoining defamation grew up where no property rights were involved. To this extent, in England, they have broadened the equitable remedy against defamation. 5 POMEROY, EQUITY JURISPRUDENCE, § 1895 (1919). See note 3, supra.

[10] Inadequacy of the legal remedy was wholly disregarded in Marlin Fire Arms Co. v. Shields, 171 N. Y. 384, 64 N. E. 163 (1902). CLARK, PRINCIPLES OF EQUITY, § 239 (1937), argues for extending injunctions in libel so as to protect personal rights.

[11] Nims, "Unfair Competition by False Statements or Disparagement," 19 CORN. L. Q. 63 (1933), argues for a relationship between competitors such that defamation

will be included in the term "unfair competition" but admits that no court has as yet gone that far.

For recent decisions which reach a result contrary to the principal case, see Hollander & Son v. Hollander Inc., 117 N. J. Eq. 578, 177 A. 80 (1935); Yood v. Daly, 37 Ohio App. 574, 174 N. E. 779 (1930).