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EQUITY- DECLARATORY JUDGMENT -INJUNCTION TO PROTECT RIGHT IN EASEMENT

EQUITY — DECLARATORY JUDGMENT — INJUNCTION TO PROTECT RIGHT IN EASEMENT — Defendant owned a piece of land in a city block, and plaintiff owned an adjoining piece of land together with an easement for light and air upon a contiguous strip of defendant's land 4 feet wide and 90 feet long. Plaintiff's land alongside the strip was vacant, and he had no immediate intention of building thereon. Defendant erected an office building on his land, constructing an outside stairway on the 4 x 90 foot strip. Plaintiff asked for a mandatory injunction compelling defendant to remove the stairway, stating in his argument before the court that though he had no present use for his easement, he wanted to protect his property and preserve the right to have the strip kept clear. *Held,* that the injunction should be denied, for the reason that when a mandatory injunction is asked, "the court will balance the benefit of an injunction to plaintiff against the inconvenience and damage to defendant, and grant an injunction or award damages as seems most consistent with justice and equity under all the circumstances of the case." There was no present threat of injury and no damages had been suffered. Hence, neither remedy was available. Having reached that conclusion, the court, on its own motion, proceeded to discuss the applicability of the Michigan Declaratory Judgment Act,[1] and found therein an adequate remedy to meet the situation. Accordingly, a declaratory judgment was rendered establishing and declaring the plaintiff's right in the easement. *Hasselbring v. Koepke,* 263 Mich. 466, 248 N. W. 869 (1933).

One other case, in Ontario,[2] seems to have used the declaratory judgment as it is here used — to quiet the title of plaintiff in an easement when other remedies were inadequate. In the principal case the court properly refused an injunction because defendant's present use was consistent with plaintiff's right.[3] No damages could be awarded because no injury had occurred. Yet, unless something was done to protect the plaintiff, he was in danger of losing the easement through defendant's long-continued use, on the basis of adverse possession[4] or estoppel.[5] In a few States a solution for a problem of this kind has been reached by the use of a bill to quiet title,[6] but in most jurisdictions, including Michigan, the courts have not passed on the applicability of that device to protect an easement. Some courts have issued the injunction, despite the absence of any threat of present injury, in order to prevent the subsequent loss of the easement.[7] This would seem to be an unsatisfactory remedy, as it deprives the defendant of the use of his land without resulting in immediate advantage to the plaintiff. Most courts

[1] Mich. Comp. Stat. (1929), sec's 13903-13909.

[2] Cohen v. Boone, 50 Ont. L. R. 368 (1921).

[3] New York Central R. R. v. Ayer, 242 Mass. 69, 136 N. E. 364 (1922); Duncan v. Goldthwait, 216 Mass. 402, 103 N. E. 901 (1914); Henry v. Sinclair, 218 Mich. 296, 189 N. W. 6 (1922).

[4] Wall v. United States Mining Co., (C. C. A. 8th, 1916) 239 Fed. 90; Hunter v. West, 172 N. C. 160, 90 S. E. 130 (1916).

[5] Champ v. Nicholas County Court, 72 W. Va. 475, 78 S. E. 361 (1913).

[6] Homewood Realty Corp. v. Safe Deposit & Trust Co., 160 Md. 457, 154 Atl. 58 (1931).

[7] Danielson v. Sykes, 157 Cal. 686, 109 Pac. 87 (1910); Vestal v. Young, 147 Cal. 721, 82 Pac. 383 (1905); Moore v. Clear Lake Water-Works, 68 Cal. 146, 8 Pac. 816 (1885); Schmoele v. Betz, 212 Pa. 32, 61 Atl. 525 (1905).

have agreed with the Michigan court in denying the injunction, but have left the plaintiff without any adequate remedy.[8] The declaratory judgment seems to be a convenient and adequate method of protecting the rights of both parties in such a situation, since it removes the danger of loss of plaintiff's easement, and still allows defendant the full use of his land. The case illustrates the elasticity of the declaratory judgment as a remedial device and the ease with which it can be adopted to new uses. In granting the remedy in the present case, in order to give plaintiff the protection to which he was entitled, the court clearly carried out the intent of the statute which declared that its provisions were to be "liberally construed and liberally administered with a view of making the courts more serviceable to the people."

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[8] Billings v. McKenzie, 87 Conn. 617, 89 Atl. 344 (1914); Watson v. New Milford Water Co., 71 Conn. 442, 42 Atl. 265 (1899); Kendall v. Hardy, 208 Mass. 20, 94 N. E. 254 (1910); Hill v. Hittel, 64 Pa. Sup. Ct. 317 (1916); Bochterle v. Saunders, 36 R I. 39, 88 Atl. 803 (1913); Southern Ry. v. Beaudrot, 63 S. C. 266, 41 S. E. 299 (1901). See also n. 2, supra.