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Val Sanford

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# EQUITY—1956 TENNESSEE SURVEY

VAL SANFORD\*

## EQUITY JURISDICTION

One of the most important characteristics of the administration of justice in Tennessee is the maintenance of separate courts of law and equity. While numerous statutes have been enacted from time to time in an effort to clarify the jurisdiction of the two courts and the boundaries of their respective jurisdictions have been further defined by the courts, nevertheless, cases are still dismissed because they are brought in the wrong court. In *Tucker v. Simmons*<sup>1</sup> a tenant brought suit in chancery court against her landlord for personal injuries resulting from a fall and to have a release signed by her set aside on the grounds of fraud and "inadequacy of damages." The bill was demurred to on the ground that its main purpose was to recover unliquidated damages for personal injuries and was thus outside the jurisdiction of the chancery court. In support of her bill, the complainant argued that since chancery had jurisdiction to rescind a fraudulent instrument, that it should take jurisdiction to award the damages prayed since "when Chancery has jurisdiction for one purpose, it will take jurisdiction for all purposes." The supreme court held, however, that since the main purpose of the suit was the recovery of unliquidated damages for personal injuries the chancellor properly dismissed the bill. The court pointed out that it is well established that the complainant in this case could have obtained the relief sought here in an action at law. The case is illustrative of the settled policy of the Tennessee courts against the extension of the jurisdiction of chancery to tort actions for unliquidated damages.<sup>2</sup>

In proper cases, however, where chancery has taken jurisdiction for one purpose, it has taken jurisdiction for other purposes not within the scope of its independent jurisdiction. For example, in *Wilson v. Clark*,<sup>3</sup> where the chancery court took jurisdiction over a suit between a wife's administratrix and the heirs of the husband and wife for the partition of certain real estate, and the administration of the wife's estate had not been finally disposed of in the probate court; it was held that the chancery court should have fixed the fees of the administratrix

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\* Lecturer in Law, Vanderbilt University, 1955-56.

1. 287 S.W.2d 19 (Tenn. 1956).

2. Under TENN. CODE ANN. § 16-602 (1956), chancery courts have concurrent jurisdiction with the circuit courts of all civil causes triable in the circuit courts, except actions for unliquidated damages for injury to person or character, and except for unliquidated damages for injury to property resulting from a breach of oral or written contracts.

3. 288 S.W.2d 740 (Tenn. App. W.S. 1954).

and her attorney for their services both in the probate and the chancery courts.

The crystalization of the principles of equitable jurisdiction and the limitations of the reach of equitable remedies to those situations falling within such established principles are exemplified by the case of *Turner v. Harris*.<sup>4</sup> In that case, the complainant filed suit in equity alleging that she sustained personal injuries as the result of the defendants' negligent operation of an automobile, and that she had brought suit in circuit court to recover her damages. She then alleged that the defendant had no liability insurance covering the automobile involved in the accident and thus could not comply with the financial responsibility law<sup>5</sup> by exhibiting such a policy; and that the defendants should be required to post a financial responsibility bond as provided by law. She then alleged that the defendants owned real estate and that she had an equitable lien upon this real estate to require a compliance with the financial responsibility law. She then prayed that the defendants be enjoined from encumbering or transferring this real estate. The defendants demurred to the bill on the grounds that the complainant had asserted no basis for a lien and that there was no ground for an injunction to be issued as prayed.

The supreme court affirmed the chancellor's action in sustaining the demurrer. The court based its decision on the finding that the financial responsibility law provides "partial remedies" in such cases, in that "the injured person is empowered to prevent the defendant from driving the car involved, or any car, and to prevent its use and disposition, unless complainant's claim for damages is satisfied." The court reasoned that the financial responsibility law creates a "new right," and provides a limited remedy and that "the jurisdiction of the court is not so latitudinous that it is authorized to supply deficiencies in a statute by providing additional remedies for its more effectual enforcement."

While the result reached by the court is sound, the rationale of its decision does not appear to be so. Nowhere does the financial responsibility law create any rights in one person in the real estate of another. Thus the complainant here had no right in or claim upon the real property of the defendants which the courts could protect in any way. In addition, the revocation provisions of the financial responsibility law are not "remedies" available to the private citizen; but rather they are positive duties imposed upon the Commissioner who administers the law.

From the standpoint of the powers of a court of equity the court's language may be somewhat misleading if it is taken to mean that

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4. 281 S.W.2d 661 (Tenn. 1955).

5. TENN. CODE ANN. §§ 59-1201 to -1221 (1956).

equity has no power to enforce a right created by statute unless the equitable remedy is provided for in the statute creating the right. While it is true that no court has the power to transcend or add to a statute so as to extend it to cases not falling within its provisions, it is also true that a statute is not to be construed in isolation, but rather in connection with the whole body of the law and in the light of the general principles thereof.<sup>6</sup> Equitable remedies thus may be available to protect and enforce statutory rights even though no specific provision is made in the particular statute for their application.<sup>7</sup>

The mere novelty of a case has not led the courts to deny jurisdiction when the case appears to fall within the established jurisdiction of equity. Thus in *Brown v. Brown*,<sup>8</sup> the court held that a judgment of a circuit court awarding a divorce to a husband but giving alimony to the wife was, insofar as the alimony provision was concerned, void; and the chancery court was held to have the power to enjoin its enforcement by a contempt proceeding brought in the circuit court.

#### SPECIFIC PERFORMANCE

In *Sanders v. Sanders*,<sup>9</sup> the court, after upholding the validity of an antenuptial contract providing for the joint ownership of all the property of the wife and husband and the execution of a joint will, held that the contract should be specifically enforced and that the wife was entitled to a decree requiring the husband to convey certain real estate into their joint names and to a decree restraining the husband from revoking the joint will, except by mutual consent.

#### EQUITABLE DEFENSES

*Harris v. Buchignani*<sup>10</sup> was an ejectment action brought in circuit court. In Tennessee, the chancery and circuit courts have concurrent jurisdiction over such cases. The defendants in this action interposed by plea certain equitable defenses. The plaintiff moved to strike these pleas on the ground that equitable defenses could not be raised in an action at law. The defendants then petitioned to have the case transferred to chancery court. The circuit court denied the petition for a transfer, but granted the motion to strike. The supreme court affirmed this action holding that the statute authorizing the transfer of cases from circuit court to chancery court applies only to suits of a purely equitable nature, and that where, as in this case, the courts have concurrent jurisdiction, no transfer should be granted. The supreme court also held that equitable defenses were not available in "a legal

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6. 50 AM. JUR., *Statutes* § 339 (1944).

7. See, e.g., *Wise v. McCanless*, 183 Tenn. 107, 191 S.W.2d 169 (1945).

8. 281 S.W.2d 492 (Tenn. 1955).

9. 288 S.W.2d 473 (Tenn. App. E.S. 1955).

10. 285 S.W.2d 108 (Tenn. 1955).

action of the kind here in question." The decision is supported by precedent. The case does, however, point to the need for statutory reform either by providing for the transfer of such cases to the chancery courts or by providing for the interposition of equitable defenses in actions at law.

#### RESCISSION

In *Huddleston v. Lee*,<sup>11</sup> the complainant had bought from the defendant a certain model automatic freezer for use in his business. The court found that the defendant had made such representations as to raise an implied warranty of fitness and that there had been a breach of the warranty justifying a rescission of the sale. The defendant argued that the complainant had retained and used the machine after he complained of its unfitness and that by such use he should be held to have waived his right to a rescission. The court, while recognizing the soundness of the principle involved, held that the complainant had not so retained and used the machine as to justify the application of the doctrine of waiver.

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11. 284 S.W.2d 705 (Tenn. App. M.S. 1955).