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Equity--Retention of Jurisdiction to Award Damages

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CASE COMMENT

EQUITY—RETENTION OF JURISDICTION TO AWARD DAMAGES.—*P* brought suit to enjoin *D* from cutting and removing timber on *P*'s land and to recover damages for timber unlawfully cut and removed. Upon institution of suit *D* ceased cutting and removing the timber. As a result thereof *P* did not request that the injunction prayed for be issued. The bill of complaint was taken for confessed. The trial court entered a decree in favor of *P* for the damages sustained. Later, on *D*'s motion, the trial court set aside the decree on the ground that the court was without jurisdiction to award damages since *P* did not request or obtain the injunctive relief prayed for. *P* appealed. *Held*, that the failure of *P* to obtain an injunction did not deprive the court of jurisdiction. Having rightfully acquired equitable jurisdiction, the court retained jurisdiction to grant relief upon a purely legal demand, even though an injunction, being unnecessary, was not awarded. *Webber v. Offhaus*, 62 S.E.2d 690 (W. Va. 1950).

According to the weight of authority, where a bill of complaint states a case entitling complainant to equitable relief, if the proof fails to establish the allegations of the bill, the court is without jurisdiction to award other relief by way of disposing of the entire controversy, unless it appears that the remedy at law will be inadequate. *Soper v. Conly*, 107 N.J. Eq. 537, 153 Atl. 586 (1931); *O'Donnell v. Henley*, 327 Ill. 586, 158 N.E. 692 (1927); *Toucey v. New York Life Ins. Co.*, 102 F.2d 16 (8th Cir. 1939); Note, 19 L.R.A. (n.s.) 1064 (1909). A contrary rule is recognized in a few jurisdictions where the court will grant purely legal relief notwithstanding the fact that the complainant failed to establish a right to the equitable relief prayed for in his bill of complaint. *Downes v. Bristol*, 41 Conn. 274 (1874); *Atkinson v. Felder*, 78 Miss. 83, 29 So. 767 (1901); Note, 19 L.R.A. (n.s.) 1064 (1909). The Virginia court seemingly adheres to the minority rule. *Walters v. Farmers' Bank*, 76 Va. 12 (1881); *Johnston v. Bunn*, 108 Va. 490, 62 S.E. 341 (1908); *Cheshire v. Giles*, 144 Va. 253, 132 S.E. 481 (1926).

There has been a decided conflict in the West Virginia holdings on this question. *Evans v. Kelly*, 49 W. Va. 181, 38 S.E. 497 (1901), held that where the equitable relief originally sought is denied, equity will retain jurisdiction to grant relief legal in nature. Cf. *Hotchkiss v. Fitzgerald Patent Prepared Plaster Co.*,

41 W. Va. 357, 23 S.E. 576 (1895); *Smith v. White*, 71 W. Va. 639, 78 S.E. 378 (1911). These cases appear to adopt the minority rule. However, later decisions seemingly adopt the view that in order for equity to retain jurisdiction and grant legal remedies some substantial ground of equitable jurisdiction must exist, and if the proof fails to establish it, equity is without jurisdiction and the bill should be dismissed. *Carlsbad Mfg. Co. v. Kelley*, 84 W. Va. 190, 100 S.E. 65 (1919); *Wyoming Coal Sales Co. v. Smith-Pocahontas Coal Co.*, 105 W.Va. 610, 144 S.E. 410 (1928).

In the principal case the court failed to note the apparent conflict in the West Virginia decisions, although these conflicting holdings were cited with approval. The case was decided on the ground that the complainant not only alleged a basis for equitable relief but proved it. The court said: "The plaintiff did not fail, either by averment or by proof, to establish his right to equitable relief by injunction but, on the contrary, upon the allegations of his bill of complaint, which was taken for confessed as to the defendant. . . , the [trial] court found . . . that he was entitled to the relief prayed for in his bill of complaint." At 698. When no answer is filed, every material allegation of the bill shall for the purpose of the suit, be taken as true, and no proof thereof shall be required. W. Va. CODE c. 56, art. 4, § 60 (Michie, 1949); *New River Grocery Co. v. Trent*, 101 W. Va. 118, 132 S.E. 487 (1926).

The principal case falls directly in line with the *Carlsbad Mfg. Co.* and *Wyoming Coal Sales Co.* cases, the later cases in West Virginia. One of these, the *Carlsbad Mfg. Co.* case, expressly disapproved the holding in the *Evans* case and considered it as virtually overruled. The court, by its apparent approval of the conflicting decisions, has seemingly thrown some doubt on what was heretofore a fairly well settled rule in West Virginia. Until the question is squarely presented to the court, as it was in the *Evans* case, the state of law on this question is somewhat conjectural.

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B.: Equity--Retention of Jurisdiction to Award Damages