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Injunctions--Restraining Unlicensed Practice of Medicine

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The principal case, not within the exclusive realm of equity,[13] could more clearly fit into the niche of "concurrent jurisdiction". Shorn of its factual complications which allow only a technical right of action at law, there is sufficient ground to warrant analogous application of the Statute of Limitations. To deny its application would lead to the anomalous situation of giving more protection to an incomplete mortgage, than a complete one not based on any contingent future interest.

One might venture to offer the "concurrent jurisdiction" cases as one example indicative of the breakdown of the rigid breach between law and equity.

—JULIUS COHEN.

INJUNCTIONS — RESTRAINING UNLICENSED PRACTICE OF MEDICINE. — There is a statute which makes the practice of medicine without complying to licensing requirements a misdemeanor. P, in interest of himself and others similarly situated was awarded an injunction to restrain D in his unlawful practice. The lower court sustained a demurrer to the bill and certified its ruling for review. The Supreme Court simply calls P's license a franchise, a valuable property interest, which he can protect by enjoining one without a license. *Sloan v. Mitchell.*[1]

The court reaches a wholesome result which can well be supported although there is some contrary authority.[2]

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[13] One of the most typical examples in which equity takes exclusive jurisdiction is in the case of a trust. Emphasis is given to its "purely equitable" character, and the Statute of Limitations will not apply by analogy. Patrick v. Stark, 62 W. Va. 606, 59 S. E. 606 (1907); Currence v. Ward, 43 W. Va. 367, 27 S. E. 329 (1897); Heiskell v. Powell, 23 W. Va. 717 (1883); Marinack v. Blackburn, 93 W. Va. 585, 116 S. E. 7 (1923); POMEROY, *op. cit. supra* § 419.

[14] Pound, *Decadence of Equity* (1905) 5 COL. L. REV. 20, at p. 23: "The anti-legal element has come to be a minimum once more, a work of liberalization being accomplished, the system whereby it was brought about remains merely as an accident of judicial administration, requiring men for historical reasons to seek relief here rather than there, or in this way rather than that, without sensibly affecting the substance or rules applied."

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[1] 168 S. E. 800 (W. Va. 1933).

[2] Drummond v. Rowe, 155 Va. 725, 156 S. E. 442 (1931). (The court refused an injunction to P, a veterinary, against D who had not taken the examination required by statute.) Healy v. Sidone, 127 Atl. 520 (N. J. 1923). (The statute was not passed for benefit of P.) Merz v. Murchison, 30 Ohio Cir. Ct. R. 646 (1908). (No injunction will issue where P only urges a diminution of profits by means of unlawful competition. There is

It is conceded that equity will not enjoin a crime as such; however if there are grounds for equitable jurisdiction the fact that there is also a crime is a mere coincidence. There are at least three common grounds urged for equitable interposition; injury to franchise,[3] nuisance[4] and unfair competition.[5] The first is the most convenient and direct route. Equity will step in the moment there is shown to be an injury to property[6] for which the legal remedy is inadequate.[7] It is enough that there be a damage to a pecuniary interest which cannot be readily estimated at law.[8] The license need not be exclusive.[10] Yet the result in this case

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no property right damaged.) Goldsmith v. Jewish Press Pub. Co., 18 Misc. 789, 195 N. Y. Supp. 37 (1922). (Public accountant licensing statute deemed not to create special property in licensees but to be for the interest of the whole public.).

[3] Unger v. Landlords' Management Corp., 168 Atl. 229 (N. J. 1933); Paul v. Stanley, 168 Wash. 771, 12 Pac. (2d) 401 (1932); Puget Sound Traction, Light & Power Co. v. Grassmeyer, 102 Wash. 482, 173 Pac. 504 (1918); Dworken v. Apartment House Ass'n, 38 Ohio App. 265, 176 N. E. 577 (1931); Hewitt v. Board of Medical Examiners, 148 Cal. 590, 84 Pac. 39 (1906). (A license to practice medicine is a valuable property interest.)

Rochester Ry. v. New York Ry., 110 N. Y. 128, 17 N. E. 680 (1888); Walker v. Stone, 117 Wash. 578, 50 Pac. 488 (1897); *In re* O'Briens Petition, 79 Conn. 46, 63 Atl. 777 (1906). (The privilege of practicing law of admitted attorneys is property.)

[4] People v. Chiropractors' Ass'n, 302 Ill. 228, 134 N. E. 4 (1922); Healy v. Sidone, *supra* n. 2; State v. Crawford, 28 Kan. 529 (1882); State v. Lindsay, 85 Kan. 79, 116 Pac. 207 (1911); 5 POMEROY, EQUITY JURISDICTION (2d ed. 1892) § 1893.

[5] Featherstone v. Independent Service Station Ass'n of Texas, 10 S. W. (2d) 124 (Tex. Civ. App. 1928); Glorea v. Mallorka, 238 Mich. 216, 213 N. W. 107 (1927); Note (1925) 25 COL. L. REV. 1088.

[6] Unger v. Landlords' Management Corp.; Rochester Ry. v. N. Y. Ry.; Dworken v. Apartment House Ass'n; Walker v. Stone; Paul v. Stanley; Hewitt v. Board of Medical Examiners; Puget Sound Traction Co. v. Grassmeyer, all *supra* n. 3.

[7] Mobile v. Louisville Ry. Co., 84 Ala. 115, 4 So. 106 (1888): The damage to franchise by interference cannot be adequately estimated at law. POMEROY, EQUITY JURISDICTION (4th ed. 1919) § 1889. An injunction is proper remedy where an intangible property right is damaged, the value of which cannot be certainly estimated.

[8] International News Service v. Associated Press, 48 U. S. 215, 399 S. Ct. 68, 63 L. Ed. 211 (1918). Equity treats any civil right of pecuniary nature a property right.

[9] *Supra* n. 7.

[10] Puget Sound Traction Co. v. Grassmeyer, *supra* n. 3. (Although not exclusive, franchise is exclusive to one who exercises the privilege without authority and in defiance to laws regulating the practice.) Patterson v. Woolman, 5 N. D. 608, 67 N. W. 1040 (1896). Franchise need not be exclusive. Unger v. Landlords' Management Corp., *supra* n. 3. (The practice of law is exclusive in those regularly admitted to practice.)

Dworken v. Apartment House Ass'n, *supra* n. 3. (The court held that the right to practice law was exclusive in that it was restricted to those with special training and valuable in that it was a means of obtaining livelihood not given to those outside the profession.) People v. Utica Ins. Co., 15 Johns. Ch. 358 (N. Y. 1818). (Where the welfare of people require that an occu-

should be limited to cases where a privilege is granted and not cover cases where license is required solely for revenue purposes.[11] When P brings a class suit using the franchise theory he is relieved of the onerous burden of showing a direct or peculiar damage to himself, the supposition being that the act of D could not help but injure some of P's class.[12] D's conduct would doubtless constitute a public nuisance, as an open and continuous violation of a public statute.[13] If he sued on this theory P would have the sometimes difficult problem of showing special damages to himself.[14] Proceeding on the ground of unfair competition, there is the difficulty of showing actual competition, a direct injury, by diverting patients that P would otherwise have had. The decree, moreover, would extend only to the injurious competition with P. A minor objection to this ground is that professional men dislike having their calling lowered to the standards of ordinary business. The suggestion that D by non compliance with the statute gains a pecuniary advantage over P[15] is only a makeweight.

When the courts speak of adequacy of legal remedy for jurisdictional purposes, they usually refer to a civil remedy. The fact that there is a criminal penalty does not mean that P has a remedy at law.[16] Since the purpose of the bill is to stop D immediately in order to prevent the continuance of damage to P which is not compensable at law, the injunction should issue more readily here than in the case where the act of D is only partially illegal and against public policy.[17]

P in order to maintain a suit on his own behalf would have to show more than mere chance of getting the patients.[18] He would have to show actual diversion of patients and a reduction in in-

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pation be regulated by the legislature to correct the evil then that which was a common right is now a franchise.)

[11] W. VA. CODE, c. 11, art. 12, § 3 authorizes injunction where occupation tax is not paid.

[12] Dworken v. Apartment House Ass'n.; Unger v. Landlords Ass'n; Paul v. Stanley, all *supra* n. 3.

[13] State v. Crawford, *supra* n. 4; State v. Lindsay, *supra* n. 4. (Where there is open and continual violation of criminal statute it should be enjoined whether it is called a nuisance or not.) *Contra*: Goldsmith v. Jewish Press Pub. Co., *supra* n. 2; People v. Universal Chiropractors' Ass'n, *supra* n. 4.

[14] Goldsmith v. Jewish Press Pub. Co., *supra* n. 2.

[15] Note (1925) 25 Col. L. Rev. 1088.

[16] State v. Patterson, 14 Tex. Civ. App. 465, 37 S. W. 478 (1896).

[17] *Supra* n. 5.

[18] French v. Parker, 16 R. I. 219, 14 Atl. 870 (1888). Mere chance of getting patients sufficient subject matter for sale and to specifically enforce negative covenant of practice.

come.[19] If P can show such peculiar damage to himself he could obtain an injunction on any of the above-mentioned theories plus a money decree for past damage.[20] Thus a representative suit to protect his franchise has distinct advantages for P.

—RICHARD F. CURRENCE.

MASTER AND SERVANT — WORKMEN'S COMPENSATION — GOING TO AND FROM WORK ON PUBLIC STREETS OR HIGHWAYS. — The plaintiff, an employee of the defendant taxi company, having finished his day's work, left his taxi in the defendant's garage and started home. The jury found that he was struck by one of the defendant's taxis while on the sidewalk immediately in front of the entrance to the defendant's garage. *Held*: The common law right of action for negligence lies against the employer since the employee was not in the course of his employment within the meaning of the Workmen's Compensation Act. *White v. Checker Taxi Company.*[1]

The common law did not recognize the right of an employee to recover from his employer for injuries occurring in the course of his employment, on the theory that what risks there were, were assumed by the employee himself.[2] Changing social and economic values, eventually dictated legislation which would insure the workman, in case of accident, compensation that was certain, prompt and reasonable, and which would place upon the employer a higher degree of responsibility for the safety of his employees.[3] This compensation, however, has been "conditioned in most of the workmen's compensation acts and in the English act upon the disability being due to an accidental injury which arose 'out of' *and*[4] 'in the course of' the employment."[5]

[19] Puget Sound Traction Co. v. Grassmeyer, *supra* n. 3; *In re* Debs, 158 U. S. 564, 593, 15 S. Ct. 900, 39 L. Ed. 1092 (1895). (To call into exercise the injunctive powers of the court there must be an actual or threatened interference with property rights of a pecuniary nature and such jurisdiction is not destroyed by the fact that interference is a violation of criminal law.)

[20] Mason v. Harpers' Ferry Bridge Co., 17 W. Va. 396 (1880).

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[1] 137 N. E. 49 (Mass. 1933).

[2] Farwell v. Boston and Worcester Railroad Corporation, 4 Metc. 49 (Mass. 1842).

[3] Borgnis v. Falk Co., 147 Wis. 327, 133 N. W. 209 (1911).

[4] Italics ours.

[5] SCHNEIDER, WORKMEN'S COMPENSATION LAWS (1932) 734, § 262; MASS. GEN. LAWS, c. 152; W. VA. REV. CODE (1931) c. 23, art. 4, § 1: ("in the course of and resulting from the employment").

Where the injury arises out of and in the course of the employment, the