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## Equity--Use of Injunction Against Criminal Social Evil--Loan Sharks

Elizabeth H. Simonton

*West Virginia University College of Law*

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EQUITY — USE OF INJUNCTION AGAINST CRIMINAL SOCIAL EVIL — LOAN SHARKS. — In violation of a statute<sup>1</sup> which limits the rate of interest to 10 per cent per annum and provides for forfeiture of the excess and also for deduction from the sum then due of the amount contracted for over the legal rate, defendants were engaged in the business of lending small sums of money to poor wage-earners at interest rates ranging from 240 to 520 per cent per year. They took assignments of wages under color of wage sales and enforced payments by threats of garnishment, an action which by rules of the employers' corporations automatically effected a discharge from service. The attorney-general brought a bill for temporary and permanent injunctions and in order to wind up the business. The trial court sustained a demurrer to the bill. *Held*: Equity had jurisdiction to entertain a bill by the state to enjoin widespread violation of the usury statute, on the ground that a place in which such illegal practices were habitually carried on was a disorderly house,<sup>2</sup> and such a place was a public nuisance,<sup>3</sup> abatable by injunction. *State v. McMahon*.<sup>4</sup>

The decision was supported by the language of *In re Debs*:<sup>5</sup>

"Every government entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare has a right to apply to its own courts for any proper assistance in the exercise of one and the discharge of the other."

Because it enjoins as a criminal nuisance a violation of a statute which merely imposes a civil penalty without show of injury to public health or property the propriety of the decision has been questioned.<sup>6</sup> That the law against an offense is not enforced or observed is no ground for the interference of a court of equity, for equity has nothing to do with crime as such. Its intervention is solely for the protection of property or civil rights where the extent of the damage is such that law will not afford adequate remedy.<sup>7</sup> There are, however, decisions which support the view that an injunction may be granted without show of injury to property where the remedy at law is inadequate<sup>8</sup> or there is a

<sup>1</sup> KAN. REV. STAT. ANN. (1923) c. 41-102.

<sup>2</sup> *State v. Martin*, 77 N. J. L. 652, 73 Atl. 548 (1909); *State v. Dimant*, 73 N. J. L. 131, 62 Atl. 286 (1905).

<sup>3</sup> *State v. Lindsay*, 85 Kan. 79, 116 Pac. 207 (1911).

<sup>4</sup> 128 Kan. 772, 280 Pac. 906 (1929); note (1930) 66 A. L. R. 1072.

<sup>5</sup> 158 U. S. 564, at 584, 15 S. Ct. 900 (1895).

<sup>6</sup> Note (1930) 43 HARV. L. REV. 499; note (1930) 18 CALIF. L. REV. 328.

<sup>7</sup> *State v. Patterson*, 37 S. W. 478 (Tex. Civ. App. 1896).

<sup>8</sup> *State v. Chicago B. & Q. Ry. Co.*, 88 Neb. 669, 130 N. W. 295 (1911); *Stead v. Fortner*, 225 Ill. 468, 99 N. E. 680 (1911).

threat of irreparable injury to public morals.<sup>9</sup> Furthermore where the statute provides an adequate remedy an injunction will be denied.<sup>10</sup>

The West Virginia Small Loans Act<sup>11</sup> provides that penalties for violation of its provision shall be fine and imprisonment, and, after the second offense, revocation of license with no re-issue either directly or indirectly; the obligation shall be void and the borrower may recover back both principal and interest. Interest shall not be compounded and shall be computed on unpaid balances only. A renewal note including both principal and interest due on an original note has been held to constitute a contract to pay interest on principal and unpaid interest of the original note and, therefore, a contract compounding interest which, under the provisions of this act is null and void.<sup>12</sup> A borrower who has entered into a contract to pay interest in excess of the legal 24 per cent per year may resist the taking of his chattels by self-help if necessary or revoke the assignment of his wages without fear of prosecution by the money-lender. If he has executed a bill of sale of personal property to secure a debt he may defend any suit that may be brought against him by filing an affidavit of illegality. Since the remedy at law is adequate equity has no jurisdiction to cancel the bill of sale and enjoin suit upon the note because of usury.<sup>13</sup>

The Small Loans Act does not apply to licensed pawn-brokers.<sup>14</sup> The legislature has given the city council in cities and trustees in villages the power to license and regulate money brokers, pawn-brokers, loan agents and others engaged in like business and "safeguard the public against unscrupulous, unfair, exorbitant charges by such brokers and loan agents".<sup>15</sup> Under this grant of power it is purely discretionary with city authorities whether they will license or regulate the business of pawn-brokers or wholly suppress the business by them within the city.<sup>16</sup>

The question still remains whether the failure of prosecuting attorneys to prosecute constitutes such inadequacy of legal

<sup>9</sup> State v. Canty, 207 Mo. 439, 105 S. W. 1078 (1907).

<sup>10</sup> State v. Crawford, 28 Kan. 518 (1882); POMEROY, EQUITY JURISPRUDENCE (4th ed. 1918) § 221.

<sup>11</sup> W. VA. REV. CODE (1931) c. 47, art. 7.

<sup>12</sup> Frazier v. City Investment Co., 157 S. E. 102 (Ga. 1931).

<sup>13</sup> American Security Co. v. Miller, 159 S. E. 692 (Ga. 1931).

<sup>14</sup> W. VA. REV. CODE, c. 47, art. 7, § 21.

<sup>15</sup> MORGANTOWN CHARTER, c. 15, § 23, ACTS OF LEGISLATURE OF W. VA. 1921, Municipal Charters, c. 15, § 23 (h).

<sup>16</sup> City of Chicago v. Shaynin, 258 Ill. 69, 101 N. E. 224, 45 L. R. A. (N. S.) 25 (1913); Launder v. City of Chicago, 111 Ill. 291 (1883).

remedy as will justify interference by a court of equity for protection of the public welfare. The Illinois court has said in *Stead v. Fortner*:<sup>17</sup> "If ordinary methods are ineffective and officials fail to perform their duties the court ought to apply the strong and efficient hand of equity to uproot the evil." The great weight of authority, however, is contrary. "If there is a remedy in the law courts of equity will in the absence of statute refuse to act even though the legal remedy is rendered ineffective by the failure of law courts to perform their duties."<sup>18</sup>

The ill effects of such extension of the injunction into the field of criminal law outweigh whatever temporary advantage there may be in summary action. Such procedure threatens defendant with imprisonment without the benefit of constitutional safeguards.<sup>19</sup> It arouses suspicion and resentment and tends to weaken public confidence in the courts.<sup>20</sup> "Unless the issuance of these injunctions be restricted, ill-advised legislatures yielding to popular clamor may seriously impair our judicial system by curtailing their power of punishment for contempt."<sup>21</sup>

—ELIZABETH H. SIMONTON.

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TORTS — INTERFERENCE WITH CONTRACTS TO MARRY. — Courts are very reluctant to protect contracts to marry from the malicious or fraudulent interference of third parties. Such contracts are isolated from contracts in general, and are declared to be an exception to the universal rule that any malicious interference with the contract rights of another is actionable as a tort.<sup>1</sup> It is conceded that contract rights are in the nature of property rights<sup>2</sup> and as such are deserving of the same protection against undue interference that the law affords to property rights.<sup>3</sup> The modern tendency is to be liberal in allowing a recovery against those who wilfully and wantonly induce the breach of a contract between

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<sup>17</sup> *Supra* n. 8, at 255 Ill. 479.

<sup>18</sup> Caldwell, *Injunction Against Crime* (1931) 26 ILL. L. REV. 259, at 273.

<sup>19</sup> Note (1920) 20 COL. L. REV. 605.

<sup>20</sup> Mack, *Revival of Criminal Equity* (1903) 16 HARV. L. REV. 389.

<sup>21</sup> See note, *supra* n. 19.

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<sup>1</sup> *Thacker Coal Co. v. Burke*, 59 W. Va. 253, 53 S. E. 161 (1906); *Angle v. Chicago E. Co.*, 151 U. S. 1, 14 S. Ct. 240, 36 U. S. (L. ed.) 55 (1894); *Booth v. Burgess*, 72 N. J. Eq. 181, 65 Atl. 226 (1906). See Carpenter, *Interference With Contract Relations* (1928) 41 HARV. L. REV. 728, 750.

<sup>2</sup> *Raymond v. Yarrington*, 96 Tex. 443, 72 S. W. 580 (1903). Injury to a property right amounts to a tort.

<sup>3</sup> *Booth v. Burgess. supra* n. 1, at 188.