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EQUITABLE PROTECTION OF PERSONAL OR INDIVIDUAL RIGHTS

BY WILLIAM Q. DE FUNIAR*

Equity, as is well known, developed as a system of jurisprudence to supply the deficiencies in the remedial relief available at common law and in the common law courts. The common law might give a right but with the powers of the common law courts not sufficient to give a complete remedy, or the common law gave no right but upon principles of universal justice the interference of some judicial power was necessary to prevent a wrong. Thus, one prerequisite of equitable relief came to be that there was no remedy at law or else only an incomplete or inadequate remedy.

Unfortunately, when equity was developing and emerging as a full-fledged system of jurisprudence, rights of property rather than human rights were paramount. The personal, the individual, the civil, the social, the political rights of the common man were in that day vague and more or less formless. Consequently, equity, in supplying the deficiencies or lack of remedies in the common law courts, found itself solely engaged with matters of property and rights incidental thereto. From this arose the second prerequisite of the exercise of equity jurisdiction, that property or property rights must be in question.

While the concept of what are property and property rights has necessarily been broadened by the great economic, industrial and mercantile growth of Anglo-American life and duly recognized by courts in the exercise of equity jurisdiction, courts of equity continue to be burdened, like Coleridge's ancient mariner, with a dead albatross hung around their necks.

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That is, to repeat the rule, courts of equity intervene only to protect property and property rights and not to prevent injuries of a purely personal or individual nature which have no connection or association with property interests. The rule continues to be reiterated by numerous writers and courts at the present day. Although frequently asserted by courts at the very moment they are seeking to evade its stultifying effect, its constant assertion apparently demands that the lawyer and the law student accept it as established. Then it is necessary to begin the study of the ways and situations in which it is frequently evaded.

That this restriction on the exercise of equity jurisdiction should be removed would seem to be obvious. Equity developed to relieve the inadequacies of remedies available at common law. That this was in instances of property rights or property interests was due to the fact that the society of that day gave weight principally only to such rights. But the very development of our way of life which has brought about recognition of new property rights or rights of substance in the nature of property rights has also brought a recognition of human rights, of personal and individual rights. Since these rights may be subjected to interference, to injury, to infringement, justice demands that the judicial power protect these rights. If the power or limits of the common law or statutory provisions, do not provide the adequate remedies, equity is the proper source or remedy, just as it was once before in comparable situations.

1 See HIGH, INJUNCTIONS (4th ed., Sec. 20b) who appears to approve of the rule. Other writers seem to accept it without comment or criticism. See BISPHAM, PRINCIPLES OF EQUITY (10th ed., Secs. 37, 465) MERWIN, PRINCIPLES OF EQUITY (1895). However, most present day writers are critical of the rule. See authorities cited below, n. 3.

2 LAWRENCE, EQUITY JURISPRUDENCE (1929), Sec. 53, asserts that equity is not confined to the protection merely of property rights, but his illustrations to demonstrate this are mainly instances in which equity accomplished its purpose by expanding or stretching the concept of what is property.

"The rule that equity will not afford relief by injunction except where property rights are involved is known chiefly by its breach rather than by its observance; in fact, it may be regarded as a fiction, because courts with greatest uniformity have based their jurisdiction to protect purely personal rights nominally on an alleged property right, when, in fact, no property rights were invaded." Hawks v. Yancey, 265 S.W. 233 (Tex. Civ. App. 1924), noted (1924) 19 ILL. LAW REV. 679.
This has, indeed, been very widely recognized by the courts and frequently by the legislatures. The result has been the establishment of some situations, although not in all jurisdictions, in which the power of equity has been made available to relieve against violation or threatened violation of rights not connected with property interests. It has also led many courts to read into a situation some alleged property right which will justify them in giving relief. There is thus a definite modern trend to extend equitable relief to protect personal rights, although most courts are not as yet at the point where they unanimously renounce the surface rule that property is prerequisite to equity jurisdiction.4 Some few courts, however, have been outspoken in declaring that personal rights recognized by law will be protected by equity upon the same conditions upon which property rights will be protected.5 These conditions, of course, are that unless relief is granted, a substantial right of


5 In Massachusetts, it has been definitely announced that "we cannot believe that personal rights recognized by law are in general less important to the individual or less vital to society or less worthy of protection by the peculiar remedies equity can afford than are property rights. We are impressed by the plaintiffs' suggestion that if equity would safeguard their right to sell bananas it ought to be at least equally solicitous of their personal liberties guaranteed by the Constitution. We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction." Kenyon v. City of Chicopee, —Mass.—, 70 N. E. 2d 241 (1946).

In Louisiana, where the civil law, as distinguished from the Anglo-American common law, prevails, the courts have not been hampered by the restrictions existing in the Anglo-American law. Injunction may be granted to protect personal rights. See, e.g., Itzkovitch v. Whitaker, 117 La. 708, 42 So. 228, 116 Am. St. Rep. 215 (1908)

In England, the Judicature Act of 1873, Sec. 25, subsec. 8, confers power on the courts to grant injunction in all cases "in which it shall appear to the court to be just or convenient that such order should be made." It has been said in Texas that the Texas statutes confer equivalent power. Ex parte Warfield, 40 Tex. Cr. 413, 50 S.W 933, 76 Am. St. Rep. 724 (1899).
the plaintiff will be impaired to a material degree, that the remedy at law is inadequate, and that injunctive relief can be applied with practical success and without imposing an impossible burden on the court or bringing its processes into disrepute.6

The distinction has been made, no doubt properly, that where there is no personal right present there is no ground upon which to base equitable relief. It is, indeed, apparent that even if equity will protect personal rights, there must be a personal right existent and judicially cognizable to warrant the interposition of equity 7 However, an examination of many of the cases holding that there is no personal right present or no legal injury to be redressed reveals situations as to which a more enlightened view would consider a personal right was present.8 Much the same may be said of the often repeated statements of the courts that equity does not grant protection of purely moral or ethical rights.9 Changes of viewpoint might bring about a consideration that what was once dismissed as a purely moral or ethical right is instead a personal right of substance worthy of equity's protection. Moreover, differences frequently exist between courts of law and courts of equity in the interpretation of the existence of a personal right which is judicially cognizable. The former may deny the existence of a right for the injury of which an action for damages will lie, whereas on similar facts the latter may find a right deserving of equitable protection in the absence of any remedy at law. This dissimilarity of view tends to disappear in a court in which powers of law and equity have been merged.10

The existence of an adequate legal remedy may naturally

6Kenyon v. City of Chicopee, preceding note.
7See annotation, Jurisdiction of equity to protect personal rights, 14 A.L.R. 295. For an interesting analysis of situation, see Moscovitz, Civil Liberties and Injunctive Protection (1944) 39 Ill. L. Rev. 144.
8For example, the unauthorized use of one's picture or the publication of matter injurious to one's reputation. The change of view is set out in the text following under 'Right of Privacy.'
9Statement of rule, see Benj. T. Crump Co. v. Lindsay, 130 Va. 144, 107 S.E. 679, 17 A.L.R. 747 (1921).
10Chafee, Does Equity Follow the Law of Torts (1926) 75 U. of Pa. L. Rev. 1.
result in the refusal to give equitable aid. Here again, changes in viewpoint, as well as the effect of the merger of legal and equitable powers in the same court, may lead to belief that although there is a legal remedy available it is nevertheless not so adequate, effective and complete as that which equity can give.

**Injuries to the Physical Person**

Where physical injury has been inflicted by a completed act, there is no ground for equitable relief, for in any event equity does not concern itself with an injury which is over and done, with no reasonable probability of repetition. There is an adequate remedy at law by way of damages for the physical injury inflicted by the completed act. If the act constitutes a crime, as is usually the case, criminal proceedings may be instituted to punish the act. Is the situation different where physical injury has been inflicted and will, with reasonable probability, again be inflicted or, although none has yet been inflicted, there is reasonable probability that it will be?

If property is in question, whether or not a threatened act is a crime or will give rise to an action for damages, equity will enjoin its commission if the commission of the act will cause irreparable injury to the property. The remedy at law or the resort to criminal proceedings comes too late and is thus inadequate as a remedy. Human life or safety is not less important than property, at least by present day standards in this country. Hence, if the only remedy available is an action for damages or a criminal proceeding after the threatened physical injury actually occurs, the remedy is totally inadequate and equity should intercede. But if there are other methods available for preventing the threatened physical injury, there is no need to resort to equity. For instance, if there is time to apply to equity before the threatened injury will occur, there is certainly also time in which to call a policeman or to file a criminal complaint. This may provide adequate protection and adequate

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12 Compare with view of court in Snedaker v. King, supra, that of the Texas courts, infra, on discussion of family rights.
remedy, since the threat of the physical injury may come within the definition of disorderly conduct or assault or may be made in connection with a criminal trespass. Adequate relief may also exist under statutory provisions for placing the threatener under bond or security to keep the peace.

There may, of course, be situations in which calling a policeman, filing a criminal complaint or placing one under bond to keep the peace will not be appropriate methods of relief. If this is true and no other adequate means of protection are afforded except by equitable remedies, then assuredly equitable relief should be granted. Illustrations of such situations may be found in the granting of an injunction against the use of a rifle range until it was made safe to use without endangering the lives of those occupying adjoining property, granting injunction against a course of conduct which not only involved threatened physical injury but which included defamation designed to accomplish the arrest of the complanant and the loss of her job and other matters of persecution, and the granting of an injunction against removing an elderly woman to a pesthouse which was dangerously unsuitable for habitation by her.

INJURIES TO PERSONAL REPUTATION

The principle has been announced, with much seeming firmness, from the earliest cases to the present day that equity will not enjoin the threatened publication of matter

32 Randall v. Freed, 154 Cal. 299, 97 Pac. 669 (1908).
33 McKillop v. Taylor, 25 N. J. Eq. 139 (1874).
34 Although it appears that the personal danger to such occupants was the reason for granting the injunction, it will be observed that this type of case would permit an approach based on the element of a property right if that is considered necessary. That is, it might be alleged that the use of the rifle range was a nuisance, in that it prevented the plaintiff's reasonable use and enjoyment of his property.
37 Compare Stuart v Board of Supervisors, 83 Ill. 341 (1876), denying injunction against confinement in unhealthful jail, on ground that there was an adequate remedy at law.
38 Brandreth v Lance, 8 Paige (N.Y.) 24, 34 Am. Dec. 368 (1839).
defamatory of the personal reputation. An exception has sometimes been stated, to the effect that equity will enjoin publication of the defamatory matter as an incident to the specific enforcement of a trust or contract.10

This refusal has been based on the ground that equity protects property rights only (a contention having less validity today than when originally announced), and on such grounds as that the constitutional rights of freedom of the press and right of trial by jury would be interfered with.20 The validity of such grounds or reasons has been seriously questioned.21 It is undoubtedly true that there have been many departures from the rule. The recognition in many jurisdictions of the doctrine of the right of privacy has brought about the equitable restraint of many acts as invasions of the right of privacy, where actual consequences of the acts would be to injure personal reputation.22 Restraining the wrongful expulsion of one from a club or social organization is frequently the restraint of an act which would be injurious to the personal reputation of the expelled member.23 Likewise, restraining the unauthorized publication of private letters, on the ground that the writer’s right of property in the letters is being protected, may actually be the prevention of an injury to the personal reputation of the writer.24

**RIGHT OF PRIVACY**

The right of privacy or the right to privacy may be defined as the right of the individual to be let alone, or the right

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10 See Choate v Logan, 240 Mass. 131, 133 N.E. 582 (1921) where it was said that the facts disclosed no contract or trust which was violated by the defamatory matter.

11 See cases in notes immediately preceding.


21 *See* discussion, *infra*, on Right of Privacy

22 *See* discussion, *infra*, on Social Rights.

23 Publishing letters of another as invading his right of privacy, *see* annotation, 138 A.L.R. 96. *See also*, *infra*, n. 29, as to Gee v Pritchard.
to live one's life in seclusion free from unwarranted and undesired publicity. The consequence of such invasion or publicity may be to hold the individual up to public ridicule or even scorn or contempt, in short in some way to attack or damage his personal reputation. To a lesser extent it may make him an object of public curiosity, or otherwise interfere with his peace of mind and his right to the pursuit of happiness.

In the past there was no recognition of the existence of such a right so as to afford a basis of judicial jurisdiction, whether legal or equitable. Courts of equity refused to enjoin invasions of privacy on the ground that no property or property right was involved to which irreparable injury was threatened. Courts of law, short of a clear case of libel, refused to recognize any right which could be the subject of injury.

The change in viewpoint which has now come about is generally attributed to an article written in 1890 by the late Justice Brandeis and Professor Warren. They pointed out that it is a principle as old as the common law that the individual shall have full protection in person and in property. And that it is necessary from time to time to define anew this protection where political, social and economic changes entail the recognition of new rights. The time had now come, they argued, to consider anew the need for increased protection of the person, rendered necessary by such modern developments as the growth of photography and the press—to which we may now add radio, television and even news reels. The weight and validity of their arguments were very shortly thereafter judicially noticed and given effect, and this has continued to be the case. In the majority of courts in which the question has arisen, the courts have recognized that a justifiable right exists and have

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27 Invading right of privacy by publishing another's literary efforts or letters or by using his name, see annotations, 138 A.L.R. 96.
28 Brandeis & Warren, supra, n. 25. Innumerable articles of much excellence have appeared in the years since. It may suffice to cite that of Nizer, 39 Mich. L. Rev. 526 (1941), which reviews the developments since 1890. A very comprehensive collection of cases on the subject will be found in the annotation, 138 A.L.R. 22.
afforded protection against invasions or violations of the right. While many of these courts, plagued by doubt that equity should protect purely personal rights, have founded their decision on the existence of some real or technical property right, others have made the personal right itself the basis of their decision.

Of course, where the right of privacy is recognized as justifiable, the relief sought may be by way of damages for the invasion, or by way of injunctive relief in equity where the remedy by way of damages affords inadequate relief. If the invasion of one's privacy is as yet only threatened, but threatened with reasonable probability, equitable relief is the proper remedy to prevent the violation of one's rights from taking place. Or if the invasion has already taken place but is of a continuing nature, again equitable relief provides the proper remedy.

The recognition and protection of the right has been primarily by judicial action, but in several states this recognition and protection has been afforded by statute. However,

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25 Munden v. Harris, 153 Mo. App. 652, 134 S.W. 1076 (1911).

26 Breach of contract rights, see McCreery v. Miller's Grocery Co., 99 Colo. 499, 64 P. 2d 803 (1936), where it is clear that one of the defendants, who was nevertheless enjoined, had no contractual relations with the plaintiff.

27 It is interesting to notice the well known case of Gee v. Pritchard, 2 Swanst. 402, 36 Eng. Rep. 670 (1818), wherein the plaintiff sought to enjoin the unauthorized publication of private letters of his. This, as is well recognized today was in reality an effort to prevent an invasion of the plaintiff's privacy, which would have been violated by such publication. Lord Eldon, although declaring that equity protects only rights of property, then found that the writer of a letter has a property right therein and that such right, however nominal, is a proper subject of equitable protection. This view as to a property right in letters has been uniformly followed by the American courts.


The California court has based its decision on the state constitutional provision guaranteeing the fundamental right to pursue and obtain happiness, which it declares includes the right to live one's life free from unwarranted attacks on one's liberty, property and reputation. Melvin v. Reid, supra, n. 25.


this statutory recognition is usually much narrower in scope than that provided by judicial action. This is not to say that the right as developed by many courts is by any means broad. The doctrine of the right of privacy, as developed by judicial action, has been summarized by one court, as follows. An incident of the person and not of property; a purely personal action which does not survive the person injured; the right does not exist where the person has himself published or consented to publication of the matter objected to; the right does not exist where the person has become so prominent that by his very prominence he has dedicated his life to the public; the right can only be violated by printings, writings, pictures or other permanent publications or reproductions and not by word of mouth; and—in some jurisdictions only—that the

24 The New York statute, for example, goes no further than to protect against the unauthorized use of one's picture for advertising or commercial uses. The prohibition of the statute has been held not to apply to a newspaper or to a news film. Jeffries v New York Evening Journal Pub. Co., 67 Misc. 540, 124 N. Y. S. 780 (1910) Humston v Universal Film Mfg. Co., 189 App. Div 467, 178 N. Y. S. 752 (1919)

25 Melvin v Reid, supra, n. 25.

26 Notice that question is entirely one of protecting a personal right.

27 Matter v Los Angeles Examiner, 35 Cal. App. 2d 304, 95 P 2d 491 (1939)

But the right of action has been held to survive the death of the wrongdoer and to be revivable against his administrator. Reed v. Real Detective Pub. Co., supra, n. 30.


29 This is applied to all those who become what has been described as objects of legitimate public interest, either by voluntarily following a course of conduct or an occupation of public interest, as in O'Brien v Pabst Sales Co., in the preceding note, or by involuntarily attracting public interest, as by some anti-social act, as in Elmhurst v Pearson, 153 F 2d 467 (1946), noted (1946) 46 Col. L. Rev. 1040, where person seeking relief was defendant in sedition trial of national interest. In this latter regard, reference may also be made to Melvin v Reid, supra, n. 25, as to incidents of a woman's life which appeared in the records of her criminal trial and were thus open to the public as part of the public records. See also Note (1946) 32 Va. L. Rev. 1045, as to right of privacy not being enforceable where public interest involved.

30 See criticism of this in paragraph of text following.

Taking and retention of fingerprints and photographs by police as invasion of right of privacy see State ex rel. Mavity v Tyndall, —Ind.— 66 N. E. 2d 755 (1946), noted (1946) 21 Tulane L. Rev. 289.
right of action accrues only when publication or reproduction is made for gain or profit.\footnote{As under the New York statute, \textit{supra}, n. 34.}

Objection may certainly be made to any such requirement as that the publication must be one for gain or profit. It should be entirely immaterial what purpose or motive brings about the invasion of privacy. Certainly, so long as it is knowingly done or continued, it is as much a wrong in one instance as in the other. The point is not whether the defendant is making a profit from his invasion of the rights of another, but whether the right of another is violated. In protecting property rights, equity does not make relief dependent on whether the defendant profits or not from his wrongful act.

Similarly, it should be entirely immaterial whether the wrong is accomplished by writings, pictures, or printings on the one hand or by word of mouth on the other. The point is not the method by which one violates the rights of an innocent person, but the fact that he violates the rights to the latter's injury. It is interesting to notice in this regard that the right of privacy has been held to have been violated by a radio broadcast.\footnote{\textit{Mau v Rio Grande Oil, Inc.}, 28 F Supp. 845 (1939)}

Another legitimate object of criticism is the view of many courts that only one's name and picture are comprised within one's right of privacy. One's privacy must assuredly comprise more than the mere right to object to the unauthorized use of one's name or picture, since it is the right to be let alone and to maintain one's seclusion. On a radio program recently, the master of ceremonies announced that one of the contestants would toss away two hundred dollars in dimes—supplied by the sponsor, of course—in front of the contestant's home on a certain day and hour. As reported on the program the following week, a large crowd had gathered for hours at the place named, overflowing into the yards of the neighbors, to their obvious disturbance, discomfiture and inconvenience. Aside from any injury to the property of these neighbors and the blocking of their ingress and egress, it would clearly appear that the radio program and the broadcasting company were responsible for the invasion of the neighbors' rights of privacy, and that with-
out any use of their names or pictures. Indeed, in these days of commercial advertising, with the policy of using individual’s indorsements of a product, one’s name and picture must be considered to have a definite value and to constitute a property right. The value of this property right naturally varies and as to most individuals will have only a nominal value. Nevertheless, as a property right which each of us has, it may be clearly distinguished from that right of privacy which each of us has. The right of privacy must, logically, go beyond the mere use of names and pictures and must relate to all disturbance or interference of one’s right to be let alone.\(^4\)

**DOMESTIC OR FAMILY RIGHTS AND RELATIONSHIPS**

In the matter of domestic or family rights and relationships, courts of equity usually have no trouble in finding present a property right or interest of some sort. The right to or duty of support, rights of inheritance, right to services, are common examples. Nevertheless, it is not infrequent to find courts announcing that the personal rights involved are alone sufficient to warrant equitable protection, although the weight of this is usually weakened by the court hurrying on to point out the property rights that are involved. An example of this is the well known case of *Vanderbilt v Mitchell*,\(^4\) in which the plaintiff sought the cancellation of a birth certificate placed on the public records which charged him with paternity of the child. He also sought a permanent injunction against the mother and child claiming under this certificate the status, name or privilege of a lawfully begotten child of his, as well as an injunction against the appropriate official from issuing copies of the certificate from the public record. This case is much cited as an outright example of equity’s departure from the rule that equity protects only property rights.\(^5\) The court does say that if the plaintiff’s status and personal rights were alone threatened or invaded by the filing of the false certificate,

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\(^4\) See dissenting opinion in O’Brien v Pabst Sales Co., *supra*, n. 38.

\(^5\) 72 N. J. Eq. 910, 67 A. 97, 14 L.R.A. (N.S.) 304 (1907), noted (1907) 7 Col. L. Rev. 533, (1907) 21 Harv. L. Rev. 54.

\(^6\) See WALSH, TREATISE ON EQUITY (1930) Sec. 52; annotation 14 A.L.R. 295 (1921)
nevertheless a court of equity would protect those rights. However, it continues "But it is not necessary to place the decision upon this ground, because there are sufficient facts presented to enable us to put this case upon the technical basis that the jurisdiction we are exercising is the protection of property rights." These property interests were considered to be the burden of support that might be imposed upon the plaintiff and the rights of inheritance that might subsequently be claimed.46

Another example, where the property element was supplied by a contract, arose in Kentucky. The defendant lived with her mother in a house jointly owned by them. The plaintiff, another daughter, obtained an injunction against the defendant molesting and annoying her when she visited their mother. The court said. "As a general rule, equitable remedies deal with property rights rather than with personal rights and obligations and at one time the rule was broadly stated that equity will not interfere to enforce a strictly personal right where no property right is involved, but that rule has been greatly relaxed and many cases can be found where a court of equity has assumed jurisdiction to protect purely personal rights from invasion. But, even if some property right is requisite to equity jurisdiction, this element is not wholly lacking in the present case. Appellant and appellee entered into a written contract in which the former agreed that appellee should have the right to visit her mother without molestation by appellant, in consideration of the settlement of certain

46 Similarly, to annul and cancel an instrument purporting to be a contract of marriage, on the ground that it was a forgery, see Sharon v. Hill, 20 Fed. 1 (1880) In overruling a demurrer to the bill, the court stated that a proper case for equitable relief was stated, since there was no adequate remedy at law and the contract, after the death of the complainant who was far older, might be made the basis of a claim to the large property interests of the complainant. See also Randazzo v. Rappolo, 105 N.Y.S. 481 (1906) where defendant had gone through a marriage ceremony with a man impersonating the plaintiff; Burns v Stevens, 236 Mich. 443, 210 N. W 482 (1926)

The converse of Vanderbilt v Mitchell, supra, is presented by McCreoot v Taylor, 225 App. Div 562, 234 N.Y.S. 2 (1939) where plaintiff sought a declaratory judgment that she was the daughter, albeit illegitimate, of defendant and that defendant be compelled to execute and deliver to plaintiff a certificate of plaintiff's birth. Motion to dismiss the complaint as not stating a cause of action was denied.
litigation which was then pending. The natural right of appellee to visit her mother was fortified by a written contract executed for a valuable consideration.\textsuperscript{17}

Where personal rights of infants are involved, courts of equity have never hesitated to give relief. Undoubtedly, rights of property might be adduced to support the equity jurisdiction and sometimes the courts do adduce such matters. However, it has been for centuries considered that the welfare of infants is peculiarly within the purview of the courts' jurisdiction and, particularly, within the protection of their equity powers. It is immaterial whether this is put on the ground that infants are the wards of the court or on the ground of public policy. A court of equity will exercise its power to determine and protect the personal rights of infants.\textsuperscript{18} Much the same is true, incidentally, in regard to the mentally incompetent.\textsuperscript{19}

In regard to the marital relation, it has not been infrequent for courts to enjoin interference with the relationship by a third person, especially where the third person is alienating the affections of one spouse. This has been especially true of lower courts, as shown by Dean Pound's collections of newspaper accounts of such occurrences.\textsuperscript{20} The basis or reason of the courts' actions in such cases does not appear. In the appellate courts where such injunctive relief has been granted it has been based on the public policy of protecting and furthering the marriage relation or on the ground of the husband's right in the services and society of the wife or the wife's right to society of and support from the husband.\textsuperscript{21} In some juris-

\textsuperscript{17} Reed v Carter, 268 Ky 1, 103 S.W 2d 663 (1937), noted (1937) 51 Harv. L. Rev. 166, (1937) 32 Ill. L. Rev. 496, (1938) 22 Minn. L. Rev. 566.

\textsuperscript{18} Ex parte Badger, 286 Mo. 139, 226 S.W 936, 14 A.L.R. 286 (1920)

See Moreland, Injunctive Control of Family Relations (1930) 18 Ky. L. J. 207; annotation, Jurisdiction of equity to protect personal rights, 14 A.L.R. 295, at p. 308.

Injunction to prevent further debauching of plaintiff's minor daughter, see Stark v Hamilton, 149 Ga. 227, 99 S. E. 861, 5 A.L.R. 1041 (1919).

\textsuperscript{19} See Watson v Watson, 183 Ky 516, 209 S.W 524, 3 A.L.R. 1575 (1919)

\textsuperscript{20} Pound, Cases on Equitable Relief against Defamation and Injuries to Personality (Chafee, 2d ed. 1930) pp. 127-137.

\textsuperscript{21} Henley v Rockett, 243 Ala. 472, 8 So. 2d 852 (1942) Ex parte Warfield, 40 Tex. Cr. 418, 50 S.W 933, 76 Am. St. Rep. 724 (1899),
dictions which adhere strictly to the requirement that protection of a property right is essential to equity jurisdiction, relief in such cases has been denied as involving purely personal rights and on the grounds that remedies are available at law and the difficulty of enforcing the injunctive decree.\textsuperscript{52}

In so far as concerns suits between spouses for equitable relief, the grant or denial of such relief usually has been dependent upon the existence of property interests or pecuniary loss. Whether the property interest or probability of pecuniary loss is real or is more or less invented to justify equitable relief is another matter. A close approach to ignoring of the property element appears in a New Jersey case wherein the wife obtained an injunction against her husband continuing the prosecution of a suit for divorce in another state allegedly having no jurisdiction. It was remarked that the wife would either have to go to the "trouble and expense" of appearing in the other state to fight the suit or allow it to go by default which would leave her in a position described as a "hardship" to which the "husband has no right to subject her." It may also be noticed that the court was concerned about the rights and interests of the children of the marriage.\textsuperscript{53} However, on a similar state of facts the New York court denied the wife an injunction on the ground that no injury was shown except it

\textsuperscript{52} Bank v Bank, 180 Md. 244, 23 A. 2d 700 (1942) Snedaker v King, 111 Ohio 225, 145 N. E. 15 (1924), noted (1925) 19 ILL. L. REV. 587, (1925) 34 Yale L. J. 327.

\textsuperscript{53} Kempson v Kempson, 58 N. J. Eq. 94, 43 Atl. 97 (1899) \textit{et al.}, 63 N.J. Eq. 783, 52 Atl. 625 (1902)
be to her feelings.\textsuperscript{54} Even where a husband had already obtained a divorce in another state and returned and married a second time, the New York court contented itself with rendering a declaratory judgment at the suit of the first wife that she was still the lawful wife of the defendant husband and demurred her an injunction against the husband and the other woman holding themselves out as husband and wife. Injunction is warranted, the court held, only where some substantial legal right is to be protected. It does not intervene to restrain conduct merely injurious to one’s feelings and causing mental anguish.\textsuperscript{55}

The situation presented by the immediately foregoing cases would seem to boil down to the question whether the marital status itself is a substantial legal right which equity should protect. Since marital property rights, the rights of support, and rights and interests of children of the marriage may also be involved, it would appear that there is ample justification for the intervention of equity.

\textbf{Civil Rights}

Civil rights are those rights one enjoys as regards other individuals rather than those in relation to the establishment and administration of the government, the latter being political rights. Civil rights are the rights accorded to every member or citizen of a community or nation with reference to such matters as property, marriage, family, education and religion, and designed to assure happiness, equality, freedom from discrimination, and so on.\textsuperscript{56} The term is sometimes used to designate those rights of the individual guaranteed by the federal constitution and, as well, by the various state constitutions. The term ‘civil liberties’ is also used in this latter connection.\textsuperscript{57}

\textsuperscript{54} Goldstein v Goldstein, 283 N. Y. 146, 27 N. E. 2d 969 (1940), with strong dissent by Conway, J. It does not appear, incidentally, that the rights of any children were present.


\textsuperscript{56} Moore, Cyc. Law Dict. (3d ed.) “Civil Rights,” 10 AM. JUR. 894.

\textsuperscript{57} See Moore, Cyc. Law Dict. (3d ed.) Moscovitz, Civil Liberties and Injunctive Protection (1944) 39 ILL. LAW REV. 144.
When the law gives a civil right, it is recognized that a violation of the right gives rise to a cause of action for damages, even if not expressly so stated in the law itself. Since the amount of damage may be only nominal, rendering such remedy somewhat ineffectual to afford protection and to discourage violations, it is common to provide by statute that penal or punitive damages in some flat sum shall also be recoverable as well as actual damages. As an alternative means of protecting civil rights and discouraging their violation, or sometimes in addition to the right to recover for penal or punitive damages, it is frequently provided that the violation shall constitute a crime.58

In ordinary circumstances, the violation of the right having already occurred, such remedies may be entirely adequate. Even if the wrongdoer is determined to continue his course of conduct, the loss to him in damages from successive actions against him may well cause him to stop and consider. Nevertheless, occasions have arisen in which the foregoing remedies have not been adequate to prevent violations. Repeated violations may require successive actions at law for damages, violations by a great number may require a multiplicity of actions at law for damages, or an initial violation may be threatened with reasonable probability. Must the individual resign himself to an initial violation or to repeated violations of his civil rights and content himself thereafter with attempts to obtain compensation which may be difficult of ascertainment? Certainly, constitutional or legal guaranties of civil rights mean little if violation must be submitted to and cannot be prevented.59 In many of the cases asserting that equity does not protect purely personal or political rights, it has been stated that equity protects "only civil rights and property rights" or


59 See Orloff v. Los Angeles Turf Club, —Cal. 2d—, 180 P. 2d 321 (1947), placing stress on difficulty of ascertaining compensation even where statute provides for a flat sum as punitive damages, since additional punitive damages may be recoverable in excess of those provided by law upon a proper showing.
words to that effect.\textsuperscript{50} Since civil rights were not involved in those cases, the statements amount only to dicta, but they raise the question whether these courts of equity recognized a field of operation in between property rights and political rights.\textsuperscript{61} But despite these dicta, when the question of enjoining violation of a civil right has squarely arisen we find the property question frequently influencing the court. In a jurisdiction where the rule is strictly followed that property rights but not personal rights are protected by equity, injunctive relief to prevent violation of a civil right has been denied.\textsuperscript{62}

In other jurisdictions, however, civil rights have been considered rights of substance, to be distinguished from personal rights involving trivial issues or for which adequate remedies at law do actually exist, and preventive relief determined to be the only adequate and suitable relief, as where a continued policy of violating the civil rights of the complainant is shown.\textsuperscript{63} Certainly, if the remedy at law is patently inadequate or may not be resorted to successfully, as where the violation is under color of law, equity is the proper source of relief.\textsuperscript{64}

\textsuperscript{61}See Moscovitz, supra, preceding note.
\textsuperscript{62}Tate v Eidelman, 32 Oh. N. P., N. S. 478 (1934), noted (1935) 1 Oh. St. U. L. J. 59, wherein the court seemed favorably inclined to giving equitable relief but declared it could not do so until the state Supreme Court overruled its view that equity protects only property rights.
\textsuperscript{63}In White v Pastfield, 212 Ill. App. 73 (1918) wherein negroes were excluded from a public swimming pool in violation of a civil rights statute, injunctive relief was denied on the ground that equity does not protect personal rights. It was indicated, however, that an adequate remedy by way of mandamus against the public officials was available.
\textsuperscript{64}See Orloff v Los Angeles Turf Club, supra, note 59.
\textsuperscript{65}Kenyon v City of Chicopee, —Mass.— 70 N. E. 2d 241 (1946), enjoining interference with distribution of handbills by religious sect; Harjst v Hoeger, 349 Mo. 808, 163 S.W 2d 609 (1942), enjoining use of school funds for sectarian religious purposes; Garrett v Rose, 161 S.W 2d 893 (Tex. Clv App. 1942) enjoining interference with religious practices.

Interference, under color of law, with civil rights guaranteed by the federal constitution is ground for suit in equity in the federal courts, according to the federal statutes. U. S. Code, Tit. 28, Sec. 41 (14) See also Cyclopaedia of Federal Procedure (2d ed.) Sec. 252; Moscovitz, supra, n. 60.

Mandamus has also been resorted to in order to compel public officials to discontinue racial discrimination or the like. Stone v.
Judicial language on the point has tended to become more and more emphatic in favor of equitable relief. It is submitted that in a case where it can be shown with reasonable probability that an initial violation will occur equity should interpose to protect the civil right, rather than letting the violation occur and directing the injured person to seek relief by way of damages.

**SOCIAL RIGHTS**

Social rights, for our purposes, may be defined briefly as those rights arising from companionship or relationship with others, in clubs, social or fraternal organizations, and the like.

Where the right asserted is merely the right to be allowed to continue this association or companionship, as where expulsion is threatened or has taken place, no property right really exists to warrant equitable protection in a jurisdiction wherein property is an essential prerequisite to equity jurisdiction. Even in a more liberal jurisdiction, equitable relief might well be denied on the basis that there is no injury which warrants judicial remedy of any kind and that, in any event, it would not lie within the power of a court of equity to compel men to associate with each other when they are disinclined or unwilling to do so. Moreover, as is well known, courts are uniformly

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Board of Directors, 47 Cal. App. 2d 749, 118 P 2d 866 (1941), mandamus issued to compel city officials to admit negroes to public swimming pool; Pearson v Murray 169 Md. 478, 182 Atl. 590, 103 A.L.R. 706 (1936), mandamus as proper remedy where state refused to admit negro law students to state maintained law school.

See particularly, Kenyon v City of Chicopee, preceding note.

See Baird v Wells, L.R. 44 Ch. Div 661 (1890)


The late Professor Walsh, in his Treatise on Equity (1930) p. 275, note 37, asks if equity would intervene in the case of wrongful expulsion from a petty card club having only a handful of members who have contributed a small sum for prizes, and argues that a remedy by way of damages should be adequate and that any injury to personality would be too petty to warrant injunctive relief. Certainly one may agree with this, for it is but a reminder of the principle that equity does not concern itself with trivial matters. Some of the English cases denying relief may well be put upon this ground.

Admission to membership cannot be compelled, see Chapman v. American Legion, 244 Ala. 553, 14 So. 2d 225, 147 A.L.R. 585 (1943).
unwilling to interfere in the internal affairs of clubs and associations.68

Nevertheless, there is one aspect of this situation which has a strong appeal for a court of equity. The expulsion of one from a club, social organization or the like, implies that he cannot get along with his fellows, or even worse that he is unfit to be associated with. Once the news of his expulsion is bruited about, the consequences in his personal and in his business life can be very harmful. If the expulsion is wrongful, the situation is highly inequitable as to him. Thus, when an expulsion is wrongfully threatened or attempted, an expulsion which may blacken the victim’s character, destroy his peace of mind, injure him in his private and his business life, an injury or wrong is threatened to him for which all fair minded men will agree there should be a judicial remedy somewhere. Equity is the logical place to obtain this remedy or relief and equity has risen to the challenge.69

Many courts interpose in the situation of an expulsion without a hearing or without a fair hearing, on the ground that such conduct is contrary to “natural justice” or “fair play.”70 The difficulty concerning the existence of a property right has frequently been surmounted by determining that the constitution or by-laws of the club or organization providing for membership or the agreement by which one becomes a member constitute a contract between the member and the club or organization. An attempt wrongfully to expel the member is said to be a breach of his contract and thus an injury to a property right, since the contract or the rights under it constitute a property right. Upon this basis, many courts of equity have been willing to examine the rightfulness or wrongfulness of a threatened expulsion or of an accomplished expulsion and to enjoin threatened or pending expulsion proceedings if found

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68 See Note (1922) 7 CORN. L. Q. 261.
70 See Note (1920) 30 YALE LAW JOUR. 202; Pound, Equitable Relief against Defamation and Injuries to Personality (1916) 29 HARV. L. REV. 640.

Expulsion because of exercise of constitutional rights as citizen, see Spayd v Ringing Rock Lodge, etc., 270 Pa. St. 67, 113 Atl. 70, 14 A.L.R. 1443 (1921), noted (1922) 35 HARV. L. REV. 332, (1922) 6 MINN. L. REV. 241.
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to be wrongful or to enforce performance of the contract by compelling reinstatement of a member if the wrongful expulsion has been accomplished. Any remedy at law by way of damages is a totally inadequate remedy in the circumstances. In some cases, some other technical property interest has been found, as for instance some interest in assets or property of the organization.

Where, as is frequently the case these days, membership in an organization or society carries with it concrete benefits, such as health, accident, hospital, medical or life insurance, or the like, the loss of such benefits from a wrongful expulsion definitely deprives the member of property rights. This is a deprivation or loss against which equity will give relief, since the remedy at law is inadequate. As to membership in labor unions, trade associations and the like, the matter goes beyond mere social relationships and enters the realm of the power to earn a living or the right to carry on a lawful business and has been discussed in a previous article.

When any remedy exists within the club, association or organization, the member must first exhaust it before applying to the courts, unless the procedure whereby this remedy is obtained is too burdensome or is unfairly conducted.

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72 See also Pound, Equitable Relief Against Defamation and Injuries to Personality (1916) 29 HARV. L. REV. 640, at p. 680; WALSH, TREATISE ON EQUITY (1930), pp. 275-277 and notes thereto.
74 That a substantial property right must be involved, see Howard v Betts, 190 Ga. 530, 9 S. E. 2d 742 (1940).
75 The dispute within a society or association may, of course, concern other matters than expulsion of a member. If the dispute between the society or association and the member involves property rights, a court of equity will take cognizance of it. See Ryan v Cudahy, 157 Ill. 108, 41 N. E. 760, 49 L.R.A. 353, 48 Am. St. Rep. 305 (1895).
76 Ayres v. Order of United Workmen, 188 N. Y. 280, 80 N. E. 1020 (1907).
77 See de Funik, Equitable Protection of Business and Business Rights (1947) 35 Ky. Law Jour. 261.
78 Fales v Musicians Protective Union, 40 R. I. 34, 99 Atl. 823 (1917).
Political Rights

Political rights are the rights of participation in the establishment and administration of the government and include such rights as the right to vote, the right to be a candidate for public office, the right to hold public office, the right to see to the proper disposition of public funds, and similar matters. They are to be distinguished from civil rights.76

In the past, courts in the exercise of equity jurisdiction have refused to grant injunctive relief against the violation or denial of political rights. This has variously been put upon the ground that no property rights or interests in property are involved,77 that there are other adequate remedies available,78 or that the matter is properly within the jurisdiction of other branches of the government and that equity cannot interfere or should not interfere as a matter of public policy.79

So far as the use of the so-called extraordinary remedies, particularly mandamus, prohibition and quo warranto, are available, as to enforce one’s right to register or to vote or to try title to public office, it may be conceded that there are adequate remedies which render unnecessary a resort to equity. It may also be conceded that matters sometimes arise which are properly within the jurisdiction or cognizance of some other branch of the government, such as the legislative branch, and are not within the jurisdiction or cognizance of equity or for that matter of the judicial branch at all.80 It may well be doubted, however, in view of modern developments, that the property element is any longer a requisite for the protection of personal or individual rights, certainly where such rights are recognized as legal rights, as political rights are. If there is no other adequate remedy, as by way of mandamus or quo warranto, for example, to prevent the loss of or injury to a political right and there is no question of invading the province

76 MOORE, CYC. LAW DICT. (3d ed.) Moscovitz, Civil Liberty and Injunctive Protection (1944) 39 ILL. L. REV. 144.
77 Fletcher v Tuttle, 151 Ill. 41, 37 N. E. 683, 42 Am. St. Rep. 220, 25 L.R.A. 143 (1894)
78 Fletcher v Tuttle, supra, n. 77.
80 See Spies v Byers, 267 Ill. 627, 122 N.E. 841 (1919)
of another branch of the government, equitable relief should be awarded.\textsuperscript{51}

It will be found that equitable relief is being increasingly given, at least as part of the relief, where political rights are in dispute.\textsuperscript{52} This is particularly true in code states where law and equity powers are merged in one court. Thus, despite some authority to the contrary, where title to a public office is in dispute, an injunction will usually issue to protect the possession of the incumbent while the title is determined in a court of law or on the law side of the court.\textsuperscript{53} Sometimes the political question may give rise to tax liability and on the ground that a property question is involved as the main issue of the case, the equity court has passed on the political question as being merely incidental to the main issue of the property right involved.\textsuperscript{54} The property interest of the taxpayer has also frequently provided the basis for enjoining the holding of an invalid election relating to the expenditure of public funds.\textsuperscript{85} But whether placed on the ground of protection of a legal right or on the ground of protecting a property right, the increasing tendency, as already remarked, is to extend equitable relief to political rights as in the cases of other personal rights.

\textsuperscript{51}See Gilmore v Waples, 108 Tex. 167, 188 S.W 1037 (1916).

\textsuperscript{52}Illustrations of equitable protection of political rights and some of the judicial reasoning to justify it, are given by Moscovitz, Civil Liberties and Injunctive Protection (1944), 39 Ill. L. Rev. 144 at 154, 155.

\textsuperscript{53}Heyward v Long, 178 S.C. 351, 183 S.E. 145, 114 A.L.R. 1330 (1935) and annotation thereto at 1147.

\textsuperscript{54}Coleman v. Board of Education, 131 Ga. 643, 63 S.E. 41 (1908).

\textsuperscript{85}It is frequently asserted that the rule is that injunction will not issue to enjoin the holding of an election but such rule is open to serious question in view of the many decisions allowing injunction. The matter seems to boil down to the question of whether or not there is any other adequate remedy except in equity to protect the political right of the plaintiff or to the question whether the matter is one placed by governing law beyond the jurisdiction of the judiciary generally. See annotation, Power to enjoin holding of election, 33 A.L.R. 1376; Note, (1932) 32 Col. L. Rev. 138; Note, (1933) 18 Corn. L. Q. 278; Note, (1921) Wis. L. Rev. 309; McClintock, Handbook of Equity (1936), Sec. 161.