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THE JOINDER RULES AND EQUITY JURISDICTION IN THE AVOIDANCE OF A MULTIPLICITY OF SUITS

*Bachman v. Lembach*¹

Plaintiff, an administrator *de bonis non*, under the authority of an order of the Orphans' Court of Baltimore City, filed a bill in equity against four defendants for the recovery of certain property alleged to have belonged to the decedent. The bill alleged that one of the defendants, a sister of the decedent, had joint access to the decedent's safe deposit box; that at the time of the decedent's death, all the contents of the box, consisting of certain jewelry, cash and United States Defense Savings Bonds, belonged to the decedent; that the defendant sister opened the box and removed its contents; that the bonds and a watch had subsequently come into plaintiff's hands, but that the remaining jewelry and cash were in part retained by the defendant and in part delivered by her to the other defendants. Plaintiff asked for a declaratory decree, discovery and accounting for the contents of the box, determination of the ownership thereof, an injunction and other relief. Defendants demurred, urging that there were adequate remedies at law in actions of replevin or trover, or for money had and received. On appeal from an order overruling the demurrer,² the Court of Appeals reversed and ordered the bill dismissed, holding the legal remedies adequate and the only ground for equitable jurisdiction the prevention of multiple suits; in view of the Joinder Rules, it would be unnecessary to bring more than one action at law to determine all questions in issue, and therefore there was no need to seek relief in equity on this ground.

Plaintiff, in contending that equity had jurisdiction over the present controversy, relied upon the recent case of *Berman v. Leckner*,³ in which the Court had held that equity had jurisdiction of a bill by an administrator *de bonis non* to recover personal property of the decedent al-

¹ 63 A. 2d 641 (Md. 1949).

² In the instant case the appeal was taken from the order overruling a demurrer to the entire bill of complaint. Such an appeal is no longer permitted. See Rule 6A of the Court of Appeals Rules and Regulations Respecting Appeals (published in the Baltimore Daily Record, May 24, 1950) providing:

"No appeal shall be allowed from an order overruling a demurrer to a bill of complaint, but the ruling shall be reviewable upon appeal from the final decree."

This rule became effective on June 1, 1950.

³ 188 Md. 321, 52 A. 2d 464 (1947).

leged to have been withheld. In the *Berman* case the Court said generally as to the right to proceed in equity for the specific recovery of personal property:⁴

"It is a general rule that equity will 'enforce the surrender and delivery of chattels in specie, which have been tortiously obtained or are wrongfully detained', where they consist of heirlooms, paintings, or other works of art having a sentimental or unique value, or having no ready market value.⁵ In Maryland, this rule has been extended to notes and other securities.⁶ Whether Equity will assume a concurrent jurisdiction may depend upon the balance of convenience in a particular case.⁷ Important considerations, in the recovery of assets of any type, may be the necessity for a discovery, the sufficiency of allegations as to fraud or collusion, and the possibility of avoiding a multiplicity of suits.⁸ In the case at bar, we think the legal remedy would be inadequate or incomplete, and that the equity jurisdiction is properly invoked to bring about a recovery and redistribution of the assets in a more expeditious and convenient manner."

However, the Court distinguished the instant case from the *Berman*⁹ case in that by the allegations of the bill there was no showing of any peculiar value in the chattels involved, no need for discovery, nor any complication or need for an accounting. The Court therefore concluded that the legal remedies here were adequate, and that there was no reason to give equitable relief except upon the ground of preventing possible multiplicity of suits.

As to this, the Court stated that it has never been flatly decided in Maryland whether the avoidance of a multiplicity of suits at law is an independent ground for relief in equity, but assumed without deciding that it is. Nevertheless, the allegations in the bill show no practical necessity for the Court's exercising its jurisdiction on this ground in

⁴ *Ibid*, 326, 327.

⁵ Citing, *Pomeroy*, Spec. Perf., (3rd ed. 1926) Sec. 12; *Burr v. Bloomsbury*, 101 N. J. Eq. 615, 138 A. 876 (1927).

⁶ Citing, *Scarborough v. Scotten*, 69 Md. 137, 14 A. 704, 9 Am. St. Rep. 409 (1888); *Safe Deposit and Trust Co. v. Coyle*, 133 Md. 343, 105 A. 308 (1918); *McIntyre v. Smith*, 154 Md. 660, 141 A. 405 (1928). But see *Farmer v. O'Carroll*, 162 Md. 431, 160 A. 12 (1932), and *Note, Specific Restitution in Equity of Converted Stocks and Bonds*, 4 Md. L. Rev. 92 (1939); *Sykes v. Hughes*, 182 Md. 396, 35 A. 2d 132, 150 A. L. R. 87 (1943).

⁷ Citing, 4 Restatement, Torts, (1939), Sec. 946.

⁸ Citing *Boland v. Ash*, 145 Md. 465, 477, 125 A. 801 (1924); *Turk v. Grossman*, 176 Md. 644, 667, 6 A. 2d 639 (1939).

⁹ *Supra*, ns. 3, 4.

the instant case since under the Joinder Rules¹⁰ multiple suits at law would not be necessary to adjudicate all the questions in issue.

The statement by the Court that it has never flatly decided that the avoidance of a multiplicity of suits is an independent ground of equitable jurisdiction has been repeated subsequently in *Redwood Hotel v. Korbien*.¹¹ Nevertheless in the past the Court of Appeals has stated it frequently as one of various alternate reasons for the exercise of equitable jurisdiction.¹² And there are several cases in which, on the facts of the cases, relief in equity seems to have been given primarily, if not entirely, on this ground.¹³ The case of *Allender v. Ghingher*,¹⁴ cited by the Court in the instant case, deals with only one phase of the question of the avoidance of a multiplicity of suits, viz., whether a bill on this ground will lie where there is no common right, title or interest involved, a question as to which there is sharp conflict in the authorities.¹⁵

Wells v. Price,¹⁶ which was also cited by the Court, seems to be directly in point. In that case the State's Attorney of Baltimore City sought the aid of equity to restrain the Warden of the Baltimore City Jail from releasing prisoners under the state-wide law, rather than according to the local law, pertaining to the maximum period of confinement for the nonpayment of fines and costs. During the course of the year the issue of the case would affect the cases of about one thousand prisoners. The jurisdiction of equity was not challenged by counsel but the Court nevertheless examined this point at some length, and stated that equity will act to prevent multiple litigation, quoting Pomeroy with approval. Though other reasons in support of the exercise of equitable jurisdiction were given as well, it is difficult on the facts to find any other ground for its existence, and it would therefore seem that the case could

¹⁰ General Rules of Practice and Procedure, Part Two, III, Joinder of Parties and Claims; Third Party Practice, Rule 2 (a) (d) (e), Md. Code Supp. (1947) 2040.

¹¹ 73 A. 2d 468, 472 (1950).

¹² See Note, *Power of Equity to Enjoin Trespassers to Real Property — Requisites for the Granting of Such Relief*, 2 Md. L. Rev. 160, 166 (1938), and cases cited.

¹³ See *Cityco Co. v. Slaysman*, 160 Md. 357, 153 A. 278 (1931); *Baker v. Howard County Hunt*, 171 Md. 159, 188 A. 223 (1936); *Metaxas v. Easton Pub. Co.*, 154 Md. 393, 140 A. 603 (1928); *Blondell v. Consolidated Gas Co.*, 89 Md. 732, 43 A. 817 (1889); *Townsend, Grace & Co. v. Epstein*, 93 Md. 537, 49 A. 629, 86 A. S. R. 441, 52 L. R. A. 409 (1901).

¹⁴ 170 Md. 156, 183 A. 610 (1936).

¹⁵ See Chafee, *Bills of Peace with Multiple Parties*, 45 Har. L. Rev. 1297, 1312-1321 (1932).

¹⁶ 183 Md. 443, 37 A. 2d 888 (1944).

be regarded as a clear holding that the prevention of multiple litigation is an independent ground of equitable jurisdiction.

As pointed out in the *Wells*¹⁷ case, a distinction must be made between equitable jurisdiction in the strict sense, meaning the power to hear and determine a cause, and in the looser sense in which it is frequently used, meaning the desirability of exercising power in a particular case. Where relief in equity is sought purely to avoid multiple litigation, the question is one as to the exercise, not the existence of equitable jurisdiction. The ground upon which plaintiff asserts a claim to relief in equity is the inequitable hardship to which he will be otherwise exposed by the necessity of prosecuting or defending multiple suits at law and the vexatious character of such multiple litigation. To justify his claim he must consequently show that the hardship is real and outweighs the inconvenience resulting to the defendant if equity should take jurisdiction over the cause.¹⁸

In the instant case, as the Court points out, the plaintiff was not actually under any necessity of prosecuting multiple suits at law, by virtue of the Joinder Rules.¹⁹ As stated by the Court:²⁰

“the plaintiff may join in one action at law as many legal claims as he may have against any defendant, and

¹⁷ *Ibid*; See also *Fooks v. Ghingher*, 172 Md. 612, 621, 192 A. 782 (1937).

¹⁸ See *Hale v. Allinson*, 188 U. S. 56 (1903); *Di Giovanni v. Camden Fire Insurance Co.*, 296 U. S. 64 (1935); *Boise Artesian Co. v. Boise City*, 213 U. S. 276 (1909); *Peninsular Construction Co. v. Merritt*, 90 Md. 589, 45 A. 172 (1900); *Roland Park Co. v. Hull*, 92 Md. 301, 48 A. 366 (1901); *Fingles v. Singer*, 139 Md. 535, 115 A. 795 (1921).

¹⁹ *Supra*, n. 10. Specifically the Joinder of Parties and Claims Rules here referred to are:

“Rule 2. Permissive Joinder of Parties and Claims.

(a) *Same Parties*. The plaintiff may join in one action either as independent or as alternate claims as many claims as he may have against the defendant.

(d) *Multiple Joinder*. Separate claims involving different plaintiffs or defendants or both may be joined in one action whenever any substantial question of law or fact common to all the claims will arise in the action or for any other reason the claims may conveniently be disposed of in the same proceeding. The claims joined may be joint, several, or in the alternative, as to plaintiffs or defendants or both. Any person may join in the action as a plaintiff who demands any relief on any of the claims joined, and he need not be interested in the other claims or in obtaining all the relief demanded. Any person may be joined as a defendant against whom any relief is demanded on any claim, and he need not be interested in defending against the other claims or all the relief demanded.

(e) *Judgments Among Multiple Parties*. Where the action involves more than one plaintiff or defendant or both, judgment may be given for one or more of the plaintiffs according to their respective rights to relief and against one or more defendants according to their respective liabilities.”

²⁰ *Supra*, n. 1, 644.

as many separate legal claims as he may have against more than one defendant 'whenever any substantial question of law or fact common to all the claims will arise in the action.' Separate judgments may be entered on the various claims. In the instant case the parties in possession all claim title by way of gift from the decedent, through her agent Mrs. Bachman. If they are unable to maintain their claim, separate judgments for the return of the jewelry and for money had and received could be entered by the law court, against each of the three parties in possession."

In the absence of any such necessity for prosecuting multiple suits at law, there is no inequitable hardship placed upon the plaintiff in remitting him to his legal remedies, and consequently no basis for the exercise of equitable jurisdiction on the plaintiff's behalf.

As stated by Pomeroy:²¹

"There must be a practical necessity for the exercise of the jurisdiction. Since the existence or exercise of the jurisdiction, in classes third and fourth,²² depends on defects in the legal rules as to joinder of parties, where the legal remedy is not thus defective, but permits the joinder of the numerous parties or consolidation of the numerous suits, equity will not take jurisdiction for the purpose of awarding substantially the same relief that may be obtained at law."

Pomeroy goes on to state in a footnote that the statutory provisions for interpleader, intervention, consolidation of suits, and bringing in additional parties are all in aid of the efficacy of the remedy afforded to the parties by the ordinary action at law, and that these may be considered in determining whether a suit in equity to restrain actions at law should be entertained.²³ Thus it appears that in determining whether equity will take jurisdiction over a given controversy, consideration must be given not only to

²¹ Pomeroy, *Eq. Jur.* (5th ed. 1941), Sec. 251¾.

²² Class 3 is where a number of persons have separate and individual claims and rights of action against the same party; Class 4 is where the same party has or claims to have some common right against a number of persons. Class 1 is where plaintiff at law is obliged to bring a number of similar actions against the same wrong-doer. Class 2 is where one party brings successive or simultaneous similar actions against another party, and the defendant at law now seeks to have equity decide the controversy in one single judicial determination.

²³ *Davis v. Forrester*, 124 Minn. 10, 144 N. W. 423, L. R. A. 1915 F, 1012, Ann. Cas. 1915 B, 448 (1913).

the rules of equity jurisprudence, but also to the General Rules of Practice and Procedure. Decisions in other jurisdictions are to the same effect.²⁴

However, although the plaintiff's remedies at law in the instant case were adequate by the usual tests and no undue hardship is imposed by remitting him to these, a query might still be raised as to whether the Court's action in decreeing dismissal of plaintiff's bill was consistent with Art. 16, sec. 92.²⁵ In its decision in the instant case, the Court makes no reference to this statute; and there was no showing in the facts of the case as to defendants' solvency or whether there was a posting of bond. The Court does state that in the absence of allegations in the bill it could not assume that judgments at law would be inadequate or ineffective. The statute, however, places the burden upon the defendant of affirmatively showing that a judgment at law would be effective and in the absence of such showing, requires bond to be posted. In *Universal Realty Corp. v. Felser*,²⁶ which also came up on appeal from the action of the trial court on defendants' demurrers to the bill of complaint the Court reversed a decree sustaining the demurrers without leave to amend and remanded the case for further proceedings, declaring:

"It may very well be that the Felsers (defendants) are financially able to respond in damages, or can give the proper bond, but there is nothing in the record before us to show that this is the case. In the absence of such a showing, relief should not be refused on the ground that the appellant (plaintiff) had an adequate remedy of law."

It is not apparent why this statement is not equally applicable to the instant case.²⁷

²⁴ See, e.g., *Equitable Life Assurance Society v. Wert*, (C. C. A. 8th Cir.), 102 F. 2d 10 (1939); but cf. *Parkway, Inc. v. United States Fire Ins. Co.*, 314 Mass. 647, 51 N. E. 2d 436 (1943); *Jay-Bee Realty Corp. v. Agric. Ins. Co.*, 320 Ill. App. 310, 50 N. E. 2d 973 (1943).

²⁵ Md. Code (1939), Art. 16, Sec. 92:

"No court shall refuse to issue a mandamus or injunction on the mere ground that the party asking for the same has an adequate remedy in damages, unless the party against whom the same is asked shall show to the court's satisfaction that he has property from which the damages can be made, or shall give a bond in a penalty to be fixed by the court, and with a surety or sureties approved by the court, to answer all damages and costs that he may be adjudged by any court of competent jurisdiction to pay to the party asking such mandamus or injunction by reason of his not doing the act or acts sought to be commanded, or by reason of his doing the act or acts sought to be enjoined, as the case may be."

²⁶ 179 Md. 635, 641, 22 A. 2d 448 (1941).

²⁷ See also, *Michael v. Rigler*, 142 Md. 125, 120 A. 382 (1928).