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Punitive Damages In Equity

*Superior Construction Co. v. Elmo*¹

Appellant, as a result of his building operations, caused debris and silt to be deposited on appellee's land. In the trial court, in equity, appellee secured an injunction against further trespass and an award of full compensatory damages, as well as \$1,000.00 as punitive damages. This decree was affirmed by the Court of Appeals, except as to the allowance of punitive damages, on which question reargument was ordered.

On reargument, the Court held that where a party seeking equitable relief also seeks punitive damages as incidental thereto, the court of equity, as a condition to its giving assistance, will require the party to waive any claim to punitive damages because they are in the nature of a penalty or forfeiture. The Court further held that in awarding damages to provide complete relief and avoid multiplicity of suits, it was applying a permissive and not a mandatory jurisdiction, and that since the rule was one of convenience, it would be applied only in those cases where it was consistent with the fundamental principles of equity, one of which principles is that equity will permit only what is just and right, with no element of vengeance.²

¹ 204 Md. 1, 102 A. 2d 739, 104 A. 2d 581 (1954).

² The Court stated that punitive damages could have been justifiably awarded in the present case if it had been tried at law. *Ibid*, 14.

The appellees contended that since equity may award compensatory damages as incidental relief, it is reasonable and consistent with equitable principles to grant full relief by going on, in a proper case, to award punitive damages as well. They also argued that when such incidental jurisdiction is taken over a purely legal claim to avoid multiplicity of suits, the court sits *pro tanto* as a court of law, and is not giving equitable relief but legal relief. Admitting that the weight of authority is against their position, they contended that the contrary cases are inconsistent with the theory upon which equity courts award damages as incident to purely equitable relief.

Against this the appellant argued that historically equity has always refused to enforce penalties or forfeitures and has sought not to penalize but only to provide restitution where the normal legal remedies are inadequate; hence, that to award punitive damages would run counter to basic and long established equitable principles. It also contended that plaintiff, by seeking relief in equity, had waived any claim for such damages which could have been recovered at law.

The case is one of first impression in the Maryland courts, but authority for the court's decision certainly is not wanting.³ An early American authority cited by the court is *Bird v. The W. & M. R.R. Company*.⁴ In this case an injunction against continuing trespass and compensatory damages was awarded, but the court said, "plaintiff by applying to this Court, waives all claim for vindictive damages". This statement was not supported by authority or reasoning, but in answering appellee's claim in the instant case that this was a casual statement without support in precedent, the Court of Appeals referred to the prior Supreme Court case of *Livingston v. Woodworth*⁵ and to the English rule as set out in *Colburn v. Simms*.⁶ In the former

³ See cases cited on Reargument, *ibid*, 14, 16-17, fn. 1.

⁴ 8 Rich. Equity 46, 57, 64 Amer. Dec. 739, 746 (S. C. 1855).

⁵ 15 How. 546, 559 (U. S. 1854). The court in this case held that equity, because of its basic principles, would not award punitive damages, saying:

"But before a tribunal which refuses to listen even to any, save those whose acts and motives are perfectly fair and liberal, they cannot be permitted to contravene the highest and most benignant principle of the being and constitution of that tribunal.

"There they will be allowed to claim that which, *ex aequo et bono* is theirs, and nothing beyond this."

⁶ 2 Hare 543, 553-4, 67 Eng. Rep. 224, 229 (1843). Vice Chancellor Sir James Wigram said:

"... the question suggests itself whether a court of equity will afford any assistance in giving effect to a forfeiture, or whether the parties ought not, so far as respects this claim, to be left to their remedies at law. The general rule undoubtedly is that, where a party seeking

case punitive damages were denied on general equitable principles; in the latter on the waiver theory.

The Court of Appeals reasoned in the instant case that the waiver theory was especially applicable because appellees had asked for compensatory damages only and had included no prayer for general relief. Also, the further fact that by Statute,⁷ allowing injunctive relief at law with accompanying damages, there was provided an adequate alternative to relief in equity seemed to settle the Court's conclusion that equity should not afford relief. *Karns v. Allen*⁸ is cited by the court as a case in which it was held that waiver occurred by resort to a court of equity. This result was reached even after the court acknowledged the principle that once equity takes jurisdiction it is supposed to give complete relief.

The courts in this country have generally held that punitive damages may not be awarded in equity.⁹ The minority position is a decidedly weak one in point of numbers. In Texas, three cases gave punitive damages in equity,¹⁰ but the later case of *Bush v. Goffrey*¹¹ expressly refused to follow them, saying that they gave no consideration to the fundamental principle involved. In Mississippi,

equitable relief is incidentally entitled to the benefit of a penalty or forfeiture, the court requires him, as a condition of its assistance, to waive the penalty or forfeiture."

⁷ Md. Code (1951) Art. 75, Secs. 135-147. This authorizes the plaintiff under certain circumstances to obtain an injunction at law, together with the simultaneous recovery of damages available in the ordinary action at law.

⁸ 135 Wisc. 48, 115 N. W. 357, 360 (1908) :

"Of course the general rule that where a court of equity takes jurisdiction it will award full relief is well understood, but the question is whether a court of equity should in any case award exemplary damages, or is it confined simply to giving compensatory damages? After considerable search we have been able to find no case where exemplary damages were allowed by a court of equity, and while our investigation shows a great dearth of authority in point on the subject, the cases which in any way touch the question appear to lean to the doctrine that a court of equity should award only compensatory damages."

⁹ *Supra*, n. 3.

¹⁰ *Oliver v. Chapman*, 15 Tex. 400 (1855) ; *Western Cottage Piano & Organ Co. v. Anderson*, 97 Tex. 432, 79 S. W. 516 (1904) ; *Mossop v. Zapp*, 189 S. W. 979 (Tex. 1916).

¹¹ 84 S. W. 2d 759, 764 (Tex. 1935) :

"Now, full restitution has been made to the complainant, and she has been made whole. It would ill comport with the principles of equity for the court to visit upon the defendants a sort of punishment to the pecuniary profit of the complainant and consequent loss of the defendants. A court of equity is a court of conscience, but not a forum of vengeance. It will make restitution, but not reprisals. It will fill full the measure of compensation, but will not overflow it with vindictive damages."

punitive damages were awarded in one case,¹² which could however also be construed as the award of enlarged compensatory damages only, and in another case¹³ the language as to punitive damages was *dictum*. Two Tennessee cases¹⁴ have allowed such recovery, but without citing authority. In the California case of *Union Oil Co. v. Reconstruction Oil Co.*,¹⁵ where the trespasser continued to drill oil after the injunction had issued, it was held that the rule of damages was the same as that at law.¹⁶ But it was also said that there was but one form of action under the California Code, the implication being that it did not matter on which side the damages were sought.¹⁷

Two Maryland cases relate to the problem only inferentially,¹⁸ but directly in point is *Coca-Cola Co. v. Dixi-Cola Laboratories*,¹⁹ a Federal case from Maryland. Judge Soper, speaking for the Circuit Court of Appeals for the Fourth Circuit, said that a court of equity did not have power to award exemplary damages without express statutory authorization, and further, that one who applies to equity in the absence of such statute waives such recovery, as the function of equity is to compensate and not to punish.

There is certainly therefore adequate basis in precedent for the Court's decision in the present case,²⁰ and the Court's

¹² *Hines v. Imperial Naval Stores Co.*, 101 Miss. 802, 58 So. 650 (1912).

¹³ *Neal v. Newburger Co.*, 154 Miss. 691, 123 So. 861 (1929).

¹⁴ *South Penn Oil Co. v. Stone*, 57 S. W. 374 (Tenn. 1900) (decided in the Tennessee Chancery Court of Appeals). *Lichter v. Fulcher*, 22 Tenn. App. 670, 125 S. W. 2d 501 (1938) (decided in an intermediate court).

¹⁵ 20 Cal. App. 2d 170, 66 P. 2d 1215 (1937).

¹⁶ The Court of Appeals in the instant case, *supra*, n. 1, 21, pointed out that the punitive damages given in the California case for not obeying the injunction were really enlarged compensatory damages similar to those given in the coal cases in Maryland. See *Mt. Savage G. Ck. Co. v. Monahan*, 132 Md. 654, 104 A. 480 (1918) and cases cited.

¹⁷ But *cf.* the statement of Judge Soper in *Coca-Cola Co. v. Dixi-Cola Lab., Inc.*, *infra*, n. 19, 64, that:

"In the absence of statute the function of a court of equity in the award of damages is confined to compensation and does not include the authority to award damages in the nature of a penalty; and hence one who appeals to a court of equity for relief waives vindictive damages."

¹⁸ *Jacob Carmel, et al. v. Joseph Lipnick, et al.*, 3 Baltimore City Reports, 475 (1916), where it is taken for granted that equity could not award punitive damages. *Cross v. McClenahan*, 54 Md. 21, 24 (1880), where the court said equity never enforces a penalty.

¹⁹ 155 F. 2d 59, 64 (4th Cir. 1946), *cert. den.*, 329 U. S. 773 (1946).

²⁰ The encyclopedias state the situation rather succinctly. Thus in 15 Am. Jur. 704, Damages, Sec. 268, it is said: "As a general rule, courts of equity will not award exemplary damages, although this rule is not without exception." See also: 19 Am. Jur. 125, Equity, Sec. 125.

The reference to *Corpus Juris Secundum* was cited by both parties in their briefs. 30 C. J. S. 426, Equity, Sec. 72, states: "Damages recoverable in equity as incidental relief are ordinarily limited to compensatory damages, and . . . equity as a rule will not award exemplary or punitive damages." See also 25 C. J. S. 709, Damages, Sec. 117.

supporting its waiver approach with emphasis on the existence of a complete remedy at law permitted by statute²¹ is understandable. However, it may be suggested that the reason why equity should not award such damages has never been thoroughly and logically set forth in any of the authorities. Conceding that punitive damages are the sort of penalty which equity should not normally encourage as a part of equitable relief, yet, is it not also true that applying this general doctrine to a case such as the present one is in contravention of another principle of equity, that once it takes jurisdiction, it gives full relief to prevent a multiplicity of suits? It seems clear that full justice is not done, as the plaintiff cannot recover all of the damages to which he would have been entitled at law. Such a situation presents the anomaly that a court of law might give more complete relief than a court of equity in view of the statutory authorization for the issuance of an injunction in suits at law.

It is submitted that there are actually no substantial reasons of policy or administration which would prohibit the award of exemplary damages in equity as incidental to equitable relief to which the plaintiff shows himself entitled. The policy of taking jurisdiction in equity in order to do complete justice would indicate rather that such damages should be permitted. When equity awards damages as incidental relief in a case such as this, it is awarding legal and not equitable damages, and even though this is a discretionary power, it would seem that it should, when it is exercised, be governed by legal and not equitable principles. This would not be a case of equity's creating or favoring punitive damages, but, merely one of equity's permitting them to complete equity's relief when they are already otherwise established by law.

The two bases which the Court adopted as its rationale are perhaps open to some question. The waiver theory manifestly is dependent upon the principle on which it rests, namely, that equity will not enforce a penalty. If this falls, the waiver theory must surely fall with it.

²¹ Under Md. Code (1951) Art. 75, Secs. 135-147, an injunction may be awarded at law which is in addition to any ordinary legal relief to which plaintiff may be entitled. It should be noted however, that Sec. 147 states that these provisions are not to interfere with ordinary equity jurisdiction in matters of injunction. It is likely that an injunction against trespass would be more easily obtained through the customary equity procedure than at law. To the extent that this is so, it would give greater force to the argument that equity should, if necessary to give full relief, award exemplary damages where these could be recovered at law.

While at an earlier time there may have been good reason for the dichotomy of legal maxims inherent in the majority view,²² there seems no compelling reason in principle why equity should not now afford a complete remedy for every wrong of which it takes cognizance. Certainly convenience would be aided by such an approach. Even more important is the fact that justice would be better served if equity afforded complete relief rather than forever partially denying to the complainant the full relief to which he would have been entitled at law. Justice sometimes necessarily involves a penalty. It seems logical and proper that the principle against penalties should yield to the principle of doing complete justice in equity, where equity jurisdiction exists and when a penalty is called for and permitted by law.

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²² *Mid Continent Petroleum Corp. v. Bettis*, 180 Okla. 193, 69 P. 2d 346, 348 (1937). ". . . the basis of the rule seems to be that, historically, the assessing of damages is not a function of a court of equity, and it will assess actual damages only as ancillary to equitable relief."