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INJUNCTIVE RELIEF IN FLORIDA

L. L. FABISINSKI AND JOE A. COWART, JR.

The early English chancellor, almost always an ecclesiastic and student of the civil law, found in Roman law a body of principles adapted to guide him in his effort to fill the gaps in, and to soften the rigors of, the early common law. Among other things he found the interdict, defined as follows in the *Institutes*:¹

"erant autem interdicta formae atque conceptiones verborum, quibus praetor aut iubebat aliquid fieri aut fieri prohibebat. . . .

". . . prohibitoria sunt, quibus vetat aliquid fieri, veluti vim sine vitio possidenti, vel mortuum inferenti, quo ei ius erit inferendi, vel in loco sacro aedificari, vel in flumine publico ripave eius aliquid fieri, quo peius navigetur, restitutoria sunt, quibus restitui aliquid iubet"

This is the very definition used by an early American author who described injunction as "a judicial process, whereby a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ."²

Although injunction is not one of the traditional common law extraordinary writs,³ it stands forth as a distinct head of equity jurisprudence and perhaps the most important of the equitable processes. It is frequently termed the strong arm of equity and, like the writ of habeas corpus, is to be granted cautiously and sparingly,⁴ lest it be

¹INSTITUTES 4.15.pr: "Interdicts were formulae by which the praetor either ordered or forbade something to be done. . . .

². . . Prohibitory interdicts are those by which he forbids some act, such as forcibly ejecting a bona fide possessor, or forcibly interfering with interment in a lawful place, or building upon sacred ground, or doing anything in a public stream or on its banks that will impede navigation. Restitutory interdicts are those by which he orders that something be restored. . . ." Cf. GAIUS 4.138.

³2 STORY, COMMENTARIES ON EQUITY JURISPRUDENCE §861 (13th ed. 1886).

⁴The Supreme Court of Florida has stated that it is established law in Florida that a writ of injunction is an extraordinary writ, *Clark v. Kreidt*, 145 Fla. 1, 199 So. 333 (1940).

⁵*Johnson v. Killian*, 157 Fla. 754, 27 So.2d 345 (1946); *Willis v. Hathaway*, 95 Fla. 608, 117 So. 89 (1928).

turned into an instrument of oppression and injury.⁵ The issuing of an injunction has always called forth strong statements of caution by eminent judges. Thus Judge Baldwin in *Bonaparte v. Camden & A.R.R.*⁶ said, "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction"

The reason for caution is evident. In many applications for injunction the court is obliged to act on ex parte affidavits that, if they do not positively misstate the facts, may give a very inadequate view of them. So impressed are the English equity judges with the necessity of discouraging one-sided statements that if the ex parte presentation of the case is not fair they will dismiss the application without regard to its merits.⁷

I. OBJECT AND PURPOSE OF INJUNCTIONS GENERALLY

The object and purpose of an injunction is to preserve an existing state or condition and to restrain an act which if done would be contrary to equity and good conscience. It is the appropriate relief if the remedy at law is available only subsequent to the injury and the effects cannot at that time be adequately compensated.⁸ Since it is well settled in this state that injunction is preventive only⁹ and ordinarily cannot be applied correctively,¹⁰ injunction will not issue if the acts complained of are past¹¹ and not continuous in nature¹²

⁵Clark v. Kreidt, 145 Fla. 1, 199 So. 333 (1940); Savage v. Parker, 53 Fla. 1002, 43 So. 507 (1907); Godwin v. Phifer, 51 Fla. 441, 41 So. 597 (1906).

⁶3 Fed. Cas. No. 1,617, at 827 (C.C.D.N.J. 1830).

⁷Wigram, V. C., in *Castelli v. Cook*, 7 Hare 89, 94, 68 Eng. Rep. 36, 38 (Ch. 1849), said: "The rule, as I understand it, is this: that a Plaintiff applying *ex parte* comes (as it has been expressed) under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the Plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go."

⁸Pensacola & G. Ry. v. Spratt, 12 Fla. 26, 91 Am. Dec. 747 (1867).

⁹Smith v. Davis, 22 Fla. 405 (1886).

¹⁰Godwin v. Phifer, 51 Fla. 441, 41 So. 597 (1906).

¹¹Davis v. Wilson, 139 Fla. 698, 190 So. 716 (1939); Wilkinson v. Woodward, 105 Fla. 376, 141 So. 313 (1932); Drew Lumber Co. v. Union Inv. Co., 66 Fla. 382, 63 So. 836 (1913).

¹²Smith v. Davis, 22 Fla. 405 (1886).

and there is no showing of reasonable probability that such conduct will continue.¹³ Thus an injunction to restrain the holding of an election has been denied when the date fixed for the election passed before the determination of the suit to restrain.¹⁴

When a party seeks the aid of a court of equity by injunction, he must show not only clear legal or equitable right but also a well-grounded apprehension of immediate injury.¹⁵ The Florida Court has said, "To make out a case for an injunction, it must appear that there is at least a reasonable probability, not a bare possibility, that a real injury *will occur if the writ is not granted.*"¹⁶ If the special and peculiar injury apprehended is doubtful of occurrence, the relief is generally withheld.¹⁷

II. CLASSIFICATIONS, DISTINCTIONS AND DEFINITIONS

Injunctions may be classified as prohibitory and mandatory. A prohibitory, sometimes called preventive, injunction is one that operates to restrain the commission or continuance of an act and to prevent a threatened injury. A mandatory injunction commands acts to be done or undone, and hence may require the performance of some affirmative acts.¹⁸

Injunctions are also classified according to their duration or permanency as follows: (1) restraining orders, which are usually granted without notice to the opposite party and are intended only as a restraint on the defendant until the hearing on an application for a temporary injunction; (2) temporary injunctions, which are provisional remedies obtainable before hearing on the merits; and (3) permanent injunctions, which issue only after process and a final

¹³Jacksonville v. Wilson, 157 Fla. 838, 27 So.2d 108 (1946); Seaboard A.L. Ry. v. Southern Inv. Co., 53 Fla. 832, 44 So. 351 (1907).

¹⁴McKinney v. County Comm'rs, 26 Fla. 267, 3 So. 887 (1888); *accord*, Smith v. Davis, 22 Fla. 405 (1886) (affirming the denial of an injunction without considering the merits because the sale sought to be enjoined had occurred prior to appeal).

¹⁵Crawford v. Bradford, 23 Fla. 404, 2 So. 782 (1887).

¹⁶Davis v. Wilson, 139 Fla. 698, 705, 190 So. 716, 719 (1939); *accord*, Farmers' State Bank v. Board of Comm'rs, 295 Fed. 755 (S.D. Fla. 1920); Ruge v. Apalachicola Oyster Canning & Fish Co., 25 Fla. 656, 6 So. 489 (1889).

¹⁷Hernandez v. Board of Comm'rs, 114 Fla. 219, 153 So. 790 (1934); Ruge v. Apalachicola Oyster Canning & Fish Co., 25 Fla. 656, 6 So. 489 (1889).

¹⁸Zetrouer v. Zetrouer, 89 Fla. 253, 103 So. 625 (1925).

hearing on the merits and are usually perpetual in effect.¹⁹

Our Court has occasionally mentioned, collectively, "temporary restraining order and interlocutory injunction,"²⁰ and, disjunctively, "temporary injunction or restraining order,"²¹ and at times each individually,²² but has never made a distinction between the two. The terms and conditions of a temporary injunction are so completely under the control of the judge issuing it that the one can be made to serve the purpose of the other without distinction. In addition, a restraining order is given by statute the same effect as an injunction.²³ Certainly in popular practice among lawyers the terms are used interchangeably. The authors of this article have accordingly treated the two terms as synonymous.

Temporary Injunction

The purpose of a temporary injunction is the maintenance of the subject matter *in statu quo* pending the determination of the cause. As the name implies, such an order is not conclusive, and its provisions may be merged in, modified, or dissolved by or before the final decree.²⁴

Since the object of a temporary injunction is to preserve the status quo, the court will not grant such an order when its effect would be to change the status. Thus it is erroneous to restrain the defendant from interfering with prospective acts of the plaintiff if the effect of a temporary injunction will be to destroy the existing condition of the subject matter of the suit before the final determination of the plaintiff's right to such relief.

¹⁹Injunctions are properly classified as follows:

1. Restraining orders.
2. Temporary injunctions (often called preliminary, interlocutory, or injunction pendente lite).
3. Permanent injunctions (often called final or perpetual injunctions).

Both temporary and permanent injunctions may be mandatory in form.

²⁰*See, e.g.,* Merryman v. Southern Tours, 120 Fla. 440, 445, 162 So. 897, 899 (1935).

²¹*See, e.g.,* B.L.E. Realty Corp. v. Mary Williams Co., 101 Fla. 254, 258, 134 So. 47, 50 (1931).

²²*E.g.,* Strong v. Clay, 47 So.2d 822 (Fla. 1950); Thursby v. Stewart, 103 Fla. 990, 138 So. 742 (1931).

²³FLA. STAT. §63.73 (1949).

²⁴*Smith v. Housing Authority*, 148 Fla. 195, 3 So.2d 880 (1941); *Schultz v.*

The status quo which will be preserved by temporary injunction is the last actual, peaceable, noncontested condition which preceded the pending controversy. If the defendant wrongfully changes the condition of things before the granting of the injunction, the court may not only restrain further action by him but may also, by temporary mandatory injunction, compel him to restore the subject matter of the suit to its former condition. In so doing the court acts without any regard to the ultimate merits of the controversy.²⁵ Temporary injunctions are often used to protect property from interference and molestation,²⁶ to prevent illegal and fraudulent transfers²⁷ and transfers in violation of contracts. Thus its use has been approved to prevent a pledgee from disposing of pledged stock during the pendency of suit,²⁸ to restrain a producer from disposing of sponges *in esse* in violation of a contract to market them through the agency of a sponge producers' association,²⁹ to enjoin a trustee from conveying land in violation of his trust agreement,³⁰ to restrain a municipality from selling real property for taxes illegally levied,³¹ and to enjoin an unlawful transfer of public property.³² Furthermore, when the title or boundary to real property is in dispute and the title and right to possession of the disputed land has not previously been settled by a proceeding at law, any actual possession already peaceably secured, whether warranted in law or not, is entitled to be protected and preserved *in statu quo* by an injunction to restrain any unlawful interference and disturbance until such time as right to possession may be determined.³³

Freeland, 107 Fla. 286, 145 So. 257 (1932).

²⁵Bowling v. National Convoy & Trucking Co., 101 Fla. 634, 135 So. 541 (1931); Van Joel v. Hornsey, [1895] 2 Ch. 774; see Notes, 32 A.L.R. 894 (1924), 39 L.R.A. (n.s.) 31 (1912).

²⁶Perky Properties, Inc. v. Felton, 113 Fla. 432, 151 So. 892 (1934).

²⁷Robinson v. Springfield Co., 21 Fla. 203 (1885); Hayden v. Thrasher, 18 Fla. 795 (1882).

²⁸Poynter v. Smith, 120 Fla. 469, 162 So. 874 (1935).

²⁹Angelis v. Tarpon Springs Sponge Producers' Ass'n, 111 Fla. 740, 149 So. 630 (1933).

³⁰Prest v. Hammock, 92 Fla. 941, 111 So. 112 (1926).

³¹Walter C. Hardesty, Inc. v. Holly Hill, 100 Fla. 1130, 131 So. 134 (1930).

³²The Biscayne Co. v. Martin, 95 Fla. 259, 116 So. 66 (1928); Deering v. Martin, 95 Fla. 224, 116 So. 54 (1928).

³³Fisher v. Rando, 154 Fla. 408, 17 So.2d 789 (1944); Jacksonville v. Giller, 102 Fla. 92, 135 So. 549 (1931); *accord*, Echelkamp v. Schrader, 45 Mo. 505 (1870). For a case in which the plaintiff sought to preserve the status quo by

Mandatory Injunction

Perhaps the first appearance of the mandatory injunction occurred in a case in which the English chancellor, not content with granting the usual injunction against ploughing up ancient pasture lands, ordered the defendant to show cause why he should not lay down again that which he had ploughed.³⁴ There are other instances of early uses of such an injunction by the chancery courts.³⁵ While courts of equity have on occasion continued to grant this particular remedy, nevertheless they dread commanding a person to undo that which has been done, and view the mandatory injunction with much prejudice. Because, perhaps, of a literal interpretation and acceptance of the negative implication of the words "enjoin" and "restrain" the courts have from an early day carefully phrased their mandatory injunction decrees in negative rather than positive form. It is refreshing to observe, however, that the chancellor has been able to sidestep the obstacle created by this formalistic approach when equity required affirmative action. In such a case the defendant has been enjoined from allowing a condition to continue—compliance with such an order requiring affirmative action. No good reason existed for this backdoor, roundabout method of procedure. The following view was presented by Sir George Jessel, Master of the Rolls, a very learned and eminent chancellor:³⁶

"As to mandatory injunctions, their history is a curious one, and may account for some of the expressions used by the Judges in some of the cases cited. At one time it was supposed that the Court would not issue mandatory injunctions at all. At a more recent period, in cases of nuisance, a mandatory injunction was granted under the form of restraining the Defendant from continuing the nuisance. The Court seems to have thought that there was some wonderful virtue in that form, and that extra caution was to be exercised in granting it. To that proposition

enjoining acts of the defendant who was in possession of land the title to which was in dispute, and a consideration of what acts will be restrained, see *Snyder v. Hopkins*, 31 Kan. 557, 3 Pac. 367 (1884). See note 133 *infra*.

³⁴*Rolls v. Miller*, Tot. 144, 21 Eng. Rep. 149 (Ch. 1639).

³⁵*E.g.*, *Murdock's Case*, 2 Bland 461 (Md. Ch. 1825).

³⁶*Smith v. Smith*, L.R. 20 Eq. 500, 504 (1875) (removal of a building interfering with ancient lights).

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I can by no means assent. Every injunction requires to be granted with care and caution Every Judge ought to exercise care, and it is not more needed in one case than in another."

The Florida Court has acknowledged the power of courts of equity to issue an injunction mandatory in form³⁷ and has in a proper case required a defendant to restore property to its condition prior to the time of the injury enjoined.³⁸ Our Court has also recognized that mandatory injunctions are looked upon with disfavor and that they are issued with more reluctance than are prohibitory ones.³⁹

Temporary Mandatory Injunction

The latest development in the law of injunctions is the granting of a mandatory injunction on interlocutory motion.⁴⁰ It is here that the most reluctance is shown and most safeguards required. Temporary injunction is to a great extent preventive in character; and, as we have seen, its purpose is to maintain the status quo. Cases arise, nevertheless, in which the plaintiff will be damaged irreparably unless the court forces the defendant to take affirmative action before trial; and a system of justice that failed to provide relief in such situations would be deplorably deficient. A court should, therefore, consider the evidence, balance the equities, and grant or refuse the requested mandatory injunction accordingly.

The Florida Court has granted temporary mandatory injunctions but is committed to the doctrine that a mandatory injunction will generally not be ordered except on final hearing, and then only to execute the judgment or decree of the court. The Court reasons that the granting of such an injunction before that time is like awarding execution before trial and judgment.⁴¹ Exceptions to this rule have

³⁷Bowling v. National Convoy & Trucking Co., 101 Fla. 634, 135 So. 541 (1931); Gainesville v. Gainesville Gas & Elec. Power Co., 65 Fla. 404, 62 So. 919 (1913) (public utility corporation required to perform its duties and furnish service to the public).

³⁸Ocala v. Anderson, 58 Fla. 415, 50 So. 572 (1909).

³⁹See Johnson v. Killian, 157 Fla. 754, 757, 27 So.2d 345, 346 (1946).

⁴⁰See Note, 15 A.L.R.2d 213 (1951).

⁴¹Miami Bridge Co. v. Miami Beach Ry., 152 Fla. 458, 12 So.2d 438 (1943); Kellerman v. Chase & Co., 101 Fla. 785, 135 So. 127 (1931).

involved cases in which the right to the injunction was free from reasonable doubt⁴² and coupled with urgent necessity or extreme hardship.⁴³

An example of this situation, and the leading Florida case on temporary mandatory injunctions is *Zetrouer v. Zetrouer*,⁴⁴ in which the defendant had closed a road leading to certain parts of the plaintiff's farm which had been used by the plaintiff and the public for thirty-five years. It was evident that the plaintiff would be greatly inconvenienced in attending his farm while the barricade remained, and that no harm would result to the defendant by forcing him to remove it until the hearing on the merits. In approving the prayer for relief the Court said:⁴⁵

"It is well settled that mandatory injunctions are rarely granted before final hearing, or before the parties have full opportunity to present all the facts in such manner as will enable the court to see and judge what the truth may be; however, instances are not wanting where relief by mandatory injunction was granted on the proper showing made."

The Court went on to say that in the matter of granting mandatory injunctions each case must rest on its own facts and circumstances, and that whether the relief will be granted is, as in other types of injunction, in the sound discretion of the court.

Constitutional Writ of Injunction

Whatever doubt may have existed at one time concerning the power,⁴⁶ it is now well established that the Supreme Court of Florida can issue a "constitutional writ of injunction" under Section 5 of

⁴²*American Fire & Casualty Co. v. Rader*, 160 Fla. 700, 36 So.2d 270 (1948); *House v. Nash*, 90 Fla. 123, 105 So. 266 (1925); *Stephens v. Stephens*, 87 Fla. 466, 100 So. 746 (1924); *Florida E.C. Ry. v. Taylor*, 56 Fla. 788, 47 So. 345 (1908).

⁴³*Bowling v. National Convoy & Trucking Co.*, 101 Fla. 634, 135 So. 541 (1931).

⁴⁴89 Fla. 253, 103 So. 625 (1925), cited and approved in: *Price v. Gordon*, 129 Fla. 715, 177 So. 276 (1937); *Trust Co. of Florida v. Crider*, 102 Fla. 593, 136 So. 434 (1931); *Kellerman v. Chase & Co.*, 101 Fla. 785, 135 So. 127 (1931).

⁴⁵*Id.* at 254, 103 So. at 626.

⁴⁶*See Cohen v. L'Engle*, 24 Fla. 542, 549, 5 So. 235, 239 (1888).

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Article V of the Florida Constitution, which empowers the Court to "issue . . . all writs necessary or proper to the complete exercise of its jurisdiction."⁴⁷ The Supreme Court is not clothed with original jurisdiction of the writ of injunction,⁴⁸ but by virtue of the quoted provision of the Constitution is empowered to issue the injunctive writ when essential to the complete exercise of its appellate jurisdiction. It will not invoke the power so granted except in cases carefully investigated and upon a showing (1) that the writ sought is indispensable to protect the rights of the party seeking it; or (2) that the law affords no other remedy; or (3) that some constitutional or statutory provision is about to be violated; or (4) that the rights in litigation are of such peculiar or intrinsic value or nature that the facts of the case make it imperative that they be held *in statu quo* pending the adjudication of the cause on appeal.⁴⁹ The normal exercise of this constitutional power is by an injunction in the nature of supersedeas pending a review of the circuit court's denial of injunction, and is further discussed in connection with that subject below.⁵⁰

III. GROUNDS IN GENERAL

A prerequisite of injunctive relief is that the case fall under an acknowledged head of equity jurisdiction. Broadly speaking, there are but two grounds for injunctive relief — statutory authority and the inadequacy of any remedy at law. Scattered throughout our Florida statutes are many provisions authorizing injunction in specific instances which aside from the statute may or may not be proper subjects for that relief. These statutes often contain special conditions precedent and provisions as to notice and bond. Hence no injunction should be brought, defended, or the thought discarded until after a careful survey of the statutes. Independent of statute,

⁴⁷Tacker v. Board of Comm'rs, 126 Fla. 15, 170 So. 458 (1936); Anderson v. Tower Amusement Co., 118 Fla. 437, 159 So. 782, *vacated*, 118 Fla. 895, 160 So. 523 (1935); Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932).

⁴⁸*Ex parte Ivey*, 26 Fla. 537, 8 So. 427 (1890).

⁴⁹Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932); L. Maxcy, Inc. v. Mayo, 103 Fla. 552, 139 So. 121 (1931); Wester v. Belote, 103 Fla. 976, 138 So. 721 (1931); Thursby v. Stewart, 103 Fla. 1201, 137 So. 7 (1931).

⁵⁰See note 276 *infra*.

all of the usual grounds for an injunction, namely, the irreparability of plaintiff's injury, multiplicity of actions at law, enforcement of restrictive covenants on real estate, and other less successfully advocated grounds, are in a sense but instances where for one reason or another the remedy at law is inadequate. It should also be noted that the "equity" of any case may be increased by facts involving trusts, fraud, minors, and other subjects that peculiarly appeal to equity.

Inadequate Remedy at Law

It is settled law that an injunction should never be granted when the remedy at law is adequate.⁵¹ If the remedy at law is not full, complete, and adequate, or if complete relief is doubtful and a more ample and appropriate remedy may be afforded by injunction, equity will take cognizance and give relief, provided this can be done in accordance with recognized principles of chancery jurisdiction.⁵² If it is apparent from the allegations of the bill that there was at the time of the institution of the suit an adequate remedy at law, equity has no jurisdiction to hear and determine the cause.⁵³ If all issues sought to be determined by a bill for injunction to restrain the prosecution of a law action are determinable in the law action, there is no equity in the bill.⁵⁴ The remedy at law may, however, be inadequate because of the parties involved.⁵⁵ Also the subject matter of a controversy at law may be of such complex and involved nature that a court of equity can treat it more efficaciously than a court of law. In such a case the defendant in the law action may bring a suit in equity for an accounting and to enjoin further proceedings at law.⁵⁶ Further, damages resulting from a breach of contract may be un-

⁵¹Egan v. Miami, 130 Fla. 465, 178 So. 132 (1938); Masser v. London Operating Co., 106 Fla. 474, 145 So. 79 (1932); Williams v. Dormany, 99 Fla. 496, 126 So. 117 (1930); Simmons v. Williford, 60 Fla. 359, 53 So. 452 (1910).

⁵²Price v. Gordon, 129 Fla. 715, 177 So. 276 (1937); Morgan v. Lakeland, 90 Fla. 525, 107 So. 269 (1925); McNabb v. Tampa & St. Petersburg Land Co., 78 Fla. 149, 83 So. 90 (1919); Rentz v. Granger & Lewis, 64 Fla. 445, 60 So. 221 (1912).

⁵³Smith v. Powell, 80 Fla. 166, 85 So. 654 (1920).

⁵⁴Palm Beach v. Gottesman, 152 Fla. 182, 11 So.2d 337 (1943); see note 99 *infra*.

⁵⁵Isom v. Equitable Life Assurance Soc'y, 138 Fla. 260, 189 So. 253 (1939).

⁵⁶North Amer. Constr'n Co. v. Olson, 131 Fla. 440, 179 So. 659 (1938).

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ascertainable, and hence equity may enjoin the breach. In a case of threatened continuous breach of a contract to purchase electricity from complainant power company, the Court in approving an injunction to prevent the defendant consumer from using any power not furnished under the contract said:⁵⁷

"The record shows that the complainant could have no adequate and complete remedy at law because, amongst other reasons, it was a fact that it could never be ascertained what amount of power and energy or the value of such power and energy which might be used by the defendant during any stated period until after the same had been used and its amount and value determined by the meters established for that purpose."

Again, when the plaintiff landlord's rental income depended on the volume of sales of the defendant lessee, the plaintiff was held entitled to an injunction to prevent the lessee from closing his store in violation of a covenant in the lease to keep his business open during the entire year. The Court said:⁵⁸

"It appears that it would be impractical, if not impossible, to establish the damage to the lessor, . . . resulting from a breach of the covenant and that the remedy at law would, therefore, not be adequate."

Payment of money damages in a court of law is normally adequate for the loss of personal property, but real property is presumed to be unique and hence inadequately compensated for by money damages.⁵⁹ Consequently, equity will take jurisdiction in cases involving the conveyance of land but will not take jurisdiction in cases involving personalty unless the chattel is of peculiar character and value.⁶⁰

⁵⁷*Manatee County Growers Ass'n v. Florida Power & Light Co.*, 113 Fla. 449, 454, 152 So. 181, 183 (1934).

⁵⁸*Lincoln Tower Corp. v. Richter's Jewelry Co.*, 152 Fla. 542, 545, 12 So.2d 452, 454 (1943).

⁵⁹*Romano v. Birmingham Ry. L. & P. Co.*, 182 Ala. 335, 62 So. 677 (1913); *Wilson v. Townend*, 1 Drew. & Sm. 324, 62 Eng. Rep. 403 (Ch. 1860).

⁶⁰*First Nat. Bank v. MacKenzie*, 100 Fla. 1674, 131 So. 790 (1931) (injunction to restrain sale of stock certificates denied); *Hughes Trust & Banking Co. v. Consolidated Title Co.*, 81 Fla. 568, 88 So. 266 (1921) (replevin adequate to recover abstracts from public records still in existence); *H. W. Metcalf Co. v.*

Whether personal property is of a nature that brings it within the orbit of equity jurisdiction is in all cases a question to be determined by the chancellor, subject, of course, to review. Once the chattel is found to be of peculiar value, however, equity will grant full relief by requiring specific delivery or enjoining interference.⁶¹

Irreparable Injury

The remedy at law is not adequate when the injury done or threatened cannot be adequately compensated in money damages and is therefore irreparable without the intervention of equity. Injunctive relief is ordinarily warranted when an act threatened or accomplished will produce irreparable injury to the petitioner. If the facts alleged show an injury that can be fully compensated in damages, an injunction should be denied.⁶²

Multiplicity of Suits

The prevention of a multiplicity of actions at law is a special ground sufficient in itself to warrant equity jurisdiction,⁶³ and for that purpose injunction ordinarily is freely used.⁶⁴ At an early date the Florida Court, after stating that chancery has often intervened to prevent a multiplicity of suits, even though there be an otherwise

Martin, 54 Fla. 531, 45 So. 463 (1907) (bill to restrain sale of barroom fixtures dismissed); Odlin v. Woodruff, 31 Fla. 160, 12 So. 227 (1893); Baldwin v. Tucker, 16 Fla. 258 (1877); Davidson v. Floyd, 15 Fla. 667 (1876) (chattel must be of some peculiar value, such as being ancient, or the production of some distinguished artist, or a family relic or ornament).

⁶¹Price v. Gordon, 129 Fla. 715, 177 So. 276 (1937) (medicines of an unusual type); State *ex rel.* Meredith v. Board of Trustees, 102 Fla. 219, 135 So. 781 (1931) (furnishings necessary in operation of home for unfortunate girls and unmarried mothers); Bass v. Alderman, 80 Fla. 345, 86 So. 244 (1920) (herd of cattle on the range).

⁶²H. W. Metcalf Co. v. Martin, 54 Fla. 531, 45 So. 463 (1907).

⁶³Pinellas County v. St. Petersburg, 116 Fla. 582, 156 So. 523 (1934).

⁶⁴Realty Bond & Share Co. v. Englar, 104 Fla. 329, 143 So. 152 (1932); Gainesville Gas & Elec. Co. v. Gainesville, 63 Fla. 425, 58 So. 785 (1912). When the injury to land is permanent, as when occupied for railroad purposes, the judgment in an action at law for damages may include damages for future injury; hence there is no ground for equitable jurisdiction for an injunction to prevent a multiplicity of suits, Pensacola & A.R.R. v. Jackson, 21 Fla. 146 (1884).

adequate remedy at law, adopted the following position:⁶⁵

"The court will not, however, grant an injunction against one person merely because he is guilty of repeated trespasses where the legal remedy affords an adequate and complete redress in damages. The rule, as stated by many decisions, is, that to justify the interference of a court of equity in cases of trespasses in order to avoid a multiplicity of suits, there must be several persons controverting the same right, and each standing upon his own claim or pretension."

Notwithstanding the "many decisions" referred to, the above rule, in so far as it requires several persons, each standing upon his own claim or pretension, appears to be a definite minority holding. Recent and better reasoned Florida decisions indicate that the Court is at least veering in the direction of the more generally accepted rule that if an injury committed by one against another is continuous or is being constantly repeated, so that the plaintiff must bring successive law actions, the remedy at law is inadequate and equity will assume jurisdiction.⁶⁶

In the case of *Jacksonville v. Giller*,⁶⁷ decided in 1931, the Court did not consider this point but nevertheless allowed an injunction against the city, which threatened repeated acts of usurpation over plaintiff's land and a continued interference with the business thereon, because a multiplicity of actions might be necessary to recover damages for the injury done. The only issue considered was whether the disputed parcel was part of the city street or embraced within the property described in a lease held by plaintiff. In another case⁶⁸ a mandatory injunction issued requiring a railroad to alter an embankment that obstructed a flow of water. The Court said that "multiplicity of suits" included a constantly recurring, though seasonal and

⁶⁵*Carney v. Hadley*, 32 Fla. 344, 353, 14 So. 4, 7 (1893); *accord*, *Cowan v. Skinner*, 52 Fla. 486, 42 So. 730 (1907).

⁶⁶See 5 POMEROY, EQUITY JURISPRUDENCE §496, n.22 (2d ed. 1919); Note, 92 A.L.R. 578, 582 (1934) (injunction against repeated or continuous trespasses to real property — doctrine that several persons must assail the same right). See also *Denver Milk Bottle Case & Can Exchange, Inc. v. McKinzie*, 87 Colo. 379, 287 Pac. 868 (1930).

⁶⁷102 Fla. 92, 135 So. 549 (1931).

⁶⁸*Seaboard All Fla. Ry. v. Underhill*, 105 Fla. 409, 141 So. 306 (1932) (alternative holding).

intermittent, tortious injury. In *Morgan v. Lakeland*,⁶⁹ the plaintiff alleged that he had five suits at law pending against the defendant city and would be compelled to file others if an injunction were refused. Although this was a case of trespass to personal property and only the two parties to the suit were involved, the injunction issued because other remedies required a multiplicity of actions at law.

Violation of Restrictive Covenants

In a suit to enjoin the violation of a covenant restricting the use or occupancy of real property, appropriate allegations showing the violation are held sufficient without an allegation that such violation constitutes a nuisance or amounts to an irreparable injury to the plaintiff.⁷⁰ It would, therefore, seem that this is an independent ground for injunctive relief.

Insolvency

At a very early date Florida law appeared settled that insolvency of a vendor, with his consequent inability to comply with his covenants or respond in money damages, was sufficient ground for an injunction restraining the collection of purchase money.⁷¹ Within a relatively short time, however, these decisions were distinguished out of existence, and the present rule evolved that insolvency alone is not a sufficient ground for an injunction but is merely an element in determining whether the court should grant an injunction in a given case.⁷² In *Simms v. Burnette* Justice Cockrell indicated unequivocally that the evolution was complete:⁷³

⁶⁹90 Fla. 525, 107 So. 269 (1925).

⁷⁰*Stephl v. Moore*, 94 Fla. 313, 114 So. 455 (1927); see Note, 57 A.L.R. 336 (1928).

⁷¹*Yonge v. McCormick*, 6 Fla. 368, 63 Am. Dec. 214 (1855); *Hunter v. Bradford*, 3 Fla. 269 (1850).

⁷²*Masser v. London Operating Co.*, 106 Fla. 474, 145 So. 79 (1932); *Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906); *Doke v. Peek*, 45 Fla. 244, 34 So. 896 (1903); *Carney v. Hadley*, 32 Fla. 344, 14 So. 4 (1893); *Pensacola & G.R.R. v. Spratt*, 12 Fla. 26, 91 Am. Dec. 747 (1867).

⁷³55 Fla. 702, 706, 46 So. 90, 91 (1908). In an interesting case, *Pepper v. Beville*, 100 Fla. 97, 129 So. 334 (1930), the defendants, receivers of an insolvent pledgee bank, demanded full payment of the balance owed by the

"The fact of insolvency does not deprive one of his constitutional right to have decided by a jury which of the parties breached the contract, and while it may feed another equity, it is too weak of itself to support a bill for injunction."

IV. GENERAL EQUITABLE CONSIDERATIONS

Discretion of Chancellor

Injunction, being an equitable process, is subject to all the doctrines, principles, and maxims usually applied in equity. Nothing is better settled in Florida injunction law than the fact that injunction is a discretionary writ.⁷⁴ Since *Allen v. Hawley*,⁷⁵ decided during the year 1855, the Court has fully recognized and continuously approved the rule that a chancellor has broad discretion in granting, denying, continuing, modifying, or dissolving injunctions.⁷⁶ This discretion is guided by the application of established principles of equity jurisprudence to the facts, circumstances, and nature of the particular case.⁷⁷ Although the matter is discretionary, if the allegations of the bill are sufficient and the evidence in support thereof is ample to warrant the granting of a temporary injunction, and no sufficient defense is made, an order denying an injunction will be reversed.⁷⁸ Likewise, the dissolution of a restraining order is not automatic simply because the equities of the bill are denied by answer.⁷⁹ If

plaintiff pledgor without adjustment for the value of a ring lost by the bank and threatened to sell the remaining pledged jewelry. The Court, recognizing that a suit against the insolvent bank would not afford the plaintiff adequate, if any, relief and that there was no ground for trover or conversion against the receivers, allowed the plaintiff an injunction against the proposed sale.

⁷⁴*Watson v. Cochrane*, 150 Fla. 733, 8 So.2d 664 (1942); *Ruff v. Fisher*, 115 Fla. 247, 155 So. 642 (1934). FLA. STAT. §63.73 (1949) makes it a matter within the judicial discretion of the circuit judge to grant or deny an application for restraining order, *North Miami v. Travis Co.*, 118 Fla. 879, 160 So. 360 (1935).

⁷⁵8 Fla. 142, 63 Am. Dec. 198 (1855).

⁷⁶*See Daoud v. Miami Beach*, 145 Fla. 449, 452, 199 So. 582, 583 (1941), for a collection of the cases. A recent case is *State Road Dep't v. Newhall Drainage Dist.*, 54 So.2d 48 (Fla. 1951).

⁷⁷*See Decumbe v. Smith*, 143 Fla. 5, 8, 196 So. 595, 596 (1940).

⁷⁸*Seaboard Oil Co. v. Donovan*, 99 Fla. 1296, 128 So. 821 (1930); *Taylor v. Florida E.C. Ry.*, 54 Fla. 635, 45 So. 574 (1907).

⁷⁹*Davis v. Wilson*, 139 Fla. 698, 190 So. 716 (1939).

the answer, however, by appropriate denials and averments, sufficiently meets the asserted equities upon which a restraining order was granted, the order should be dissolved upon proper proceedings duly taken, unless the answer be properly controverted.⁸⁰

As in other cases, the ruling of the lower court is presumptively correct; and, if the evidence taken by the chancellor in person contains matter sufficient to warrant his action, the appellate court will not interfere.⁸¹ Only clear abuse of discretion justifies reversal.⁸²

The solicitor must remember that the chancellor is not necessarily confined to the issues presented by the litigants in exercising his discretion. The rights of the general public, if affected, will be considered in the granting, continuing, or modifying of a temporary restraining order.⁸³ In refusing an injunction because its issuance would probably result in confusion and disorder in the management of the school system for a year, the Court said:⁸⁴

"This Court is committed to the doctrine that extraordinary relief will not be granted in cases where it plainly appears that although the complaining party may be ordinarily entitled to it, that the granting of such relief in the particular case would result in confusion and disorder and will produce an injury to the public which outweighs the individual right of the complainant to have the relief he seeks."

As in the issuance of a temporary injunction, the facts and the law of the particular case guide the court in formulating the decree that should be entered after final hearing. The conclusion of the chancellor on questions of fact as expressed in a final decree will not be disturbed on appeal in the absence of a clear abuse of discretion.⁸⁵

Ordinarily the court will take into consideration the relative inconvenience or injury which the parties will sustain by the granting or

⁸⁰*Pensacola v. Bear*, 83 Fla. 484, 91 So. 360 (1922).

⁸¹*Clark v. Kreidt*, 145 Fla. 1, 199 So. 333 (1940); *Shaw v. Palmer*, 54 Fla. 490, 44 So. 953 (1907); *Simms v. Patterson*, 53 Fla. 984, 43 So. 421 (1907).

⁸²*Bishop v. First Old State Bank*, 142 Fla. 190, 194 So. 488 (1940); *Willis v. Hathaway*, 95 Fla. 608, 117 So. 89 (1928).

⁸³*Thursby v. Stewart*, 103 Fla. 990, 138 So. 742 (1931); *Taylor v. Florida E.C. Ry.*, 54 Fla. 635, 45 So. 574 (1907).

⁸⁴*Bronson v. Board of Public Instr'n*, 108 Fla. 1, 10, 145 So. 833, 836 (1933).

⁸⁵*Reaves v. Sadler*, 136 Fla. 553, 189 So. 41 (1939).

refusal of an application for injunction.⁸⁶ This "balance of convenience" doctrine is normally not applied in nuisance cases. However, the language of the concurring opinion by Chief Justice Davis in *Gibson v. Tampa* should be noted:⁸⁷

"A court of equity may properly refuse to grant an injunction when it appears that greater injury and inconvenience will be caused to the defendant by granting the injunction than will be caused to the complainant by refusing it."

This view appears to be opposed to the current of authority established in other jurisdictions, but it can be reconciled with decisions in those jurisdictions that hold that even in nuisance cases injunction is discretionary.⁸⁸

Equally troublesome is the balancing of equities in encroachment cases. The court is often put in the dilemma of choosing between denying the injunction because the balance of hardships is in favor of the defendant and in effect allowing the defendant to exercise a private right of eminent domain, or granting an injunction and thereby aiding the plaintiff in extortion.⁸⁹ In a late Florida case⁹⁰ defendants' concrete block garage, built some twenty years before by their predecessor in title, encroached slightly on plaintiff's adjoining land. The injury to the adjoining land was slight and the garage could not readily be moved. The Court, balancing the equities, denied a mandatory injunction that would have compelled removal of the garage and relegated plaintiffs to their remedy at law. The

⁸⁶See, e.g., *Wefel v. Williams & Pritchett*, 58 Fla. 538, 541, 50 So. 679, 680 (1909). The rule does not apply to every case, see, e.g., *Lincoln Tower Corp. v. Richter's Jewelry Co.*, 152 Fla. 542, 545, 12 So.2d 452, 453 (1943), in which the Court recognized that its injunction decree would cause the defendant "extreme difficulty," but that refusal to act "is a hardship that should not be visited upon the [plaintiff]."

⁸⁷114 Fla. 619, 620, 154 So. 842 (1934).

⁸⁸The problem of "balancing the equities" in nuisance cases is too involved for further discussion in the limited space of this article. The interested reader is referred to 5 POMEROY, *EQUITY JURISPRUDENCE* §530 (2d ed. 1919); WALSH, *EQUITY* §56 (1930); Notes, 61 A.L.R. 924 (1929), 39 L.R.A. (N.S.) 580 (1912), 31 L.R.A. (N.S.) 881 (1911).

⁸⁹See WALSH, *EQUITY* §55 (1930); 27 N.C.L. REV. 548 (1939); Note, 96 A.L.R. 1287 (1935) and *McCreary v. Lake Boulevard Sponge Exch. Co.*, 133 Fla. 740, 183 So. 7 (1938).

⁹⁰*Johnson v. Killian*, 157 Fla. 754, 27 So.2d 345 (1946).

Court referred with approval to the Illinois case of *Pradelt v. Lewis*,⁹¹ in which it was stated:⁹²

"... where the encroachment is slight and the cost of removing it will be great and the corresponding benefit to the adjoining owner small, or compensation and damages can be had, the court will ordinarily decline to compel a removal and will leave the complaining party to his remedy at law."

Further commenting on the subject, the Illinois court said that in order to be granted the relief the complaining party should show the damage to be irreparable and the encroachment intentional.

Laches

An injunction will not be granted if the person seeking it could, by proper vigilance, have protected himself by the ordinary means at law.⁹³ Laches does not depend on lapse of time alone but is predicated upon delay in bringing suit, which has operated to the disadvantage of the other party or has evidenced assent by complainant. When such laches is present the remedy of injunction should be denied. Injunction should not be denied, however, simply because the complainant might have begun his action sooner.⁹⁴

There may be a degree of laches in the prosecution of a suit to final decree after obtaining an injunction that will justify the dissolution of the injunction, but, at least under some circumstances, gross negligence is required.⁹⁵

V. SPECIFIC SUBJECTS OF RELIEF

Proceedings at Law

The power to stay proceedings at law for the purpose of exercising

⁹¹297 Ill. 374, 130 N.E. 785 (1921).

⁹²*Id.* at 377, 130 N.E. at 787.

⁹³*County Comm'r's v. Bryson*, 13 Fla. 281 (1871).

⁹⁴*Seaboard All Fla. Ry. v. Underhill*, 105 Fla. 409, 141 So. 306 (1932); *Mercer v. Keynton*, 99 Fla. 914, 127 So. 859 (1930) (involving delay in restraining violation of restrictive covenants until after a building had progressed materially).

⁹⁵*Scarlett v. Hicks*, 13 Fla. 314 (1871).

equitable control over the parties and proceedings, to the end that justice may be promoted, seems to be inherent in courts of general jurisdiction. A court of equity in interpleader proceedings may enjoin an action at law in order to draw the entire litigation into one principal action.⁹⁶ An injunction decree to restrain proceedings at law admits the jurisdiction of the law courts but issues on the ground that they are making use of their jurisdiction contrary to equity and good conscience.⁹⁷

A Florida statute⁹⁸ requires notice, bond, and payment of all costs of the suit at law before injunction to stay proceedings at law shall issue. Whether the injunction stays proceedings before or after verdict, the bond is conditioned to protect the plaintiff at law in case complainant fails to secure aid in the equity court.

Jurisdiction to enjoin actions at law is to be exercised sparingly and only when other remedies are inadequate and the equities invoking it are clear and strong.⁹⁹ It has been stated that fraud, accident, mistake, and discovery are the four principal grounds upon which injunctions may issue to stay proceedings at law.¹⁰⁰ If the complainant shows himself to be entitled to some purely equitable remedy, thereby giving equity jurisdiction of the case, pending or threatened actions at law concerning the same subject matter may be enjoined. When equity has once obtained jurisdiction for one purpose it will generally dispose of the entire case, bringing in all necessary parties and enjoining actions at law in order to prevent circuity of action and a multiplicity of suits, the object being to render complete justice between the parties in one proceeding.¹⁰¹

⁹⁶*Miller v. Gulf Life Ins. Co.*, 148 Fla. 1, 8 So.2d 519 (1941); *Crockett v. Volunteer Life Ins. Co.*, 142 Fla. 750, 196 So. 297 (1940); *Curtis v. Albritton*, 101 Fla. 853, 132 So. 677 (1931).

⁹⁷*See Finegan v. Mayor*, 18 Fla. 127, 130 (1881); *accord*, *Platt v. Woodruff*, 61 N.Y. (16 Sick.) 378 (1875).

⁹⁸FLA. STAT. §64.02 (1949). Construing the predecessor of this statute in the early case of *Scarlett v. Hicks*, 13 Fla. 314 (1871), the Court said at page 322: "The intention of the Legislature here was to require at the hands of the defendant at law due security for a compliance with the result of the suit at law before he could question it in a court of chancery. Having failed in the suit at law, he must give security for a compliance therewith in case he fails to secure the aid of a court of equity."

⁹⁹*City of Stuart v. Green*, 156 Fla. 551, 23 So.2d 831 (1945); *Isom v. Equitable Life Assur. Soc'y*, 138 Fla. 260, 189 So. 253 (1939).

¹⁰⁰*See Finegan v. Mayor*, 18 Fla. 127, 130 (1881).

¹⁰¹*North American Constr'n Co. v. Olson*, 131 Fla. 440, 179 So. 659 (1938);

It has been repeatedly held that legal proceedings will not be enjoined upon grounds which the law court, upon proper pleas, is competent to adjudicate.¹⁰² Under Florida practice, equitable pleas may be interposed in actions at law; but only negative defenses can be interposed, and no affirmative relief can be obtained.¹⁰³ Therefore, if any affirmative equitable relief is necessary to a full settlement of the controversy and to a complete protection of the defendant's rights, a court of equity will entertain a suit for such relief.¹⁰⁴ A good example is the situation in which the defendant at law seeks the intervention of equity to enjoin further prosecution of an ejectment action because there is a mistake or erroneous description in the deed under which he entered into possession, and it is necessary that he be permitted to introduce the corrected deed in evidence. In such a case a prayer for reformation is a prayer for affirmative relief; and, since in Florida only a court of equity is competent to grant such relief, equity has jurisdiction to enjoin the prosecution of the ejectment suit unless the deed as reformed would constitute no defense.¹⁰⁵

The power of a court of equity to restrain parties from commencing or prosecuting legal proceedings extends to suits in equity as well as to actions at law. But one court of equity should not ordinarily enjoin a party from proceeding in another court of equity of equal and coordinate jurisdiction merely for reasons of convenience.¹⁰⁶ The propriety of obtaining an injunction to restrain a chancery decree rather than restraining the decree by petition filed in the same suit was extensively considered in an early Florida case.¹⁰⁷

Pepple v. Rogers, 104 Fla. 462, 140 So. 205 (1932).

¹⁰²*Palm Beach v. Gottesman*, 152 Fla. 182, 11 So.2d 337 (1943); *Proodian v. Plymouth Citrus Growers' Ass'n*, 143 Fla. 788, 197 So. 540 (1940); *Garrett v. Phillips*, 101 Fla. 426, 134 So. 231 (1931); *Peacock v. Feaster*, 52 Fla. 565, 42 So. 889 (1906); *Peacock v. Irvine*, 52 Fla. 562, 42 So. 894 (1906); *Byrne v. Brown*, 40 Fla. 109, 23 So. 877 (1898); *Cohen v. L'Engle*, 29 Fla. 579, 11 So. 47 (1892); *Freeman v. Timanus*, 12 Fla. 393 (1868).

¹⁰³*City of Stuart v. Green*, 156 Fla. 551, 23 So.2d 831 (1945); *Pepple v. Rogers*, 104 Fla. 462, 140 So. 205 (1932).

¹⁰⁴*Isom v. Equitable Life Assur. Soc'y*, 138 Fla. 260, 189 So. 253 (1939); *Bailey v. Inman*, 105 Fla. 1, 140 So. 783 (1932); *Pepple v. Rogers*, 104 Fla. 462, 140 So. 205 (1932).

¹⁰⁵*E.g.*, *Crompton v. Kirkland*, 157 Fla. 89, 24 So.2d 902 (1946); *Osceola Fertilizer Co. v. Beville*, 86 Fla. 479, 98 So. 354 (1923); *Raulerson v. Peebles*, 79 Fla. 367, 84 So. 370 (1920); *Griffin v. Fries*, 23 Fla. 173, 2 So. 266 (1887).

¹⁰⁶*Ray v. Williams Phosphate Co.*, 59 Fla. 598, 52 So. 589 (1910); see Note, 102 A.L.R. 308 (1936).

¹⁰⁷*Robinson v. Springfield Co.*, 21 Fla. 203, 225 (1885).

In that case the Court approved a separate injunction suit by one not a party to the pending equity proceeding, because a petition in the original cause would have been cumbersome and unnecessary.

An equity court ordinarily has no jurisdiction to enjoin the institution or continuation of criminal prosecutions; nor will the Supreme Court issue its constitutional writ to enjoin criminal prosecutions.¹⁰⁸ Our Court regards this as well settled even in cases in which the bill alleges a threat of multiplicity of future prosecutions and forfeitures incident thereto. The arrested person is deemed to have an adequate remedy at law by habeas corpus or other proceeding.¹⁰⁹ There are well-recognized exceptions to this rule, however. If criminal proceedings are threatened under an allegedly unconstitutional statute affecting property rights, courts of equity have jurisdiction to enjoin the institution of the criminal proceedings. To warrant such interference, however, the circumstances must be exceptional and the danger of irremediable loss great and immediate.¹¹⁰ The right to earn a livelihood and to continue in one's employment unmolested by efforts to impose void enactments is likewise entitled to protection.¹¹¹

Even though acts of an accused may ultimately be held not within provisions of a valid criminal statute and the threatened proceedings may be destructive of property rights in the meantime, proceedings should not be enjoined if the asserted rights sought to be protected by the injunction are of doubtful validity and have never been duly submitted for adjudication in courts of criminal jurisdiction. Injunction will issue if a multiplicity of suits renders a defense against attempted enforcement of a valid statute unduly burdensome on property or personal rights before a final decision can be rendered, or if the enforcement of a statute which is probably unconstitutional would have the same effect.¹¹²

Another exception applies only to those cases in which a plaintiff in equity attempts to resort to a criminal procedure to enforce against the defendant the same rights that he is asserting against him in

¹⁰⁸*Taylor v. Trianon Amusement Co.*, 146 Fla. 447, 200 So. 912 (1941); *Stocks v. Lee*, 144 Fla. 627, 198 So. 211 (1940); *The Merry-Go-Round, Inc. v. State ex rel. Jones*, 136 Fla. 278, 186 So. 538 (1939).

¹⁰⁹*Jacksonville v. Wilson*, 157 Fla. 838, 27 So.2d 108 (1946); *Stocks v. Lee*, 144 Fla. 627, 198 So. 211 (1940).

¹¹⁰*Pohl Beauty School, Inc. v. Miami*, 118 Fla. 664, 159 So. 789 (1935); *L. Maxcy, Inc. v. Mayo*, 103 Fla. 552, 139 So. 121 (1931).

¹¹¹*Watson v. Centro Espanol de Tampa*, 158 Fla. 796, 30 So.2d 288 (1947).

¹¹²*Sweat v. Daley*, 116 Fla. 755, 156 So. 720 (1934).

equity. In *Gulf Theatres, Inc. v. State ex rel. Ferguson*¹¹³ the state, on relation of a citizen, sought to enjoin defendant's operation of a theater "bank night" under what is now Section 64.11 of Florida Statutes 1949. The injunction was granted but the defendant appealed, obtaining a supersedeas pending appeal. The prosecuting attorney was about to institute criminal proceedings against the defendant when the defendant asked the Supreme Court to issue its constitutional writ of injunction to restrain criminal prosecution until the determination of the matter in equity. The Court granted the prayer on the ground that the state, by submitting itself as plaintiff in the equity court, had given that court jurisdiction, at least for the time being, of the entire case.

When two actions at law are based upon the same matter and are between the same parties, the action last filed may be enjoined.¹¹⁴ If courts of law and equity have coordinate jurisdiction of a cause, the court first assuming jurisdiction will retain it and determine the entire controversy, and if that court is the equity court it will restrain the action at law.¹¹⁵

Enforcement of a judgment of a law court which had jurisdiction over the parties and subject matter will not be enjoined unless there is proof of extrinsic fraud.¹¹⁶ Intrinsic fraud, such as perjury or subornation of perjury, which may be the basis of a stay of execution by a law court,¹¹⁷ will not justify action by equity.¹¹⁸ But, if a defendant relies upon a written assurance that default will not be taken, a court of equity will enjoin judgment taken in violation of that assurance.¹¹⁹ Also, a creditor of an insolvent decedent is entitled to enjoin execution of a judgment obtained by another creditor after

¹¹³133 Fla. 634, 182 So. 842 (1938).

¹¹⁴*Watson v. Pepper*, 134 Fla. 586, 184 So. 131 (1938).

¹¹⁵*Williams v. Bullington*, 159 Fla. 618, 32 So.2d 273 (1947).

¹¹⁶*Jeffery Lumber Co. v. Coleman*, 149 Fla. 704, 6 So.2d 821 (1942); *Allison v. Handy Andy Stores, Inc.*, 106 Fla. 274, 143 So. 263 (1932) (denying injunction against enforcement of a judgment alleged to have been proved by false return of process when no fraud or other ground of equitable cognizance was advanced).

¹¹⁷FLA. STAT. §55.38 (1949) provides that the court may "... for good cause . . . direct a stay [of execution] . . . and the suspension of proceedings thereon."

¹¹⁸*Kearley v. Hunter*, 154 Fla. 81, 16 So.2d 728 (1944); *Nelson v. Hansard*, 143 Fla. 898, 197 So. 513 (1940); *Michel v. Sammis*, 15 Fla. 308 (1875); *Gamble v. Campbell*, 6 Fla. 347 (1855); see Note, 30 L.R.A. 786 (1896).

¹¹⁹*Purviance v. Edwards*, 17 Fla. 140 (1879).

suggestion of insolvency was filed in the county court and notice given to creditors.¹²⁰ Similarly, a creditor may enjoin enforcement of a foreclosure decree when the mortgage and foreclosure are but a device to defraud creditors.¹²¹ Enforcement will also be enjoined if there is surprise tantamount to fraud.¹²²

Equity will also enjoin execution on a void judgment. Thus a judgment in excess of the jurisdictional amount of the court rendering it¹²³ or against one not a party to the suit will be enjoined.¹²⁴ Indeed, it has been said that a collateral attack on a judgment by suit to enjoin levy of execution thereon cannot prevail unless the judgment is void.¹²⁵ Here, as in other suits for injunction, if there is an adequate remedy at law by appeal equitable relief will not be granted to one who has neglected to avail himself of it.¹²⁶

Trespass

Originally chancery did not enjoin a trespass upon land. By analogy to the remedy of injunction to prevent waste, which had been recognized since the thirteenth century and was dependent upon privity of title between the parties, equity extended the remedy to cases of trespass without privity of title under certain conditions. The basis of the jurisdiction in such cases was the probability of irreparable injury,¹²⁷ the inadequacy of pecuniary compensation, the destruction of the estate in the character in which it had been enjoyed, or the prevention of a multiplicity of suits when the right to the property was controverted by numerous persons, each insisting on his individual right.¹²⁸

¹²⁰Scarlett v. Hicks, 13 Fla. 314 (1871).

¹²¹Robinson v. Springfield Co., 21 Fla. 203 (1885).

¹²²Hoey v. Jackson, 31 Fla. 541, 13 So. 459 (1893); Dibble v. Truluck, 12 Fla. 185 (1868).

¹²³E.g., Wilson v. Sparkman, 17 Fla. 871, 35 Am. Rep. 110 (1880); see Note, 31 L.R.A. 200 (1896).

¹²⁴E.g., Purviance v. Edwards, 17 Fla. 140 (1879).

¹²⁵Fisher v. Rawleigh Co., 141 Fla. 717, 193 So. 747 (1940).

¹²⁶Wordehoff v. Evers, 18 Fla. 339 (1881); Dibble v. Truluck, 12 Fla. 185 (1868).

¹²⁷See Atlantic C.L.R.R. v. Feagin, 90 Fla. 62, 64, 105 So. 141 (1925).

¹²⁸Davis v. Wilson, 139 Fla. 698, 190 So. 716 (1939); Brown v. Solary, 37 Fla. 102, 19 So. 161 (1896); Wiggins v. Williams, 36 Fla. 637, 18 So. 859 (1895).

Something more than a mere trespass, susceptible of adequate remuneration, must be shown before a court of equity will exercise jurisdiction.¹²⁹ Three situations are most common: (1) title to the land is in dispute; (2) title is not in dispute but the trespass is in the nature of waste; (3) title is not in dispute but a repeated or continuous trespass is threatened.

(1). The confusion regarding the trial of legal titles in equity seems to have dated from the time of Lord Eldon, who remarked in *Pillsworth v. Hopton*,¹³⁰ "I remember perfectly being told from the bench very early in life, that if the plaintiff filed a bill for an account, and an injunction to restrain waste, stating, that the defendant claimed by a title adverse to his, he stated himself out of court as to the injunction." Even today with some exceptions equity will leave the determination of title hinging upon a question of fact to a court of law.¹³¹ By 1817, however, courts of equity were granting temporary injunctions to protect the plaintiff during the period of time required for bringing an action at law.¹³² At the present time the form of equitable assistance probably most often invoked in litigation over real estate is the interlocutory injunction issued to maintain the status quo pending a decision on the merits in an action to try title.¹³³ The Florida Court has stated that the plaintiff's title must be admitted or legally established in order to give a court of equity jurisdiction to enjoin a mere trespass on land.¹³⁴ The grantee of the successful

¹²⁹*Wiggins v. Williams*, 36 Fla. 637, 18 So. 859 (1895); *Carney v. Hadley*, 32 Fla. 344, 14 So. 4 (1893); *Indian River Steamboat Co. v. East Coast Trans. Co.*, 28 Fla. 387, 10 So. 480 (1891); *Baldwin v. Tucker*, 16 Fla. 258 (1877).

¹³⁰6 Ves. 51, 52, 31 Eng. Rep. 933 (Ch. 1801); see Comment, 11 CORNELL L.Q. 547 (1926). Several reasons have been advanced for the reluctance of the chancery courts to render decrees when the disputed title to land turns upon a question of fact; see CLARK, EQUITY §192 (1919); WALSH, EQUITY §30 (1930); Note, 32 A.L.R. 463, 502 (1924).

¹³¹The Florida Court has held that a constitutional right to a trial by jury exists in such a case, *Jacksonville v. Giller*, 102 Fla. 92, 135 So. 549 (1931). See also *Woodstock Operating Corp. v. Quinn*, 201 Ala. 681, 79 So. 253 (1918).

¹³²*Jones v. Jones*, 3 Mer. 161, 36 Eng. Rep. 62 (Ch. 1817).

¹³³*E.g.*, *Perky Properties, Inc. v. Felton*, 113 Fla. 432, 151 So. 892 (1934); *Brown v. Solary*, 37 Fla. 102, 19 So. 161 (1896).

¹³⁴*Atlantic C.L.R.R. v. Feagin*, 90 Fla. 62, 105 So. 141 (1925); *Brown v. Solary*, 37 Fla. 102, 19 So. 161 (1896); *Carney v. Hadley*, 32 Fla. 344, 14 So. 4 (1893).

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plaintiff in ejectment in possession under his grant may enjoin a trespasser whose sole claim of title is under the unsuccessful defendant in ejectment.¹³⁵

(2). Acts of a trespasser admittedly without title causing permanent damage, which would constitute waste if done by a tenant, will be enjoined in equity because the damages at law are inadequate. The mining and taking of phosphate rock from land valuable chiefly on account of the phosphate amounts to a destruction of the substance of the estate in the character in which it has been enjoyed, and the injury resulting therefrom is of such irreparable nature as to authorize a court of equity to enjoin it, on proper bill by the real owner.¹³⁶ Similarly, if trees are of peculiar value and importance because of their condition or use as a part of the underlying estate, their destruction or injury would actually be an injury to the owner of the land in the use and enjoyment of his estate for which money damages would not be adequate compensation. In a proper case brought under this rule the court may in granting the injunction proceed to an accounting and award damages sustained by the trespass as an incident to the relief by injunction.¹³⁷ The cutting and removal of ornamental trees may under this theory be restrained,¹³⁸ but the simple working of pine trees for turpentine in the customary manner is not irreparable injury.¹³⁹ This latter holding is circumvented, however, by an amendment to Section 64.08 of Florida Statutes 1949 which now provides:¹⁴⁰

¹³⁵Williams v. Richardson, 66 Fla. 234, 63 So. 446 (1913).

¹³⁶Brown v. Solary, 37 Fla. 102, 19 So. 161 (1896).

¹³⁷Davis v. Wilson, 139 Fla. 698, 190 So. 716 (1939); Cowan v. Skinner, 52 Fla. 486, 42 So. 730 (1906); Brown v. Solary, 37 Fla. 102, 19 So. 161 (1896); Wiggins v. Williams, 36 Fla. 637, 18 So. 859 (1895).

¹³⁸Binnicker v. Leeper, 138 Fla. 738, 190 So. 6 (1939).

¹³⁹Cowan v. Skinner, 52 Fla. 486, 42 So. 730 (1906); Carney v. Hadley, 32 Fla. 344, 14 So. 4 (1893).

¹⁴⁰The language "or the timber, or the right to work for turpentine purposes the timber on any lands" was added in 1907 after several decisions had denied the benefit of this statute to one not claiming the land but only the timber or turpentine rights thereon, Doke v. Peek, 45 Fla. 244, 34 So. 896 (1903); McDonald v. Padgett, 46 Fla. 501, 35 So. 336 (1903). An action brought under this statute for a trespass committed under such circumstances that equity could not enjoin it independently of the statute differs in several aspects from an action under the common law rule stated in the text. Under the statute (1) no actual physical possession, or *pedis possessio*, by the owner is necessary, Reddick

"Courts of chancery shall entertain suits by any person claiming to own any timbered lands, or the timber, or the right to work for turpentine purposes the timber on any lands in this state, to enjoin trespass on such lands by the cutting of trees thereon, or the removing of logs therefrom, or by boxing or scraping the said trees for the purpose of making turpentine, or by the removal of turpentine therefrom."

(3). An injunction may be had against continuous or repeated trespasses that threaten to continue indefinitely, even though they are not in the nature of waste.¹⁴¹ In such cases, when it is necessary in order to quiet a rightful, admitted, or established possession, chancery has often interposed to prevent a multiplicity of suits even though there be a remedy at law.¹⁴² It should be remembered that by "multiplicity of suits" in this situation the Court has reference to its rule requiring suit by several persons, each standing upon his own claim, as previously discussed.¹⁴³ If the injury is of a permanent nature, such as the flooding of land or the laying of a railroad, the damages recoverable at law are deemed to include present as well as future injury, and there is no danger of further litigation.¹⁴⁴

v. Meffert, 32 Fla. 409, 13 So. 894 (1893); (2) irreparable injury or other ground for injunctive relief need not be shown; (3) no accounting or award of damages in equity in connection with the suit is possible, *Cowan v. Skinner*, 52 Fla. 486, 42 So. 730 (1906); *McMillan v. Wiley*, 45 Fla. 487, 33 So. 993 (1903); *Louisville & N.R.R. v. Gibson*, 43 Fla. 315, 31 So. 230 (1901); *Wiggins v. Williams*, 36 Fla. 637, 18 So. 859 (1895). The reasoning of the cases establishing this restriction on an action brought under this statute logically applies with equal force to any action brought under the authority of any of the many statutes in Florida providing the remedy of injunction where it would not otherwise exist. This is a definite limitation on the general rule that when equity assumes jurisdiction to grant an injunction it may award any other relief essential to do complete justice between the parties, *Baylen St. Wharf Co. v. Pensacola*, 39 So.2d 66 (Fla. 1949); *State Road Dep't v. Bender*, 147 Fla. 15, 2 So.2d 298 (1941).

¹⁴¹*Jacksonville v. Giller*, 102 Fla. 92, 135 So. 549 (1931); *Morgan v. Lakeland*, 90 Fla. 525, 107 So. 269 (1925); *McGourin v. DeFuniak Springs*, 51 Fla. 502, 41 So. 541 (1906); *Richardson v. Kittlewell*, 45 Fla. 551, 33 So. 984 (1903); *Baya v. Lake City*, 44 Fla. 491, 33 So. 400 (1902); see Note, 92 A.L.R. 578 (1934).

¹⁴²*Cowan v. Skinner*, 52 Fla. 486, 42 So. 730 (1906); *Carney v. Hadley*, 32 Fla. 344, 14 So. 4 (1893).

¹⁴³See page 572 *supra*.

¹⁴⁴*Jarrett Lumber Corp. v. Christopher*, 65 Fla. 379, 61 So. 831 (1913);

Nuisance

The development and present law of nuisance are beyond the scope of this article, which is confined to noting some of the more general distinctions and rules as they relate to the use of injunction in nuisance cases.¹⁴⁵ Generally, nuisances fall into two groups: (1) acts of wrongful user by an owner or possessor of land resulting in an unreasonable interference with the rights of enjoyment of the owner or possessor of neighboring land, and (2) wrongful interference with easements or other incorporeal rights.¹⁴⁶ Nuisances are further classified as private or public, and as acts that are nuisances per se as distinguished from acts that may be nuisances depending upon time, circumstances, and location.

While only an act which is a nuisance at all times and under any circumstances, regardless of location or surroundings, is a nuisance per se, anything that annoys or disturbs one in the free use, possession, or enjoyment of his property or that renders its ordinary use or occupation physically uncomfortable may become a nuisance.¹⁴⁷ Courts of equity are reluctant to interfere by injunction with the free use and enjoyment of property by an owner or occupant, and will only interfere when it is clearly made to appear that the use and enjoyment are injurious to the rights of others.¹⁴⁸

An injunction to restrain a nuisance will be granted ex parte only if the plaintiff shows a case of urgent necessity or one in which irreparable mischief would otherwise be produced. If the thing sought to be restrained is a nuisance per se, and it so appears from the facts set forth in the bill, the court will give its aid to stay irreparable mischief and will grant a temporary injunction until the parties can have a hearing. But when the thing sought to be restrained is not in itself noxious but only something that may according to circumstances prove so, the court will refuse to interfere¹⁴⁹ until after final

Pensacola & A.R.R. v. Jackson, 21 Fla. 146 (1884).

¹⁴⁵For a historical analysis of the development of nuisance see McRae, *The Development of Nuisance in the Early Common Law*, 1 U. OF FLA. L. REV. 27 (1948).

¹⁴⁶See WALSH, *EQUITY* §33 (1930).

¹⁴⁷*Mercer v. Keynton*, 121 Fla. 87, 163 So. 411 (1935).

¹⁴⁸*Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906); *Shivery v. Streeper*, 24 Fla. 103, 3 So. 865 (1888); *Randall v. Jacksonville St. R.R.*, 19 Fla. 409 (1882); *Thebaut v. Canova*, 11 Fla. 143 (1866).

¹⁴⁹*Thebaut v. Canova*, 11 Fla. 143 (1866).

hearing or trial at law.

The authority of courts of equity to interfere by way of injunction in cases of private nuisance is founded upon their power to restrain irreparable mischief or to prevent a multiplicity of suits. It follows, therefore, that not every case that gives rise to a right of action at law will justify the interposition of courts of equity to redress the injury or remove the annoyance caused by a nuisance. On the other hand, when the injury is irreparable, or loss of health, loss of trade, destruction of the means of subsistence, or permanent ruin to property may ensue from the wrongful act, a court of equity will interfere by injunction to protect the rights so endangered or violated.¹⁵⁰

Although not frequently exercised, the power undoubtedly exists in courts of equity to enjoin public nuisances.¹⁵¹ A court of law can reach only existing nuisances, and future acts must be the subject of new prosecutions or proceedings. Therefore this phase of equity jurisdiction is both necessary and salutary, especially when a nuisance affects the health, morals, or safety of the community. In the absence of statutory permission, an individual generally may not bring suit to enjoin a public nuisance. The rule is otherwise if the individual suffers special or peculiar substantial injury different in kind and not merely degree from the injury to the public at large.¹⁵²

Often a nuisance is both private and public. Such was the situation in the recent and novel Florida case of *Shamhart v. Morrison Cafeteria Co.*,¹⁵³ in which the defendant's downtown cafeteria attracted more

¹⁵⁰*Seaboard All Fla. Ry. v. Underhill*, 105 Fla. 409, 141 So. 306 (1932); *Thebaut v. Canova*, 11 Fla. 143 (1866).

¹⁵¹*Pompano Horse Club, Inc. v. State ex rel. Bryan*, 93 Fla. 415, 111 So. 801 (1927).

¹⁵²*Biscayne Co. v. Martin*, 95 Fla. 259, 116 So. 66 (1928); *Deering v. Martin*, 95 Fla. 224, 116 So. 54 (1928); *Brown v. Florida Chautauqua Ass'n*, 59 Fla. 447, 52 So. 802 (1910); *Robins v. White*, 52 Fla. 613, 42 So. 841 (1906). All suits to enjoin nuisances as defined in FLA. STAT. §823.05 (1949) must be brought in accordance with §§64.11-64.15, *Losey v. State ex rel. Giblin*, 158 Fla. 381, 28 So.2d 604 (1947). In a suit by an individual in the name of the state to enjoin a nuisance as authorized by FLA. STAT. §64.11 (1949), no special damage to the individual need be shown, *Valdez v. State ex rel. Farrior*, 142 Fla. 123, 194 So. 388 (1940); *State ex rel. Moore v. Gillian*, 141 Fla. 707, 193 So. 751 (1940); *National Container Corp. v. State ex rel. Stockton*, 138 Fla. 32, 189 So. 4 (1939).

¹⁵³159 Fla. 629, 32 So.2d 727 (1947); 1 U. OF FLA. L. REV. 316 (1948); 1 ALA. L. REV. 67 (1948); 26 CHI-KENT REV. 355 (1948); 20 MISS. L.J. 92 (1948); 20 TENN. L. REV. 699 (1949); 1 VAND. L. REV. 324 (1948).

patrons than its conventional lobby and entrance approach could accommodate. The potential customers formed lines on the public sidewalk and frequently blocked the entrances to plaintiff's nearby drugstore. Plaintiff sued to enjoin the nuisance and sought damages for loss of business. The Florida Supreme Court held that the defendant should be enjoined and that the court below should ascertain what damages the plaintiff had sustained. Pursuant to this mandate, the lower court decreed that the defendant provide sufficient space upon its premises to accommodate the waiting lines, and assessed plaintiff's damages, including interest and costs, at \$3,801.92. On second appeal¹⁵⁴ the Supreme Court of Florida modified this decree by striking that portion requiring the defendant to enlarge its premises, and approved an agreement between the parties which provided that defendant should station an attendant on the sidewalk to supervise the waiting lines in a manner so as not to obstruct the plaintiff's store entrances. With this modification the decree of the lower court was affirmed.

Contracts

If contracts are classified as either affirmative, in which it is agreed that something will be done, or negative, in which it is agreed that something will not be done, the equitable remedy for breach of the first class is a decree for specific performance, and for breach of the second is an injunction.¹⁵⁵ Accordingly, an injunction restraining the breach is a negative specific enforcement of that contract. It may be stated as a general proposition that whenever the contract is one of a class which will be specifically enforced in an affirmative manner, a court of equity will restrain its breach by injunction if that is the only practicable mode of enforcement which its terms permit.¹⁵⁶ The tendency of the American courts has been to limit, rather than to enlarge, the area in which this relief will be granted. English courts will enjoin the violation of some contracts, even though they cannot be specifically enforced; but American courts, with few exceptions, refuse to adopt this doctrine.¹⁵⁷ Performance of an agreement should

¹⁵⁴Shamhart v. Morrison Cafeteria Co., 160 Fla. 540, 35 So.2d 842 (1948).

¹⁵⁵Seaboard Oil Co. v. Donovan, 99 Fla. 1296, 128 So. 821 (1930).

¹⁵⁶Thompson v. Shell Petroleum Corp., 130 Fla. 652, 178 So. 413 (1938); Seaboard Oil Co. v. Donovan, 99 Fla. 1296, 128 So. 821 (1930).

¹⁵⁷Thompson v. Shell Petroleum Corp., 130 Fla. 652, 178 So. 413 (1938).

not be specifically enforced, *pendente lite*, by use of a temporary injunction against its breach, unless such performance is urgently necessary prior to final hearing or unless such interlocutory relief is indispensable to the preservation of plaintiff's ultimate rights.¹⁵⁸

Usually the breach of a contract will not be enjoined unless there be a mutuality of remedy as well as of obligation.¹⁵⁹ Actions to enjoin the cancellation of leases are exceptions to this rule. It has been held that the fact that a lease is terminable at the option only of the lessee does not of itself render the lease objectionable for lack of mutuality of remedy or prevent the party in whose favor the option exists from enjoining a breach of its terms.¹⁶⁰ On the other hand, the "lack of mutuality" rule has been used to support the refusal of injunctive relief in cases involving the enforcement of restrictive covenants in contracts of employment.¹⁶¹ In *Love v. Miami Laundry Co.* the Court used the following rather broad language:¹⁶²

"A court of equity should not lend its power to enforce the provisions of an executory contract against one of the parties unless the terms and conditions of the contract are such that the court of equity might enforce at least a part of the terms thereof against the other party."

Florida has followed the general rule¹⁶³ that, independently of the requirement of mutuality of remedy, courts will not enforce such restrictive covenants in personal service contracts in the absence of

¹⁵⁸*Anderson v. Tower Amusement Co.*, 118 Fla. 437, 159 So. 782, *vacated*, 118 Fla. 895, 160 So. 523 (1935) (injunction allowed); *Bowling v. National Convoy & Trucking Co.*, 101 Fla. 634, 135 So. 541 (1931); *Garriga v. Reid Lumber Co.*, 97 Fla. 321, 120 So. 849 (1929); *Campbell v. Maull*, 69 Fla. 102, 67 So. 639 (1915); *Taylor v. Florida E.C. Ry.*, 54 Fla. 635, 45 So. 574 (1907).

¹⁵⁹See Note, 8 A.L.R.2d 1208 (1949).

¹⁶⁰*City Market Bldg., Inc. v. Giglio*, 157 Fla. 760, 26 So.2d 785 (1946); *Thompson v. Shell Petroleum Corp.*, 130 Fla. 652, 178 So. 413 (1938); see Note, 117 A.L.R. 256 (1938).

¹⁶¹*J. Schaeffer, Inc. v. Hoppen*, 127 Fla. 703, 173 So. 900 (1937); *Lewis v. Kirkland*, 118 Fla. 350, 160 So. 44 (1935); *Wheeler v. Mickles*, 118 Fla. 348, 160 So. 45 (1935); *Nettles v. City Ice & Fuel Co.*, 118 Fla. 345, 160 So. 42 (1935); *Love v. Miami Laundry Co.*, 118 Fla. 187, 160 So. 32 (1935); see Note, 98 A.L.R. 963, 987 (1935).

¹⁶²118 Fla. 137, 142, 160 So. 32, 34 (1935).

¹⁶³RESTATEMENT, CONTRACTS §380 (1933).

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some special equity.¹⁶⁴

In *Seaboard Oil Co. v. Donovan* Justice Davis, with no lack of certainty, expressed the Court's attitude on the doctrine of "clean hands" in cases seeking injunction against breach of contract:¹⁶⁵

"A party is not entitled to enjoin the breach of a contract by another, unless he himself has performed what the contract requires of him so far as possible; if he himself is in default or has given cause for non-performance by defendant, he has no standing in equity."

Our Court has apparently approved the view that when a contract involves peculiar convenience or advantage, or the loss occasioned by its breach would be a matter of uncertainty, a threatened or impending tortious interference by a person not a party to the contract may be enjoined by the party whose enjoyment of existing contractual rights is thus endangered. The application of this doctrine is no longer restricted to contracts for personal services. Nor is it necessary to enjoin all the tort-feasors as defendants when there are more than one, since a person receiving injury from the tortious acts of others has a remedy against one or all of the tort-feasors and may enforce that remedy against one or all at his election, either at law or in equity.¹⁶⁶

Enforcement of Statutes and Ordinances

Injunctions are sometimes sought to prohibit the enforcement of statutes¹⁶⁷ or municipal ordinances. A chancery court may grant a

¹⁶⁴By "special equity" the Court indicated it meant a case involving good will, peculiar intellectual or other skill or capacity, trade secret or secret process, direct contact with the complainant's customers, creating a personal influence and following upon and among them, which might be carried as an asset to a new firm, or other recognized ground, *Simms v. Burnette*, 55 Fla. 702, 46 So. 90 (1908); *Simms v. Patterson*, 55 Fla. 707, 46 So. 91 (1908).

¹⁶⁵99 Fla. 1296, 1305, 128 So. 821, 824 (1930); *accord*, *J. S. Betts Co. v. South Ga. Ry.*, 69 Fla. 46, 67 So. 861 (1915) (temporary injunction enjoining the refusal to carry out a contract dissolved upon showing that complainant had repeatedly violated many essential provisions of the contract).

¹⁶⁶*Knight v. Miami*, 127 Fla. 585, 173 So. 801 (1937); *Dade Enterprises, Inc. v. Wometco Theatres, Inc.*, 119 Fla. 70, 160 So. 209 (1935); see Note, 84 A.L.R. 850 (1933).

¹⁶⁷*State ex rel. Watson v. Lee*, 158 Fla. 148, 28 So.2d 104 (1946); *Mayo*

temporary injunction on the ground that application of a statute will probably be unconstitutional. The usual conditions precedent, such as irreparable injury, must of course be proved.¹⁶⁸ Courts are not authorized to enjoin the operation of a statute that has been duly adjudged constitutional and operative unless the statute is being illegally applied or unless the statute, or the challenged part of it, is unconstitutional on unadjudicated grounds.¹⁶⁹

Injunction will not lie to prohibit the enforcement of an ordinance when a remedy exists at law.¹⁷⁰ Even a void municipal ordinance should not be restrained if its enforcement amounts to a mere trespass.¹⁷¹ The mere fact that compliance with an ordinance will impose a heavy burden on plaintiff constitutes no ground for equitable relief by injunction.¹⁷² Resort to the courts to enjoin enforcement of a municipal zoning ordinance is justified only when substantial property rights have been illegally or arbitrarily invaded and municipal relief from unlawful injury has been denied.¹⁷³ In such cases acquiescence by a municipality in an existing condition over a long period of time may be taken into account in determining whether a zoning ordinance is being arbitrarily enforced.¹⁷⁴

Actions of Public Officials and Administrative Boards

Injunction cannot be used to control or review the proceedings or judgments of a board, commission or commissioner, common law certiorari being the appropriate method of judicial review when there is

v. Winn & Lovett Grocery Co., 155 Fla. 318, 19 So.2d 867 (1944); Mizelle v. Sweat, 130 Fla. 345, 177 So. 709 (1937).

¹⁶⁸Mayo v. Florida Grapefruit Growers' Protective Ass'n, 112 Fla. 117, 151 So. 25 (1933).

¹⁶⁹Cone v. King, 143 Fla. 323, 196 So. 697 (1940).

¹⁷⁰Stocks v. Lee, 144 Fla. 627, 198 So. 211 (1940); see Egan v. Miami, 130 Fla. 465, 468, 178 So. 132, 133 (1938); Rawls v. Miami, 82 Fla. 65, 67, 89 So. 351, 352 (1921); Orange City v. Thayer, 45 Fla. 502, 506, 34 So. 573, 574 (1903).

¹⁷¹Egan v. Miami, 130 Fla. 465, 178 So. 132 (1938).

¹⁷²*Ibid.*; Rawls v. Miami, 82 Fla. 65, 89 So. 351 (1921).

¹⁷³Miami v. Perell, 52 So.2d 906 (Fla. 1951); DeCarlo v. West Miami, 49 So.2d 596 (Fla. 1950); Miami v. Rosen, 151 Fla. 677, 10 So.2d 307 (1942); Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 3 So.2d 364 (1941); Snedigan v. Keefer, 131 Fla. 191, 179 So. 421 (1938).

¹⁷⁴Miami v. Lithgow, 152 Fla. 394, 12 So.2d 380 (1943); Miami Beach v. Gulf Oil Corp., 141 Fla. 642, 194 So. 236 (1940).

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no other prescribed method.¹⁷⁵ Yet illegal action taken by state officials may be enjoined when the ordinary remedies afforded by courts of law are inadequate.¹⁷⁶ Normally the public by its authorized officers must institute proceedings to prevent an unlawful act by a public official. If, however, a private person is threatened with or suffers some public or special damage to his individual interests distinct from that suffered by every other inhabitant, and can also bring his case under some acknowledged head of equity jurisdiction, he may use injunction to prevent the act.¹⁷⁷ In certain situations a citizen-taxpayer, even though he has no special interest, can bring suit to enjoin acts of public officials. For example, he can enjoin the illegal creation of a debt which he, in common with other property owners and taxpayers, would be compelled to pay,¹⁷⁸ the execution of illegal contracts involving payments from a public fund to which he is a contributor,¹⁷⁹ and an unauthorized expenditure of public money.¹⁸⁰

Although acts of a ministerial character will be freely enjoined upon a proper state of facts, courts of equity rarely restrain or control the exercise of discretionary powers vested in municipal officers under the police power. To do the latter would amount to an assumption by the court of the powers delegated only to the municipal corporation or its officers. The court never does so unless it clearly appears that the officers are unlawfully abusing and will probably continue to abuse the discretion reposed in them. The act to be enjoined may grow out of action under an invalid statute, misconception of the law, fraud, malice, bad faith, or unfair dealing. The absence of an adequate remedy at law must be established here, as in other suits for injunction.¹⁸¹

¹⁷⁵*Vocelle v. Maleszewski*, 160 Fla. 291, 34 So.2d 436 (1948); *Ruff v. Fisher*, 115 Fla. 247, 155 So. 642 (1934).

¹⁷⁶*Coen v. Lee*, 116 Fla. 215, 156 So. 747 (1934); *Sparkman v. County Budget Comm'n*, 103 Fla. 242, 137 So. 809 (1931); *Louisville & N.R.R. v. Railroad Comm'rs*, 63 Fla. 491, 58 So. 543 (1912).

¹⁷⁷*Metropolis Pub. Co. v. Miami*, 100 Fla. 784, 129 So. 913 (1930); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

¹⁷⁸*Crawford v. Gilchrist*, 64 Fla. 41, 59 So. 963 (1912); *Peck v. Spencer*, 26 Fla. 23, 7 So. 642 (1890).

¹⁷⁹*Hathaway v. Munroe*, 97 Fla. 28, 119 So. 149 (1929).

¹⁸⁰*Thursby v. Stewart*, 103 Fla. 990, 138 So. 742 (1931); *Whitner v. Woodruff*, 68 Fla. 465, 67 So. 110 (1914); *Anderson v. Fuller*, 51 Fla. 380, 41 So. 684 (1906).

¹⁸¹*Jacksonville v. Wilson*, 157 Fla. 838, 27 So.2d 108 (1946).

Criminal Acts

In the early days of organized English society the chancellor sometimes restrained the commission of criminal acts in cases where other tribunals were too weak to protect the helpless against powerful noblemen. Since the common law courts have become able to deal with such matters, however, equity, subject to some qualifications, has refused to restrain the commission of criminal acts. Equity will likewise not exercise its power to enforce the criminal laws.¹⁸² In such cases resort must be had to the criminal courts, which possess ample power to punish the wrongdoer.

The law of Florida declares gambling houses to be public nuisances that may be abated by injunction.¹⁸³ In the leading case construing this statute and passing upon its constitutionality the Court stated that injunction can be made available by statute to suppress places in which gambling is conducted.¹⁸⁴ The injunction operates against the nuisance and hence is not conceded to be used to prevent an act that is only illegal. The Court explained:¹⁸⁵

"Where there is legislation authorizing courts of equity to enjoin acts constituting, and duly declared to be, a public nuisance, which acts at the same time are declared to be criminal, the best considered cases uphold the jurisdiction of Courts of Equity to abate such nuisances by injunction. The State possesses the undoubted right to prohibit gambling and the keeping or operation of gaming places or devices, and we do not doubt the authority of the State to declare that any place kept and maintained for the purpose of gambling and the operation of gambling devices shall be deemed a public nuisance, and, at the same time, to provide for the criminal prosecution of the offenders. 'One is a proceeding against the property used for forbidden purposes, while the other is for the punishment of the offender. . . .'

¹⁸²Polk v. Polk, 41 So.2d 150 (Fla. 1949); Hagerty v. Coleman, 133 Fla. 363, 182 So. 776 (1938); see Maloney, *Injunctive Law Enforcements: Leaven or Secret Weapon*, 1 MERCER L. REV. 1 (1949).

¹⁸³FLA. STAT. §64.11 (1949).

¹⁸⁴Pompano Horse Club, Inc. v. State *ex rel.* Bryan, 93 Fla. 415, 111 So. 801, (1927); *accord*, Lansky v. State *ex rel.* Gibbs, 145 Fla. 301, 199 So. 46 (1940).

¹⁸⁵*Id.* at 437, 111 So. at 809.

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"... 'These two proceedings are entirely unlike. The latter is conducted under the provisions of the criminal law, and deals only with the person who has violated the law. The former is governed by the rules which relate to property, and its only connection with persons is through the property in which they may be interested. The fact that keeping a nuisance is also a crime does not deprive a court of equity of the power to abate such nuisance.'"

The pendency of a suit by a private citizen to enjoin operation of a gambling house as a nuisance under the above statute does not preclude a criminal prosecution against the defendant for the same offense.¹⁸⁶ An injunction issued under the authority of this statute that enjoins the operation of any game of chance within a county was held to be an improper use of equity to enjoin transgression of a criminal law and not to abate a nuisance.¹⁸⁷

Elections

In jurisdictions recognizing distinct courts of law and equity, as in Florida, the general rule is that an injunction will not issue for the purpose of restraining the holding of an election or of controlling the mode in which an election shall be held. An election is a political matter, with which courts of equity are reluctant to interfere,¹⁸⁸ and as to which in any event an adequate remedy, such as quo warranto, exists at law. In this state the rule has been modified to the extent of holding that, if prior to an election fraud and palpable violation of the registration or election laws are about to take place and are properly charged by an elector, he may have "injunction or such other appropriate remedy as is available to him under the law."¹⁸⁹ This general reluctance may be explained on the ground that judicial interference in election controversies might result in the destruction of popular government, especially when the relief sought is to prevent the holding of an election by the people and thereby to prevent the

¹⁸⁶*Coleman v. Greene*, 136 Fla. 276, 186 So. 541 (1939).

¹⁸⁷*Lansky v. State ex rel. Gibbs*, 145 Fla. 301, 199 So. 46 (1940).

¹⁸⁸*Joughin v. Parks*, 107 Fla. 833, 147 So. 273 (1933); see Note, 70 A.L.R. 733 (1931).

¹⁸⁹*Joughin v. Parks*, 107 Fla. 833, 143 So. 145 (1932); *McGregor v. Burnett*, 105 Fla. 447, 141 So. 599 (1932).

free expression of popular will. This impelling judicial tendency to leave unhampered our avenues of popular expression is no doubt of sufficient cogency to support the rule as applied to general elections recurring at stated intervals and required by statute to be held at particular times and places. But the reason for the rule does not logically apply to a number of special and extraordinary "non-political" elections. Recall elections, for example, can be held only when specific statutory authority has been granted and substantially pursued. Interference with such unusual elections by injunction or otherwise will have no other effect than to delay a particular recall effort until such time as the court is satisfied that the election proceedings properly comply with the applicable statute. A suit will therefore be entertained to enjoin the holding of a recall election when the ground is that the provisions of the statute authorizing the election are not being complied with and no other plain, complete, and adequate remedy at law exists for the protection of the rights of the plaintiff.¹⁹⁰ Likewise, in other cases not involving the people's right to choose elective officials to govern themselves, a court of equity may in a clear case enjoin the holding of the election when asserted vested contract or property rights can be more effectually protected by restraining in advance a threatened unlawful election.¹⁹¹ Examples of such instances occur in elections involving improper use of funds,¹⁹² or a change in a contract with a public utility.¹⁹³

Courts of equity do not have general jurisdiction to order elections to be held in the absence of valid statutory authority, but they do have power to require that to be done which in law should be done. Consequently any and all appropriate judicial writs, including injunction, are available to electors and officeholders to prevent violations of statutes enacted for the purpose of regulating and securing the expression of popular will in elections in the absence of laches, waiver, or estoppel.¹⁹⁴

Labor Problems

It is now firmly established under federal and state decisions that

¹⁹⁰Flatt v. Ross, 112 Fla. 596, 150 So. 716 (1933); *State ex rel. Landis v. Tedder*, 106 Fla. 140, 143 So. 148 (1932).

¹⁹¹Duval County v. Jennings, 121 Fla. 584, 164 So. 356 (1935).

¹⁹²Cincinnati v. Hillenbrand, 103 Ohio St. 286, 133 N.E. 556 (1921).

¹⁹³Mobile v. Mobile Elec. Co., 203 Ala. 574, 84 So. 816 (1919).

¹⁹⁴Williams v. Keyes, 135 Fla. 769, 186 So. 250 (1938).

picketing is not per se unlawful but will be enjoined if done for an unlawful purpose or accompanied by threats, force, violence, coercion, or intimidation.¹⁹⁵ It was recently held that picketing buildings in which an employer had contracted to install plumbing equipment for the sole purpose of compelling the employer to enter into a closed shop agreement was picketing for an unlawful object and was properly enjoined even though the picketing was peaceful.¹⁹⁶

VI. PROCEDURE

Bill of Complaint and Affidavits

Section 64.01, Florida Statutes 1949, provides:

"No writ of injunction shall be granted until a bill praying therefor shall have been filed, except in the special cases in which, and for the special causes for which such writs are authorized in the courts of the United States exercising equity jurisdiction."

Without doubt more injunctions fail because of insufficient allegations in the bill of complaint than for any other reason. The long and unyielding insistence on compliance with the strict requirements relating to the bill is understood when it is realized that in many applications for injunction these allegations constitute the court's only source of information in determining the propriety of the grant.¹⁹⁷

Since an application for injunction is made in chancery, the first requirement of a bill of complaint is that it state a cause for equitable relief. A bill without equity is always subject to attack on motion to dismiss, and no restraining order or temporary injunction should be granted thereon. If already granted, the injunction should be dissolved as soon as possible and the bill dismissed.¹⁹⁸ On an applica-

¹⁹⁵Moore v. City Dry Cleaners & Laundry, 41 So.2d 865 (Fla. 1949); see Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932) (enjoining picketing of theatre).

¹⁹⁶Local Union No. 519 v. Robertson, 44 So.2d 899 (Fla. 1950).

¹⁹⁷See note 7 *supra*.

¹⁹⁸Blume v. Giles, 143 Fla. 615, 197 So. 344 (1940); Tarpon Springs v. Chrysostomides, 108 Fla. 500, 146 So. 845 (1933); State *ex rel.* Knott v. Willmer, 102 Fla. 64, 135 So. 859 (1931); B. L. E. Realty Corp. v. Mary Williams Co. 101 Fla. 254, 134 So. 47 (1931); St. Johns County v. Triay, 73 Fla. 289, 74 So. 405 (1917); Builder's Supply Co. v. Acton, 56 Fla. 756, 47

tion for an injunction the chancellor may go into the merits as disclosed by the bill and may dismiss it for lack of equity before answer is filed.¹⁹⁹ Moreover, relief cannot be granted for matters not charged in the bill. The complainant must stand on the case made by his bill and cannot have advantage of material matter not put in issue by it, even though such matters be shown by other pleadings or the evidence. It is incumbent upon a plaintiff to allege clearly and definitely every fact necessary to entitle him to relief; and if he omits essential facts or states facts that show he is not entitled to equitable relief he must suffer the consequences. This principle applies to all bills in equity but is especially applicable to those seeking injunction.²⁰⁰ Of course, time should be allowed for amendment so as to give plaintiff an opportunity, if he desires, to set forth facts that entitle him to relief.²⁰¹

The Court has repeatedly held that not only must the allegations of a bill of injunction be clear, direct, and positive, but they must also be verified by an affidavit which must be direct and positive; and, if any of the material allegations contained in the bill of complaint are stated on information and belief, there should be annexed to and presented therewith an affidavit of the person or persons from whom the information is derived positively averring that the facts alleged upon information are true.²⁰² A bill verified on information and belief, without any accompanying affidavit as to its truth from the source of such information, is defective and subject to objection and dissolution as a matter of course before answer. The only exception to this rule is that a preliminary injunction is sometimes allowed upon allegations founded upon information and belief until, under an order to show cause, a hearing can be had and better evi-

So. 822 (1908).

¹⁹⁹See note 216 *infra*.

²⁰⁰*American Fire & Casualty Co. v. Rader*, 160 Fla. 700, 36 So.2d 270 (1948); *House v. Nash*, 90 Fla. 123, 105 So. 266 (1925); *Builder's Supply Co. v. Acton*, 56 Fla. 756, 47 So. 822 (1908); *Weeks v. J. C. Turner Lumber Co.*, 53 Fla. 793, 44 So. 173 (1907); *Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906); *Johnson v. McKinnon*, 45 Fla. 388, 34 So. 272 (1903); *McKinney v. Board of County Comm'rs*, 26 Fla. 267, 4 So. 855 (1890).

²⁰¹*Stonaris v. Certain Picketers*, 46 So.2d 387 (Fla. 1950); *McKinney v. Board of County Comm'rs*, 26 Fla. 267, 4 So. 855 (1890).

²⁰²*Trust Co. of Florida v. Crider*, 102 Fla. 593, 136 So. 434 (1931); *Drew Lumber Co. v. Union Inv. Co.*, 66 Fla. 382, 63 So. 836 (1913); *Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906).

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dence adduced.²⁰³ An affidavit by the plaintiff's solicitor is sufficient if it is positive and direct as of knowledge.²⁰⁴

A plaintiff seeking an injunction must allege not only definite facts showing clear legal or equitable rights the invasion of which would afford a basis for the relief sought, but also a well-grounded apprehension of immediate injury to that right. When no necessity is shown for the protection of the right by an injunction, it will not be granted.²⁰⁵ Vague allegations of opinions or conclusions are not sufficient, even though such allegations suggest equities which, if properly pleaded, might under some circumstances authorize equitable relief.²⁰⁶

When an injunction is sought on the ground of irreparable injury, the bill should allege facts that will enable the court to determine whether the injury will in actuality be irreparable—facts that show the exact nature of the injury. A mere general allegation that the injury will be irreparable is a legal conclusion or opinion of the pleader and is not sufficient. When an application is made for a temporary injunction without notice to the defendant, the allegations in the bill are even more carefully examined than when the defendant has been served with notice and given an opportunity to resist the application. An allegation in the bill or an affidavit stating that notice to the defendant will accelerate the injury apprehended is a legal conclusion, not sufficient reason for dispensing with notice.²⁰⁷ When the injury complained of is one arising from the right of property in soil, such as continued trespasses amounting to a nuisance or threatening irreparable injury, or trespasses to timbered lands under Florida Statutes 1949, Section 64.08, plaintiff should set up his title in terms clearly showing his ownership.²⁰⁸ General allegations of title to lands may be sufficient when they are not qualified or

²⁰³Cunningham v. Tucker, 14 Fla. 251 (1873).

²⁰⁴Ballard v. Eckman, 20 Fla. 661 (1884); Bowes v. Hoeg, 15 Fla. 403 (1876); Coxetter v. Huertas, 14 Fla. 270 (1873).

²⁰⁵House v. Nash, 90 Fla. 123, 105 So. 266 (1925); Crawford v. Bradford, 23 Fla. 404, 2 So. 782 (1887); Pensacola & G.R.R. v. Spratt, 12 Fla. 26, 91 Am. Dec. 747 (1867); see note 16 *supra*.

²⁰⁶American Fire & Casualty Co. v. Rader, 160 Fla. 700, 36 So.2d 270 (1948); Stanton v. Harris, 152 Fla. 736, 13 So.2d 17 (1943).

²⁰⁷Godwin v. Phifer, 51 Fla. 441, 41 So. 597 (1906).

²⁰⁸Baker v. McKinney, 54 Fla. 495, 44 So. 944 (1907); Louisville & N.R.R. v. Gibson, 43 Fla. 315, 31 So. 230 (1901); Sullivan v. Moreno, 19 Fla. 200 (1882).

otherwise rendered insufficient by other allegations in the pleading.²⁰⁹ An averment of possession is essential to a bill by one claiming the legal title to land to enjoin a judicial sale upon the ground that the sale would cast a cloud upon his title. If he is not in possession he has a full and adequate remedy at law.²¹⁰

Every bill of complaint for injunction should, of course, contain a prayer for relief.²¹¹ A temporary injunction must be specially prayed for.²¹² When the prayer for injunction is broader than plaintiff's right, relief may be denied altogether.²¹³ The better view would seem to be not to deny relief completely but to grant such relief as under the circumstances is equitable.²¹⁴

Application for Temporary Injunction

To grant a temporary injunction two essential conditions must prevail. The bill must allege facts that appear sufficient to constitute a cause of action or ground for injunction; and on the full showing made from both sides it must appear in the light of circumstances that the injunction is necessary to protect the legal rights of the plaintiff pending the litigation.²¹⁵

It has been repeatedly held in Florida that on an application for a temporary injunction the chancellor may consider the merits of the bill, for the reason that an examination of a bill on its merits is the primary means available to the court to determine whether ground for injunction is stated.²¹⁶ Holding this view, the Court has said that it is not improper for the chancellor to consider and dispose of the

²⁰⁹*Sinclair v. Hornsby*, 61 Fla. 742, 55 So. 404 (1911).

²¹⁰*Bevill v. Smith*, 25 Fla. 209, 6 So. 62 (1889).

²¹¹*Gaines v. Russ*, 60 Fla. 317, 53 So. 113 (1910); *Savage v. Parker*, 53 Fla. 1002, 43 So. 507 (1907); *Thompson v. Maxwell*, 16 Fla. 773 (1878).

²¹²*Gaines v. Russ*, 60 Fla. 317, 53 So. 113 (1910); *Savage v. Parker*, 53 Fla. 1002, 43 So. 507 (1907).

²¹³*McSween v. State Live Stock Sanitary Bd.*, 97 Fla. 749, 125 So. 704 (1927).

²¹⁴*Scully v. Webber*, 158 Fla. 896, 30 So.2d 504 (1947).

²¹⁵*Thursby v. Stewart*, 103 Fla. 990, 138 So. 742 (1931); *McMullen v. Pinellas County*, 90 Fla. 398, 106 So. 73 (1925).

²¹⁶*Thursby v. Stewart*, 103 Fla. 990, 138 So. 742 (1931); *McMullen v. Pinellas County*, 90 Fla. 398, 106 So. 73 (1925); *McKinney v. Board of County Comm'rs*, 26 Fla. 267, 4 So. 855 (1890); *Apalachicola v. Curtis*, 9 Fla. 340, 79 Am. Dec. 284 (1861).

main question on application for temporary injunction.²¹⁷ The Court has indicated that it considers a temporary restraining order without notice as summary in nature, entitling the party restrained to a speedy determination of the issues raised.²¹⁸

A temporary injunction ordinarily continues under our practice for the time fixed by the order granting it or, if no time is fixed, until the hearing on the merits, unless it is sooner dissolved.²¹⁹ It is not dissolved by the filing of an amended bill.²²⁰ A plaintiff has no right to keep it extant indefinitely, however, without taking steps to maintain his case by proof or to bring it to some final determination.²²¹

As a general rule a second application for an injunction, when based upon the same evidence or upon evidence that should have been presented upon the first application, will be denied. Since, however, this is a matter in which judicial discretion should be exercised, it is not error to grant a second application if a clear case is presented.²²²

Notice of Application for Temporary Injunction

A duty involving care and caution is imposed upon the chancellor to whom the application for temporary injunction is made. He must protect and preserve the alleged rights of the plaintiff, but he must also guard the rights of the defendant. The requirements of direct, clear, and positive allegations in the bill and a specific sworn affidavit containing a statement of the material facts are but two safeguards protecting a defendant. Much the best means of protecting a defendant is to give him notice, even if it be only a few hours — unless the giving of it would be likely to defeat the purpose of the application.

Equity Rule 73²²³ in effect requires notice or a proper showing to dispense with notice. A temporary injunction without either is im-

²¹⁷McMullen v. Pinellas County, 90 Fla. 398, 106 So. 73 (1925).

²¹⁸Strong v. Clay, 47 So.2d 822 (Fla. 1950).

²¹⁹Scarlett v. Hicks, 13 Fla. 314 (1871).

²²⁰Pedrick v. Vidal, 95 Fla. 952, 116 So. 857 (1928).

²²¹Perry v. Wittich, 37 Fla. 237, 20 So. 238 (1896).

²²²Thursby v. Stewart, 103 Fla. 990, 138 So. 742 (1931).

²²³Same as FLA. STAT. §63.73 (1949). FLA. STAT. §64.12 (1949) provides that at least three days' notice in writing must be given the defendant of the time and place of application for temporary injunction to abate a nuisance

providently and erroneously granted.²²⁴ A statement in the bill or affidavit asserting simply the legal conclusion that "notice to the defendant of the application for injunction will accelerate the injury apprehended" is not sufficient. Allegations of a sworn bill or accompanying affidavit must state facts showing how and why the giving of notice will accelerate or precipitate the injury. From these facts the court can determine for itself whether the giving of notice will produce or is likely to produce such a result.²²⁵ Obviously the allegations in such bill or affidavit should be more closely scanned than when notice is given and defendant resists the application. The court should be satisfied that there is a clear case of urgent necessity in which irreparable mischief will be produced if relief is denied.²²⁶ If the injury threatened is the making of a judicial sale on legal sale day as advertised by the sheriff, notice to the defendant is required because an affidavit that such notice would accelerate the injury apprehended has no application to such a case.²²⁷ As previously noted,²²⁸ by virtue of statute no substitute for notice is available in a suit to stay proceedings at law.

The statute providing for injunction without bond requires as a prerequisite for such remedy that the chancellor receive from both parties evidence as to the truth of the statements in the bill and affidavit.²²⁹ It would seem, therefore, that under the existing statutes no injunction should issue without notice and without bond.

Bond

Another and an effective safeguard is to require the plaintiff to post a bond of indemnity. Although three Florida statutes deal with

thereunder.

²²⁴*American Fire & Casualty Co. v. Rader*, 160 Fla. 700, 36 So.2d 270 (1948); *Drew Lumber Co. v. Union Inv. Co.*, 66 Fla. 382, 63 So. 836 (1913).

²²⁵*Dixie Music Co. v. Pike*, 135 Fla. 671, 185 So. 441 (1938); *Thursby v. Stewart*, 103 Fla. 990, 138 So. 742 (1931); *Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906).

²²⁶*Dixie Music Co. v. Pike*, 135 Fla. 671, 185 So. 441 (1938); *Gillespie v. Chapline*, 59 Fla. 500, 52 So. 722 (1910); *Godwin v. Phifer*, 51 Fla. 441, 41 So. 597 (1906).

²²⁷*Richardson v. Kittlewell*, 45 Fla. 551, 33 So. 984 (1903); *Baird v. Ellsworth Trust Co.*, 45 Fla. 187, 34 So. 565 (1903).

²²⁸See note 98 *supra*.

²²⁹FLA. STAT. §64.03 (1949).

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injunction bonds,²³⁰ only the one relating to injunctions to stay proceedings at law requires a bond as a prerequisite to the injunction. Nevertheless, it is well settled that a temporary injunction or restraining order should not be awarded without an indemnity bond unless it is shown by the bill or affidavit that the plaintiff is unable to give bond or other security and the procedure provided by Section 64.03, Florida Statutes 1949, is followed.²³¹ This power to waive the requirement of a bond should be exercised sparingly. The absence of a special statute requiring injunction bonds in all cases affords no occasion per se for a departure from the prevailing equity practice, existing in Florida for many years, of so doing in cases in which by injunction the complainant seeks to destroy, for the period of the injunction's duration, valuable rights being claimed by the defendant.²³² Our Court has taken the position that if a statute providing the remedy of injunction makes no reference to a bond, a temporary injunction without bond should not issue thereunder except on the express conditions provided by the general statute relating to injunctions without bond.²³³

The courts of Florida are very frequently asked to issue injunctions in the delicate situations produced by domestic discord. While the writers have no detailed knowledge of the practice in the state outside of the First Judicial Circuit, in that circuit the practice in marital cases is to grant injunctions without notice freely and without requiring bond when sought to prevent violence by the husband against the wife, to prevent the removal of children from the jurisdiction by

²³⁰FLA. STAT. §64.04 (1949) relates only to injunctions by municipal corporations or taxing districts; §64.02 requires a bond in every case of injunction to stay proceedings at law; §64.03 is general, providing that when the complainant is unable to give bond or other security the chancellor shall receive from both parties evidence of the truth or falsity of the statement of the bill and of the accompanying affidavit, and if they shall appear to be true shall grant process without requiring security.

²³¹*Dixie Music Co. v. Pike*, 135 Fla. 671, 185 So. 441 (1938); *Merryman v. Southern Tours, Inc.*, 120 Fla. 440, 162 So. 897 (1935). The Court has repeatedly disapproved the practice of granting restraining orders on condition of posting the required bond at a future date and has held that it is contrary to the provisions and policy of FLA. STAT. §64.03 (1949), *Ginsberg v. Daytona Beach*, 103 Fla. 168, 137 So. 253 (1931); *Gillespie v. Chapline*, 59 Fla. 500, 52 So. 722 (1910); *Hall v. Horne*, 52 Fla. 510, 42 So. 383 (1906); *Stockton v. Harmon*, 32 Fla. 312, 13 So. 833 (1893).

²³²*Merryman v. Southern Tours, Inc.*, 120 Fla. 440, 162 So. 897 (1935).

²³³*Ibid.*

one spouse or the other, to preserve the status quo as to marital accumulations of property pendente lite,²³⁴ and kindred related acts.²³⁵ This is especially true when the wife seeks relief against the husband. The opposing party, in cases in which injunctions have been granted, has in no instance seriously contended that the court was acting arbitrarily or without authority or justification in so doing. Since the husband owes the wife the duty of support and is usually answerable for obligations incurred by her, it seems so wholly illogical to require her to give indemnity to her husband that the court has disregarded the technical requirements of the statute in such cases.

The statute requiring bond as a condition precedent to the issuance of an injunction to stay proceedings at law specifically states what the condition of the required bond must be. In cases not within that statute the law is not so clear. In 1946 the Supreme Court of Florida said that the plaintiff "... should be required to give a good and sufficient bond in such an amount and according to such terms or conditions as will fully indemnify the petitioner here (defendant below) for all costs and damages which he may sustain in the event respondent does not finally prevail."²³⁶

In a very old case²³⁷ the Court said that upon the dissolution of an injunction and the failure of the obligors to perform the conditions of the injunction bond, the bond became forfeited and a right of action accrued for the penalty. In an action at law upon the bond judgment may be had for the penalty and for such damages as the jury may assess. The complaint in such an action must set forth the cost, damages, or expenses incurred by reason of the improper suing out of the injunction or it will be fatally defective.²³⁸ It is no defense that the condition of the bond is broader than the terms required by the injunction order.²³⁹ A statute effective June 11, 1951,²⁴⁰ eliminates the necessity for a separate action at law in such situations. The circuit judge is now empowered upon dissolution of an injunc-

²³⁴FLA. STAT. §65.11 (1949) provides that "... when the husband is about to remove himself or his property out of the state, or fraudulently convey or conceal it, the court may award a ne exeat or injunction against him or his property, and make such order or decree as will secure the wife's alimony to her."

²³⁵See Note, 164 A.L.R. 321 (1946).

²³⁶Hart v. Kapnias, 157 Fla. 846, 848, 27 So.2d 145, 146 (1946).

²³⁷Tallahassee R.R. v. Hayward, 4 Fla. 411 (1852).

²³⁸Royal Phosphate Co. v. Van Ness, 53 Fla. 135, 43 So. 916 (1907).

²³⁹Sewell v. Huffstetler, 83 Fla. 629, 93 So. 162 (1922).

²⁴⁰Fla. Laws 1951, c. 26,916.

tion to hear the evidence and assess the damages to which the defendant may be entitled under the bond, provided neither party requests a jury trial for damages in the bill of complaint, the answer, or the motion to dissolve.

Attorneys' fees, among other items of damages, are allowable upon dissolution of an injunction, whether dissolved upon interlocutory or final hearing.²⁴¹ In *Wittich v. O'Neal*,²⁴² the earliest Florida case touching on this subject, the Court said at page 598:

"The case at bar is one in which the main suit was pending; a temporary injunction was issued and dissolved on the application of the plaintiff in this suit before a determination of the main suit. In such a case the temporary injunction is an extraordinary remedy. Unlike the usual course of law, which 'proceeds upon inquiry and only condemns after a hearing,' it is often *ex parte* and condemns temporarily before a hearing. It seems just and right that where a party asks the interposition of the power of the courts, in advance of a trial of the merits of the cause, to deprive the defendant of some right or privilege claimed by him, even though temporarily, that if on investigation it is found that the plaintiff has no just right either in the law or the facts to justify him in asking and obtaining from the court such a harsh and drastic exercise of its authority, that he should indemnify the defendant in the language of his bond for 'all damages he might sustain,' and that *reasonable* counsel fees necessary to the recovering of such injunction are properly a part of his damage."

In another early case the bond, following substantially the language of the statute, was conditioned ". . . to pay 'all costs, losses and charges, damages and expenses' [sustained] 'by reason of said injunction . . . being dissolved or the said bill dismissed on final hearing.'"²⁴³ The Court held that while there was no motion to dissolve the injunction, which was granted on full hearing and then dissolved and the bill dismissed on final hearing, the condition of the bond and the statute covered the item of attorneys' fees.

²⁴¹National Surety Co. v. Willys-Overland, Inc., 103 Fla. 738, 138 So. 24 (1931); see Note, 164 A.L.R. 1088 (1946).

²⁴²222 Fla. 592 (1886).

²⁴³Bailey v. Haymans, 73 Fla. 1191, 1192, 76 So. 135 (1917).

In a later case concerning an injunction bond conditioned that if the "injunction be dissolved and the bill be dismissed" the plaintiffs should pay all costs and damages, it appeared that the motion to dissolve the injunction on interlocutory hearing was denied, but on final hearing it was dissolved and the bill dismissed. Defendant demurred to the declaration upon the ground that, since the declaration affirmatively showed that the motion to dissolve was denied, the subsequent dissolution of the injunction and dismissal of the bill did not entitle the plaintiff to demand any damages. The Court rejected this contention and held that under the statute and the condition of the bond it was immaterial whether the dissolution of the injunction occurred upon motion or upon final hearing.²⁴⁴ The Court further held that dissolution of an injunction upon the merits operates as an adjudication that it was improperly issued.

The latest decision coming from our Court on the subject of attorneys' fees arose out of litigation upon the bond given by plaintiff in an application for the appointment of a receiver. In that case complainants alleged mismanagement, misappropriation of funds, and various other misconduct on the part of defendants. The bill prayed for an accounting, reimbursement of funds, and the appointment of a receiver. A receiver was appointed upon the posting of a bond conditioned to pay the company for loss or damage if upon further hearing it was determined that appointment of a receiver was not warranted. There was no separate hearing on the motion to dismiss the receiver, which was considered and disposed of on the final hearing on the merits. Upon such hearing it was decreed that the appointment of a receiver was not warranted, and the bill was dismissed. In a suit upon the bond for damages sustained, claim was made for attorneys' fees resulting from the defense on the merits. The Court analogized the situation to bonds in injunction cases and held that attorneys' fees could be recovered, saying:²⁴⁵

"... we hold that where, as here, the receivership was inseparable from relief sought by the bill and the receivership was the indispensable medium through and by which to receive the relief prayed, the defendant can recover as damages in a suit on the bond given . . . such proportion of attorney's fees as were

²⁴⁴*Sewell v. Huffstetler*, 83 Fla. 629, 93 So. 162 (1922).

²⁴⁵*New Amsterdam Casualty Co. v. Utility Battery Mfg. Co.*, 122 Fla. 718, 725, 166 So. 856, 859 (1935).

reasonably and properly incurred by the defendant in procuring a decree discharging the receiver, although such decree also disposes of the case on its merits."

Order for Injunction

It has become common practice in Florida to consider the order of the court for an injunction as the injunction itself. There may be danger in this assumption. Correctly, injunction is a writ issuing by the order and under the seal of the court.

In some states the writ of injunction has been abolished by statute, and an injunction is merely an order rather than a writ. In at least one state the same result has been reached by the development of the practice in the state.²⁴⁶ Since our statutes refer to a "writ of injunction,"²⁴⁷ it is quite obvious that the writ has not been abolished by statute. Whether it is to be considered abolished by disuse is a question that should be considered by the careful lawyer. No Florida cases bear directly upon the question of the form of the injunction in so far as it may be considered process as distinguished from an order or decree of the court. The distinction might become important to the executive officer of the court, since his conduct while serving process is protected, while the service by him of an unofficial document, such as a certified copy of the order or decree, might result in complications if met with resistance. The better practice is to furnish the officer with a writ issued by the clerk under the seal of the court, following the language of the order or decree of the court, rather than to permit him to serve only a copy of the order or decree.

Modification and Dissolution of Temporary Injunction

If modification is necessary to the equitable operation of an order granting a temporary injunction, the circuit court may apply the remedy when such order is not pending on appeal. If an appeal is pending the appellate court may grant leave to apply to the circuit

²⁴⁶The court in *Ellis v. Commander*, 26 S.C. 93, 95, 20 S.C. Eq. 188, 192 (1847) said: "The distinction between the writ of injunction, strictly so called, and an order in the nature of an injunction, has been disregarded in practice, and such orders, although not enforced by writ of injunction, have long since indiscriminately obtained the name of injunctions."

²⁴⁷FLA. STAT. c. 64 (1949).

court for appropriate modification.²⁴⁸

A temporary injunction may be merged in or dissolved by the final decree²⁴⁹ and may also be attacked while the suit is pending, even before answer is filed. The latter is done by motion to dissolve ". . . either before or after answer filed, on due notice being previously given to the opposite party or his solicitor" ²⁵⁰ Upon such a motion to dissolve, as well as upon the original application for the injunction, either party has the right to introduce evidence, and the chancellor will grant, dissolve, or continue the order, or may require security, according to the weight of the evidence.²⁵¹ The burden of proof in this instance is on the defendant,²⁵² and it is error to dissolve an injunction without notice to the plaintiff.²⁵³ As the case is not before it for final hearing, the court should not dismiss the bill upon the hearing on a motion to dissolve — unless, of course, the bill lacks equity — ²⁵⁴ but only upon a final hearing, after an opportunity has been given the parties to make up issues and take testimony.²⁵⁵ Overruling a motion to dissolve an injunction does not preclude the court from afterward dissolving the injunction and dismissing the bill.²⁵⁶ An order of the court denying, granting, dissolving, or refusing to dissolve a temporary injunction but not dismissing the bill should be treated as interlocutory and not final in its nature and should be reviewed on interlocutory certiorari under Supreme Court Rule 34 and not on appeal.²⁵⁷

If a temporary injunction has been granted and then dissolved but the bill remains on file and the cause is still within the control of the court, it is not error on rehearing for the court to vacate that order

²⁴⁸Sharp v. Bussey, 129 Fla. 775, 176 So. 763 (1937).

²⁴⁹Smith v. Housing Authority, 148 Fla. 195, 3 So.2d 880 (1941); Schultz v. Freeland, 107 Fla. 286, 145 So. 257 (1932).

²⁵⁰FLA. STAT. §64.05 (1949).

²⁵¹FLA. STAT. §64.06 (1949); Ogden v. Baile, 69 Fla. 458, 68 So. 671 (1915); Builders Supply Co. v. Acton, 56 Fla. 756, 47 So. 822 (1908); Baya v. Lake City, 44 Fla. 491, 33 So. 400 (1902).

²⁵²Orlando Orange Groves Co. v. Hale, 107 Fla. 304, 144 So. 674 (1932).

²⁵³McAdow v. Wachob, 45 Fla. 482, 33 So. 702 (1903).

²⁵⁴See note 198 *supra*.

²⁵⁵Tampa Northern R.R. v. Tampa, 91 Fla. 241, 107 So. 364 (1926); Richardson v. Kittlewell, 45 Fla. 551, 33 So. 984 (1903); Baya v. Lake City, 44 Fla. 491, 33 So. 400 (1902).

²⁵⁶See Sewell v. Huffstetler, 83 Fla. 629, 93 So. 162 (1922).

²⁵⁷Weiss v. Marcus, 160 Fla. 283, 34 So.2d 550 (1948); Stephens v. Stickel,

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and reinstate the injunction without a refiling of the bill.²⁵⁸ The reversal of an order dissolving an injunction reinstates the injunction and in effect declares the acts enjoined to be unauthorized and illegal.²⁵⁹

Answer

The discretionary action of the chancellor in continuing or discontinuing the injunction must be governed by the weight and legal effect of the evidence presented on hearing.²⁶⁰ Normally, however, when the defendant to a bill for injunction files an answer that is fully responsive to the bill and denies all the equities asserted by the plaintiff, a temporary injunction granted prior to the answer will be dissolved.²⁶¹ When the sworn answer of the defendant positively denies the allegations of the bill and also contains responsive averments sufficient, if sustained, to defeat the injunction, a motion to dissolve, heard by consent solely on the bill and answer, should be granted.²⁶² If, however, the answer does not negative beyond reasonable doubt the equity of the bill, the court should continue the injunction until final hearing.²⁶³ Many cases can be found in which the chancellor thought it best under the circumstances that the injunction continue.²⁶⁴ Delay and acquiescence of the enjoined defendant prevents an application for dissolution by him only if the delay has so changed the status of the parties that subsequent dissolution of the injunction would injuriously and inequitably affect the plaintiff or permit the defendant to exercise some inequitable or unfair advantage acquired by reason of his acquiescence and delay.²⁶⁵

146 Fla. 104, 200 So. 396 (1941).

²⁵⁸Peck v. Spencer, 26 Fla. 23, 7 So. 642 (1890).

²⁵⁹Martin County v. Hansen, 111 Fla. 40, 149 So. 616 (1933).

²⁶⁰Davis v. Wilson, 139 Fla. 698, 190 So. 716 (1939); Dade Enterprises, Inc. v. Wometco Theatres, Inc., 119 Fla. 70, 160 So. 209 (1935); Godwin v. Phifer, 51 Fla. 441, 41 So. 597 (1906); Campell v. White, 39 Fla. 745, 23 So. 555 (1897).

²⁶¹Gillespie v. Chapline, 59 Fla. 500, 52 So. 722 (1910); Shaw v. Palmer, 54 Fla. 490, 44 So. 953 (1907); Fuller v. Cason, 26 Fla. 476, 7 So. 870 (1890).

²⁶²Robbins v. White, 52 Fla. 613, 42 So. 841 (1907).

²⁶³Orlando Orange Groves Co. v. Hale, 107 Fla. 304, 144 So. 674 (1932).

²⁶⁴E.g., Hayden v. Thrasher, 20 Fla. 715 (1884); Linton v. Denham, 6 Fla. 533 (1856).

²⁶⁵Perry v. Wittich, 37 Fla. 237, 20 So. 238 (1896).

Hearing on Bill and Answer

Ordinarily, upon hearing on bill and answer the only matters to be considered by the chancellor are the plaintiff's bill and the defendant's answer; and the facts found by the court in its preliminary order upon a hearing for a temporary injunction are of no consequence.²⁶⁶

Final Decree

A temporary injunction can be obtained upon mere notice or without notice if the circumstances justify a summary remedy. No final decree may be entered or permanent injunction issued, however, without process, pleadings presenting the issues, and proof relevant to them, unless these formalities are waived by stipulation, appearance, or otherwise.²⁶⁷ The acts or things enjoined should be specified in the decree with sufficient definiteness and certainty to inform a defendant bound by the decree of what he must refrain from doing.²⁶⁸ Further, an injunction order should never be broader than is necessary to secure to the injured party the full relief warranted by the particular facts of the case.²⁶⁹ Generally speaking, an order that permanently restrains a defendant from "resuming, continuing or repeating the acts complained of in the bill of complaint," without particularization of the specific acts enjoined, violates the principles stated. This rule is applied especially where the bill charges the commission of many different and varied acts and activities some of which may be perfectly permissible and proper.²⁷⁰

Modification of Final Decree

A final decree of injunction continues the life of the equity proceeding for such other relief as the court may in good conscience grant under the law. Unless otherwise provided by its terms, the injunction will remain in force so long as the court believes that the protection that it affords is necessary to complainant's rights or until

²⁶⁶Weiss v. Marcus, 160 Fla. 283, 34 So.2d 550 (1948).

²⁶⁷Smith v. Housing Authority, 148 Fla. 195, 3 So.2d 880 (1941).

²⁶⁸Henderson v. Coleman, 150 Fla. 185, 7 So.2d 117 (1942); Palm Corp. v. Walters, 148 Fla. 527, 4 So.2d 696 (1941); see note 286 *infra*.

²⁶⁹Seaboard Rendering Co. v. Conlon, 152 Fla. 723, 12 So.2d 882 (1943).

²⁷⁰Moore v. City Dry Cleaners & Laundry, 41 So.2d 865 (Fla. 1949).

conditions demand a modification of that protection or its entire removal. The decree itself may reserve to the court the right of modification. Even in the absence of such a reservation, the court that renders a decree for permanent or perpetual injunction has an inherent right to open or modify the decree at any time that circumstances are shown to have changed so as to make it just and equitable to do so.²⁷¹ Since an injunction order or decree does not create a right, its modification cannot be considered an unconstitutional deprivation of property without due process.

As regards the causes or occasions that may call for the modification or suspension of a permanent injunction, the rule seems to be that the court in its discretion may permit or order such modification or suspension as justice may require. This discretion is exercised when the conditions motivating the issuance of the injunction change, or when the applicable law, common or statutory, has in the meantime been changed, modified, or extended.²⁷²

Review

No supersedeas on an appeal from an interlocutory order or final decree granting or dissolving an injunction shall have the effect of suspending or modifying the order or decree appealed from unless the Supreme Court or a justice thereof shall make an order for suspension or modification.²⁷³

As previously observed,²⁷⁴ an order of the court granting, denying, dissolving, or continuing a temporary injunction but not finally determining the cause, is interlocutory in nature and may be reviewed on interlocutory certiorari under Supreme Court Rule 34. On such a review no question other than the propriety of the order may be presented or argued.²⁷⁵ When a preliminary injunction has been improperly denied by the circuit court, the Supreme Court, with the cause transferred to it by the interlocutory appeal, will, upon appel-

²⁷¹*Seaboard Rendering Co. v. Conlon*, 152 Fla. 723, 12 So.2d 882 (1943); *Jackson Grain Co. v. Lee*, 150 Fla. 232, 7 So.2d 143 (1942); 46 MICH. L. REV. 241 (1947).

²⁷²In *Frink v. Orleans Corp.*, 159 Fla. 646, 32 So.2d 425 (1947), the Court expressly retained jurisdiction for future modifications.

²⁷³FLA. STAT. §§67.04, 67.05 (1949).

²⁷⁴See note 257 *supra*.

²⁷⁵*Angelis v. Tarpon Springs Sponge Producers Ass'n*, 111 Fla. 740, 149 So. 630 (1933).

lant's application, issue its own constitutional injunctive writ in order to make "complete" its jurisdiction over the controversy before it.²⁷⁶ The controversy is confined to the proposition of whether the appellant was entitled to have temporary injunctive relief as of the date of the order of the chancellor below denying it. The constitutional writ, when issued in this situation, is in its practical operation and effect a supersedeas of the circuit court's order denying a temporary injunction. Since this lower court order is negative in character, it can be superseded by an appellate court only through an affirmative order of its own.²⁷⁷ The Court may, however, determine the merits of the appeal without passing on the application for the constitutional writ of injunction.

An appeal from an order dissolving an injunction does not of itself reinstate the injunction. An order directing the appeal to operate as a supersedeas, and a compliance with the terms of the order, does give it such effect, although it does not have the effect of depriving strangers to the litigation of intervening rights bona fide acquired.²⁷⁸

So long as an appeal with supersedeas from an order granting an injunction is pending, the power to enforce the injunction is suspended.²⁷⁹ When supersedeas is awarded on an appeal, an injunction to control the operation of the supersedeas will not be awarded.²⁸⁰

A reversal of an order refusing to dissolve an injunction dissolves the injunction upon its merits, and the reversal constitutes an adjudication that it was improperly issued.²⁸¹ On the other hand, the reversal of an order dissolving an injunction reinstates the injunction and in effect declares the acts enjoined to be unauthorized and illegal.²⁸²

In an appeal from a final decree awarding a permanent injunction

²⁷⁶The application may be made under FLA. CONST. Art. V, §5; see note 47 *supra*.

²⁷⁷*Tacker v. Board of County Comm'rs*, 127 Fla. 248, 170 So. 458 (1936); *Anderson v. Tower Amusement Co.*, 118 Fla. 437, 159 So. 782, *vacated*, 118 Fla. 895, 160 So. 523 (1935); see Note, 93 A.L.R. 709, 715 (1934).

²⁷⁸*Smith v. Whitfield*, 38 Fla. 211, 20 So. 1012 (1896); *McMichael v. Eckman*, 26 Fla. 43, 7 So. 365 (1890).

²⁷⁹*Powell v. Florida Land and Improvement Co.*, 41 Fla. 494, 26 So. 700 (1899); *McMichael v. Eckman*, 26 Fla. 43, 7 So. 365 (1890).

²⁸⁰*Burns v. Sanderson*, 13 Fla. 381 (1870).

²⁸¹*National Surety Co. v. Willys-Overland, Inc.*, 103 Fla. 738, 138 So. 24 (1931).

²⁸²*Martin County v. Hansen*, 111 Fla. 40, 149 So. 616 (1933).

the Supreme Court will not consider the contention that the temporary injunction issued at the beginning of the litigation was erroneously granted. Although the temporary injunction may have been improperly granted in the first place, yet if it is permitted to stand until final hearing it may not thereafter be questioned.²⁸³

Enforcement of Injunction

After an injunction is issued two separate interests in its enforcement exist. One is on the part of the applicant, who desires to see that the rights it was issued to protect are in fact protected. The other is that of the court, which has an inherent interest in maintaining its authority. Therefore, the party obtaining the injunction has a legal right to have it enforced by the court, and the chancellor has both the power and the duty to see that it is not disregarded.²⁸⁴ The punishment for violating an injunction is the same as for contempt,²⁸⁵ and the court will not accept technical defenses. A strict or narrow construction will not be placed on the terms of an injunction for the purpose of permitting a defense by one charged with violating it when it is plain that he must have known that it was the intention of the court to restrain the acts done. This is true even though such acts were not described in the injunction with complete particularity. In cases of doubt it is the duty of the defendant to apply to the court for such modification of the language of the injunctive order as will remove any ambiguity.²⁸⁶

If the court had jurisdiction to issue it, the fact that an injunction or restraining order is merely erroneous, or was improvidently granted or irregularly obtained, or the bill was without equity and subject to dismissal for that reason, is no excuse for violating it.²⁸⁷ A party cited for disobedience of an injunction is never allowed to allege as a defense for his misconduct that the court erred in its judgment in granting the injunction or in refusing to dissolve it. This rule applies

²⁸³*Sinclair v. Hornsby*, 61 Fla. 742, 55 So. 404 (1911); *Caro v. Pensacola City Co.*, 19 Fla. 766 (1883).

²⁸⁴*Seaboard A.L. Ry. v. Tampa Sou. R.R.*, 101 Fla. 468, 134 So. 529 (1931).

²⁸⁵*Miami Laundry Co. v. Florida Dry Cleaning & Laundry Bd.*, 134 Fla. 1, 183 So. 759 (1938).

²⁸⁶*Riverside Bank v. Maxa*, 45 So.2d 678 (Fla. 1950); *Seaboard A.L. Ry. v. Tampa Sou. R.R.*, 101 Fla. 468, 134 So. 529 (1931).

²⁸⁷*Seaboard A.L. Ry. v. Tampa Sou. R.R.*, 101 Fla. 468, 134 So. 529 (1931).

with special force to a prosecution for contempt instituted for the purpose of preserving property *in statu quo* in accordance with the court's order. Furthermore, it is no defense to a contempt proceeding for the breach of an injunction or supersedeas order that the breach was committed under the advice of counsel.²⁸⁸

A defense of failure of service is not permissible if in fact the defendant had knowledge of the issuance of the injunction. In a very early Florida case the Court said:²⁸⁹

"In the case of an injunction, if the defendant obtains knowledge of its contents and of its having issued, no matter how he gets his information, he is as amenable to the law for the violation of its mandate as if the writ had been regularly served upon him by the proper officer of the Court."

The power of a court to maintain its authority extends beyond fine and imprisonment. It may further require a defendant who has interfered with property in violation of an injunction to restore the property to its former condition. The court may also alternatively order the defendant to make restitution or be fined or imprisoned. Damages awarded in such cases are limited to those actually sustained by the aggrieved party.²⁹⁰ The mere fact that on final decree the bill of complaint is dismissed and the defendant adjudged to have been entitled to a decree in his favor will not operate to discharge a defendant who has violated an injunction *pendente lite* prior to such dismissal. When an interlocutory injunction has been disregarded by a defendant, it is the duty of the court to retain jurisdiction of the cause for the purpose of vindicating its authority with respect to its lawful orders. This is necessary not only to insure respect for the

²⁸⁸*Continental Nat. Bldg. & Loan Ass'n v. Scott*, 41 Fla. 421, 26 So. 726 (1899).

²⁸⁹*Thebaut v. Canova*, 11 Fla. 143, 166 (1866). Some cases do not use such broad language but require that notice of an injunction, to be sufficient, must proceed from a source entitled to credit and must inform the defendant clearly and plainly from what acts he must abstain. See, *e.g.*, *Cape May & S.L.R.R. v. Johnson*, 35 N.J. Eq. (8 Stew.) 422 (Ch. 1882); also the informative English case of *Seaward v. Paterson*, [1897] 1 Ch. 545, holding that, although only a party to an injunction may be liable in a civil case for contempt for breach of the injunction, a third party can be punished for criminal contempt if he knowingly aids, abets, or assists in the breach.

²⁹⁰*Hanna v. Martin*, 49 So.2d 585 (Fla. 1950).

court's authority at all times but also for the reason that, even though a bill be dismissed and an injunction issued thereon ordered dissolved on final hearing by the circuit court, the jurisdiction of the Supreme Court may be thereafter invoked to continue the injunction in force by way of supersedeas pending appeal. An order made in an equity suit discharging a defendant from punishment for violation of an injunction procured by complainant to protect his rights pendente lite is reviewable as an interlocutory order. If the Supreme Court finds that the defendant was in fact guilty of the contempt, it will direct the circuit court to vindicate its inherent authority to enforce its orders and redress acts of disobedience.²⁹¹

²⁹¹*Seaboard A.L. Ry. v. Tampa Sou. R.R.*, 101 Fla. 468, 134 So. 529 (1931).