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Equity

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A sound decision in regard to a frequently occurring situation was made in *Tramte v. Tramte*[18] where the court of appeals held that an order requiring the plaintiff father to pay the defendant mother $450 in addition to weekly payments previously ordered for support of the children could on the record for review, be properly treated as an order operating prospectively, and not retroactively, it being predicated upon a change in condition of the children occasioned by their illness requiring extraordinary care and medical attention and a change in the mother's condition occasioned by the depletion of her resources in providing such care and attention not contemplated by the parties or the court at the time the order for weekly payments was made. As so treated the order was held valid. An order for payment of attorney fees incurred by the mother was also held valid since attorney's services were necessary to protect the orders previously made for the mother's benefit.

ROBERT C. BENSING

EQUITY

Shipping Room Suppliers, Inc. v. Schoenlaub[1] was based on an employment contract by the terms of which Harry, one of the defendants, agreed not to engage in a competing business for two years after leaving the plaintiff's employ. In breach of this he did, after leaving plaintiff, set up a partnership, with his brother Sam, the other defendant, which partnership was in competition. An injunction was obtained against Harry individually and against Sam and Harry as partners. Thereafter, the partnership was dissolved and Harry withdrew but Sam continued in competition as an individual. This litigation involves a citation against Sam individually for contempt. The Ohio Supreme Court affirmed the lower courts in discharging the citation. Sam was not included individually within the terms of the injunction, and this omission was proper as he was not a party to the employment contract.

Sheets v. Chittum[2] reaffirmed an old doctrine expressed in *Noble v. Arnold*.[3] An action for an injunction is filed by X against Y Bond is fixed and made and a temporary injunction granted. Y employs an attorney. It is established that the action was wrongfully filed and the temporary injunction is improper. Y then sues X on the bond for damages. Y may recover as a part thereof the attorney's fees expended in the first litigation. This is allowed although the first suit was not filed maliciously.

[1] 157 Ohio St. 498, 106 N.E.2d 75 (1952).
[2] 90 Ohio App. 341, 106 N.E.2d 782 (1951).
[3] 23 Ohio St. 264 (1872).

Hennessy v. Moreland[4] reaffirmed the Ohio doctrine that a lease which was not properly acknowledged and witnessed, but would otherwise have been valid, will equitably be construed as a contract to make a lease and, as such, be specifically enforced.[5]

In *Delphos Realty Co. v. Wilson*[6] the plaintiff agreed to buy and the defendant agreed to sell certain real property. The contract of sale provided that the land was "to be free and clear of all encumbrances excepting taxes after" a specified date. Some years before, the vendor had entered into an agreement with the county treasurer whereby, pursuant to Ohio General Code Section 2672-3, the then delinquent taxes on the land were to be paid over a period of ten years. On the date specified in the contract of sale certain of these delayed tax payments were not yet due. The vendor contends that under this contract provision the purchaser was to assume responsibility for these deferred tax payments after the specified date. The court rejected this argument on the ground that under the statute the taxes were owed and delinquent as of their original due date and that the only effect of the agreement with the tax officials was to withhold the usual methods of enforcement. Hence, specific performance to require payment by the vendor of the taxes would lie.

In *Witkorowski v. Witkorowski*[7] the court refused to punish a father for contempt in failing to obey an order to support minor children when the order was journalized on the day the contempt action was brought even though it had been handed down four months earlier. The holding was based on the well-settled rule that the court speaks only through its journal.

Fawick Airflex Co. v. United Electrical Workers[8] involved the construction of Ohio General Code Section 11882. That section provides that no injunction shall operate until the party obtaining it gives a bond to secure the party enjoined against any damage he may sustain, if it finally be decided that the injunction ought not to have been granted. In this case, which arose out of a labor dispute, an original order had been issued. Proper bond was fixed and made. Later the court made an amendatory and more restrictive order. In the journal entry of this amendment to the order no reference was made to the bond. Violations of the amendatory order occurred, and certain individuals and the union were adjudged in contempt thereof. From this finding appeal was taken. The court of appeals held

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[4] 90 Ohio App. 178, 104 N.E.2d 195 (1951).

[5] *Accord,* Grundstein v. Suburban Motor Freight, Inc., 62 Ohio L. Abs. 251, 107 N.E.2d 366 (Ohio App. 1951).

[6] 90 Ohio App. 544, 105 N.E.2d 83 (1951).

[7] 89 Ohio App. 424, 102 N.E.2d 896 (1951).

[8] 90 Ohio App. 24, 103 N.E.2d 283 (1951).

[9] 90 Ohio App. 331, 106 N.E.2d 786 (1952).