

1961

## Equity

Edgar I. King

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

---

### Recommended Citation

Edgar I. King, *Equity*, 12 W. Rsrv. L. Rev. 515 (1961)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol12/iss3/14>

This Article is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

## EQUITY

In *Benrus Watch Company v. Weinstein Wholesale Jewelers*<sup>1</sup> a temporary injunction was granted under the Ohio Fair Trade Act against certain parties who were nonsigners of an agreement regarding resale prices of products in which they did business. The injunction was granted ex parte. While motions to dissolve the injunction (as well as motions to show cause for contempt) were pending, the Supreme Court of Ohio held that the provisions of that Act which applied to nonsigners were unconstitutional.<sup>2</sup> On the basis of that holding the trial court in this case determined that the temporary injunction should be dismissed and that the plaintiff's injunction bond should be cancelled. The bond was to secure payment to the defendant of damages which he might sustain by reason of the injunction if it should be finally decided that the injunction should not have been granted. At the hearing to dissolve the injunction defendant objected to a finding that the injunction should have been granted without presentation of evidence. Upon dissolution of a temporary injunction, which it is determined should not have been granted, the defendant has alternative methods of proceeding to protect himself against harm. He may either cross petition in the injunction action or file an independent action for damages. With respect to the independent action, the dissolution of the injunction is conclusive evidence that the injunction ought not to have been granted. In acting on a motion to dissolve, the court has jurisdiction to determine whether or not the temporary injunction was properly granted. When the question whether the injunction should or should not have been granted is raised, the decision cannot be made without hearing evidence when a request is made for a presentation. The court of appeals found that the trial court had erred in ruling on the propriety of granting the original injunction without giving the defendant an opportunity to present evidence.

*District Lodge 34, Lodge 804 International Association of Machinists, AFL-CIO v. L. P. Cavett Company*,<sup>3</sup> was another case involving suit to recover on an injunction bond. In a previous legal action an injunction had been granted and bond posted by the plaintiff to secure the damages which might be sustained if it were finally decided that the injunction ought not to have been granted. After appeal through the Ohio judicial system, in which the issuance of the injunction was sustained,<sup>4</sup> the United

1. 108 Ohio App. 525, 163 N.E.2d 406 (1959).

2. *Union Carbide & Carbon Corp. v. Bargain Fair, Inc.*, 167 Ohio St. 182, 147 N.E.2d 481 (1959). See also discussion in *Trade Regulation* section, p. 578 *infra*.

3. 168 N.E.2d 619 (Ohio Ct. App. 1959).

4. *L. P. Cavett Co. v. District Lodge 34, Lodge 804, Int'l Ass'n of Machinists*, 166 Ohio St. 508, 154 N.E.2d 840 (1957).

States Supreme Court held that the injunction should not have been issued because the subject matter of the suit involved interstate commerce over which the Ohio courts had no jurisdiction.<sup>5</sup> Suit was then filed to recover on the bond and the contention was made that since the state courts did not have jurisdiction, no action taken by them had any validity and that this invalidity extended to the bond and rendered it unenforceable. The court of appeals did not agree with this argument. Although there is division among the holdings in various states, the weight of authority sustains the validity of the injunction bond even though the court in which it was issued had no jurisdiction over the subject matter of the injunction.

*Regard must be had not only for the rights of the plaintiff sought to be protected and enforced, but also for the consequences resulting to the defendant from the granting of the injunction.* Applying this familiar principal of equity, the court in *Village of Richmond Heights v. Board of County Commissioners*,<sup>6</sup> in considering a request for an injunction, denied it in part. The village had brought an action to enjoin the commissioners from taking from the village a parcel of vacant land desired by the county for an addition to an airport. The village stated that it had acquired the property and was proceeding to use it for housing its village offices and police and fire departments and to establish thereon park and recreational facilities for the residents of the village. Ordinarily, land already appropriated to a public use cannot be taken by another governmental unit, but when the only land available for a particular public work is already devoted to the public use, the power to take it may be inferred from a comparison of the conflicting powers conferred by statute as well as the nature of the public works respectively to be undertaken. Ordinarily the co-equal rights of the village and the commissioners to appropriate property would lead to the conclusion that first in time is first in right, but that rule did not apply in this case. Responsible officials of the village had full knowledge that the commissioners were contemplating the purchase of the property in question at the time they bought the land. To the extent that the land was intended to be used by the village for municipal buildings the use was reasonable and in good faith. But, the expansion of the purpose for the acquisition of the property to include a recreation center was induced by a desire to thwart the acquisition of the property by the commissioners. There was a long history of opposition by the village to the expansion of the airport. There was no evidence of an intention on the part of the village to expand the use of the land to include recreational facilities

5. District Lodge 34, Lodge 804, Int'l Ass'n of Machinists v. L. P. Cavett Co., 355 U.S. 39 (1957).

6. 166 N.E.2d 143 (Ohio Ct. App. 1960).

prior to the approximate time that a public hearing on the airport was set by the commissioners. The evidence reflected a lack of any bona fide intention to develop recreational facilities within the reasonably foreseeable future. The commissioners, in determining to improve the airport to meet community needs rather than abandon it because of inadequacy, had not acted in bad faith nor abused their discretion. Consequently, an injunction was granted the village, but only to the extent that the village would be protected in its ownership of that land which was needed for the construction of municipal buildings. One of the judges in a dissenting opinion said:

I cannot agree with the majority in its holding, that in effect, the same principles of equity apply in a case where an injunction against an appropriation is sought as apply in other cases where injunction is sought . . . . The Constitution and laws of Ohio have never bestowed upon the Courts of Ohio, in an action such as this, the right to seek or to make an equitable adjustment of the rights of the contending parties.

In effect the majority is saying that as between two governmental subdivisions, with equal constitutional or statutory authority of appropriation, and neither having by law the specific or implied authority to appropriate from the other, regardless of the fact that the first governmental subdivision has purchased the property for its government uses, if the other governmental subdivision wants the property for a public use, it shall have it unless the first governmental subdivision can show that it needs the property more than does the second.<sup>7</sup>

In *Smith v. Smith*<sup>8</sup> the plaintiff and the defendant had each come into ownership of lots in a subdivision by a succession of deeds from the original allotters. Defendant's vendor had taken title under a deed which contained a restrictive covenant against the manufacture or sale of intoxicating liquor on the premises. The deed to defendant had contained no similar restriction. None of the deeds in the chain of title to the plaintiff's lots contained any reference to a right of enforcement of a restriction of this nature. The case turned on the right of the plaintiff to enforce the restriction. The recorded plat contained no provisions setting out a uniform plan with relation to such a restriction and no restriction on the use of the land. There was no provision in any deeds delivered to the purchasers from the allotters notifying the purchasers that all purchasers were subject to restrictions of this type for the benefit of all other purchasers. The plaintiff was not allowed to enforce the covenant since there was no showing that it had been for his benefit.

In the case of *In re Greenfield*,<sup>9</sup> the judge of a juvenile court sentenced a newspaper photographer for contempt under Ohio Revised Code

7. *Village of Richmond Heights v. Board of County Comm'rs*, 166 N.E.2d 143, 154 (Ohio Ct. App. 1960) (dissenting opinion).

8. 165 N.E.2d 799 (Ohio Ct. App. 1960). See also discussion in *Domestic Relations* section, p. 511 *supra*.

9. 163 N.E.2d 910 (Ohio Ct. App. 1959).