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Equity: Injunctive Relief under State Civil Rights Statutes

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able or if the court made its order without reference to a prior agreement of the parties then there would be no bar to modification under California Civil Code section 139.

As we have observed, the courts have been careful to point out that a judgment or order for alimony or child support may only be modified as to future payments,[35] and the court exercises its discretion only in respect to enforcement.[36] In a modification proceeding, the husband in order to qualify for a reduction in the amount awarded, must generally show a decreased ability to make payments.[37] It might well prove impossible to adequately distinguish between this economic *ability* on the one hand and economic *hardship* on the other. For this reason, it is submitted that unless the success of an execution appears to be in doubt, the courts of California will not attempt to deny issuance of a writ merely upon a showing by the husband of financial hardship.

In summary, we have seen that prior to the *Messenger* case courts regarded the granting of execution "as a matter of right."[38] Yet, the installment judgment, fair and reasonable at its inception, seemed not always able to contemplate the future misadventures of erstwhile spouses, thus forcing the courts to warily exercise their discretion to prevent obvious injustices. When an award for alimony and child support was granted in a non-segregated amount, the husband could readily obtain a prospective modification either when the wife remarried or when the child reached majority.[39] But when he did not avail himself of this simple expedient, the fact remained that it would not be just for him to pay when the need had vanished. And if a wife's family or subsequent husband had supported the child in whose favor the award was made, it would hardly have been equitable for the wife to reap the benefit of an execution when she had expended nothing in support of the child.[40] Also, where a husband had paid a lump sum to cover future installments and had in no way tried to avoid his obligations, surely there could have been no justice in later demanding of him an accounting for the installments.[41]

The *Messenger* case goes a step farther. Now, the court may exercise its discretion in behalf of the husband even though there be no doubt as to the wife's right. If the husband is in such economic straits that the issuance of a writ would serve no purpose but to impair his earning capacity, he may now expect the court to view his predicament with some charity and allow him time to solve his problems without being subjected to harrassment.

John S. Mead

EQUITY: INJUNCTIVE RELIEF UNDER STATE CIVIL RIGHTS STATUTES

Plaintiff, a Negro woman, sought but was denied admission to an amusement park. The sole basis for the exclusion was the plaintiff's color. Plaintiff, relying on the Ohio Civil Rights Statutes,[1] brought an action for an injunction to enjoin defendant from refusing her admittance because of her color. The Ohio Supreme

35 See note 26 *supra.*
36 *Ibid.*
37 16 CAL. JUR.2d, *Divorce and Separation* § 216 (1954).
38 See note 18 *supra.*
39 See note 30 *supra.*
40 See note 29 *supra.*
41 See note 27 *supra.*
1 OHIO REV. CODE §§ 2901.35–.36.

Court in *Fletcher v. Coney Island, Inc.*[2] denied the injunction on the ground that the statutory remedies were exclusive.

At common law, it was well-settled that except for innkeepers and common carriers, who were under a duty to serve the general public without discrimination, proprietors of private enterprises enjoyed an absolute power to serve whom they pleased.[3] Because the United States Supreme Court in the *Civil Rights Cases*[4] held that Congress was powerless to secure equal accommodations in cases of "private action," some states enacted Civil Rights Statutes which were designed to accomplish what Congress could not. That this was the intent of the states may be seen by noting that the invalidated federal statute served as a model for the state statutes.[5] The legislative intent is further borne out by the observation that the state courts have almost universally held that the application of the statutes is limited to discrimination on account of race or color.[6] This was also the interpretation of the Supreme Court in the *Civil Rights Cases.*

The first problem facing the courts is determining the purview of the statutes; that is, a determination of which "establishments" were intended to be affected by the legislation requiring accommodations. In the respect, the statutes are not uniform, and therefore there is variance in the cases merely as a matter of statutory terminology. Moreover, the courts are influenced by the rule of statutory construction that statutes in derogation of the common law are to be strictly construed.[7] However, the statutes, in general, purport to effect equal accommodations in "places of public accommodation or amusement" and generally include a "catch-all" phase to that effect after the statutory enumeration of establishments. As a result, the cases present two views as the scope of the statutes. One view applies the rule of *ejusdem generis*[8] (*i.e.,* to those places of the same general characters as those specifically enumerated), while a second view holds that *ejusdem generis* is inapplicable where the places specifically enumerated are diverse in character.[9]

The main problem arising under the statutes is in regard to the remedies available to the aggrieved person. Clearly, the statutory remedies are available, but here again the statutes are not uniform. Most statutes give a right of action for damages or impose a criminal penalty,[10] while other statutes provide that violation of the statute results only in criminal liability.[11] However, no statute has been found which provides for injunctive relief as an alternative remedy. The question thus posed is: should equity grant relief in these cases?

Relatively few cases have raised this issue under the Civil Rights Statutes, and

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[2] 165 Ohio St. 200, 134 N.E.2d 371 (1956).

[3] 10 AM. JUR., *Civil Rights* § 17 (1937).

[4] 109 U.S. 3 (1893).

[5] 10 AM. JUR., *op. cit. supra* note 3. The statutes have universally been upheld against constitutional attack as valid exercises of the police power. Jones v. Kehrlein, 49 Cal.App. 646, 194 Pac. 55 (1920).

[6] 1 A.L.R.2d 1165 (1948). California has held to the contrary pursuant to statutes (CAL. CIV. CODE §§ 51–54) broad in their language. See Orloff v. Los Angeles Turf Club, 30 Cal.2d 110, 180 Pac.2d 321 (1947); Piluso v. Spencer, 36 Cal.App. 416, 172 Pac. 412 (1918).

[7] 14 C.J.S., *Civil Rights* § 3 (1939).

[8] Cecil v. Green, 161 Ill. 265, 43 N.E. 1105 (1896); Burks v. Bosso, 180 N.Y. 341, 73 N.E. 58 (1905).

[9] Darius v. Apostolos, 68 Colo. 323, 190 Pac. 510 (1920).

[10] 171 A.L.R. 920 (1947).

[11] *Ibid.*

most courts have denied injunctive relief.[12] However, some of these cases may be explainable on the basis that the plaintiff was not within the class protected, *i.e.*, the discrimination was not based on color.[13] The courts, nevertheless, invariably state as reasons for denial of relief one of two grounds, or both, namely: (1) that the statutory remedies are exclusive,[14] or (2) that equity will not protect purely personal rights.[15]

As a general rule, most courts have held that the statutory remedies are not exclusive in actions under the Civil Rights Statutes.[16] Most of these cases, however, were actions for damages where the statute provided only for a criminal penalty. Where injunctive relief is prayed for, the courts are more inclined to assert the strict construction rule. Thus, in the *Fletcher* case, where the statute provided for damages or criminal penalty, the court disposed of the case with the following words:

> "In summary, the decision in this case rests squarely on the proposition that at common law those who own and operate private places of amusement and entertainment can admit or exclude whomsoever they please, and that, since such establishments are open to all only through legislative enactments, those enactments govern the situation, and where as a part of those enactments a specific remedy or penalty is prescribed for their violation, such remedy is exclusive . . . ."[17]

This court, then, as some others have done,[18] simply refused to go into the merits of injunctive relief, and for practical purposes "washed its hands" of the issue. Is this position defensible? As a basic proposition, the rule that if derogation of the common law are to be strictly construed is one of general, but not universal application.[19] It is axiomatic that in construing statutes the purpose of the court is to give effect to the legislative intent.[20] As noted above, it seems certain that the purpose of the Civil Rights Statutes is to secure equal accommodations to those persons contemplated by the enactments.[21] As the dissenting opinion in the principal case points out, to impute a legislative purpose of compelling a person to accept from a wrongdoer money as a substitute (for specific enforcement) is "to sustain . . . an absurdity and impugn the integrity of the legislature which enacted the statute."[22] Certainly, the inadequacy of the statutory remedies is apparent in these cases, for it is certain that specific enjoyment provides the only real remedy to the aggrieved individual. It should also be noted that a criminal prosecution is not a private remedy, but that of the State.[23] Therefore, as in the

[12] See notes 13, 14, 15 *infra*.

[13] See White v. Pasfield, 212 Ill.App. 73 (1918); Madden v. Queens County Jockey Club, Inc., 296 N.Y. 249, 72 N.E.2d 697 (1941); Grannan v. Westchester Racing Ass'n, 153 N.Y. 449, 47 N.E. 896 (1897); Woolcott v. Shubert, 154 N.Y.S. 643 (1915).

[14] Bailey v. Washington Theatre Co., 218 Ind. 513, 34 N.E.2d 17 (1941); Madden v. Queens County Jockey Club, Inc., 296 N.Y. 249, 72 N.E.2d 697 (1941).

[15] White v. Pasfield, 212 Ill.App. 73 (1918).

[16] Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214 N.W. 241 (1927); Ferguson v. Gies, 82 Mich. 358, 46 N.W. 718 (1890); Anderson v. Pantages Theatre Co., 114 Wash. 24, 194 Pac. 813 (1921); Orloff v. Los Angeles Turf Club, *infra* note 26; Everett v. Harron, *infra* note 30.

[17] 165 Ohio St. at 204, 134 N.E.2d at 375 (1956).

[18] See notes 13, 14, 15 *supra*.

[19] 50 AM. JUR., *Statutes*, § 402 (1944).

[20] 50 AM. JUR., *Statutes*, § 404 (1944).

[21] See notes 5 and 6 *supra*.

[22] 165 Ohio St. at 206, 134 N.E.2d at 377 (1956).

[23] CLARK & MARSHALL, CRIMES § 2 (5th ed. 1952).

principal case, to compel the plaintiff to pursue the statutory remedies is, in effect, to leave him only the private remedy of an action for damages. The fact that statutory recoveries are generally small once again points up the acute inadequacy of remedy.

The second main objection against granting injunctive relief is based upon the rule that equity will not protect purely personal rights. While many courts still pay "lip-service" to this much criticized rule, the readiness of courts to find some illusory "property right" indicates that the rule is more apparent than real.[24] Indeed, the tendency of modern courts is to state frankly that purely personal rights will be protected by equity.[25] The California Supreme Court in *Orloff v. Los Angeles Turf Club*,[26] squarely faced the issue here involved and said:

> "The issue should not in logic or justice turn upon the sole proposition that a personal rather than a property right is involved. To so reason, is to place property rights in a more favorable position than personal rights . . . . These concepts of the sanctity of personal rights are specifically protected by the constitution, both state and federal, and the courts have properly given them a place of high dignity and worth of especial protection."[27]

In the light of such cogent reasoning, it is difficult to see how the "property right" argument can now be successfully urged upon a court in civil rights cases. Although the court in the *Fletcher* case expressly refused to follow the *Orloff* case, the holding was expressly limited to the point involving statutory construction.

As this writer has attempted to point out above, the two main objections stated by courts which deny injunctive relief appear to be "escape-valve" mechanisms. That such grounds should be given in cases where the need for equitable relief is so pronounced would seem to indicate that a more fundamental reason underlies the decisions in these cases. Although not stated in the cases, the real reason seems to be: assuming that injunctive relief is in fact the only adequate remedy, would it solve the problem even if it were granted. It is obvious that the courts are being asked to compel the exercise of equal treatment. The intrinsic difficulties involved may well be appreciated. This problem of "practicability of enforcement" has been pointed out by Walsh, where in discussing injunctive relief in "personal rights" cases, he has stated that the principal arguments against equitable intervention are: (1) that the effectiveness of equitable relief is of doubtful result and hence will make the court the object of ridicule, and (2) that granting of equitable relief would place a heavy burden upon the courts by inviting a deluge of "petty" grievances.[28]

It can hardly be said that seeking enforcement of a civil right is a "petty" matter, but the "practicability" objection would appear to be a cogent argument against the granting of equitable relief. We may suppose two extremes, one where mere admission to an establishment is the primary purpose, as for example, to view a horse race; the other, where many personal services would be involved, for example, in a restaurant. In the latter example, it is clear that numerous opportunities to circumvent the injunction are present.

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[24] See, *e.g.*, Blanton v. Blanton, 163 Ga. 361, 136 S.E. 141 (1926). See also 50 HARV. L. REV. 171 (1936).

[25] Kenyon v. City of Chicopee, 320 Mass. 528, 70 N.E.2d 241 (1946); Everett v. Harron, *infra* note 30.

[26] 30 Cal.2d 110, 180 Pac.2d 321 (1947).

[27] 30 Cal.2d at 117, 180 Pac.2d at 325 (1947).

[28] WALSH, EQUITY § 52 (1930).

In two recent cases where injunctive relief was granted under Civil Rights Statutes, no problems of enforcement were involved. In *Orloff v. Los Angeles Turf Club*[29] an injunction was granted to compel admission to a racetrack. In the more recent case of *Everett v. Harron*[30] an injunction was granted to compel admission of Negroes to a public park. The significance of the *Everett* case seems to lie in the following statement:

> "We believe the true rule to be that equity will protect personal rights by injunction upon the same conditions upon which it will protect property rights by injunction. In general, these conditions are, that unless relief is granted a substantial right of the plaintiff will be impaired to a material degree; that the remedy of law is inadequate; *and that injunctive relief can be applied with practical success and without imposing an impossible burden on the court or bringing its processes into disrepute.*"[31] (Emphasis added.)

On the basis of the *Orloff* case, it is difficult to anticipate to what extent California courts will grant injunctive relief when faced with more complex fact situations. The California courts, however, have consistently construed the Civil Rights Statutes liberally.[32] In the *Orloff* case, the court expressly rejected both the "property right" and the strict construction rule objections, and therefore, it would appear that California courts would be bound to inquire only into the merits of injunctive relief, as such.

It is submitted that the majority of courts in denying injunctive relief have refused to come to grips with the real problem involved, and in refusing to go into the merits for equitable relief, have denied the only effective means of enforcing rights granted by the Civil Rights Statutes. It is not suggested here that an injunction should issue in every case, but only that the courts should at least inquire whether in any specific case, the injunction would be effective. While this may necessarily involve a case to case approach, it would be a long step in the direction of effecting the legislative intent.

If the analysis presented here is correct, it would seem that the court in the *Fletcher* case avoided the crucial issue and denied injunctive relief under facts obviously amenable to such relief. In conclusion, it may be said that a reappraisal by the state courts is desirable. While some judicial restraint may be necessary in specific situations, it would seem that a "right" deemed sufficiently important to be given express sanction by the legislature is entitled to effective protection by injunction if practicable under the circumstances.[33]

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[29] See note 26 *supra*.

[30] 380 Pa. 123, 110 A.2d 383 (1955).

[31] 380 Pa. at 127, 110 A.2d at 387 (1955).

[32] See 35 CALIF. L. REV. 571 (1947).

[33] The courts have readily granted injunctive relief in cases involving federal civil rights. Draper v. St. Louis, 92 F. Supp. 546 (E.D. Mo. 1950); Law v. Mayor and City Council of Baltimore, 78 F. Supp. 346 (D. Md. 1948). Although many cases have arisen under Federal Statutes providing for equitable relief as an alternative remedy, such relief is discretionary, not mandatory. Fleming v. Jacksonville Paper Co., 128 F.2d 395 (5th Cir. 1942).