

### 1.3.3 Law of associations

The injunction may be used by persons wishing to enforce their rights under the Companies Acts, as it may by a director to restrain other directors from excluding him from office, or to enforce the calling of a meeting.

In a non-proprietary club (where the property is vested in the club members themselves) an injunction is available where club rules have not been followed and the forms of natural justice not complied with. It is also available in similar situations arising in professional and trade associations and friendly societies. Thus, in *Amalgamated Society of Rail, Servants v. Osborne*,<sup>1</sup> an injunction was obtained to prevent the use of union funds for unlawful purposes, and in *Law v. Chartered Institute of Patent Agents*,<sup>2</sup> to restrain the expulsion of a member.

### 1.3.4 Industrial property

The usual remedy for an infringement of copyright, patent or trade mark is an injunction and an account of profits. In the first case, proof of actual damage is not necessary if it is probable that damage will occur.

### 1.3.5 Protection of reputation

An injunction may be obtained to restrain publication of a libel or other false statement, or a groundless threat of legal proceedings for alleged infringement of patents (a "threats action"). An injunction in respect of a libel will not be granted on an interlocutory application unless there is danger of repetition and the matter is clearly defamatory; the jurisdiction "ought only to be exercised in the clearest cases, where any jury would say that the matter complained of was libellous, and where if the jury did not so find the court would set aside the verdict as unreasonable."<sup>3</sup>

### 1.3.6 Breach of trust

The object of the injunction here is to protect some purely equitable claim such as in *Dance v. Goldingham*.

### 1.3.7 Judicial proceedings

An injunction may be granted to restrain an action in the Supreme Court where the writ has not been issued, and it may be obtained to restrain proceedings in an inferior or foreign court. Section 41 of the Judicature Act, 1925 provides however, that no cause or proceeding pending in the High Court of Justice or before the Court of Appeal can be restrained by injunction or by prohibition.

The list above is not exhaustive. The injunction ranges widely, covering in addition the improper use of confidential information (such as trade secrets or secret processes), public right, matrimonial and family matters (such as to prevent a child being taken out of the jurisdiction), company matters, the breach of negative statutory duties (at the suit of the Attorney-General), and other matters.

## 1.4 Development of law in England.<sup>5</sup>

Old English law declares injunctions as ancillary to claim for damages. An injunction is ancillary to the claim for damages and cannot be granted as a substantive form of relief by itself.<sup>6</sup>

1 [1910] AC. 87.

2 [1919] 2 Ch. 276.

3 Per Lord Esher, M.R. in *Coulson v. Coulson*, (1887), 3 T.L.R. 846, C.A.

4 (1873), 8 Ch. App. 902 (insertion of depreciatory conditions of sale by trustees for sale of land, without reasonable cause).

5 See *The English & Empire Digest*, 1962, Replacement Vol. 28, p. 737.

6 (Lord Sterndale, M.R.).-*Davey v. Robinson*, [1923] as reported in 1 K.B. 563, C.A.

membership it may even exceed the membership prescribed in bye-law.<sup>1</sup> Therefore, balance of convenience is also against the plaintiff and in favour of the defendant.<sup>2</sup>

It is settled law that no interim injunction would be issued if the final relief cannot be granted. As was held in *K.P.M Aboobucker v. K.Kunhamoo*,<sup>3</sup>:

“An interim relief is granted to a person on the footing that that person is *prima facie* entitled to the right on which is based the claim for the main relief as well as the interim relief. That relief is granted as an interim measure till the disposal of the suit in which is to be investigated the validity of the claim or right that has been put forward in the suit. It means that there can be no occasion for investigation of such a claim in the suit, there can be no justification for the grant of an interim relief which will just lapse on the termination of the suit, but which will leave the parties in the same position in which they were before the institution of the suit in the course of which the interim relief was sought and obtained. That is not the scope of 0.39, Rule I.”<sup>4</sup>

#### 6.5.2 Interim relief what could never be granted in the main suit

The Court has no jurisdiction to grant by way of interim relief what could never be granted in the main suit itself. Thus an interim injunction granted during the pendency of a suit should not be of greater scope than what could be granted in the suit. Plaintiff who seeks temporary injunction should not only show the *prima facie* case and balance of convenience but also inseparable injury and also that the case falls within the exceptional category of cases wherein the Courts should intervene immediately in granting relief which may in fact, cover the entire relief that should have been granted in the suit itself.<sup>5</sup>

#### 6.5.3 Suit cannot be converted for probate of will

In the instant case when the deceased was attempting to alienate the properties given to her under the compromise decree, the appellants filed a suit in the Court of the District Munsif for a perpetual injunction restraining her from alienating the property. The contest in the suit centers round the question whether she got an absolute estate under the compromise decree so as to enable her to alienate the properties to third parties or she had a limited estate thereunder covered under Section 14(2) of Hindu Succession Act, 1956. Pending suit, she died. Respondents have come on record under Order 22 Rule 4 CPC claiming that the deceased had executed a Will in her favour. It was also further contended that she had lost the original will and sought to adduce secondary evidence under Section 65 of the Evidence Act. The District Munsif had refused to permit her to adduce secondary evidence. Thereon the matter was carried in revision. The High Court of A.P. directed abduction of secondary evidence. Thus, an appeal to the Supreme Court by special leave. *Held* : The mere suit for injunction cannot be converted into a suit for probate of a will whereat the will is to be proved. If the will is to be proved according to law, it has to be by way of probate in the court having competency and jurisdiction according to the procedure provided under the Indian Succession Act. That procedure cannot be converted in a suit for mere injunction as a probate suit and direct the parties to adduce evidence, be it primary or secondary evidence as the circumstances may warrant.<sup>6</sup>

1 *Sunil Jain and another v. Nagarathinam and others*, AIR 2002 NOC 12 (Mad)

2 *J. Daulat Singh v. Delhi Golf club Limited*, AIR 2002 Del 501.

3 AIR 1958 Mad 287

4 *Raman Hosiery Factory Delhi and others, v. J. K. Synthetics Ltd. and others*, AIR 1974 Del 207.

5 *Prem Chand v. Manak Chand and others*, AIR 1997 Raj. 198.

6 *T.Venkata Narayana & Ors. v. Smt. Venkata Subbamma (deed) & Ors.*, 1996(3) Supreme 765.

It must be borne in mind that injunction being a discretionary remedy, a court may not grant an order of injunction, even if all the three necessary ingredients are present i.e. *prima facie* case or infraction of legal rights, such infraction causes irreparable loss and injury to the plaintiff and the injury is of such nature that it cannot be compensated by way of damages.<sup>1</sup>

Temporary injunction cannot be granted so as to stay proceedings in Court. Where a proceeding for delivery of possession was pending a case for issue of injunction does not exist and the order granting injunction is liable to be set aside. *Narayan v. Surendranath*, A.L.R. 1972 Orissa 115.

No injunction restraining a nominee from withdrawing the amount payable under the insurance policy, after the death of the injured, can be granted, as it would stultify the provisions of S. 39 of the Insurance Act.<sup>2</sup>

### 6.33 Injunction with conditions

#### 6.31.1 Conditions will be imposed

The court will, in no case, interfere, upon an interlocutory application, to prevent a party from enforcing a legal right, without putting the party applying upon such terms as will enable the court to do justice to the party restrained in the event of plaintiff in equity failing to make out a case for equitable relief at the hearing.<sup>3</sup>

Where it is manifest from the pleadings that issues have been raised in the cause which must necessarily be discussed at the hearing, the court will grant an interim injunction upon terms.<sup>4</sup>

Undertaking to abide by any order made at hearing. - A mining company, admitting the forfeiture of their lease at law, sought relief in equity, on the ground of accidental stoppage of works, substituted performance of certain covenants, and implied acquiescence on the part of the lessor's agent. There appearing reasonable grounds for the exercise of equitable jurisdiction, an interim injunction was granted, plaintiffs undertaking to abide by any order the court might make at the hearing, and to allow judgment to go at law.<sup>5</sup>

Payment into court- Upon a bill filed by underwriters for an injunction against an action on a policy of insurance, and for a commission to examine witnesses abroad, the court will not grant the injunction and commission, except upon the terms of having the money paid into court; even though it should appear, on the answer of defendants, that there is a case for inquiry in a court of equity.<sup>6</sup>

An order for an injunction to restrain commissioners under a local drainage Act from signing their final award, and from proceeding to enforce payment of rates, although the Act gave jurisdiction to the quarter sessions, affirmed on appeal; but the L.C. attached to it the condition of bringing the money into court.<sup>7</sup>

In 1830, W. conveyed certain real estate to R. and T. and their heirs by way of mortgage for securing £400, with a power of sale in case of default. W. died in 1839, having devised the same property, subject to certain charges created by his will, to his sons A, B.

<sup>1</sup> *State of Karnataka v. State of Andhra Pradesh*, 2000 (3) Scale 505; 2000 (4) Supreme 39; 2000 (6) JT 1; 2000 (3) CCC 32; AIR 2000 SC 3511.

<sup>2</sup> *Malti Devi v. Kanchan Purna Dei*, A.L.R. 1973 Orissa 83.

<sup>3</sup> *Sanxter v. Foster*, (1841), Cr. and Ph. 302; 41 E.R. 506, L.C.

<sup>4</sup> *Coleman v. West Gartlepool Ry. Co.*, (1861), 3 L.T. 847.

<sup>5</sup> *North Stafford Steel, Iron and Coal Co. (Burslem), Ltd. v. Camoys (Lord)*, (1865), 6 New Rep. 345; 12 L.T. 780; 29 J.P. 628; 11 Jur. N.S. 555, L.J.J.

<sup>6</sup> *Irving v. Harrison*, (1824), 3 L.J.O.S. Ch. 48.

<sup>7</sup> *Armistead v. Durham*, (1848), 11 Beav. 556; 50 E.R. 932.

## Injunction in Cases of Nuisance

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### 18.1 Requirements for temporary injunction

Order XXXIX, Rule 2, Civil P. C. gives power to Court to grant injunction in order to prevent the defendant from committing a breach of the contract or other injury of any kind. No doubt the grant of temporary injunction is a discretionary order made for the purpose of maintaining the *status quo* and to protect the interests of the parties pending disposal of the suit. But the balance of convenience and judicial discretion are the key-notes in the matter of disposing of such interlocutory applications.

Further, for the purpose of granting temporary injunction, pending disposal of the suit, is absolutely unnecessary to discuss the evidence on record elaborately. But there must be a *prima facie* ground for the grant of injunction, *prima facie* ground has to be made out by the party seeking the injunction and the burden is not upon the person who objects to such grant.

In the instant case there were already machineries in the plaintiffs house itself for his tobacco factory. As such, the 7.5 HP motor which was sought to be worked by the petitioners could not be considered as a fresh or surprising nuisance to the respondent. Since the suit itself was on the basis of nuisance and on that basis injunction was prayed for, it was premature to grant the injunction as if some nuisance had been perpetrated. The Commissioner's report and plan clearly proved that there were machineries inside the plaintiffs portion itself, apart from the fact that there were two 15 HP motors within 9.8 meters to the east of the plaintiffs building, there were five hullers, viz., two flour hullers, one paddy huller, one chilly huller and one soapnut powder huller. The Commissioner's report further states that within a near reach of the respondent's residence there was an oil rotary which goes under the name and style of 'Shanmugha Oil Mills' with a motor having 15 HP. Admittedly these motors were much more nearer in distance to the actual residential portion of the respondent than the 7.5 HP motor sought to be worked by the petitioners. No doubt, the petitioner's motor was just adjoining the business shed or the resting shed of the respondent. But that itself could not be taken as the criterion before deciding the suit, as amounting to nuisance to the respondent. It was admitted that both the respondent's and the petitioner's places of residence and business were in the busiest locality; and the Commissioner's report definitely stated that these buildings were situated in the busy thoroughfare and commercial business was going on in the street and people were also residing. *Held* : In order to obtain an interlocutory injunction, it is not enough for the plaintiff to show that he has a *prima facie* case, he must further show (i) in the event of withholding the relief of temporary injunction he will suffer an irreparable injury; (ii) in the event of his success in the suit in establishing his alleged legal right the encroachment whereof is complained against, he will not have the proper remedy in being awarded adequate damages; (iii) in taking into consideration the comparative mischief of

“7. *Arbitration agreement.*- (1) In this part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in-

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, telegrams or other means of telecommunication which provided a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.”

“16. *Competence of arbitral tribunal to rule on its jurisdiction:*—(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

Section 5 of the Act provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I (Section 2 to 43), no judicial authority shall intervene except where so provided in the said part. This clearly indicates the legislative intent to minimise supervisory role of courts to ensure that the intervention of the court is minimal. Section 4 is a deeming provision, which lays down that where a party proceeds with the arbitration without stating his objection to non-compliance of any provision of Part I from which the parties may derogate or any requirement under