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INTERFERENCE WITH CONTRACT ENJOINED.

The recent case of *Beekman v. Marsters*, reported 80 N. E. 817, and decided by the Supreme Court of Massachusetts, upheld an injunction granted to restrain the defendant from acting under a contract which he had obtained by inducing the breach of a contract between a third party and the plaintiff. A hotel company had made the plaintiff an exclusive agent for it in a certain section, and the defendant afterwards induced the hotel company to appoint him an agent also. The plaintiff, on showing unlawful interference with his contract by the defendant and that damages would not afford him an adequate remedy, was entitled to an injunction.

That inducing the breach of a contract is actionable seems to be a sound principle. A person entering into a contract with another, has, flowing from that contract, legal rights. Is it lawful for another to interfere with those legal rights? Undoubtedly many judges have thought and held that inducing a breach of contract by means of persuasion was not actionable, and most cases holding such acts unlawful have strong dissenting opinions. *Vegelahn v. Gunter*, 167 Mass., 192.

But conceding the right to sue a person wrongfully inducing the breach of a contract, it would seem that, some special ground for equitable jurisdiction existing, an injunction ought to issue to protect the legal right. Such ground for equitable jurisdiction might be irreparable injury, as in acts of trespass, or the fact that the remedy at law for damages was inadequate. *Pickett v. Walsh*, 192 Mass., 572.

The case of *Pacific Postal Tel. Cable Co. v. Western Union Tel. Co.*, 50 Fed. 493 is worthy of notice in this connection. The plaintiff company was granted an exclusive right of way along a railroad to conduct a telegraph system. The defendant corporation prepared to put in a telegraph line to compete with the plaintiff and an injunction was sought against the former. Here there was no allegation of the defendants inducing the breach of the plaintiff's contract, but knowing of the existence thereof, and attempting to build a rival line, certainly amounted to a violation of plaintiff's contract. It is true in this case, that an injunction was denied, but this is easily to be accounted for on grounds other than those of a denial of the right. When a person seeks equitable relief there are many influences of an equitable nature which affect the chancellor. In this case, the plaintiff's contract was held not only *ultra vires* but also against public policy. Such a case can hardly be an authority denying the right as recognized in the principal case.

On the other hand, in the case of *Western Union Telegraph Co. v. Rogers and the Baltimore and Ohio Telegraph Co.*, 42 N. J. E. 311, the right to an injunction under circumstances similar to those in the principal case is recognized and with reasoning clear and convincing. Rogers owned a hotel and gave the complainant an exclusive privilege to operate a telegraph office. Rogers afterwards entered into a contract with the Baltimore and Ohio Telegraph Co. extending to them a like privilege. The complainant sought to enjoin the latter from exercising this privilege. The defense was "adequate remedy at law." The court said the position that this court of equity ought to allow parties to violate their agreements and send the injured party to law was not tenable. As further supporting the granting of the injunction, the vice-chancellor said that adequate damages could not be obtained at law. There was no way of estimating damages at law, as the value of one office only depended on the number of connections that office had. "Irreparable injury simply means a grievous injury, not adequately reparable by damages at law. By inadequacy of the remedy at law is meant that the damages obtainable at law are not such a compensation as will in effect, though not in specie, place the parties in the position in which they formerly stood." *Kerr on Injunctions* 200. "The mere circumstances of the breach of contract may afford sufficient ground for the court to interfere by injunction." 1 *Joyce on Inj.* 75.

It is everywhere conceded that the remedy by injunction is being extended. Equity takes cognizance of many actions now that formerly could not have arisen. It may perhaps be doubted

if in the earliest days of chancery jurisdiction, the chancellor would have thought it possible to enjoin the defendant in the main case. But the advantage of this remedy is certainly a sufficient reason for its application in *Beekman v. Marsters.*

LEVY ON PROPERTY IN DEBTOR'S HANDS.

The recently decided case of *Richards v. Heger*, 99 S. W. 802, holds that an officer acting under and by virtue of a writ of execution does not commit a trespass in seizing money in the hands of the execution debtor while he is engaged in counting it. The action is one brought by the latter to recover the money. It seems plaintiff had the sum of $450.00 due from an insurance company. Payment of such was made in the company's office by tossing to him a package of bills with the statement that it was his and to count it. Proceeding to do so, the defendant, a constable, came up behind him, grabbed the money out of his hands, said, "I levy on this," and then read the writ under which he acted. The court in passing opinion relied most strongly on the case of *Green v. Palmer*, 15 Cal. 411 and *State v. Dillard*, 3 Iredell's Law (N. C.) 102; and these, together with an extract from *Freeman on Executions*, constitute the only authorities cited in support of the conclusion reached. The argument of the court is embraced in the following: "The seizure of property attached to the person of a defendant would be a trespass against his person as it would tend to provoke a breach of the peace, but to seize his property found in his possession, not pertaining to his wearing apparel, nor worn or carried on his person for use or as an ornament, would not be an indignity against his person nor, under ordinary circumstances, a trespass. The circumstances of the seizure in question were no more likely to provoke a breach of the peace, and possess no more of the elements of a trespass, than an entry by the officer on the premises of the defendant in the execution and the seizure there, in his presence, of his personal effects against his will and over his protest. Either act would be a trespass but for the acts and powers with which the officer is clothed by law for the purpose of writs of execution. He commits a trespass when he seizes and levies upon the defendant's property exempt from execution, or when to make a levy he commits unlawful violence against his person; but to take a bridle rein, by which defendant is leading his horse, from his hand, or a bag of gold, or a package of currency he is holding in his hand, is not committing violence against his person, and in our opinion is not a trespass." This is all the court has to say on the subject, substantially a mere declaration of the conclusion. It is to be regretted that more consideration was not given to a legal analysis of the situation as the precedence upon which it relies appear indefensible on the basis of theory or policy. *State v. Dilliard* was the seizure under execution of a horse on which the owner was riding. It was held legal. But a horse does not partake so much of the nature of property which is on the person as money and articles of clothing or adornment. The relation between it and its owner

is not so intimate nor would there be such a feeling of natural sanctity relative to it. This decision is not nearly the extreme case as the present and can hardly be said to be an authority for it. The quotation from *Freeman on Executions* is to the effect that the California case of *Green v. Palmer* (supra) "seems to establish the proposition that money in the hands of the debtor may be seized under execution" but then goes on to doubt the logic of such a rule. So the real and only foundation for the present decision is the case of *Green v. Palmer*. There are no equivocal circumstances or phraseology connected with this case. It holds that the seizure under execution of a bag of gold in the hands of the debtor is justifiable. However, the decision is unusual and the courts of sister states should feel much hesitancy in following it unless, by sound reasoning, it can be vindicated.

At one time the idea obtained in England that money was not subject to execution, and the quaint even if fallacious reason given was that nothing was so subject except it could be sold and the inherent nature of money negatived that notion. Lord Mansfield in *Armistead v. Philpot*, Doug. 231. But it is superfluous to say that the rule is no longer adhered to either there or in this country. Marshall, C. J. in *Turner v. Fendall*, 1 Cranch 117. In this connection Lord Coke said, speaking of what was the subject of distress, "Although it may be of valuable property, as a horse, etc., yet when a man or a woman is riding on him, or an axe in a man's hand cutting off wood or the like, they are for that time privileged, and cannot be distrained." *Co. Lit.* 47, a. But there is a distinction between distress and levy under execution inasmuch as the former is the act of the party himself and the latter that of an officer of the law. The reasons assigned, if not of equal potency in the two cases, nevertheless have strong bearing on the question we are at present considering.

The rule of universal prevalence is that property on the person is exempt from levy. In *Holmes v. Nuncomb*, 12 Johns. (N. Y.) 395, the constable was present when money was paid to a person against whom he held a writ of execution. The latter handed it to the officer asking him whether in his opinion it was counterfeit, and it was immediately levied on by him. This was held to be a valid levy. In another case a levy was made by an officer on a watch which has been handed to him for purposes of comparison with his own. A small cord encircling the owner's neck had to be broken in separating it from him. This was held to be a trespass. *Mack v. Parks*, 8 Gray 517. A later Massachusetts case holds that a valuable breast pin, though worn with the avowed object of precluding its being seized under legal process, could not be so taken while on the owner's person. *Maxham v Day*, 16 Gray 213. In a Tennessee case, it was held that a levy on blacksmith's tools while in use by him was invalid, there being no statute on the subject. The case is very meagerly reported in *I. Yerger* 397.

The basic reason underlying all these decisions is that the seizure of property on the person is so provocative of resistance

by the owner that the policy of the law forbids it. Why does that not apply to the seizure of money in the hands? That is undeniably as invitatory of a personal encounter as the seizure of a breast pin worn on a scarf. The opinion in *State v. Dilliard*, holding that a horse being ridden by its owner could be levied upon, assigns as a reason that it is the duty of the person to surrender his property to legal process as much in the case of where he is using it as where it is merely in his sight or presence. No distinction can be drawn on the duty theory. Is it not as much the duty of the party to surrender a valuable breast pin worn by him as it is to surrender his horse which perchance is to him a means of livelihood? Is it not as much the duty of a person to surrender money in his pocket as it is money in his hand? Yet it can be indisputably asserted that no court would sustain a levy on the former. It is on his person in one case as much as in the other, and in both the incentive to personal conflict concerning which the law is so solicitous, is present in a high degree. The propriety of the rule laid down in the California and Missouri cases can well be doubted.

CONFLICT OF LAWS. MARRIAGE CONTRACT.

The Supreme Court of the United States rendered a decision April 15th, in *Travers v. Reinhardt*, which is interesting as a modern construction of common law marriage. The case was tried on an appeal from the Court of Appeals of the District of Columbia, 25 App. D. C. 567. The litigation arose in construing a will, and the validity of the marriage of James Travers became material in determining whether his wife would take under a provision of the will. In the opinion, the following facts were in substance conceded to be established. In 1865 a marriage between James Travers and Sophia V. Grayson was performed in Alexandria, Va., by a friend of Travers who in fact was not a person authorized by statute to perform such a ceremony. The woman believed it was a real marriage. After this ceremony the woman assumed the name of Mrs. Travers. They thereafter lived in Maryland till 1883 as husband and wife. A few months prior to Traver's death they had resided in New Jersey. During all the eighteen years of their cohabitation they had continued the relation of husband and wife in every way, and were so considered and respected in the communities in which they lived. Abundant evidence such as deeds, an unattested will and the last will of Travers showed that they considered themselves as husband and wife. The situation was briefly this: Following the Virginia Supreme Court of Appeals construction of the Virginia statute, the marriage in Virginia was void. The statute, requiring every marriage to be under license and solemnized in manner prescribed, was considered mandatory and not directory and it thus abrogated the common law. Cohabitation for over fifteen years in Maryland did not establish a legal relation of husband and wife, for the Maryland Court of Appeals had held that in that state there can-

not be a valid marriage without a religious ceremony. The short residence in New Jersey prior to Traver's death was the means of giving their cohabitation recognition as a legal relation of marriage. New Jersey recognizes the comman law principle of marriage, and from the continued cohabitation of this couple an agreement *per verba de praesenti* was implied, and the court held the marriage valid in law, so the wife was entitled to take under the provisions of the will in controversy.

The general rule that marriage is valid or void by the law of the place where it is celebrated is valid or void everywhere, is very familiar. It has been held in New Jersey that when a man and a woman intend to marry and live together as husband and wife but their intent is frustrated by the existence of some unknown impediment, when the impediment is removed and it is shown that the same intent continues, their relations are lawful. *Chamberlain v. Chamberlain*, 62 Atl. 680. Most states by statute prescribe the formalities which are required to constitute a valid marriage in their respective territories. In construing these statutes the courts consider that marriage is a right which existed before statute and that the relation was encouraged at common law. So where statutes give requirements unless the statutes also expressly deny validity to marriage not in conformity thereto, such a statute will be construed as directory and not mandatory. *Maryland v. Baldwin*, 112 U. S. 490. *Heyman v. Heyman*, 218 Ill. 636. *Bishop on Mar. & Div.* Sec. 283. Speaking of statutes, the court, in *Meister v. Moore*, 96 U. S. 76, says: "In many states, enactments exist very similar to the Michigan statute, but their object has manifestly been not to declare what shall be requisite to the validity of the marriage but to provide a legitimate mode of solemnizing it." The state alone has the right to regulate marriage within its boundaries.

Travers v. Reinhardt presents a novel situation made possible by the diversity of marriage requirements in the different states. The lack of uniformity in our marriage laws has for a long time been a source of confusion and continues a problem for legislation yet unsolved.