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urgent need to suppress the habitual criminals who are so rampant today.⁹

RUSSELL S. MACHMER.

EQUITY DELIGHTS TO DO JUSTICE AND NOT BY HALVES—This maxim, although not often quoted in the opinions of the courts is, nevertheless, one of the most important of the maxims of equity. The significance of the maxim lies in its last words. It means that it is the aim of equity to have all interested parties in court and to render a complete decree, adjusting all rights and protecting the parties against future litigation. The principle of the maxim embraces the well-established doctrine that when equity once acquires jurisdiction it will retain it so as to afford complete relief.¹ The maxim does not always appear in exactly the above words,² but the rules applicable are the same.

Professor Bisphan in his book "Principles of Equity" does not recognize the maxim as a distinct one, but rather

⁹See 42 Harvard Law Review 832 for brief criticism.

¹21 Corpus Juris p. 198, Par. 187; Piro v. Shipley, 33 Pa. Super. 278. (1907).

²This maxim does not appear in Francis, in Pomeroy, nor in Story Eq. Jur., but is given in Story Ed. Pl. Sec. 72. The other statements of the rule are: 1—"Equity does nothing by halves." Latimer v. Irish-American Bank, 119 Ga. 887, 47 S. E. 322, (1904). 2—"It is characteristic of equity to do justice, and not by halves." Beville v. Boyd, 16 Tex. Civ. A. 491, 42 S. W. 318, (1897). 3—"A court of equity ought to do justice completely, and not by halves." Camp v. Boyd, 229 U. S. 530, (1912). 4—"Equity does nothing grudgingly or by halves. Its outstretched arm corrects but with loving kindness withhold." Stitt v. Stitt, 205 Mo. 155, 103 S. W. 547 (1907). 5—"When equity lays hold of a subject-matter it does not lift its hand until plenary and perfect justice is done as near as may be under the issues". Jelly v. Lamar, 242 Mo. 44, 145 S. W. 799, (1912). 6—"It is the desire as well as the duty of this court never to do justice by the halves, —never merely to beget business for another court,—and never, when a case is fairly within its jurisdiction to leave open the door for litigation farther or in any other place, if it can possibly be here closed." Decker v. Caskey, 1 N. J. Eq. 427. 7—"Equity will not permit litigation by piecemeal, but will determine the whole controversy where all the facts and parties are before it." Curtin v. Krohn, 4 Cal. A. 131, 87 Pac. 243, (1906).

regards it as being ancillary to the maxim that "Equity will not suffer a wrong to be without a remedy." He cites as an example of the latter maxim that courts of equity have no jurisdiction to give damages or compensation, when these constitute the sole grounds of the bill, but that where the bill seeks other relief which can be had in equity alone and damages are incidental to this relief, equity having proper possession of the case will proceed to determine the whole case. This maxim is indeed the source of the whole of equity jurisdiction, as it affords a relief wherever a right exists, and no adequate remedy at law is available. The maxim is sometimes vindicated by denying that a wrong exists when no remedy can be afforded. But the maxim that "Equity delights to do justice and not by halves" is not an independent source of jurisdiction. Jurisdiction is a prerequisite to its application. Moreover, an adequate remedy at law is no bar to the application of the maxim once equity has jurisdiction of the case.³

The following rules govern the application of the maxim:

Rule 1. When a court of equity acquires jurisdiction of a controversy for any purpose, it will, as a general rule, proceed to determine the whole controversy and to award complete relief, although in so doing it may decide purely common law reliefs, which standing alone would furnish no basis for equity jurisdiction. One of the most outstanding, as well as one of the earliest, cases showing the application of this particular phase of the maxim, is that of *McGowin v. Remington*.⁴ In that case the defendant was in possession of certain chattels belonging to the claimant. Some of the chattels had a unique value for the plaintiff, and he sued in equity to have the specific chattels of unique value returned to him. The court of equity decreed that even though some of the chattels were not of such a nature that it would ordinarily have ordered their return, still, since some of the chattels were of such a nature that their specific return should be ordered, the court would follow the maxim and extend its jurisdiction to include all the chattels; and the return of the entire list of chattels was therefore ordered.⁵

³For a discussion of the doctrine that where equity obtains jurisdiction for one purpose, it retains it to afford complete relief, see 16 Cyc. of Law and Procedure, pps. 106-108 and 133, 134.

⁴12 Pa. 56 (1849).

⁵See also *Wally v. Wally*, 286 Pa. 414 (1926); *Moore v. Doyle*, 85 Pa. Super. 406 (1925); *Allison's Appeal*, 77 Pa. 221, (1874); Delaware

Rule 2. Rule (1) will not be applied where only some incidental feature of the controversy is of equitable cognizance so as to enable the court of equity to decide the main subject of the controversy, if for the latter there is an adequate common law remedy. In *Graeff v. Felis*,⁶ the court says, "The rule that equity having acquired jurisdiction of the case may decide all matters incidentally connected with the issue does not apply to a case where only some incidental matter is of equitable cognizance, and it is sought to draw in the main subject of controversy which has a distinct and appropriate remedy of its own."

Rule 3. Where the bill discloses no ground of equitable jurisdiction, or where the evidence fails to establish the allegations in the bill upon which the jurisdiction of the court of equity is based, the court will not retain the bill for the purpose of deciding purely common law questions and enforcing purely common law claims. In the case of *Kerlin v. Kipp*,⁷ the vendee sued the vendor for specific performance of a written contract for the sale of real estate. At the hearing, it appeared that the land had already been sold to an innocent purchaser for value and that the vendee had knowledge of that fact. The vendee claimed, nevertheless, that equity should retain jurisdiction so as to assess the damages caused by the breach of the contract by the vendor. The court, in dismissing the bill, stated that in such cases there was an adequate remedy at law and that therefore equity would not retain the bill to assess the damages.

A seeming exception to this rule is found in the case of *Tidewater Pipe Company v. Bell*.⁸ In that case there was a dispute regarding property and one of the claimants took forcible possession from the other. Upon a bill in equity being filed, the court proceeded to restore the original status and charge the wrongdoer with all costs, expenses and damages resulting from his wrongful conduct. Then at the request of the innocent party, the court of equity decided to determine the question of title also, even though but for the other's wrongful conduct that question would have been cognizable only in a court of law. The court

& Lackawanna Western Rwy. Co. v. The County Commissioners of Luzerne County, 241 Pa. 83 (1913); *Hurst v. Brennan*, 239 Pa. 217 (1913); *Holden v. Berstein Manufacturing Co.*, 232 Pa. 366 (1911).

⁶200 Pa. 137 (1901).

⁷207 Pa. 649 (1904). See also *Ahl's Appeal*, 129 Pa. 63 (1889).

⁸280 Pa. 104 (1924).

based its decision upon the fact that the respondent had failed to challenge the jurisdiction of the court of equity either by answer or demurrer, and that it therefore had the right, in following out the maxim under discussion, to decide the question of title. The right of Pennsylvania courts to so decide such questions can also be sustained under the act of June 7, 1907, P. L. 440, which states that a defendant who challenges the jurisdiction in equity, must explicitly raise this issue by demurrer or answer. But without such a statute upon which to rely, it is debatable whether a court of equity should so decide a common law question where there appears no ground for equitable jurisdiction in the first instance.

Rule 4. Rule (3) is subject to the qualification that if the circumstances at the commencement of the action were such as to warrant the granting of equitable relief, and the granting of such relief has, during or pending the suit, become impracticable, the court of equity may retain the bill and award damages if the plaintiff is entitled thereto. In *Mason's Appeal*,⁹ the relief asked for in the bill was an injunction to prevent the use of a party wall by the defendant. On the hearing the plaintiff showed his title to relief, but the proofs also showed that the defendant had already built against the wall. Upon this state of facts, the court, to prevent a failure of justice, and to avoid further litigation, ascertained the compensation which should be made to the plaintiff for the use of the wall. This qualification is applied to Rule (3) by some courts even though the granting of the equitable relief had become impracticable at the time of the commencement of the suit, provided the plaintiff did not know the circumstances which had rendered the equitable remedy impracticable at the time that he brought suit.¹⁰

Rule 5. Rule (1) enables the court to determine only those questions and rights which are dependent upon or germane to the main purpose of the bill. It does not enable the court to decide independent controversies beyond the scope of that raised by the bill. In *Bittenbender v. Kemmerer and Bittenbender*,¹¹ there was a bill in equity to set aside an agreement to dissolve a partnership on the ground of mental incapacity of the plaintiff when he signed the

⁹70 Pa. 26 (1871). See also *Blood v. Erie Dime Savings & Loan Co.*, 164 Pa. 95 (1894).

¹⁰*Latta v. Hax*, 219 Pa. 483 (1908).

¹¹185 Pa. 135 (1898).

agreement. Sufficient evidence was given to show that at that time the plaintiff was of sound mind. The plaintiff then asked that equity retain the bill to work out incidental equities of the parties arising under other controversies. The court in dismissing the bill denied their jurisdiction so to do.

Rule 6. Rule (1) operates in favor of the defendant as well as the plaintiff. In *Rosenberger v. Kuesel*,¹² there was a bill in equity for an accounting. It was held that the court should, so far as was possible, award the fund on hand so as to give each partner the amount to which he was entitled under the articles of copartnership; and should, in addition, enter a decree requiring payment of any unpaid balance due from one partner to the other. This it should do in favor of a defendant, if he is legally entitled to be paid, though he has not filed a crossbill asking for such relief.

Rule 7. The relief incidentally granted under the operation of Rule (1) must, however, ordinarily be authorized by the pleadings. The plaintiff should request it in his bill specially or should use a prayer for general relief, and a defendant should ask for such relief in his answer. In *Winton v. Morss*,¹³ a complainant in equity, who had filed a bill praying that certain conveyances of real estate be declared to amount to a mortgage, obtained a decree in his favor, by the terms of which he was declared to be entitled to a conveyance of said real estate on the payment of certain sums of money by him to the defendant. The complainant failed to pay such sums, although the conveyances were executed and tendered by the defendant. It was held that the court, on the filing by the defendant, of a petition in the nature of a supplementary bill to enforce the decree, might order the amount of rent in the hands of the lessee of said real estate to be paid by him to the defendant, to apply on the original decree, and that though a court of equity had no jurisdiction to decree a sale of mortgaged premises at the instance of a mortgagee, in a distinct and independent proceeding, it was nevertheless justified, under the circumstances, in ordering a sale of the real estate in question, if, within a specified time, the amount due by

¹²292 Pa. 195 (1928); See also *Wally v. Wally*, supra; *Kelly v. Shay*, 206 Pa. 208 (1903); *Findley v. Warren*, 248 Pa. 315 (1915); *Shingle v. Smyth*, 248 Pa. 359 (1915); *Winton v. Morss*, 97 Pa. 385 (1881).

¹³97 Pa. 385 (1881). This was before crossbills had been abolished,

complainant to the defendant was not paid, the purchase money to be applied on account of the amount so due.

Rule 8. *United Drug Company v. Kovacs*,¹⁴ is an authority for the rule that while a court of equity which has obtained jurisdiction for any purpose will ordinarily round out the whole circle of controversy between the parties, still it cannot do this as to a right based on a statute which clearly specifies an entirely different jurisdiction for establishing and enforcing the liability.

A full and complete discussion of the application of this maxim cannot be presented in a few rules as stated above, but, the author feels that these rules cover the vast majority of the cases wherein the maxim has been followed.

W. HUDSON R. UNGER.

WIDOW'S AND CHILDREN'S EXEMPTION IN PENNSYLVANIA.—“The widow shall remain in her husband's capital mansion house for forty days after his death during which time her dower shall be assigned. These forty days are called the widow's quarantine.”¹ Thus originated what today in Pennsylvania is known as the “widow's and children's exemption.” The purpose of such an allotment is to protect the family from financial distress in the period immediately following the death of the husband or father, so that one bereavement be not followed by another - loss of subsistence.²

The present statutory authorization allowing the widow's exemption is Section 12a of the Fiduciaries Act of 1917³ which, in effect, provides that the widow, or children, in case of no widow, shall *retain* property or the proceeds thereof in the amount of five hundred dollars.. Section 6 of the Intestate Act of 1917⁴ providing that one year's wilful and malicious desertion by a wife shall forfeit her interest in the deceased's estate has no application in determining the validity of a widow's claim for exemption under the Fiduciaries Act.⁵

¹⁴279 Pa. 133 (1924).

¹Blackstone's Commentaries. Vol. 2, Ch. 8, Page 135.

²*Sipes v. Mann*, 39 Pa. 414 (1861); *McGovern's Estate*, 19 Berks (Pa.) 347 (1927).

³P. L. 447.

⁴P. L. 829.

⁵*Braum's Estate*, 86 Pa. Super. 245 (1926); *Stauffer's Estate*, 89 Pa. Super. 531 (1926).