Volume 43
Issue 1 *Dickinson Law Review - Volume 43, 1938-1939*

10-1-1938

# Equity Acts in Rem

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# Dickinson Law Review

Published October, January, April and May by Dickinson Law Students

VOLUME XLIII | OCTOBER, 1938 | NUMBER 1

Subscription Price $2.00 Per Annum | 75 Cents Per Number



## NOTES

### EQUITY ACTS IN REM

INTRODUCTION

"Equity acts in personam, and not in rem." This maxim, at one time expressing a rule without exception, has now become little more than a mnemonic clause to enable the student to remember the fundamental theory underlying equitable procedure. It is the purpose of this note to explain in part, at least, this categorical statement.

The maxim has been defined generally as meaning that equity dealt primarily with the person, and usually only through him with the *res*;[1] or that a decree of chancery spoke in terms of personal command to the defendant, but its directions could only be carried into effect by his personal act.[2] Another writer

[1] 21 C. J.; No. 183, p. 194.
[2] Pomeroy, Equity Jurisprudence; No. 428, p. 206.

has said of the maxim, that "it is almost always used to express the characteristic form and mode of enforcement of equity decrees, which command the party to do, or refrain from doing, some act, enforced by coercion applied to the person, as distinguished from the ordinary judgment at law which establishes a right in the plaintiff, enforced by action of the officers of the state."[3] The origin of this method of procedure has been ascribed to the fact that "in the infancy of the court of chancery, while the chancellors were developing their system in the face of a strong opposition, in order to avoid a direct collision with the law and with the judgments of the law courts, they adopted the principle that their own remedies and decrees should operate in personam upon defendants and not in rem."[4]

However, all these attempted definitions are inadequate to give us an intelligent understanding of the maxim. Yet such an understanding is essential if we are to grasp what departures have been made in present day equitable procedure. Hohfeld[5] states that the phrases *in personam* and *in rem,* in spite of the scope and variety of situations to which they are commonly applied, are more usually assumed by judges, lawyers, and authors to be of unvarying meaning and free of ambiguities, the exact opposite of which is, however, true. He goes on to state:

> ". . . . the antithetical pair of expressions, *in personam,* and *in rem,* is constantly being employed as a basis for classifying at least four distinct matters; and the respective meanings . . . are not the same for all of the different situations involved: First, we have a fundamental classification of primary rights as *rights in personam,* and *rights in rem;* second, there is the well-known classification of all judicial proceedings into *proceedings* or *actions in personam* and . . . *in rem;* third, there exists the closely related classification of *judgments* and *decrees* (and the corresponding *jurisdictions* of courts) . . . *in personam,* and . . . *in rem;* fourth . . . such *enforcement* is . . . in *personam,* or . . . *in rem.*"[6]

In the treatment to follow, the reader must bear in mind, both in scrutinizing statutes to be considered, and in analyzing cases to be cited, just with which of the above four breakdowns the legislature or the courts are dealing.

While it is true, as we have observed, that equity originally acted only in personam, yet numerous situations developed where such action was inexpedient, impracticable, and ineffective; and the law courts, because of rigidity of form, and the peculiarity of their remedies, were unable to grant relief. Suppose, for example, that the legal title of a trustee became vested in one incompetent to act as trustee or to convey the legal title to a successor; equity, acting only in per-

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[3]McClintock, Equity; 48. The author further states, "In modern times the maxim that equity acts in personam has been used particularly in determining the territorial jurisdiction of courts acting as courts of equity . . ."

[4]Pomeroy, Eq. Juris.; No. 428, p. 206.

[5]Hohfeld, Fundamental Legal Conceptions, 26 Yale L. J. 713.

[6]Id., 714, 715.

sonam, could appoint a successor to act as a trustee, but could not vest the legal title in him, nor could it order the title to be conveyed, since the holder had no power to convey.[7] Or, suppose A, a non-resident vendor, contracts with B, a vendee to convey land located where B resides; here equity, requiring jurisdiction in personam, would be helpless to compel A to convey legal title if A remained out of the court's territorial jurisdiction making personal service impossible.[8] Or assume a situation where a non-resident's claim constituted a cloud on title to land within the court's jurisdiction;[9] here also a court of equity would be helpless if it acted only in personam.

Many more comparable situations could be cited. It suffices to say that the frequent recurrence of such prayers for relief which equity could not grant led some courts, without statutory authority, to act upon jurisdiction in rem;[10] while others were enabled, by means of statutes,[11] where the *res* is within the court's jurisdiction to notify the defendants in some form or another, and act on the jurisdiction *in rem* thus acquired. Pennsylvania has such a statute, and it is the purpose of this article to consider some of the changes wrought by it, and some of the problems it has created.

THE ACT OF 1859

The Act of 1859[12] provides as follows:

> "It shall be lawful for any court of this Commonwealth having jurisdiction, upon the special motion of the plaintiff or plaintiffs, in any suit in equity which has or shall be instituted therein, concerning goods, chattels, lands, tenements, or hereditaments, or for the perpetuating of testimony concerning any lands, tenements and so forth, situate or being within the jurisdiction of such court, or concerning any charge, lien, judgment, mortgage or encumbrance thereon, or where the court have acquired jurisdiction of the subject matter in controversy, by the service of its process on one or more of the principal defendants, to order and direct that....any....process . . . be served upon any defendant or defendants therein, then residing or being out of the jurisdiction of such court, wherever he, she or they may reside or be found . . . and to proceed as effectually as if the same had been made within the jurisdiction of such court . . . . ."[13]
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> "Whenever it shall appear to the satisfaction of the court . . . that any defendant or defendants in any such suit . . . cannot, upon

[7]Feribee v. Proctor, 19 N. C., 439; see Pennsylvania Rules of Equity Practice, Rule 87.
[8]Garfein v. McInnis, 248 N. Y. 261; 162 N. E. 73 (1928); Act 1901, Apr. 19, P. L. 83. No. 1.
[9]Tennant's Heirs v. Fretts, 67 W. Va. 569; 68 S. E. 387 (1910).
[10]Clark, Equity, 563.
[11]21 C. J., No. 367, p. 358.
[12]Act of 1859, Apr. 6, P. L. 387; 12 P. S. 1254-1256
[13]Id. No. 1.

diligent inquiry, be found, so as to be personally served with any process to be had therein, it shall be lawful for such court . . . to make an order upon such defendant or defendants similar to the requirements of such process, specifying the time when compliance therewith must be made, and . . . to proceed as fully and effectually as if such process had been duly served within the jurisdiction of such court: Provided, That a statement of the substance and object of the bill, . . . . and a copy of such order . . be published in such one or more newspapers, and at such times as such court shall, by special order direct."[14]

"No order or process of contempt shall be made or issued under this act . . ."[15]

Any attempt to analyze intelligibly this statute seems naturally to give rise to three lines of inquiry: First of all, we wish to determine upon what theory the validity of such legislation, so apparently revolutionary of the historical maxim that "equity acts in personam," can be sustained; secondly, what are the requisites for invoking the statute; and finally, how extensive is the application of such a statute. The first disposes of constitutionality, the second, of jurisdiction, and the third, of decrees or judgments. We can best answer these problems by considering the interpretations placed upon this and similar acts by the courts.

CONSTITUTIONALITY

The basis of all real equitable procedure in Pennsylvania is statutory.[16] Yet the mere fact that this additional power has been given by statute does not make it valid. It has been the policy of our jurisprudence to bring non-residents within the jurisdiction of our courts only in very special cases. Commenting upon this policy, it was said in *Coleman's Appeal*,[17] "We may congratulate ourselves that such has been the policy, for nothing can be more unjust than to drag a man thousands of miles, perhaps from a distant state, and in effect compel him to appear and defend under the penalty of a judgment or decree against him pro confesso. The Act of 1859 ought, therefore, to receive a construction in harmony with this policy. There seems no good reason why courts of equity should be invested with a more enlarged jurisdiction against non-residents than courts of law." For a court to have jurisdiction over the person or property of an alien, either that person or his property must be within the territory. Chief Justice Gibson stated in *Steel v. Smith*[18] that an exercise of jurisdiction without this

[14]Id. No. 2.

[15]Id. No. 3.

[16]Morton's Estate, 201 Pa. 269 (1902).

[17]Coleman's Appeal, 75 Pa. 441 (1874).

[18]Steel v. Smith, 7 W. & S. 447, cited with approval in Wallace v. United Electric Company, 211 Pa. 473.

presence or situs would be an "act of usurpation," adding further, that jurisdiction of property does not draw after it jurisdiction of the owner's person.

Since the Act of 1859 purports to give courts jurisdiction over defendants, all or some of whom are without the territory, it must follow, then, in view of the aforestated principles, that the Act depends for its validity, upon the presence within the territory, of some property, or *res* which forms the subject matter of the suit, and the object of the decree. That is precisely what the Supreme Court of the United States held in the leading case of *Pennoyer v. Neff*,[19] involving an Oregon statute comparable to ours.

Said the court:

> "Substituted service, by publication or in any other authorized form, may be sufficient to *inform parties* of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale . . . Such service may answer in all actions which are substantially proceedings *in rem*. But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in personam, constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one state cannot run into another state, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the state where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the state, and process published within it, are equally unavailing in proceedings to establish his personal liability."[20]

In *Boudwin v. Boudwin*,[21] plaintiff wife filed a bill in equity against defendant husband, a non-resident, complaining that he had deserted her and refused to support her. She invoked statutory remedies providing for service under the Act of 1859,[22] against defendant's property in the county of suit. The

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[19]Pennoyer v. Neff, 95 U. S. 715 (1877)

[20]Id., 726.

[21]Boudwin v. Boudwin, 320 Pa. 147 (1936).

[22]Acts of May 23, 1907, P. L. 227, No. 2; Apr. 27, 1909, P. L. 182, No. 1; July 21, 1913, P. L. 867, No. 7: Whenever any man has heretofore separated, or hereafter shall separate, himself from his wife, without reasonable cause, or whose whereabouts are unknown, and, being of sufficient ability, has neglected or refused or shall neglect or refuse to provide suitable maintenance for his said wife, proceedings may be had against any property, real or personal, of said

court granted an order directing service on the defendant, calling for the entering of an appearance and the filing of an answer, *with notice that failure to appear and answer would result in a decree pro confesso.* Affidavit was filed, stating that defendant had been served out of state; appearance was entered for defendant *de bene esse*,[23] and court was petitioned to set aside service. On the court's refusal, and defendant's appeal, the Supreme Court stated: "The acts of Assembly authorizing a proceeding such as this one could not grant authority to a chancellor to require a defendant outside the jurisdiction of the court to appear and answer. The proceeding . . . is one purely in rem. It may be proper to give a defendant . . . notice . . . He may ignore the notice if he likes . . . The proceeding will go ahead against any property of his within the jurisdiction which the court has taken within its grasp."[24]

The court reversed the action of the lower court, remanding it for disposition in rem. It is interesting to observe that after the lower court entered its decree in rem, defendant filed a bill in the United States District Court for the Eastern District, seeking to enjoin the enforcement of the decree upon the ground that its effect is to deprive him of property without due process of law. There again he lost, the Court holding that, "under these circumstances Boudwin cannot be heard to object that he did not have notice of the proceedings, nor an opportunity to defend; *this, however, is all that the due process clause guarantees him.*"[25]

What conclusions, then, can we draw at this point? It appears certain, at least, that legislation of this character does encroach upon an almost *laissez-faire* policy of the courts where non-residents are concerned. Yet, such an encroachment, so-called, is valid if kept within recognized bounds, that is, if the court does not essay to entertain proceedings other than those directly affecting some res concededly within the court's territorial jurisdiction. Our task now is to determine just when, and how, and in what types of actions, the court has this jurisdiction.

JURISDICTION

In studying the phraseology of the statute, we see that the legislature starts out with the broad general statement that "it shall be lawful . . . in *any* suit in equity . . ." The latitude of this beginning, however, is restricted by modifying clause which limits "any suit" to four specific classes of cases, viz., (1) concerning goods, chattels, lands, tenements, or hereditaments, (2) for the perpet-

husband, necessary for the suitable maintenance of the said wife; and the court may direct a seizure and sale, or mortgage, of sufficient of such estate as will provide the necessary funds for such maintenance; and service upon the defendant shall be made in the manner provided in the act of General Assembly, entitled "An act to authorize the execution of process in certain cases in equity, concerning property within the jurisdiction of the court, and on the defendants not resident or found therein," approved the sixth day of April, one thousand eight hundred and fifty-nine.

[23]Preliminary questions of jurisdiction under the Act of 1859 are properly raised in accordance with the Act of Mar. 5, 1925, P. L. 23; Lackawanna Company v. James, 296 Pa. 225

[24]Boudwin v. Boudwin, supra, at 149.

[25]Boudwin v. Boudwin, (Dist. Ct. E. D. Pa.) 20 Fed. Supp. 903.

uating of testimony concerning the same, (3) concerning any charge, lien, judgment, mortgage or encumbrance on the same, and (4) where the court has acquired jurisdiction of the *subject matter* in controversy by serving one or more of the principal defendants. Still further are these first three classes of cases modified by the provision that the *res* must be situated within the court's jurisdiction; and a comparable provision limits the fourth class to those cases where the subject matter can be brought within the jurisdiction by personal service on a principal defendant.[25a] In *Vandersloot v. Pa. W. & P. Co.*,[26] where the property was a dam extending partly into an adjoining county, the court refused relief because the property was not "situate within the jurisdiction." In *Eldredge v. Eldredge*,[27] the court held that a mortgage is personal property, and therefore governed by the principle *"mobilia sequuntur personam"* (movables follow the person), hence can be reached only where the mortgage creditor is. In still another interesting case,[28] the plaintiff administrator filed a bill in equity in Philadelphia County, averring that a few days before decedent's death, defendant by fraud and undue influence, had inveigled plaintiff into transferring to defendant an account in the Savings Fund Socicty of Philadelphia, five hundred eighty-nine shares of stock of the United Gas Improvement Company, and a mortgage on Philadelphia premises. Defendant resided in Montgomery County, and the bill was served there under the Act of 1859; at the time of service the title papers evidencing ownership of the property were in the actual possession of defendant. There the court held that the bank account, mortgage, and stock certificate were not within the jurisdiction, being personal property and hence follow the domicile of the owner. However, the court indicated, and properly so, that the subject matter might be brought into the jurisdiction by personal service on the principal defendant. In connection with this, it was held in *The Lebanon Valley Consolidated Water Supply Co. v. Commonwealth*,[29] that the Act does not. in an action to compel delivery of bonds secured by a mortgage on *lands* in the county where instituted, warrant service on the defendant in a different county.

A still further question arises from a mere reading of the statute, namely, what is meant by "principal defendant." Several cases have turned on this very proposition. Although the courts couch their definition in very general terms, making it necessary to decide each case on its own facts, it might be well to observe what is said. Every case considering this issue has quoted with approval the following excerpt from *Joy v. Wirtz*:[30]

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[25a]60 C. J. 672 defines subject matter as "the cause; the object; the thing in controversy; the thing in dispute." See also Eldredge v. Eldredge, 128 Pa. Super. Ct. 284, n. 290; Gallagher, Adm. v. Rogan, 322 Pa. 315, 318. The legislative intent as to the meaning here is questionable, and the cases to date have not been involved in that precise problem.

[26]Vandersloot v. Pa. W. & P. Co., 259 Pa. 99 (1917).

[27]Eldredge v. Eldredge, 128 Pa. Super. Ct. 284 (1937).

[28]Gallagher, Admr. v. Rogan, 322 Pa. 315 (1936).

[29]Lebanon Valley Consolidated Water Supply Co. v. Commonwealth, 257 Pa. 284 (1917).

[30]Joy v. Wirtz, 1 Wash. C. C. Rep. 518.

> "In deciding who ought to be parties, it is necessary to distinguish between active and passive parties; between those who are so necessarily involved in the subject in controversy and the relief sought for, that no decree can be made without their being before the court: and such as are formal or so far passive, that complete relief can be afforded to those who seek it, without affecting the rights of those who are omitted."

In *Whittaker v. Miller*,[31] the Supreme Court stated, "If such unincorporated association may be dissolved and its assets distributed to those entitled thereto without the joinder of William Culp as a defendant, he is not a principal defendant within the scope of the Act of 1859 . . . It appears that William Culp, the treasurer, has no more control over the affairs of the unincorporated association than any other member thereof . . . that his duties are ministerial only."

Up to this point, we have seen that the general requisites for jurisdiction under this Act are a *res*; and that *res* must be within the court's jurisdiction, or brought within it in a particular manner. Further than that, the suit must concern that *res*. It is on this very requisite that the fate of the Act hangs; for by their interpretation, the courts may or may not render the statute abortive for all practical purposes. So frequently have the courts held that the type of action to be entertained under this Act depends to a great extent on the type of decree sought, or which must of necessity be given, that it is deemed expedient to consider this phase of jurisdiction along with the problem of just what kind of decree this statute does permit. We can best handle the matter by observing general requirements laid down, following that with instances of the court's action in specific cases.

### Actions and Decrees

In the first three types of cases covered by the Act, our courts have consistently and rigidly held that the Act authorizes only a decree *in rem*. In *Atlantic Seaboard Natural Gas Co. v. Whitten*,[32] the Supreme Court stated, "It is well settled in this court that a decree against a defendant personally is not within the purview of that Act." And in *Hughes v. Hughes*, the limitation was more forcibly defined as follows: "Even if the defendant had been served with strict regard to the provisions of the Act of 1859, no jurisdiction would have been conferred upon the Court to make personal decrees . . . No form of constructive service, whether substituted . . . or by publication, can give a court power to make a binding decree in personam against a non-resident: it would not be due process of law."[33]

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[31]Whittaker v. Miller, 301 Pa. 410 at 413 (1930).

[32]Atlantic Seaboard Natural Gas Co. v. Whitten, 315 Pa. 529, 532 (1934).

[33]Hughes v. Hughes, 306 Pa. 75 (1932).

In the fourth class of cases, that where service is made on a principal defendant, the decisions had until recently conveniently evaded the question of decrees by disposing the case on the issue of whether or not the defendant was a principal one. Now, however, our Supreme Court has committed itself in the case of *Shipley Massingham Co. v. Mutual Drug Co.*,[34] and in a *per curiam* opinion states: "The court is unwilling to break the unbending rule as to service of process on a non-resident defendant where the decree prayed for is in personam."

It appears, in the light of the foregoing, that the plaintiff's problem will be to persuade our courts to say that his suit is a proceeding in rem. And, if past decisions permit of prognostication, we can safely say he will find the Pennsylvania courts anything but friendly.

In *Gallagher, Admr. v. Rogan*,[35] our Supreme Court lays down this general distinction:

> "There is a wide distinction between a course of judicial procedure, the object of which is to subject the *res* to the power of the State directly by the judgment or decree which is entered, and a procedure which only affects or disposes of the *res* by compelling a party to the action to control or dispose of the *res* in accordance with the mandate or decree. The former is a proceeding *in rem*; the latter is a proceeding *in personam*. The suit before us is not specifically directed toward the *res*; it is directed toward the owner of the *res*."

Through their decisions, the courts have quite strictly applied this distinction. A reading of some of the cases will illustrate this conclusion.

A case which probably has engendered considerable doubt is that of *The Atlantic Seaboard Natural Gas Co. v. Whitten*,[36] where the opinion was delivered by Justice Maxey. The case involved a suit for specific performance of a contract to lease oil lands within the court's jurisdiction. Service was had against the Honolulu defendant owner in accordance with the Act of 1859, and the relief sought was either a decree directing specific performance by the defendant, or directing the prothonotary to execute a lease. The court refused plaintiff's prayer, holding it to be well settled that, in the absence of any statutory modification, a suit to compel specific performance of a contract to lease real property (or to convey real property) is a suit *in personam*, besides having jurisdiction *in rem*.[37]

[34]Shipley Massingham Co. v. Mutual Drug Co., 329 Pa. 552 (1938).

[35]Gallagher, Admr. v. Rogan, 322 Pa. 315 (1936).

[36]Cited, supra.

[37]Act of 1901, Apr. 19, P. L. 83, No. 1: "In any proceedings at law or in equity, in any of the courts of this Commonwealth having jurisdiction, if the said court shall order a conveyance to be executed by either of the parties to the said proceeding of his or her interest in any lands or tenements to any other party or person, and the party so ordered shall neglect or refuse to comply with the said order and make the said conveyance, or shall die, flee . . ., or become insane without having complied, it shall be lawful for said court to order and direct that such conveyance be made by the sheriff, prothonotary, or clerk, by a trustee specially appointed . . Provided, that this shall not prevent the said court from punishing the contempt of the said party by fine and imprisonment, if deemed necessary."

Would not our statute of 1859 have been sufficient license for the court to have granted relief in the lease case, on the theory that the proceeding was in rem? One writer has stated:

> "An examination of the proceedings in a suit for specific performance will disclose that it is in reality a proceeding in rem. The suit is commonly thought of as brought to enforce a personal duty to convey, but a consideration of what is actually done in such a suit suggests a different view. The principal object of the suit is to deprive the defendant of his interest in a particular thing . . . Moreover, there are at present statutes in nearly every jurisdiction giving courts of equity power to pass legal title to property either directly by the decree of the court or indirectly by a deed executed by some person appointed by the court. Clearly under such statutes, a suit in equity for specific performance against the vendor (lessor) has become a proceeding in rem both as to its object and as to the effect of the decree and proceedings under it."[38]

The case of *Hollander v. Central Metal & Supply Co. of Baltimore City*[39] sustains this view. There the assignees of a lease containing a covenant of the lessor, upon payment of the amount specified, to convey the reversion, filed a bill in equity for specific performance of the covenant. Defendant lessors were non-residents, served in accordance with a statute very similar to ours. The court granted the relief, stating, "while the court could not enforce a decree requiring a non-resident to execute a deed for the property, its decree may be made effective, under the Code, by the appointment of a trustee to convey the title . . . and to that end the proceedings are in rem and not in personam."

While it is true we have no statute in Pennsylvania specifically authorizing the appointment of a trustee or other officer to execute a lease, as we have for deeds, yet it is questionable whether, in the presence of such statute, our court would follow Maryland. We do, however, have a rule of equity practice providing substantially the same thing;[40] but Justice Maxey negatived the applicability of this rule to the case in question. Some cases in foreign courts have rationalized that a statute such as our Act of 1859 conferring jurisdiction in rem

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[38]Hitchler, W. H., Equity Acts in Personam, 30 D. L. R. 61; citing Cook, Powers of Equity, 15 Col. L. R. 127; Hollander v. Central, etc., 109 Md. 131 (1909), 71 Atl. 442.

[39]Cited in footnote 38 supra.

[40]Supreme Court equity rule No. 87 provides as follows: "The court, or any law judge thereof, may also, in addition to the foregoing remedies, direct that the act required to be done, shall be performed, if possible, by the prothonotary of the court, in the name of and for the delinquent party, in the same way and manner and with like effect as if the latter had performed it, and this effect shall be given to it although the party is under disability by reason of infancy, lunacy, coverture or otherwise. It may also be decreed that any instrument so executed shall be recorded and registered, if this could have been done had the delinquent party obeyed the decree, the costs of drawing, acknowledging, recording and registering being charged against him."

necessarily implies power to enter appropriate decrees in rem.[41] Could not this have been a solution in the lease case, had the court desired to grant relief? In any event, there are justifiable arguments as to why our courts should have a change of heart in suits for specific performance where a res within the territory is to be affected directly, and if our courts place the burden upon the legislature, then it is time the legislature acts.

To conclude, we might briefly look at the label placed by our courts on other types of proceedings under this Act. A bill for discovery and accounting was held to be a proceeding in personam;[42] a bill to quiet title of lands was, by way of dictum, held permissible under the Act of 1859;[43] a bill by a wife, to subject the non-resident husband's property to proceedings for support, has been allowed;[44] a bill against a non-resident judgment creditor praying that judicial sale proceeds be ordered paid into court was held proper;[45] and a suit by an owner of land to enjoin non-residents, including state police, from interfering with beverage manufacture thereon, was held not an action in rem.[46]

H. LYNN EDWARDS

## CHARACTER EVIDENCE IN PENNSYLVANIA—A SUMMARY

The words "character" and "reputation," although frequently used interchangeably, are not synonymous in legal meanings. Character is that which a person actually is, morally. It is his disposition. Reputation is that which a person is by others thought or estimated to be.[1] Character pertains to the real person. Reputation pertains to the apparent person. Character is developed as a result of the doing of specific acts, and, with the possible exception of the situation where a self-analysis is in progress, must of necessity be viewed objectively. Reputation is the community opinion, being a composite estimation of both friends and foes, in which the respective prejudices may be expected to have become neutralized. In this sense, it is submitted that a not improper definition of reputation is that it is objective character. This definition may be justified on the ground that the reputation of the person whose character is the subject of inquiry becomes, in the minds of his observers, his character.

We may say, then, that reputation is merely evidence of actual character, and it is of necessity only an approximation of the truth. However, if the

[41]Bush v. Aldrich, 110 S. C. 491, 96 S. E. 922 (1918).
[42]Degan v. Kiernan, 326 Pa. 397 (1937).
[43]Atlantic Seaboard, etc., v. Whitten; supra.
[44]Boudwin v. Boudwin; supra.
[45]Shreve v. Shreve, 305 Pa. 425 (1931).
[46]Lunine v. Penna. Alcohol Permit Board, 305 Pa. 162 (1931).

[1]Hopkins v. Tate, 255 Pa. 56 (1916).