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Injunction: Police officers not enjoined from searching premises for intoxicating liquors; remedy at law adequate

Everett P. Doyle

In regard to the third proposition, the landlord could not be considered a purchaser for value and without notice so that he could say that the plaintiff was estopped from asserting his right to the possession of the garage.[4]

E. J. B.

Injunction: Police officers not enjoined from searching premises for intoxicating liquors; remedy at law adequate.—In *Joyner v. Hammond,* 200 N. W. 571 (Iowa), the court ruled that an injunction would not issue to enjoin the chief of police and his officers from searching the plaintiff's place of business for illegal liquor kept for sale. The plaintiff's premises had previously been searched several times and the plaintiff had grounds to believe they would be searched again and his business and property injured. He alleged that the former search warrants were issued upon mere suspicion. The plaintiff had brought no action for damages because of the previous searches and the opinion fails to discuss the findings as to whether the warrants were issued upon mere suspicion or upon probable cause. The court based its decision on the ground: first, that the plaintiff had an adequate remedy at law and second, that "an injunction will not lie to hamper and thwart the power and discretion of the police touching the performance of duties enjoined upon them by law." In other words, the court decided that an injunction will never issue to enjoin the police from searching one's premises under the statutory form of warrant, regardless of whether the warrant was issued upon mere suspicion or probable cause as the statute requires.

The court based its decision that the plaintiff had an adequate remedy at law on a number of cases and citations. None of them are cases or discuss cases precisely on all fours with this one but all discuss the principles applicable when it is sought to enjoin police officers from making arrests, and from interfering with private business in the exercise of their duties. A discussion of these cases individually would require too much space. The following are the most important rules laid down in them. Police officers cannot be enjoined from performing their duties of keeping the peace and seeing that the laws are obeyed. Where the actions of the police are necessary in the suppression of an unlawful business they cannot be enjoined because of incidental injury to a private individual.[1] Equity will not enjoin police officials from stationing officers near a place where liquor is sold, to warn intending patrons that the place is disorderly and subject to raid, since, assuming that the acts are illegal, if the assumption of fact is erroneous, that fact must be established by law in an action for damages.[2] Corpus Juris states the rule as follows: "Police officers will not be enjoined from performing their proper duties in the exercise of the general police

[4] Accord: *Walker-v. Grand Rapids Flouring Mill Co.,* 70 Wis. 92, 35 N.W. 332; *Wolf v. Klutch,* 147 Wis. 209, 132 N.W. 981.

[1] *Mart v. Grinnell,* 194 Iowa 499, 187 N.W. 471, 2 L.R.A. (N.S.) 678.

[2] *Delaney v. Flood,* 183 N.Y. 323, 76 N.E. 209.

power, even though the acts may be performed in an oppressive and unlawful manner." But immediately following we find the statement that "Where it is shown that illegal acts of police officers will result in irreparable injury to the property rights of complainant, if an injunction is not issued, injunctive relief will be available."[3] L. R. A. in a case note questions the law as laid down in *Delaney v. Flood* and suggests that "When one's business is injured by acts of the police officers the only remedies are an action at law for damages, and a prosecution of the police officers under a provision of the Penal Code which would at most render them guilty of a misdemeanor and obviously these remedies might be practically inadequate in a case where the continuation of the unauthorized acts would result in the destruction of the business."[4]

The citations in the opinion to the effect that the motives of officers in instituting criminal proceedings under criminal statutes cannot be inquired into in an action for an injunction are all cases where an attempt was made to enjoin criminal prosecutions and the acts of the officers were directed against the person of the plaintiff rather than against his property.[5]

Should the recognized principle of law that the arrest of a person, although unlawful, cannot be enjoined, be applied where an injunction is asked to prevent police officers from interfering with and injuring private property by unlawful and illegal acts?

There is no question but that an injunction cannot be obtained to restrain police officers from searching a place of business under a search warrant issued on the complaint and affidavit of some third person, regardless as to whether or not that third person has probable cause for obtaining the warrant,[6] as long as the warrant is regular in all respects on its face. In such cases the police officers are only performing their duty; they are not doing any illegal act for they are protected by a warrant which is valid upon its face.[7]

But it appears that where the police officers themselves swear out the search warrants, an entirely different situation exists. Of course the person injured by the unjustifiable swearing out of the warrant would have his action for damages; but, as already stated, this is a very inadequate remedy. If an action were brought against an ordinary citizen to restrain him from swearing out search warrants without reasonable cause but merely for the purpose of annoying the individual whose property is to be searched or preventing him from enjoying his property or for the purpose of injuring him in his property rights there can be little doubt but what the injunction would issue in Wisconsin.[8]

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[3] 32 C. J. 261.

[4] *Pon v. Whitman*, 147 Cal. 280, 81 Pac. 985.

[5] *McDonald v. Denton*, 63 Tex. Civ. App. 421, 132 S.W. 823. Id. 104 Tex. 206, 135 S.W. 1148, 34 L.R.A. (N.S.) 453.

[6] Wis. Stats. Sec. 4839.

[7] *McLean v. Cook*, 23 Wis. 364; *Marks v. Wright*, 81 Wis. 572, 51 N.W. 882. *Holtz v. Rediske*, 116 Wis. 353, 92 N.W. 1105.

[8] *T. M. E. R. & L. Co. v. Bradley*, 108 Wis. 467, 84 N.W. 870.

Such cases as *Delaney v. Flood (supra),* which have never been overruled, though severely criticized in many jurisdictions, indicate that such an injunction could not issue against a police officer. In other words the illegal acts of a police officer which irreparably injure another's property rights cannot be restrained because a police officer has the public duty to keep the peace and see that the laws are obeyed. If such injunctions were issued his efficiency as an arm of the law might be impaired. *Delaney v. Flood* and the later cases stress the fact that the granting of such an injunction would be taking from the criminal courts, cases properly within their jurisdiction and giving equity courts jurisdiction of them. *T. M. E. R. & L. Co. v. Bradley, supra,* in which a criminal prosecution for assault and battery was enjoined because commenced merely for the purpose of annoying the plaintiff and injuring his property rights, deprecates such reasoning in this state, and makes the first reason the only logical one for such a decision.

As has been stated in case of illegal arrest it has long been recognized that the police cannot be restrained; but in such a case, there is an actual criminal proceeding instituted in which the guilt or innocence of the party must be determined. The criminal courts cannot be deprived of jurisdiction in such a case. But suppose an injunction is issued restraining the police from swearing out search warrants and proceeding to execute them without reasonable cause. Does such an injunction deprive the criminal court of jurisdiction? It is hard to see where it does. No direct criminal action has yet been started but merely an auxiliarly legal proceeding used by the police to obtain evidence which if it fails in its purpose will be dropped.

There is weight to the reason for refusing an injunction because of the position which the police occupy. They are a very important factor in carrying out the laws of the state and they occupy a position respected by the people. It is to the interest of all that they should not be hampered and deterred in performing their duties and it should not be within the power of anyone to obtain an injunction against them which might interfere with the performance of their duties.

On the other hand, the power of search and seizure is a dangerous one as is shown by the fact that we have an express constitutional provision that "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."[9] If courts refuse to issue such injunctions to prevent the police from obtaining search warrants without reasonable cause and proceeding under them, the value of this constitutional provision is certainly rendered negligible in many cases. Where the police officers are unscrupulous, owners might be forced to bribe them as the only practical method of protecting themselves from such illegal proceedings.

[9] *Wis. Const.,* Article I, section 11.

The writer can find but one Wisconsin case dealing with the question whether an injunction will issue against police officers. In that case the injunction was refused.[10] The case is not in point on the proposition discussed because the injunction was asked to restrain the police from arresting the plaintiff illegally and injuring his property. There is no question but that an injunction will never issue to prevent the police from making an arrest.

Four courts have held that an injunction lies to prevent police officers from committing illegal acts.[11] All of these were cases where the police officers were enjoined from committing trespasses upon property without lawful authority or any adequate reason or from searching or seizing property or arresting persons with absolutely no authority of law and without a warrant. It is hard to distinguish some of the New York cases from *Delany v. Flood,* but they all present a much stronger ground for an injunction; in fact, in all the cases the equity was very strong in favor of the plaintiff.

As a practical proposition it may be stated that the courts will generally look with disfavor upon any petition for an injunction against police officers, and one should have a very strong equitable claim for relief before attempting to secure such an injunction.

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Vehicles: Street car is "vehicle" and street car's failure to yield right of way held to justify a finding of its negligence.—It is undisputed that where both street railways and automobilists have the right to use the public streets, the rights of each must be exercised with due regard to the rights of the other and that such right must be exercised in a reasonable and careful manner so as not to abridge or interfere unreasonably with the right of the other.

That "the law of the road with reference to vehicles approaching at street intersections" applies equally to street cars as well as to all other vehicles was recently decided by the Supreme Court of Minnesota in the case of *Bradley v. Minneapolis Street R. R. Co.,* 201 N. W. 606 (Minn.). The plaintiff in that case was seriously injured when the automobile in which he was driving was struck by defendant's street car at a street intersection. The court did not hesitate to pronounce the defendant negligent by reason of the failure of its motorman to apply

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[10] *Gaertner v. City of Fond du Lac,* 34 Wis. 497.

[11] *American Steel Co. v. Davis,* 261 Fed. 800; *Kearney v. Laird,* 164 Mo. A. 406, 144 S.W. 904; *Rosenberg v. Sheen,* 77 N.J. Eq. 476, 77 A. 1019; *Constantine v. N.Y. City,* 116 Misc. 349, 190 N.Y. Supp. 372; *Hale v. Burns,* 101 Appl. Div. 101, 91 N.Y. Supp. 929; *Dinsmore v. N. Y. Bd. of Police,* Abb. N. Cas. (N.Y.) 436; *Adams Expr. Co. v. N. Y. Bd. of Police,* 65 How Pr. (N.Y.) 72; *Burns v. McAdoo,* 113 App. Div. 165, 99 N.Y. Supp. 51; *Hagan v. McAdoo,* 113 App. Div. 506, 99 N.Y. Supp. 255; *Levy v. Bingham,* 113 App. Div. 424, 99 N.Y. Supp. 258; *McGorie v. McAdoo,* 113 App. Div. 271, 99 N.Y. Supp. 47; *Hale v. Burns,* 101 App. Div. 101, 91 N.Y. Supp. 929; *Fairmount Athletic Club v. Bingham,* 61 Misc. 419, 113 N.Y. Supp. 905; *Cullen v. Bourke,* 93 N.Y. Supp. 1085.