

MISSOURI PACIFIC RAILROAD COMPANY *v.* HOBBS.

Opinion delivered February 11, 1929.

1. INJUNCTION—REPEATED TRESPASSES.—Equity has jurisdiction to prevent repeated trespasses on another's property by injunction, where the remedy at law for damages is inadequate, as where irreparable injury will result unless they are restrained.
2. INJUNCTION—MULTIPLICITY OF SUITS.—Equity has jurisdiction to restrain repeated trespassing on another's property to avoid a multiplicity of suits, especially where the wrongdoer is insolvent.
3. TRESPASS—RAILROAD PROPERTY.—The premises of a railroad company is private property, as between it and trespassers.

4. INJUNCTION—CONTINUING TRESPASS.—While courts of equity will not enjoin a mere trespass, they will interfere to prevent a continuing trespass, involving a multiplicity of suits at law, and which is both a grievance to the parties and a burden to the public.
5. CARRIERS—TRESPASSES AT RAILROAD STATION.—Equity will enjoin persons having no occasion to use railroad property for the purpose of transportation from continuous trespass on premises used for stations and depots, for the only purpose of meeting passengers and soliciting their patronage, the remedy at law being inadequate.
6. CARRIERS—DUTY TO PROMOTE PASSENGERS' COMFORT.—It is the duty of railroad companies to make arrangements to promote the comfort and convenience of passengers arriving or departing on its trains, as well as to protect them from annoyance while thereon.
7. CARRIERS—INJUNCTION AGAINST TRESPASSES—COMPLAINT.—A complaint alleging that defendant was trespassing daily on plaintiff's passenger station, platform and right-of-way, to sell sandwiches and other foods to passengers on or alighting from its trains in disregard of notices to keep off, thereby so annoying and harassing plaintiff in the conduct of its business as to amount to a nuisance, that foods sold by him are wrapped in papers and thrown on the ground, making it dangerous for passengers and causing extra expense in keeping ground clean, that defendant is wholly insolvent, and plaintiff has no adequate remedy at law, *held* sufficient as against a general demurrer.

Appeal from White Chancery Court; *Frank H. Dodge*, Chancellor; reversed.

STATEMENT BY THE COURT.

This appeal is prosecuted to reverse a decree sustaining a demurrer to and dismissing for want of equity appellant's complaint for an injunction to prevent the continued trespass of appellee upon its station, grounds and right-of-way at Bald Knob, in plying a business of peddling or selling sandwiches to passengers and persons upon incoming and outgoing trains.

It is alleged that appellant operates a railroad, as a common carrier, through the State of Arkansas, using station, grounds and a right-of-way 100 feet wide in the town of Bald Knob, and has a right to make such rules and regulations with regard to the use of said platform,

station grounds and right-of-way as necessary for the proper operation of the road, and that the defendant is in the daily habit of trespassing upon its passenger station, platform, depot grounds and right-of-way at Bald Knob, many times each day and night, and had been for many months selling his goods, wares and merchandise—sandwiches and other things to eat—to passengers upon its trains or those alighting therefrom. That he has been continually notified to cease such action and keep off its said premises and grounds for the business engaged in, but, in disregard of such notice, continuously for many hours each and every day continues to trespass upon its grounds and to sell his said wares and merchandise. That such continued trespasses have so annoyed and harassed plaintiff in the conduct of the business as to amount to a nuisance, and that the foods sold by appellee are wrapped in papers or shucks, and thrown upon the grounds, making it dangerous for passengers in getting on and off its trains, being liable to slip in stepping on such refuse. That they are unsightly, and cause extra expense to plaintiff in keeping its grounds clean and burning same. That the defendant is a man beyond middle age, and liable to be struck by some of its baggage or express trucks in the conduct of its business, and liable to fall and be injured by its trains. That defendant Joe Hobbs is a man without any property or means of any kind, and wholly insolvent. That plaintiff has no complete and adequate remedy at law, and brings this action to avoid a multiplicity of suits and protect itself from damages from such interference by the defendant, and that plaintiff will suffer great and irreparable injury unless defendant is restrained from such conduct and trespasses.

Defendant filed a general demurrer, and also alleged that plaintiff has a complete and adequate remedy at law. The demurrer was sustained, and, plaintiff declining to plead further, the cause was dismissed for want of equity.

Thomas B. Pryor and H. L. Ponder, for appellant.
Brundidge & Neelly, for appellee.

KIRBY, J., (after stating the facts). Equity has jurisdiction to prevent repeated trespasses upon the property of another by injunction, where the remedy at law for damages is inadequate, and also to restrain such trespassing, to avoid a multiplicity of suits, especially where the wrongdoer is insolvent. 32 C. J. pp. 140-144; 14 R. C. L. pp. 422-455; *Sanders v. Boone*, 154 Ark. 239, 242 S. W. 66; *Dufresne v. Paul*, 144 Ark. 94, 221 S. W. 485; *Boswell v. Jordan*, 112 Ark. 162, 165 S. W. 295; *Ellsworth v. Hall*, 33 Ark. 63; *Fletcher v. Pfeifer*, 103 Ark. 225, 146 S. W. 864.

It is said in C. J., *supra*, 140:

“It is now well settled that an injunction will apply to restrain acts of trespass which are continuously or constantly recurring, where irreparable injury will result, unless they are restrained, and the court will award the relief that the nature of the action demands, and the fact that the injury done or threatened is of a nominal character, or is insubstantial, or that the wrongful acts, when viewed separately, may not have materially impaired the use and enjoyment of the property affected, does not take away the jurisdiction of a court of equity to prevent the continuance of such wrongful act.”

The premises or property of the railroad company is private property as between it and trespassers, as appellee was alleged and by the demurrer conceded to be. In 14 R. C. L., page 455, it is said:

“While courts of equity will not ordinarily enjoin a mere trespass, yet they will interfere for the purpose of preventing a continuing trespass involving a multiplicity of suits at law, and which is both a grievance to the parties and a burden to the public. * * * Thus, the property of the railroad company is to be deemed in every legal sense private property, as between it and those of the general public who have no occasion to use it for purpose of transportation. A court of equity will

therefore enjoin such persons from a continuous trespass on the premises used for stations and depots, their only purpose being the meeting of passengers and solicitation of their patronage, the remedy at law, in a case of this character, being manifestly inadequate." Citing *Donovan v. Penn. Co.*, 199 U. S. p. 279, 26 S. Ct. 91; *N. Y. R. R. Co. v. Scovill*, 42 L. R. A., p. 157. See also note, 47 A. L. R. 564; *Joy v. St. Louis*, 138 U. S. 1, 11 S. Ct. 243; *Landre-gan v. State*, 31 Ark. 50; *Graham v. St. L. I. M. & S. Ry. Co.*, 69 Ark. 562, 66 S. W. 344.

It was the duty of the railroad company to take such action and make such arrangements as might promote the comfort and convenience of passengers arriving or departing on its trains, as well as for their protection from annoyance while thereon. The allegations of the complaint were sufficient to authorize the granting of the relief prayed, and the court erred in holding otherwise.

The decree is accordingly reversed, and the cause remanded with directions to overrule the demurrer, and for all further necessary proceedings in harmony with the principles of equity and not inconsistent with this opinion.
