

## GIFFORD v PAPILLON and others

Supreme Court  
Burford-Hancock, C.J.  
26 April 1887

*Injunction* — will be refused where the applicant is neither seeking the enforcement of an ascertained right nor the preservation of property.

The applicant brought an action against the Stewards of the Gibraltar Spring Race Meeting, claiming damages in respect of the exclusion from that meeting of his horse Phantom. He sought an interlocutory injunction to restrain the respondents from refusing to admit the entry of the horse.

**Held:** The application would be refused, because if the action were decided against the applicant, the status quo ante could not be restored.

**Per Curiam.** The fact that the respondents were not supporting a private claim but were volunteers acting for the public was a relevant consideration.

### Cases referred to in the judgment

*Sanxter v Forster*, (1841) Cr. & P. 302.

*G. W. R. v B. & O.*, I.R. 2 Ph. 597.

*Haines v Taylor*, (1846) 10 Beav. 75.

### Motion

This was a motion for the grant of an interlocutory injunction.

Cornwell, Q.C., for the applicant

Recano, Q.C., and I.A. Patron for the respondents.

**Burford-Hancock, C.J.** — The court is unable to entertain the motion for an injunction on the following grounds. An interlocutory injunction is a proceeding for the enforcement of an ascertained right, or for the preservation pendente lite of property in dispute until the legal right shall have been ascertained.

Lord Cottenham says <sup>1</sup> that the court ought not to interfere upon an interlocutory application for the purpose of preventing a party from enforcing a legal claim, without securing to itself the means of putting him in the same position in the event of his turning out to be right, as if the court had not interfered.

The same judge said in another case <sup>2</sup> that the court would in many cases interfere to preserve property in status quo during the pendency of a suit in which the rights to it were to be decided and that, without expressing and often without having the means of forming, any opinion as to such rights; that it is true the court will not interfere if it thinks there is no real question between the parties but that, seeing there is a substantial question to be decided, it will preserve the property until such question can be regularly disposed of; and that in order to support an injunction for that purpose it is not necessary for the court to decide upon the merits in favour of plaintiff; and that if the bill states a substantial question between the parties, the title to the injunction may be good, although the title to the relief prayed may ultimately fail. *But the circumstances of the case at the time when the motion is made must be such as to enable the court to interfere between the parties or to put the question between the parties into a course of trial* — and where that is not the case the motion will be at once refused. <sup>3</sup>

In the present case the plaintiff seeks not the enforcement of an ascertained right, nor the preservation of the subject matter of the action in status quo; he seeks at once to be placed in the position of having had a verdict in his favour and in a position too which affords no means of retreat should he ultimately prove to be in the wrong. How is it possible in any way to restore the status quo ante in the event of the action being determined adversely to the plaintiff? If the injunction is granted, plaintiff has it in his hands to keep the main question for ever undecided, and virtually to steal a verdict without going to trial. It is true that the court has in every case the power of hedging its injunction round with conditions framed for the preservation of the status quo, but in this case from its nature conditions would be inoperative, and the injunction once granted, no power on earth would avail to restore to the defendants their present position in the event of the cause being ultimately decided in their favour, and the court must not lose sight of the fact that the defendants are not supporting a private claim, but are volunteers, acting for the public, or for that section of the public interested in racing matters, and as such call for extra care on the part of the court that they be not unduly damnified.

Supposing the plaintiff to have used due diligence, to have exhausted all other remedies, and to be right as to the parties against whom he is proceeding, the questions of fact involved are essentially for assessors or a jury, the functions of which the court does not intend to usurp.

<sup>1</sup> *Sanxter v Forster*, (1841) Cr. & P. 302.  
<sup>2</sup> *G.W.R. v B. & O.*, i.R. 2 Ph. 597.

<sup>3</sup> *Haines v Taylor*, (1846) 10 Beav. 75.