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Comments

THE MANDATORY INJUNCTION IN LOUISIANA

LOUISIANA CODE OF PRACTICE:

Art. 296. Injunction, or prohibition, is a mandate obtained from a court, by a plaintiff, prohibiting one from doing an act which he contends may be injurious to him or impair a right which he claims.

In many particular situations the articles of the Louisiana Civil Code and Code of Practice contemplate the granting of specific relief, that is, protection or redress by way of performance or nonperformance of the necessary acts,¹ instead of the substitutive remedy, damages. In addition, a specific remedy is provided for general use, the prohibitory injunction.² But nowhere do the Louisiana codes expressly provide for use of the mandatory injunction as a general remedial device.

The court order commanding the actual performance of acts deemed necessary for the redress of injuries to others, known to modern Anglo-American law as the "mandatory injunction," is of ancient origin. In Roman law, the *interdicta* served, in the cases in which they were available, the function of a mandatory injunction.³ Obedience was impelled by the sanction of damages.⁴ The *interdicta* were apparently replaced, under the Justinian Code, by

1. See, for example, Arts. 634-637 (*distringas*), 829-844 (*mandamus*), La. Code of Practice of 1870; Arts. 1926-1928, 2046, 2086 (specific performance), 508 (demolition of works erected on the property of another), 865-868 (destruction of new works), La. Civil Code of 1870. See also Arts. 139-140 (*subpoena duces tecum*), 239-240 (attachment), 284-285 (provisional seizure), 630-632 (writ of possession), La. Code of Practice of 1870; Art. 170 (specific performance of apprenticeship agreement), La. Civil Code of 1870.

2. Arts. 296-309, La. Code of Practice of 1870.

3. The *interdictum* probably originated as an unconditional order, affirmative or negative in form. Engelmann and Millar, *A History of Continental Civil Procedure* (1927) bk. II, tit. II, c. 1, p. 311, § 48; Wenger, *The Roman Law of Civil Procedure* (1931) 5 *Tulane L. Rev.* 353, 386. In use about 300 B. C., at the earliest time of which we have definite knowledge, it was framed as a conditional command. The praetor did not himself inquire into the truth of the facts alleged by the applicant, but issued the *interdictum* subject to the express condition that the premises advanced by the applicant did in fact exist. Engelmann and Millar, *loc. cit. supra*. Different *interdicta* were developed to fit different types of cases. See Engelmann and Millar, *op. cit. supra*, at bk. II, tit. II, p. 312, § 48; Jolowicz, *Historical Introduction to the Study of Roman Law* (1932) 235-237; Wenger, *Institutes of the Roman Law of Civil Procedure* (rev. ed. transl. by Fisk, 1940) 245-254, § 24.

4. See Jolowicz, *loc. cit. supra* note 3; Wenger, *op. cit. supra* note 3, at 248-249, § 24.

a general power to grant specific as well as substitutional relief.⁵ Eighteenth century Spanish law recognized the mandatory court order.⁶ In France, the power of a court to order and to forbid was recognized in practice.⁷ English equity courts early recognized the injunctive remedy.⁸ The mandatory injunction followed in a more gradual development.⁹

The Louisiana Code of Practice sets forth rather detailed provisions to regulate the issuance of prohibitory injunctions, probably derived at least in part from Spanish and French sources.¹⁰ But Louisiana courts soon felt the need of a form of specific relief complementary to the prohibitory injunction. Like other legal systems, Louisiana found that damages were inadequate compensation for the invasion of certain legal rights. The prohibitory injunction was satisfactory so far as it went; but it covered only part of the need. Some form of relief which could be used to compel performance of acts was required in cases where only actual

5. See Sherman, *Epitome of Roman Law* (1937) 237, § 456.

6. See Scott, *Las Siete Partidas* (1931) 3.8.2, 3.32.1, 3.32.12, 3.32.16-17, 3.32.23; 2 Gregorio Lopez, *Las Siete Partidas* (1789) 3.8.2, 3.32.1, 3.32.12, 3.32.16-17, 3.32.23.

7. The device used is the *astreinte*, a court order enforced by the sanction of damages for each day that the order is not complied with. No direct authority for the procedure is found in the French Code of Civil Procedure, but some commentators argue that the incidental use of the word "*injonction*" in Article 1036 justifies it. See Esmein, *L'Origine et la Logique de la Jurisprudence en Matière D'Astreintes* (1903) 2 *Revue Trimestrielle de Droit Civil* 5, 49 et seq., an excellent discussion of the subject; 4 Garsonnet et Cézard-Bru, *Traité Théorique et Pratique de Procédure Civile et Commerciale* (3 ed. 1913) 25-26, n° 12; Japiot, *Traité Élémentaire de Procédure Civile et Commerciale* (3 ed. 1935) 145-146, n° 162. See also Brodeur, *The Injunction in French Jurisprudence* (1940) 14 *Tulane L. Rev.* 211.

8. See 1 Holdsworth, *A History of English Law* (1931) 459 at seq.; Maitland, *Equity* (2 ed. 1936) 318 et seq.; 2 Pollock and Maitland, *The History of English Law* (1899) 595-596.

9. See 1 High, *A Treatise on the Law of Injunctions* (4 ed. 1905) 4, § 2; Spelling and Lewis, *A Treatise on the Law Governing Injunctions* (1926) 35-42, §§ 22-23. See also Klein, *Mandatory Injunctions* (1898) 12 *Harv. L. Rev.* 95; Note (1931) 17 *Va. L. Rev.* 810. Early equity courts manifested a reluctance to issue the mandatory order. Even when the injunction began to issue, it was generally worded in negative form. Only in relatively recent times has the injunction actually been worded in mandatory form. See Note (1926) 25 *Mich. L. Rev.* 169, and authorities cited in note 50, *infra*.

10. Compare with the provisions of Art. 298, *La. Code of Practice of 1870*, the provisions of Scott, *loc. cit. supra* note 6. See also Scott, *op. cit. supra* note 6, at 3.2.30. Compare Art. 298, par. 5, *La. Code of Practice of 1870*, with Art. 23, *French Code of Civil Procedure*; Art. 298, par. 6, *La. Code of Practice of 1870*, with Art. 869, *French Code of Civil Procedure*; Art. 298, par. 10, *La. Code of Practice of 1870*, with 6 Pothier, *Oeuvres* (nouv. ed. par. Merlin, 1831) *Procédure Civile*, 4.2.6; 7 *id.* at *Coutumes de Duché, Builliage et Privaté D'Orleans*, tit. 20, § 6. Compare, also, with the provisions concerning new works, Pigeau, *Commentaires sur le Code de Procédure Civile* (rev. ed. 1827) liv. I, tit. IV, p. 52.

performance could furnish adequate redress. The mandatory injunction was necessary to complete the picture.

The first case to discuss the propriety of issuing a mandatory injunction was *McDonogh v. Calloway*.¹¹ In a suit to force the removal of obstacles to a passageway, the court, relying upon the authority of Anglo-American equity rules, declared that:

"An injunction is a remedial writ which courts issue for the purpose of enforcing their equity jurisdiction. . . . The writ may be directed to parties, or to public officers, enjoining them or commanding them to do certain acts or things, or to abstain from doing them and is as effective in enforcing a right as in preventing a wrong or injury."¹²

The conclusion was that "the judge below should at once have granted an order, to have the obstructions . . . removed by the Sheriff."¹³

Here, it will be noted, performance by a public officer was ordered. But in *Pierce v. New Orleans*¹⁴ the municipal defendant was itself ordered to close the openings made by its agents in a wall held in common, because the openings interfered with the privacy of the plaintiff's residence. "[A]n injunction may compel parties to do certain acts, as well as to *restrain* them from acting."¹⁵

The most complete discussion of the availability of the mandatory injunction is found in *Black v. Good Intent Tow-Boat Company*.¹⁶ The plaintiff sought an order to compel the defendant to transmit his messages over the latter's telegraph lines. An injunction issued on an ex parte writ was held to have been properly dissolved by the trial judge. However, in considering whether such an order could issue under any circumstances the court faced the definition of injunction in Article 296 of the Code of Practice and found it no more a barrier¹⁷ than the absence of

11. 7 Rob. 442 (La. 1844).

12. 7 Rob. at 444-445.

13. 7 Rob. at 446. In *Burke v. Wall*, 29 La. Ann. 38 (1877), an injunction ordered the defendant himself to remove obstructions to a cemetery avenue through which the plaintiff had a right of passage. Unless the judgment specifically requires the defendant to do the work, however, he cannot be punished for contempt for failure to obey the injunction and the sheriff must execute it. *Avery v. Police Jury of Iberville*, 15 La. Ann. 223 (1860).

14. 18 La. Ann. 242 (1866).

15. 18 La. Ann. at 243.

16. 31 La. Ann. 497 (1879).

17. 31 La. Ann. at 498. The contention was made that the use of disjunctive "or" in the phrase, "injunction or prohibition" (Art. 296, La. Code of

specific authorization for the remedy.¹⁸ The Anglo-American equity authorities relied upon were found to support the conclusion that the mandatory injunction was available.

In the famous case of *Itzkovitch v. Whitaker*,¹⁹ the court hedged somewhat on its previous conclusions. An injunction was sought to prevent the display of the plaintiff's photograph in a rogue's gallery. The photograph had already been placed on display, so the order would obviously require some action by the defendant. The court justified issuance of the injunction by declaring that it was "not strictly mandatory," but only "slightly mandatory."²⁰

Fortunately, the "slightly mandatory" rule has not survived. But in later cases the court has contributed observations to the effect that the "general rule" is that an injunction will issue only in prohibitory form.²¹ It is idle to speculate on the force of the so-called "general rule." The cases indicate no great judicial reluctance to grant the mandatory remedy. The mandatory injunction has been issued to compel the removal of erections and obstructions from streets and sidewalks,²² from the banks of navigable streams,²³ and from public squares.²⁴ Defendants have been ordered to remove buildings erected by them from the property of another,²⁵ to remove or cut levees which interfered with a servi-

Practice of 1870) indicated that the phrase should be considered a definition of the injunction, thus restricting the writ to its prohibitory form. The court said: "We are not inclined to adopt a construction which may shut us off from sources of relief that ought to be open to us, and particularly when it is based on the use of a single word, not intended apparently to have such broad significance."

18. 31 La. Ann. at 499: "Since we do not administer law and equity in separate courts, it is essential, in interpreting the articles of the Code of Practice that treat of the writs, peculiar to equity jurisdiction, to give such effect to them as will make the writs effectual remedies, so far as this can be done without running counter to the express language of the Code."

19. 115 La. 479, 39 So. 499 (1905).

20. 115 La. at 482, 39 So. at 500.

21. See *Broussard v. Cormier*, 154 La. 877, 879, 98 So. 403, 404 (1923); *Prescott v. Prescott*, 174 La. 653, 657, 141 So. 88, 89 (1932).

22. *Dudley v. Tilton*, 14 La. Ann. 283 (1859); *Bell v. Edwards*, 37 La. Ann. 475 (1885); *Kuhl v. St. Bernard Rendering & Fertilizing Co.*, 117 La. 86, 41 So. 361 (1906) (removal by defendant or by sheriff at his expense); *Porche v. Barrow*, 134 La. 1090, 64 So. 918 (1914); *Viering v. Fairbanks*, 14 Orl. App. 130 (La. App. 1916).

23. *Mayor v. Magnon*, 4 Mart. (O.S.) 2 (La. 1815); *Herbert v. Benson*, 2 La. Ann. 770 (1847). See *Allard v. Lobau*, 2 Mart. (N.S.) 317 (La. 1824); *Board of Commissioners of Petite Anse Drainage Dist. v. Iberia & Vermilion R.R.*, 117 La. 940, 42 So. 433 (1906) (lower court, which was reversed, had ordered sheriff to remove in default of defendant's doing so).

24. *Mayor, etc., of New Orleans v. Gravier*, 11 Mart. (O.S.) 620 (La. 1822).

25. *Bradley v. Pharr*, 45 La. Ann. 426 (1893); *Barker v. Houssiere-Latrelle Oil Co.*, 160 La. 52, 106 So. 672 (1925). See Art. 508, La. Civil Code of 1870.

tude of drain,²⁶ to dam drainage ditches which aggravated the servitude of drain on another estate.²⁷

Where a defendant has created a nuisance, he may be ordered to abate it. He will be compelled to remove from his property the inflammable materials which constitute a fire hazard to the plaintiff's property,²⁸ to close the cracks in his livery stable through which water splashes and obnoxious odors seep.²⁹ He must cap his dry well where air seeping through it interferes with the pumping of an oil well on adjacent property.³⁰ He must remove his spite wall.³¹

Although a vast majority of the situations in which a mandatory injunction has been issued have involved the protection of immovables or rights relating thereto, the order is equally available in other types of cases.³² The specific performance cases indicate, however, that difficulties of administration may dictate

See also the following cases in which the writ was denied on other grounds: *Bryant v. Sholars*, 104 La. 786, 29 So. 350 (1901); *Pokorny v. Pratt*, 110 La. 609, 34 So. 706 (1903); *Jennings-Heywood Oil Syndicate v. Heywood Oil Co.*, 117 La. 536, 42 So. 126 (1906); *Hayne v. Edenborn*, 137 La. 393, 68 So. 737 (1915).

26. *Leonard v. Kleinpeter*, 7 La. Ann. 44 (1852); *Sowers v. Shiff*, 15 La. Ann. 300 (1860); *Barrow v. Landry*, 15 La. Ann. 681 (1860); *Guesnard v. Executors of Bird*, 33 La. Ann. 796 (1881) (sheriff to remove obstruction); *State ex rel. Yale v. Duffel*, 41 La. Ann. 516, 6 So. 512 (1889) (sheriff directed to remove levee); *State ex rel. Shakespeare v. Duffel*, 41 La. Ann. 557, 6 So. 514 (1889) (sheriff directed to remove obstructions in drainage canal); *New Iberia Rice-Milling Co. v. Romero*, 105 La. 439, 29 So. 876 (1901); *Savoie v. Guillory*, 118 La. 455, 43 So. 49 (1907) *semble*; *Broussard v. Cormier*, 154 La. 877, 98 So. 403 (1923). See *Avery v. Police Jury of Iberville*, 12 La. Ann. 554 (1857); *Minor v. Wright*, 16 La. Ann. 151 (1861); *Town of Leesville v. Kapotsky*, 168 La. 342, 122 So. 59 (1929). See also the following cases where the writ was denied on other grounds: *Martin v. Jett*, 12 La. 501 (1838); *Becknell v. Weindhal*, 7 La. Ann. 291 (1852); *Town of Leesville v. Kapots[kly]*, 170 La. 297, 127 So. 729 (1930).

27. *Kilgore v. Grevemberg*, 10 La. Ann. 689 (1855); *Delahoussaye v. Judice*, 13 La. Ann. 587 (1858); *Sowers v. Shiff*, 15 La. Ann. 300 (1860); *Barrow v. Landry*, 15 La. Ann. 681 (1860); *Kennedy v. Succession of McCollam*, 34 La. Ann. 568 (1882); *Ludeling v. Stubbs*, 34 La. Ann. 935 (1882) (sheriff to dam drainage ditches if defendant did not do so in 60 days).

28. *Blanc v. Murray*, 36 La. Ann. 162 (1884).

29. *Dubos v. Dreyfous*, 52 La. Ann. 1113, 27 So. 663 (1900).

30. *Higgins Oil & Fuel Co. v. Guaranty Oil Co.*, 145 La. 233, 82 So. 206 (1919).

31. *Parker v. Harvey*, 164 So. 507 (La. App. 1935). Compare, on the substantive issue, *Parle v. D'Arcy*, 28 La. Ann. 424 (1876); *Taylor v. Boulware*, 35 La. Ann. 469 (1883) (note the injunction issued). See Note (1936) 10 *Tulane L. Rev.* 646.

32. The injunctions issued in the cases cited in notes 29 and 31, *supra*, were all granted on the ground that the defendant's conduct infringed personal rights of the plaintiff. See also *Pierce v. New Orleans*, 18 La. Ann. 242 (1866); *Black v. Good Intent Tow-Boat Co.*, 31 La. Ann. 497 (1879). See dictum in *Bruning v. New Orleans Canal and Banking Co.*, 12 La. Ann. 541 (1857). An injunction to remove obstructions to an alleged servitude of light

denial of the order where a complex series of acts³³ or personal services³⁴ would be required of the defendant.

In the few cases which have actually discussed the availability of the mandatory injunction in Louisiana, the conclusion of the court has often been based upon Anglo-American equity authorities. Ample support for judicial development of this remedial device may be found in native materials. The framers of the Code of Practice apparently contemplated a flexible administration of justice which would adapt itself to the exigencies of changing times and to situations unforeseen at the time of redaction. Thus it was provided that, "All judges possess the powers necessary for the exercise of their respective jurisdictions, though the same be not expressly given by law."³⁵ The constitution authorizes the issuance of "writs of mandamus, certiorari, prohibition, quo warranto, and other needful writs, orders and process. . . ."³⁶ The jurisprudence sanctions the application of remedial measures not expressly authorized by any codal provision.³⁷ And the code articles which provide that "judgments may direct

was denied on substantive grounds in *Durant v. Riddell*, 12 La. Ann. 746 (1857).

33. See Note (1939) 2 LOUISIANA LAW REVIEW 198, reviewing the specific performance cases.

34. See *Levine v. Michel*, 35 La. Ann. 1121 (1883); *Laroussini v. Werlein*, 48 La. Ann. 13, 18 So. 704 (1896).

35. Art. 130, La. Code of Practice of 1870. See also Art. 877, La. Code of Practice of 1870.

36. La. Const. of 1921, Art. VII, § 2.

37. The courts, prior to statutory enactment, exercised the power to appoint receivers for corporations and partnerships. See cases cited in Note (1942) 4 LOUISIANA LAW REVIEW 332; (1941) 16 Tulane L. Rev. 146 Title to real estate is vested by judicial decree although no *in rem* statute authorizes such procedure. Note (1939) 2 LOUISIANA LAW REVIEW 194, 195. See the following cases authorizing the use of remedies not expressly provided for: *De Lizardi v. Gossett*, 1 La. Ann. 138 (1846), and *Clarke v. Saloy*, 2 La. Ann. 987 (1847) (judicial distribution of debtor's fund); *Louisiana Board of Trustees of the American Printing-House for the Blind v. Dupuy*, 31 La. Ann. 305 (1879), and *Riggin v. Watson-Aven Ice Cream Co.*, 192 La. 469, 188 So. 144 (1939) (consolidation of suits); *State ex rel. Dardenne v. Cole*, 33 La. Ann. 1356 (1881) (fixing fees to be paid expert witnesses in criminal cases), *Morris v. Cain*, 35 La. Ann. 759 (1883), and *Lauterback v. Seikmann*, 125 La. 839, 51 So. 1008 (1910) (impleading opposing claimants); *State ex rel. Huber v. King*, 49 La. Ann. 1503, 22 So. 887 (1897) (imprisonment for failure to pay alimony); *Schwan v. Schwan*, 52 La. Ann. 1183, 27 So. 678 (1900) (sequestration of succession property); *Lacroix v. Villio*, 123 La. 459, 49 So. 20 (1909) (action for damages for slander of title permitted where plaintiff not in possession); *Allen v. Shreveport Mut. Bldg. Ass'n*, 183 La. 521, 164 So. 328 (1935) (dismissal of suit for plaintiff's failure to pay for and file transcript of testimony). See also, in connection with the general topic, *Clarke v. Peak*, 15 La. Ann. 407 (1860); *Crescent City Gaslight Co. v. New Orleans Gaslight Co.*, 27 La. Ann. 138 (1875); *Covas v. Bertoulin*, 45 La. Ann. 160, 11 So. 874 (1893). Compare the following cases refusing to recognize a remedy not provided for: *Columbia Fire Co. v. Purcell*, 25 La. Ann. 283 (1873) (enforce-

that a thing shall be given, or a thing be done"³⁸ indicate that the mandatory court order was not beyond the contemplation of the redactors.

The jurisprudence establishes the availability of the mandatory injunction. The codes of the state support the correctness of the courts' conclusion. But what rules should be followed in determining the propriety of issuing the injunction in a specific case, the procedure to be followed, and the safeguards which should be insisted upon for the protection of defendants? With a single exception, the procedure followed in the reported cases appears to correspond exactly with the rules applicable to the issuance of prohibitory injunctions. The uniform absence of discussion of any incorrectness in this procedure indicates that court and counsel consider it correct. The situation is certainly a proper one for the application of the respected civilian technique of reasoning by analogy.

However, the cases indicate that a mandatory injunction will issue only after a hearing on the merits, or in support of a prohibitory injunction,³⁹ and a few cases refuse to grant the remedy until final judgment.⁴⁰ Despite the rule, the order has been issued without a hearing.⁴¹ It has also been issued after a preliminary hearing.⁴² Apparently, Louisiana has not recognized the theory

ment of *subpoena duces tecum* by contempt process); State ex rel. Hero, 36 La. Ann. 352 (1884) and State ex rel. Duffy & Behan v. Civil Dist. Court for Parish of Orleans, 112 La. 182, 36 So. 314 (1904) (enforcement of sequestration order by contempt process); Manning v. Cohen, 128 La. 148, 54 So. 700 (1911) (enforcement of specific performance decree by contempt process).

38. Art. 628, La. Code of Practice of 1870. Art. 540, La. Code of Practice of 1870: "Courts give mandates or orders, which, though they are not termed judgments, have never the less the same effect as judgments; such are mandates of arrest and seizure." See also the provisions cited in note 1, supra.

39. So held in *Black v. Good Intent Tow-Boat Co.*, 31 La. Ann. 497 (1879); *Board of Commissioners of Petite Anse Drainage Dist. v. Iberville & Vermilion R.R.*, 117 La. 940, 42 So. 433 (1906); *Hayne v. Edenborn*, 137 La. 393, 68 So. 737 (1915); *First Nat. Bank of Abbeville v. Hebert*, 163 La. 373, 111 So. 792 (1927). See *Barrett v. New Orleans*, 33 La. Ann. 542 (1881); State ex rel. *Shakespeare v. Duffel*, 41 La. Ann. 557, 560, 6 So. 514, 515 (1889); syllabus by the court in *New Iberia Rice-Milling Co., Ltd. v. Romero*, 105 La. 439, 29 So. 876 (1901) and compare the report in 105 La. at 444, 29 So. at 878; *Jennings-Heywood Oil Syndicate v. Heywood Oil Co.*, 117 La. 536, 542, 42 So. 126, 128 (1906); *Broussard v. Cormier*, 154 La. 877, 98 So. 403 (1923); *Town of Leesville v. Kapotsky*, 168 La. 342, 122 So. 59 (1929).

40. The rule originated at a time when a prohibitory injunction could be had on ex parte application. See Arts. 303, 307, La. Code of Practice of 1870. Cases refusing to grant the mandatory order until final judgment are cited in note 43, infra.

41. *McDonogh v. Calloway*, 7 Rob. 442 (La. 1844); *Petit v. Cormier*, 1 McGloin 370 (La. App. 1811); State ex rel. *Yale v. Duffel*, 41 La. Ann. 516, 6 So. 512 (1889); State ex rel. *Yale v. Duffel*, 41 La. Ann. 557, 6 So. 514 (1889); *New Iberia Rice-Milling Co. v. Romero*, 105 La. 439, 29 So. 876 (1901).

42. *Pierce v. New Orleans*, 18 La. Ann. 242 (1866); *Itzkovitch v. Whitaker*,

of the American equity courts that the function of the interlocutory injunction is solely to maintain the status quo.⁴³ On the other hand, four cases deny the remedy because of the procedural insufficiency of a preliminary hearing.⁴⁴ In each of these cases the right to possession of or title to land was in dispute. The rule sanctioned by the jurisprudence is, then, that a mandatory injunction will properly issue after the opposing party has had the opportunity to be heard; although no final judgment has been reached, except in cases where the right to possession or title is in dispute. The exception may be justified on the basis that the respect accorded possession⁴⁵ and the seriousness of an adjudication of title dictate a more deliberate procedure.

Act 29 of 1924 prohibits the issuance of an injunction other than a temporary restraining order "without opportunity given for hearing of the opposite party."⁴⁶ In view of this act can a mandatory injunction be had today in any case without preliminary hearing? No case has been found deciding the point. The prohibitory terms of the statute might dictate the categorical denial of the validity of such a procedure. It has been argued that such an injunction might, in some instances, violate constitutional requirements of due process of law.⁴⁷ But the issuance on ex parte application of a mandatory order coupled with a temporary restraining order might be justified by the considerations similar to those which originally induced the development of this form of relief⁴⁸ and by the rule announced prior to the statute that the order would issue before hearing where it was coupled with a proper prohibitory injunction.⁴⁹ Even should it be so held, it might, as a practical matter, be difficult to present a situation

115 La. 479, 39 So. 499 (1905); *Schulman v. Whitaker*, 115 La. 628, 39 So. 737 (1905); *Broussard v. Cormier*, 154 La. 877, 98 So. 403 (1923); *Town of Leesville v. Kapotsky*, 168 La. 342, 122 So. 59 (1929).

43. See the equity cases cited in note 50, *infra*, holding that an interlocutory mandatory injunction will issue to restore the status quo where that has been wrongfully changed in violation of a prohibitory injunction, and that the interlocutory order will also issue when the status quo is one of action.

44. *New Orleans & N.E. R.R. v. Mississippi, T.A.B. & L. R.R.*, 36 La. Ann. 561 (1884); *Jennings-Heywood Oil Syndicate v. Heywood Oil Co.*, 117 La. 536, 42 So. 126 (1906); *Hayne v. Edenborn*, 137 La. 393, 68 So. 737 (1915); *First Nat. Bank of Abbeville v. Hebert*, 163 La. 368, 111 So. 792 (1927).

45. See Arts. 6, 49, 298(5), La. Code of Practice of 1870.

46. La. Act 29 of 1924, § 1 [*Dart's Stats.* (1939) § 2078].

47. See *Board of Commissioners of Petite Anse Drainage Dist. v. Iberville & Vermillion R.R.*, 117 La. 940, 42 So. 433 (1906); *Powhatan Coal & Coke Co. v. Ritz*, 60 W.Va. 395, 56 S.E. 257 (1906), mentioning but refusing to decide the issue.

48. See p. 423, *supra*.

49. See p. 428, *supra*, and the cases cited in note 39, *supra*.

where the necessity for action was sufficiently compelling to induce the court to issue the order.⁵⁰ In any event, the party enjoined should find adequate protection in the bond⁵¹ required of the plaintiff and in his right to seek dissolution of the injunction.⁵²

ALVIN B. RUBIN

A CIVIL LAW APPROACH TO THE REPARATION OF
EMOTIONAL DISTURBANCES BY ABUSIVE
LANGUAGE

The interest in peace of mind, in the protection of personal dignity and in freedom from mental disquietude has been accorded only scant legal protection in the United States. Invasions of this interest have not been recognized as a distinct and independent tort. In those cases where it has been felt that recovery should be allowed, compensation has been granted only in the form of parasitic damages for the commission of a recognized tort. Damages have been "tacked on" in actions for assault and battery,¹ false imprisonment,² libel, and slander.³ Reluctance to give forth-

50. Such a situation might be presented where a mandatory injunction is sought to compel the defendant to restore a situation which he has changed in violation of a prohibitory order. See *Levy v. New Orleans Waterworks Co.*, 38 La. Ann. 25 (1886), for an example of such a situation. In this case the mandatory injunction to compel restoration of the status quo prior to violation of the prohibitory injunction was issued ex parte. Anglo-American equity courts recognize such a case as a proper one for the issuance of an interlocutory mandatory order. *Keys v. Allgood*, 173 N.C. 16, 100 S.E. 113 (1919). See *Texas Pipe Line Co. v. Burton Drilling Co.*, 54 S.W. (2d) 190 (Tex. Civ. App. 1932), noted in (1934) 12 Tex. L. Rev. 235, for a discussion of the American equity cases on the subject.

51. See La. Act 29 of 1924, § 2 [Dart's Stats. (1939) § 2079]; Art. 304, La. Code of Practice of 1870. But a defendant may, by injunction, be compelled to restore property wrongfully taken. *Petit v. Cormier*, 1 McGlain 370 (La. App. 1881).

52. See La. Act 29 of 1924, § 2 [Dart's Stats. (1939) § 2079]; Art. 307, La. Code of Practice of 1870.

1. *Warner v. Talbot*, 112 La. 817, 36 So. 743 (1903); *Christmas v. Lofaso*, 13 Orl. App. 443 (La. App. 1916); *Fontenelle v. Waguespack*, 150 La. 316, 90 So. 662 (1922); *Derouen v. Fontenot*, 8 La. App. 652 (1928); *Davis v. Rondall*, 17 La. App. 291, 135 So. 727 (1931); *Davis v. Lindsay Furniture Co.*, 19 La. App. 169, 138 So. 439 (1931); *Noguin v. Belliot*, 155 So. 261 (La. App. 1934); *Lorenz v. Hunt*, 89 Cal. App. 6, 264 Pac. 336 (1928); *Ransom v. McDermott*, 215 Iowa 594, 246 N.W. 266 (1933); *Kline v. Kline*, 158 Ind. 602, 64 N.E. 9 (1902); *Trogden v. Terry*, 172 N.C. 540, 90 S.E. 583 (1916).

2. *Block v. McGuire*, 18 La. Ann. 417 (1866); *Healy v. Playland Amusements, Inc.*, 199 So. 682 (La. App. 1940); *Gadsden General Hospital v. Hamilton*, 212 Ala. 531, 103 So. 553 (1925); *Fisher v. Rumler*, 239 Mich. 224, 214 N.W. 310 (1927); *Jones v. Hebdo*, 88 W.Va. 386, 106 S.E. 898 (1921). Compare *Talcott v. National Exhibition Co.*, 144 App. Div. 337, 128 N.Y. Supp. 1059 (1911).

3. *Dufort v. Abadie*, 23 La. Ann. 280 (1871); *Tuyes v. Chambers*, 144 La.