

STATEMENT OF POINTS AND AUTHORITIES

A general statement of the law as an equity court's power to remove an encroachment by means of an injunction is set forth in the case of Dundalk Holding Company v. Easter, 137 A. 2d 667, 215 Md. 549, cert. den. 79 S. Ct. 34, 358 U.S. 821, 3 L. Ed. 2d 62, rehear. den. 79 S. Ct. 219, 358 U.S. 901, 3 L. Ed. 2d 151 (1953), where it is stated at page 669 of A 2d:

Injunction is historically and fundamentally a process of equity. "The remedy of injunction was undoubtedly borrowed by the chancellors from the 'interdicts' of the Roman law." 4 Pomeroy, Equity Jurisprudence, Sec. 1337 at 933, "Injunctions are granted only by courts of equity and only in cases of equitable cognizance according to the established principles of equity jurisdiction. . . ." 1 High, Injunctions, 4th Ed., Sec. 2 at 6. We think that the Legislature, in conferring upon the courts of law the power to issue injunctions, intended that the court should act in the issuance of the writ as would a court of equity. Clearly, the object was to liberalize the rigid procedures of the law and to avoid a multiplicity of actions. Finglass v. George Franke Sons Co., 172 Md. 135, 137, 190 A. 752. Section 145 of Art. 75 clearly authorizes the enjoining of continuing trespasses such as the encroachment of a wall. Equity in proper case historically enjoined trespasses of that nature. See Herr v. Bierbower, 3 Md. Ch. 456; Schaidt v. Blaul, 66 Md. 141, 6 A. 669. It did so either in exercise of its original jurisdiction or in aid of a title already declared by a court of law. For example, in Hirschberg v. Flusser, 87 N. J. Eq. 588, 101 A. 191, where there was an encroachment and the title had been settled at law, the chancellor held that a mandatory injunction could issue to compel the defendant to remove the offending structure "if equitable considerations do not prevent."
* * * (Underscoring supplied.)

A general statement of law concerning the qualification of a surveyor is set forth in the case of Warczynski v. Barnycz, 117 A. 2d 573 (1955) where it is stated at page 576: