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The Inadequacy of Legal Remedy Requirement for Equitable Relief: The Development of the Rule and Its Application in South Carolina

Val H. Stieglitz

THE "INADEQUACY OF LEGAL REMEDY" REQUIREMENT FOR EQUITABLE RELIEF: THE DEVELOPMENT OF THE RULE AND ITS APPLICATION IN SOUTH CAROLINA

Traditionally, courts of equity granted relief only if the petitioner's remedy at law was inadequate. The apparent simplicity of this practice is deceptive. While applying the rule of inadequacy of legal remedy seems an easy matter at first blush, closer examination reveals a number of conceptual and practical difficulties.

Commentators and historians agree only generally as to the rule's origins and, as a result, no encompassing definition of "inadequacy" exists. Disagreement exists over what role the rule plays, or ought to play, today, especially in light of the several exceptions to the rule which have emerged. The rule first appears to be a clear test which can be mechanically applied. It is, however, actually a subtle tool which arguably has evolved from a quasi-jurisdictional device into something of a guide which courts of equity can look to when making remedial determinations after assuming jurisdiction.

Part one of this Note will examine the historical origins of the rule and then consider its role today. Part two will explore how the rule is applied in South Carolina, and part three will briefly discuss the practical implications of the rule for litigation in this jurisdiction.

I. Origins and Function of the Rule

A. Historical Background

The traditional rule has been expressed in a variety of ways by a variety of commentators. Dobbs states that equitable relief was traditionally denied unless the matter was one in which the

plaintiff's remedy at law was inadequate.[1] Chafee's interpretation of the traditional rule is that the court lacked power to grant equitable relief unless, in addition to its having personal and subject matter jurisdiction, the "plaintiff had a reason for coming into equity."[2] According to Pomeroy, the traditional rule is that "equity jurisdiction extends to and embraces all civil cases . . . in which there is not a full, adequate, and complete remedy at law."[3] Walsh writes that "historically, there is no doubt that equity intervened to protect legal rights only in cases where the remedy at law was inadequate."[4] He concludes that "lack or inadequacy of relief at law has, therefore, been the basis upon which equity has always acted."[5]

This small sample of views reveals a divergence of authority on the issue of whether the inadequacy rule is jurisdictional, or whether it is only a guide to determining the propriety of granting an equitable remedy. Furthermore, the differences among the authorities reveal the difficulty in defining "inadequacy" for purposes of the rule.[6] The historical development of the rule must be explored in order to begin resolving these issues.

The origins of the rule are believed to lie in the slow division between law and equity which took place in England between the thirteenth and fifteenth centuries.[7] Prior to the fourteenth century, no clear distinction existed between law and equity. The common law courts heard legal and equitable matters side-by-side, under a common procedure, and fashioned remedies with great flexibility in order to do justice in individual

1. D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES § 2.5 (1973).

2. Z. CHAFEE, SOME PROBLEMS OF EQUITY 304 (1950).

3. POMEROY, EQUITY JURISPRUDENCE § 132 (5th ed. 1941).

4. R. WALSH, A TREATISE ON EQUITY § 25 (1930).

5. *Id.* at § 133.

6. Chafee appears to conceptualize the rule as a remedial guide. He views the rule as a consideration that a court of equity, which already possesses personal and subject matter jurisdiction, should take into account in determining the propriety of granting a remedy. Likewise, Dobbs appears to follow Chafee, speaking of the rule in terms of the granting of a remedy rather than in terms of the court's power to hear the case.

Conversely, Pomeroy and Walsh view the rule in terms of the court's power to act rather than in terms of a remedial consideration, thereby seeing it as jurisdictional. Pomeroy asserts that the jurisdiction of equity extends to those civil cases where the legal remedy is inadequate. Walsh argues that the rule is the basis on which equity courts act. Since subject matter and personal jurisdiction is the basis upon which all courts act, it is safe to conclude that Walsh, like Pomeroy, views the rule as jurisdictional.

7. See WALSH, *supra* note 4, at 281, 287.

cases. This period, from 1200 to approximately 1350, has been described as the first stage in the development of English equity. Holdsworth contends that the "universal principle" of the fair administration of law was applied during this time *within* the framework of the existing common law courts. According to Holdsworth, the second stage in the development of English equity commenced after 1350 and was characterized by the application of this "universal principle" *outside* the common law, mainly by the ecclesiastical Chancellors.[8]

Other legal scholars have described the gradual divorce of law and equity somewhat differently. A common theme, however, is the hardening of the common law writ system into a rigid, unresponsive ritual, necessitating pleas to the higher authority of the crown in order to secure justice.[9] The early common law courts did, indeed, enjoy broad remedial powers during the thirteenth and early fourteenth centuries. For example, common law courts in the early 1300's frequently acted in personam, issuing what amounted to injunctions, in the form of writs of prohibition. The recipient of the writ was commanded to desist from certain activities or to perform certain acts, as the case required.[10] As long as a writ existed recognizing the plaintiff's cause, the early English common law courts made no distinction between legal and equitable actions, and they issued remedies sufficient to vindicate the rights protected by the writs. Thus, as long as neither a procedural nor conceptual distinction existed between legal and equitable relief, there was no need for a rule governing access to one particular type of remedy or to a separate and distinct court.[11] It was only when equity separated from law that access to equity began to turn upon the application of certain articulated maxims such as the "inadequacy of legal rem-

8. Holdsworth, *The Early History of Equity*, 13 MICH. L. REV. 293 (1914).

9. *Id.* at 294-95; R. WALSH, *supra* note 4, at 12.

10. T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 678 (5th ed. 1956). Another species of writ, called the *quia timet*, was aimed at preventing a wrong before it occurred, much like a modern restraining order. *Id.* at 679. A third writ, the writ of *breve magistralia*, issued to meet new legal problems and grant flexible remedies. *Id.*

11. This flexible nature of the common law courts during the first half of the fourteenth century led Professor Adams to comment that "So long as common law remained a flexible system, its field undefined, its power of inclusion unlimited, its organs undifferentiated, there was no reason for distinguishing between it and equity, and all that was later done by equity could still be done in the field of the common law." Adams, *The Origin of English Equity*, 16 COLUM. L. REV. 87, 97 (1916).

edy" rule. As has been noted, most scholars date the beginning of this divorce between law and equity from the mid-1300's, and attribute it to the growing inflexibility of the common law writ system.

The common law writs, which were necessary to initiate an action, were issued by the Chancellor, a member of the King's royal council. Clerks and scribes in the Chancellor's office produced and copied writs, and new writs issued only upon the Chancellor's approval.[12] Under this arrangement, the limits of the common law reached as far as the willingness and power of the Chancellor to sanction new writs, allowing recognition of new causes of action and new theories of relief. The maintenance of this system, and its continuing ability to deliver justice to litigants, depended upon a flexible attitude toward new writs.

This liberal attitude was shortlived, however, for as early as 1258, Parliament, in the Provisions of Oxford, forbade the Chancellor from framing new writs without the consent of the King and his entire council.[13] In Walsh's view, this enactment effectively extinguished the Chancellor's ability to respond to new legal problems at common law, by locking the common law remedies into the framework of the writs existing in 1258. This statute was followed by another, in 1300, which prohibited the Exchequer from hearing common pleas.[14]

Commentators interpret these actions as a reaction by common law courts to the threat posed by a jurisprudence based on the notion of royal justice and fair-dealing rather than on precedent, technique, tradition, or formalities. The King had long entertained petitions from his subjects seeking justice and, acting through the Chancellor, he had power to command that justice be done. In something of a circular chain, the gradual ossification of common law substance and procedure led more litigants to petition the King for royal justice, which, when granted, further antagonized the common law judges who then, according to Plucknett, retreated further into "the stricter school of legal

12. T. PLUCKNETT, *supra* note 10, at 164.

13. R. WALSH, *supra* note 4, at 8.

14. T. PLUCKNETT, *supra* note 10, at 160. As a member of the royal council, and incident to his responsibility for state finances, the Exchequer had long heard cases involving trade and commerce and had granted broad forms of relief. *See id.* at 160-61.

thought."[15] This "strict school" was characterized by fealty to form over substance and procedure over outcome. Thus, "the lawyers had a maxim that they would tolerate a 'mischief' (a failure of substantial justice in a particular case) rather than an 'inconvenience' (a breach of legal principle)."[16]

The common law courts developed ever stricter rules of pleading, proof, and evidence, and began to adopt money damages as their main remedial tool. Various historians have summarized this process, which Walsh calls the "decay of equity in the common law."[17] They conclude that the legislative restrictions on the Chancellor's power to fashion new common law writs converted the common law into a much less flexible system, allowing little if any discretion, and providing well-defined restrictions on what could and could not be accomplished.[18]

With this increasing rigidity in the common law courts, the stage was set for the schism between these increasingly competitive systems of justice, one animated by strict dedication to traditional forms of action, and the other by what has often been called a jurisprudence of conscience.[19] Growing numbers of litigants believed themselves unable to obtain either substantive or procedural justice in the common law courts, and scholars have traced a rise in the number of petitions directed to the King's Council (or Chancellor) throughout the latter 1300's and

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15. *Id.* at 680.

16. *Id.*

17. R. WALSH, *supra* note 4, at 8.

18. As to this stiffening of the common law, Adams notes that, "The common law was becoming a hard and fast system with certain clearly defined things which it could do and with equally defined things which it could not do." Adams, *supra* note 11, at 96. *See also* Barbour, who observes that,

> The manner in which equity . . . disappeared from the common law has become common knowledge. The jealousy of Parliament[,][arising from the] . . . realization that the power to make new writs was a power to make new law, forced the writs into a closed cycle, and put an end to the free development of the common law.

Barbour, *Some Aspects of Fifteenth Century Chancery*, 31 HARV. L. REV. 834 (1918). Further commenting on this acquired rigidity of the common law, Holdsworth asserts that, "In the latter half of the fourteenth century, and in the fifteenth century, the common law tended to become a fixed and rigid system." Holdsworth, *supra* note 8, at 294. Finally, Plucknett maintains that, "[T]he common law courts lost much of their discretion and explicitly abandoned any thought of tempering law with equity. . . ." Plucknett, *supra* note 10, at 681.

19. *See generally* Vinogradoff, *Reason and Conscience in Sixteenth-Century Jurisprudence*, 24 L.Q. REV. 373, 379 (1908); Barbour, *supra* note 18, at 838.

1400's.[20] This is not surprising, as the King had historically served as something of a court of last resort, and petitions for justice had long come his way. Adams has put it succinctly, stating that the ancestor of the bill in equity was the petition to the Council.[21]

These petitions were popular because royal justice could operate with great flexibility and could secure rights which the common law had become unable, or unwilling, to protect. In matters of contract, for example, the law courts would not uphold oral agreements, consider partial performance, or order specific performance, while the Chancellor, acting for the King, could do all these things.[22] As another example, Barbour cites a case in which the plaintiff charged the defendant with common law trespass for withdrawing water from his pond by sorcery, thereby harming his animals pastured in an adjoining meadow. The common law court refused to recognize the action and dismissed it. The plaintiff then petitioned the Chancellor to restrain the defendant from "using the crafts of enchantment, witchcraft, and sorcery," saying that "the common law may not help."[23] The Chancellor issued the restraint.

By granting such remedies, the Chancellor was filling a need which the common law courts, bound to their traditional writs, procedures, forms of proof, and remedies, could not satisfy. By the end of the fourteenth century, petitions were flowing to the King and were routed to the Chancellor for resolution. The dictates of his conscience supplied the content of early independent equitable jurisdiction and, because most of the early Chancellors were ecclesiastics, this content was distinctly directed toward justice and fair-dealing.[24]

By the 1500's, this conceptual distinction between law and equity had been established. The former dealt with specific,

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20. Barbour, *supra* note 18, at 840.

21. Adams, *supra* note 11, at 98.

22. Barbour, *supra* note 18, at 848.

23. *Id.* at 853.

24. Vinogradoff, *supra* note 19, at 379; T. PLUCKNETT, *supra* note 10, at 695-96. Barbour notes that many of the early petitions to the Chancellor requested him to exercise his jurisdiction in matters of conscience. *See generally* Barbour, *supra* note 18, at 853. *See also* Holdsworth, *supra* note 8, at 295. Arguably then, it seems that from its earliest days equity was to be concerned with moral and ethical right. *See generally* Vinogradoff, *supra* note 19, at 378-79.

fixed forms of action and awarded money damages, while the latter addressed injustice and hardship, and fashioned remedies to meet the moral demands of good conscience.[25] Over time, the Chancellor developed a set of courts, a staff, and the administrative routine of a separate judicial system. James I formally recognized the Courts of Chancery as co-equal with the common law courts, and the long philosophical division between the two thus crystallized into institutional form.[26] Thereafter, a dual, competing system of courts existed, one protecting traditional legal rights through the remedy of damages, the other protecting matters of conscience by acting personally upon individual litigants.[27]

B. "Inadequacy" and Early Equity Jurisdiction

From this brief historical discussion, it is apparent that even before law and equity divorced institutionally, some general notion existed that the Chancellor should act upon petitions when the petitioner had failed to obtain, or could not obtain, justice in the law courts. Arguably, this notion provides the conceptual foundation for the formal rule of inadequacy of legal remedy as a prerequisite to equitable relief.[28]

Barbour identifies two classes of cases which regularly received the Chancellor's attention. The first consisted of cases in which some inequality between the parties made it impossible to achieve justice in the common law courts;[29] the second class was comprised of cases in which the impartiality of the local law court was suspect. This early practice is summarized by Barbour, stating that the Chancellor would intervene if "the legal remedy was but of theoretical value."[30] Apparently, it was soon established that litigants did not have an absolute right in the

25. Vinogradoff, *supra* note 19, at 378; Barbour, *supra* note 18, at 849.

26. Holdsworth, *supra* note 8, at 295, 297; T. PLUCKNETT, *supra* note 10, at 681.

27. 15 HOLDSWORTH, A HISTORY OF ENGLISH LAW 104-138 (1965). By the Judicature Acts of 1873 and 1875, Chancery and the common law courts were combined and the forms of action were abolished, fusing law and equity. *Id.*

28. Barbour seems to share this view: "Certainly the petitions (to the Chancellor) bear witness to the belief among all classes that in the Chancellor resided a general power to redress all wrongs if for any reason the person injured could not protect himself through the common law." Barbour, *supra* note 18, at 857.

29. *Id.* at 856. This inequality was usually economic in nature.

30. *Id.* at 858.

first instance to what is today called equity. Rather, equity would operate only to redress real, concrete, demonstrable deficiencies in the justice available in the common law courts. After chancery separated institutionally from the law courts and developed a more formal jurisprudence, equity came to take original jurisdiction of certain types of cases and developed purely equitable causes of action.[31] In turn, this development led to more definite rules describing when cases were appropriate for Chancery and when they were not. However, when we see the pre-schism Chancellors granting petitions for royal grace, we see the "inadequacy of legal remedy" rule in its embryonic stage, "inadequacy" being apparently synonomous with "injustice." Broad as it may seem, the notion of injustice, or "conscience," served as a principle of selection in these early times. The Chancellor could not accept every petition that came his way, and in the very idea that the Chancellor should attend to those cases where justice had somehow gone awry lay the seeds of a rule which, with time, became akin to a maxim of jurisdiction.

The commentators generally agree that the "inadequacy of legal remedy" rule did serve a jurisdictional function in the early days after equity and law courts separated. The rule appears to have operated as an early device to help define the reach and power of the equity courts or, as Dobbs phrases it, to protect the separation of jurisdiction between courts of law and equity.[32] Whether the rule was literally jurisdictional in the modern sense is not clear. If it was, then a court of equity had no power to decide a matter if the petitioner had available an adequate legal remedy. Presumably, any decree issued in the face of this adequate legal remedy would be void. Cox asserts that "if the cause of action was not of a kind that fell within the province of the Chancellor, a court of equity had no power to decide the cause."[33] The "inadequacy" rule was, then, one device to help determine whether a particular cause was "of a kind" that the Chancellor could act upon. If a legal remedy would adequately redress the wrong complained of, then the case was outside the Chancellor's jurisdiction.

Others suggest, however, that even if the rule did serve a

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31. POMEROY, *supra* note 3, at §§ 133, 136-38.
32. D. DOBBS, *supra* note 1, at 61.
33. Cox, *The Void Order and the Duty to Obey*, 16 U. CHI. L. REV. 86, 93 (1948).

strictly jurisdictional purpose at one time, it shortly developed into a principle of selection and a guide to action. Thus, the defendant in equity could not disobey an order on the ground that the plaintiff had an adequate legal remedy. He could, however, argue that the equity court should refrain from exercising its power because the plaintiff had available an adequate legal remedy, and he could appeal, arguing the availability of the legal remedy made the case improper for equitable intervention.

Pomeroy expresses this view of the rule's early development. He notes that writers often incorrectly assume that equity jurisdiction is measured by the absence or existence of remedies at law, that equity reaches wherever law does not. The correct view, according to Pomeroy, is that equity actually creates certain unique rights which it will protect through its own exclusive jurisdiction,[34] independent of the adequacy or inadequacy of available legal remedies. Its jurisdiction in these matters derives from the existence of fundamental equitable interests, not from the inadequacies of the common law.

On this basis, Pomeroy concludes that while the availability of a legal remedy has nothing to do with defining the jurisdiction of equity, it is relevant in determining whether a court of equity *ought* to exercise its powers in a given situation. In this sense, the rule requires the court to consider whether the claimant can secure justice without resort to the special devices of equity, and whether the interest under attack is one that warrants protection by equitable remedies.

In summary, Pomeroy maintains that equity has inherent and exclusive jurisdiction over certain wholly equitable rights and interests.[35] Presumably, these are matters in which the claim is based squarely on conscience and right rather than upon the fixed requirements of a cause at law. As a result, equity can act in this sphere without regard to the legal remedies available to the plaintiff.

However, where the claimant seeks to protect an interest *not* exclusively equitable through the special devices of equity, an equity court has jurisdiction, but must assess the adequacy of the legal remedy before acting. The rule, in these instances, serves as a guidepost to decision, and not as a maxim of

34. POMEROY, *supra* note 3, at § 131.
35. *Id.* at §§ 137-38.

jurisdiction.

C. *The Rule's Purpose Today*

Today, the general view of the rule is consistent with Pomeroy's analysis. Professor Rendleman argues that the rule may, through improper application, fail to focus the Chancellor's attention on the proper issues. On the other hand, he contends that the rule, if correctly applied as a remedial guidepost, would focus the decision-maker's resources on several important issues.[36] These issues include the acceptability of substituting money damages for the invaded interest, the moral significance of the invaded interest, and the court's own administrative capacities.[37] The moral component forces the court to define those interests which are too basic to permit the violator to, in effect, buy injustice by paying damages.[38] Rendleman argues that the rule is dead as a strictly jurisdictional doctrine. Its remaining value, however, is its potential ability to force the court to weigh and discern the fundamental interest at stake in an action, and to make essentially moral choices about what rights are important enough to merit equity's extraordinary protection. The rule becomes, in this scheme, a remedial consideration.

Dobbs embraces a similar conception of the rule's modern function. He states that the "inadequacy of legal remedy" test should be applied when the plaintiff's substantive claim is at law (such as trespass, slander, assault), but the plaintiff seeks equitable relief because of the extraordinary remedies available.[39] In such a case, the adequacy rule should be used as a limitation on the granting of equitable relief.[40] Dobbs criticizes the notion that the rule is strictly jurisdictional, noting that the logical end of such a view is to declare invalid all equitable orders where an adequate legal remedy is available. He sees the rule, again, as a device to focus attention on certain basic policy considerations, particularly whether the need for an equitable remedy outweighs

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36. Rendleman, *The Inadequate Remedy at Law Prerequisite for an Injunction*, 33 U. FLA. L. REV. 346, 347 (1981).

37. *Id.* at 348-52.

38. *Id.* at 352.

39. D. DOBBS, *supra* note 1, at 60.

40. *Id.*

the defendant's right to a jury trial.[41] Dobbs believes that with the merger of law and equity, the rule became simply a rule of decision or a tool for raising the policy issues which a court should consider before granting equitable relief.

In light of these views, it is not unreasonable to ask whether the rule has any real meaning today. Reflection reveals that equity courts must employ some principle of selection in the exercise of their powers. Otherwise, equity courts would do nothing but supervise a myriad of in personam orders. The views expressed by Chafee, Dobbs, and Rendleman appear to envision use of the "inadequacy" rule as just this principle of selection. The rule does not determine jurisdiction, in the sense that an equity court is prohibited from acting if an adequate legal remedy is available. Rather, it helps the court decide whether, in the case in dispute, it *should* act with its extraordinary powers.

One question yet to be examined in this overview is what, traditionally, has constituted "inadequacy"? A review of the scholarship in this area reveals several different approaches which appear to reach the same conclusion.

According to Rendleman, the legal remedy was inadequate if it was less efficient than the equitable remedy, less speedy, or less practical, or if the plaintiff's injury could not be measured monetarily.[42] Thus, the plaintiff had several avenues of argument for equitable relief; words such as "efficient" and "speedy" necessitate considerable subjective interpretation.

Dobbs offers a more narrow definition. He states that the cases in which the legal remedy was seen as inadequate fell into four general patterns. The first was when the plaintiff had been deprived of something to which he was entitled and which money would not replace. In these situations, only specific restitution or a mandatory injunction could make the plaintiff whole. Second was the case in which the plaintiff would have to bring more than one action to protect his legal interest. A continuing trespass, for example, would require the plaintiff to bring numerous suits at law if he could pursue only legal remedies. Equi-

41. In South Carolina, a court of equity may, within its discretion, empanel a jury to assist in making factual determinations although the trial court is not bound by the jury's verdict in deciding the case. Johnston v. Mathews, 183 S.C. 360, 191 S.E. 223 (1937); Erskine v. Erskine, 107 S.C. 233, 92 S.E. 465 (1917).

42. Rendleman, *supra* note 36, at 346.

table relief, in the form of an injunction, could resolve the problem with more economy and efficiency. The third type of case involved a plaintiff who had a claim for money damages against an insolvent defendant. There, a legal judgment was worthless and only specific performance by the defendant could provide an effective remedy. Fourth was the case in which the plaintiff had been injured, but in which damages could not be accurately measured. Rather than denying recovery because of a problem of proof, equity intervened to fashion a remedy.[43]

These classifications simply seem to be different ways of restating Barbour's argument that a legal remedy was inadequate if it was of *only theoretical value.* If real, concrete relief could not be had, or if the law court was so infected with fraud or prejudice that justice was unattainable, then equitable relief was proper.

D. Summary of the General Rule

From the foregoing, one may conclude that with the merger of law and equity, the rule lost its value as a device to protect the jurisdiction of two independent court systems. It remained valuable, however, as a means of focusing the equity court's attention on the question of whether it ought to act in a given situation, forcing the equity court to consider exactly what rights and social interests merited preservation through the extraordinary remedies of equity. Thus, the rule enables modern courts to rank interests, deciding which should be upheld by legal and equitable devices.

Under this modern view, "adequate" simply means "appropriate" in terms of the value society accords the violated interest. A heinous invasion of a highly regarded interest may require a coercive equitable remedy even if money can compensate the plaintiff, while an invasion of a less crucial interest may be appropriately remedied by damages, even if the facts suggest equitable relief. The concept of "adequacy" should, today, be used to balance the social significance of the right invaded with the type of remedy applied. This, it seems, is the most valuable purpose the traditional rule can serve after the merger of law and equity

43. D. DOBBS, *supra* note 1, at 57.

has obviated the need for strictly safeguarding the jurisdiction of two separate court systems.

Heretofore, the rule has been explored in terms of its history and in terms of its role in modern litigation. Part two of this Note will consider its development and application in the jurisprudence of South Carolina.

II. The Traditional Rule in South Carolina Practice

A. Jurisdictional or Decisional?

South Carolina incorporated the traditional "inadequacy of legal remedy" requirement into its jurisprudence at an early date. A 1791 statute provided that "suits in equity shall not be sustained in any case where plain and adequate remedy can be had at the common law."[44] In *Rees v. Parish*,[45] the court interpreted this statute as jurisdictional, defining the reach of the *power* of the Chancery court to act. In *Rees*, the petitioners alleged that they were the rightful legatees of certain Negroes in the defendant's possession. They sought a decree ordering the return of their property, and payment for the value of the work the Negroes had performed for the defendant. The defendant demurred, asserting that Chancery lacked jurisdiction over the case because the plaintiffs had an action at law for trover and detinue, and the Chancellor dismissed the petition for want of jurisdiction. Citing the 1791 statute, the appeals court in equity affirmed, holding that a court of equity could not take jurisdiction of a case where an adequate remedy at law existed.[46] This jurisdictional interpretation of the 1791 statute is interesting in that the defendant made a minimal showing of an adequate legal remedy available to the petitioner. The modern trend places upon the petitioner the burden of showing the inadequacy of his legal remedy.[47]

Despite this jurisdictional interpretation of the statute in *Rees*, two other cases suggest that the rule was not strictly a ju-

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44. 1840 S.C. Acts 278.

45. 6 S.C. Eq. (1 McCord Eq.) 56 (1825).

46. *Id.* at 59. The court expressed this holding in the following language: "It has long been the rule of the Court of Equity, that they would not entertain jurisdiction of a case where there was a plain and adequate remedy at law." *Id.*

47. *See* Knohl v. Duke Power Co., 260 S.C. 374, 376, 196 S.E.2d 115, 116 (1973).

risdictional device in pre-merger South Carolina. In *Harman v. Counts*,[48] the petitioner was the endorsee of a non-negotiable note. By statute, any person, other than the original payee, who sued on a non-negotiable note was required to bring the action at law. Harman, however, had secured an equity decree to recover damages for Counts' failure to honor the note. The defendant appealed, and the decree was set aside.

In reversing this decree, the court used ambiguous language. The court seemed to reason that in order to act, a court of equity could not disregard existing legal, statutory remedies, and that because in this case the petitioner had such an adequate statutory remedy, the court had no jurisdiction to grant an equitable remedy.[49] In dicta, however, the court stated that:

> As to what has been urged on the ground of equity, it is sufficient to say, that, taking it for granted that the district court in the exercise of its summary jurisdiction, on petition and process, may decide according to the rules which prevail in courts of equity, yet it will not follow that this decree *ought* to stand . . . . Equity *ought* to follow the law and not proceed in contradiction to the law.[50]

The use of the word "ought" indicates that while the availability of an adequate remedy at law may not divest a court of equity of jurisdiction, it may serve as a governor of the equity court's discretion, telling the court when it should and should not act. If this is true, then the dicta of the court in *Harman* is in striking conformity with the views of Chafee, who contends that "equity jurisdiction refers simply to a bundle of sound principles of decision concerning particular kinds of relief."[51] Under this approach, the appellate court may use the rule to find reversible error by the lower court, but not to void its jurisdiction by finding that the court never had the power to act. While Chafee directed this idea to the period after the merger of law and equity, it was foreshadowed by the dicta in *Harman* fifty-nine years before merger occured in South Carolina.

In *Farley v. Farley*[52] it was further suggested that the South

48. 4 S.C.L. (2 Brev.) 476 (1811).
49. *Id.* at 477.
50. *Id.* at 476-77 (emphasis added).
51. Z. CHAFEE, *supra* note 2, at 304.
52. 6 S.C. Eq. (1 McCord Eq.) 506 (1826).

Carolina courts did not view the rule as purely jurisdictional. There, the petitioner brought a bill in equity for the return of certain Negroes held by the defendant. The defendant objected to the jurisdiction of the equity court, asserting that a legal action for trover and detinue was available. The Chancellor, however, issued a decree for the petitioner and on appeal the petitioner portrayed his action as one for specific performance.

The appellate court dismissed the petition. A close analysis of its reasoning, however, reveals that it did so not because the availability of a legal remedy stripped the lower court of jurisdiction, but because the petitioner had not shown that he had a proper case for exercise of equity's extraordinary powers.

The court began by assessing whether trover and detinue were adequate legal remedies. It noted that although neither action would secure recovery of the specific property sought, an equitable decree would similarly fail to secure a specific recovery unless the petitioner, through the further legal action of bail, prevented the defendant from transferring the property out of the jurisdiction. Because supplemental legal action would be necessary to insure the petitioner's specific recovery regardless of whether he won a suit for trover or obtained an equitable decree, the legal remedy was adequate, and was the remedy to which the petitioner should have resorted.

The court did not rest there, however. It went on to state in dicta that even where an adequate remedy exists at law, equity will act if the legal remedy is "difficult." In the context of a dispute over wrongful holding of goods, the legal remedy, trover, is difficult (sufficient to trigger equitable relief) when the personalty is so unique that money damages could not adequately compensate for its loss.[53] Concluding that there was nothing unique about the Negroes involved here, the court decided that money damages could adequately compensate the petitioner for their loss.

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53. *Id.* at 517. In two later cases, however, the equity court issued decrees ordering the specific return of slaves without regard to their uniqueness. Sims v. Shelton, 21 S.C. Eq. (2 Strob. Eq.) 221 (1848); Young v. Burton, 16 S.C. Eq. (Mg. Mull Eq.) 225 (1841). The court in *Sims* said it would presume the slaves were of such peculiar value as to entitle the petitioner to equitable relief, unless there was sufficient rebuttal by the defendant. 21 S.C. Eq. (2 Strob. Eq.) at 224. In Hall v. Joiner, 1 S.C. 186, 190-91 (1869), the court restated the rule that the specific return of chattel in equity was available when the value of the chattel could not be ascertained.

Farley suggests that South Carolina had abandoned, at an early point, a talismanic approach to the rule. The decision shows the court declaring the breadth of its equity powers—it *can* act even if an adequate legal remedy exists—but also developing guidelines as to when it *ought* to act. When specific return of goods is sought, the court ought to act only if the items involved are so unique or special that they cannot be restored by money damages. By the time *Farley* was decided, the courts of South Carolina were apparently moving away from a literal, jurisdictional interpretation of the rule to an approach which applied the rule as a guide to decision, forcing the courts to think carefully about when equitable relief should issue.

B. The Rule in Post-Merger Practice

In 1870, the South Carolina General Assembly abolished the traditional forms of action and the dual court system. Henceforth, all actions for the enforcement of private rights and redress of private wrongs would be denominated civil actions and would be heard in the same forum.[54] Since 1870, with some minor deviation, the traditional rule has been used solely as a guide to decision in South Carolina.

This newer view of the "inadequacy" requirement was applied as recently as 1978 in *Van Robinson Insurance Agency v. Harleysville Mutual Insurance Co.*[55] The defendant notified the petitioner of its intention to terminate an agreement under which the petitioner had served as the defendant's South Carolina agent. The petitioner sought an injunction prohibiting cancellation of the agreement, even though a state statute provided the agent with a cause of action for damages for wrongful cancel-

54. 1870 S.C. Acts 443; Johnson v. Aetna Ins. Co., 308 F. Supp. 33 (D.S.C. 1970); Emory v. Hazard Powder Co., 22 S.C. 476 (1885); Chapman v. Lipscomb, 18 S.C. 222 (1882). This approach to the rule was demonstrated in Monteith v. Harby, 190 S.C. 453, 3 S.E.2d 250 (1939). There, the petitioners sought to recover for the conversion and misuse of trust funds, styling their action as one for an accounting in an attempt to secure equitable relief. The court concluded that a legal judgment for the petitioners, based on a tort action, would "fully satisfy their demands." *Id.* at 456, 3 S.E.2d at 251. The court affirmed the trial court's transfer of the suit from equity to the law calendar. In so doing, the court did not apply the rule to determine which side of the court of common pleas had jurisdiction. Rather, the focus was on whether the legal relief could adequately protect the petitioner's interest. If so, no reason existed for equity to act.

55. 272 S.C. 127, 249 S.E.2d 744 (1978).

lation of the agency agreement.[56] The trial court refused to issue the injunction, and the petitioner appealed.

Affirming, the South Carolina Supreme Court held that the statutory action "afford[ed] [petitioner] the full relief to which it [was] entitled. Since [petitioner] possess[ed] an adequate remedy at law, equity [would] not intervene."[57] The question was not whether the equity court had jurisdiction, but whether it ought to have acted. The availability of a legal remedy, while not determinative, did help guide the court on this latter issue. Determining whether an adequate remedy at law exists results in correct decisions about when equitable relief should be provided.

In light of *Van Robinson*, it appears the better argument is that the traditional rule has nothing to do with allocating or determining jurisdiction in post-merger South Carolina. This position is not completely unassailable, however. In *American Surety Co. v. Muckenfuss*,[58] the court granted a demurrer on jurisdictional grounds after determining that the petitioner had an adequate remedy at law. There, the petitioner sought an equitable decree releasing it from its bond on the administrator of an estate, who had died, and for an accounting of claims against the administrator's estate. The defendant demurred, and the trial judge overruled the demurrer. Reversing, the court framed the issue as whether the court of common pleas, sitting in equity, had jurisdiction. Determining that a state statute provided the relief desired by the surety, the court held that such equity jurisdiction did not exist,[59] and ordered the demurrer granted.

Arguably, *American Surety* permits a defendant to object, by demurrer, to jurisdiction whenever a statutory legal remedy is available to the petitioner and that fact appears on the face of the complaint.[60] Further, the holding suggests that the demurrer must be granted because the court lacks power to hear the case if the petitioner has an adequate legal remedy.

However, *American Surety* may have little vitality today.

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56. S.C. CODE ANN. §§ 38-37-10 to -1520 (1976).

57. 272 S.C. at 128-29, 249 S.E.2d at 745.

58. 172 S.C. 169, 173 S.E. 290 (1934).

59. *Id.* at 173, 173 S.E. at 292. The court expressed its holding in the following language: "As for the jurisdiction of the court of common pleas in equity, recourse to the court of equity can hardly be demanded when there is an adequate legal remedy supplied by statute." *Id.*

60. *See* S.C. CODE ANN. § 15-13-320(1)(1976).

The case involved a plea for equitable relief when statutory relief was also available. The issues were identical to those presented by *Van Robinson*, in which the existence of the statutory remedy was viewed as merely a factor in deciding whether equity *ought* to intervene. It may be reasonably argued, therefore, that *Van Robinson* implicitly overrules *American Surety*, at least insofar as *Van Robinson* did not attach jurisdictional significance to the fact that statutory relief was available to the petitioner in equity.

In summary, it appears that South Carolina courts, both before and after the merger of law and equity, have at times applied the "inadequacy of legal remedy" rule as a guide to proper remedial decisions, rather than invoking it mechanically to allocate jurisdiction. Cases to the contrary are distinctly at odds with the broad trend and are of questionable continuing validity.

C. Pomeroy's Analytic Scheme

Pomeroy suggests that equity may take cognizance of two basic types of cases.[61] First, certain actions are inherently equitable, having been developed and refined traditionally by the equity courts. Equitable relief may be provided in these cases regardless of the existence of a legal remedy. The second category consists of those cases seeking to enforce an essentially legal right, but by equitable means. Here, the propriety of equitable intervention may be determined by applying the traditional rule, that is, by asking whether an adequate legal remedy is otherwise available to the petitioner.

Pomeroy's scheme is helpful in examining the use of the traditional rule in modern South Carolina jurisprudence. It facilitates classification of the South Carolina cases, and leads to certain conclusions about when the court views the rule as significant today.

In South Carolina, equity has exclusive jurisdiction over the administration or enforcement of trusts.[62] Equity may also order specific performance of land conveyances, without regard to

61. POMEROY, *supra* note 3, at §§ 131-33.

62. Weston v. Weston, 210 S.C. 1, 41 S.E.2d 372 (1947); *Ex Parte* Rowley, 260 S.C. 174, 20 S.E.2d 383 (1942).

other legal remedies.[63] Also, an action to foreclose on a mechanic's lien is exclusively equitable,[64] as is an action for the reformation of instruments.[65] As a result, all of these equitable remedies are available without reference to legal relief.

A wide variety of other equitable remedies, however, are subject to the traditional rule regarding the inadequacy of legal relief. A brief review of the major areas to which the rule applies follows.

1. Accounting

South Carolina has long recognized an equitable action for an accounting.[66] The equity side of the court should not grant an accounting, however, unless no adequate remedy at law exists.[67] Where the accounts are simple, it may be possible for a jury to comprehend the figures and incorporate them into a damages award. Therefore, it has been held that accounts must be detailed and complex in order to render the legal remedy inadequate.[68] The theory contemplates that the jury's inability to understand complicated accounts constitutes "inadequacy" of legal remedy.

2. Specific Performance of a Contract

The courts in South Carolina will not order specific performance if an action at law for breach of contract will adequately compensate the petitioner.[69] It is uncertain whether difficulty in proving damages amounts to an "inadequacy" sufficient to entitle the petitioner to specific performance. In *Van Robinson*, the petitioner argued that he was entitled to eq-

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63. Belin v. Stikeleather, 232 S.C. 116, 101 S.E.2d 185 (1957); Adams v. Willis, 225 S.C. 518, 83 S.E.2d 171 (1954).

64. Winston & Co. v. Ga. & Fla. R.R., 34 F.2d 163 (W.D.S.C. 1929).

65. Chisolm v. Pryor, 207 S.C. 54, 35 S.E.2d 21 (1945).

66. Byrd v. King, 245 S.C. 247, 140 S.E.2d 158 (1965); Taylor v. Thompson, 213 S.C. 104, 48 S.E.2d 648 (1948); Butler v. Ardis, 7 S.C. Eq. (2 McCord Eq.) 60 (1827).

67. Jeffries v. Harvey, 206 S.C. 245, 33 S.E.2d 513 (1945); Butler v. Ardis, 7 S.C. Eq. (2 McCord Eq.) 60 (1827).

68. Jeffries v. Harvey, 206 S.C. 245, 250, 33 S.E.2d 513, 515 (1945).

69. *See* Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939); Bowden v. Schatzell, 8 S.C. Eq. (Bail. Eq.) 360 (1831). This rule is inapplicable to land sale contracts. *See supra* note 62 and accompanying text.

uitable relief, even though a statutory remedy was available, because he would have difficulty proving his consequential damages. The court stated that such an obstacle was "not [a] sufficient basis to transform an action at law into one in equity."[70] Although the petitioner was seeking an injunction rather than specific performance, there is no reason to believe that the court would adopt a different rule in cases seeking specific performance.

Directly opposed to the dicta in *Van Robinson*, however, is the 1939 case of *Kirk v. Clark*,[71] in which the court stated that uncertainty in fixing the measure of damages may justify the exercise of equitable relief. Unless *Van Robinson* implicitly overruled *Kirk*, it appears at least arguable that in South Carolina a material problem in calculating damages can render inadequate an otherwise available legal remedy.[72]

3. *Injunctions*

The traditional rule arises with great frequency in cases involving injunctions. The case of *Carter v. Lake City Baseball Club*[73] illustrates nicely how the rule is used in an action in which injunctive relief is sought.

In *Carter*, the defendant, an incorporated professional baseball team, played its games on a field in a residential section of Lake City, South Carolina. The petitioners, who resided near the field, complained of baseballs striking their houses, cars parking on their lawns, lights shining in their windows, and noise keeping them awake. They petitioned to enjoin the team from using the field, and the trial court held for the defendant. On appeal, the supreme court reversed and ordered the injunction to issue.

The court reasoned that a nuisance did exist and that property damage had occurred, but that if a law court could provide complete redress for this damage, equity should not intervene. Property damage is compensable by an action at law for trespass. This did not end the inquiry, however, for equity may act

70. 272 S.C. at 129, 249 S.E.2d at 745.

71. 191 S.C. 205, 211, 4 S.E.2d 13, 16 (1939).

72. *See also* Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 477, 189 S.E.2d 305, 311 (1972).

73. 218 S.C. 255, 62 S.E.2d 470 (1950).

despite the legal remedy if inaction would produce "irreparable mischief," immeasurable damages, or a "constantly recurring grievance."[74] The court held that the injuction should issue because the trespass was ongoing and constant, and because the petitioners would have to bring repeated suits at law if they were denied equitable relief.

The holding in *Carter* indicates that a legal remedy is inadequate if it forces the plaintiff to bring a multiplicity of lawsuits. The court's perfunctory statement that inability to measure damages will justify equitable intervention strengthens the supposition that the court would, if presented squarely with the issue, find a legal remedy inadequate because of difficulties in determining damages. Another factor, mentioned briefly in the opinion, was the insolvency of the defendant baseball corporation, which rendered it unable to respond to a judgment at law. Arguably, the defendant's inability to pay damages may also constitute an "inadequacy" of legal remedy, entitling the petitioner to equitable relief.[75]

Applying Pomeroy's scheme, it is possible to draw general conclusions about when the traditional rule will be invoked in South Carolina. With regard to the enforcement of trusts and land conveyances, the foreclosure of mechanic's liens, and the reformation of instruments, equity may act regardless of the availability of legal remedies, because the rule simply does not apply to these actions. With regard to actions for an accounting, specific performance or an injunction, however, the rule must be applied by the court to determine whether it *ought* to act.[76]

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74. *Id.* at 271, 62 S.E.2d at 477.

75. *See* D. DOBBS, *supra* note 1, at 62. Note how closely these conceptions of "inadequacy" resemble each other.

76. It should be noted that the rule has also been applied to several other types of actions, but its use arises most frequently where the petitioner seeks an accounting, specific performance, or an injunction. Other types of actions include actions for rescission for mistake, *see* Turner v. Washington Realty Co., 178 S.C. 271, 276, 122 S.E. 768, 769 (1924), for the return of a specific chattel, *see* Hall v. Joiner, 1 S.C. 186, 190-91 (1869), for measurement of dower in lands, *see* Lane v. Lane, 211 S.C. 536, 542, 34 S.E.2d 754, 756 (1945), for determination of the priority of liens, *see* Dana v. Peurifoy, 142 S.C. 46, 47, 140 S.E. 247, 248 (1927) (case decided prior to South Carolina's adoption of the Uniform Commercial Code), for relief from a penalty, *see* Lane v. New York Life Ins. Co., 147 S.C. 333, 373, 145 S.E. 196, 209 (1928), and for the creation of an equitable lien, *see* Georgia-Carolina Gravel Co. v. Blassingame, 129 S.C. 18, 25, 123 S.E. 324, 326 (1924).

D. *What Is an "Inadequate" Legal Remedy?*

The cases and commentaries are replete with general statements about what constitutes an "inadequate" legal remedy. Recall, for example, Barbour's observation that a legal remedy was traditionally seen as inadequate if it was of only theoretical value.[77] In *Chisolm v. Pryor*,[78] the South Carolina Supreme Court offered a vague definition, reasoning that in order to be "adequate," the legal remedy must provide for justice in the case as well as being as practical, efficient, and prompt as the equitable remedy.[79] This broad description appears to be the closest the South Carolina Supreme Court has come to defining specific inadequacies at law.

Thus, it is not surprising that a review of the cases yields little in the way of firm guidelines on precisely what constitutes "inadequacy." The broad language in *Chisolm*, however, clearly provides petitioners ample latitude to argue for equitable intervention far beyond any specific settings. The key words are "practical, efficient, and prompt." It should not be difficult, in almost any factual situation, to assert that equity offers a remedy that is either more practical, more efficient, or more prompt than the remedy available at law. Thus, *Chisolm* gives the petitioner the opportunity to argue for an extremely liberal construction of inadequacy, and to maintain that impediments of

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77. Barbour, *supra* note 18, at 858.

78. 207 S.C. 54, 35 S.E.2d 21 (1945).

79. *Id.* at 60, 35 S.E.2d at 24 (citing Monteith v. Harby, 190 S.C. 453, 3 S.E.2d 250 (1939)). The court presented a similar general treatment of the term "inadequacy" in Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 189 S.E.2d 305 (1972):

> [W]hether a wrong is irreparable, in the sense that equity may intervene, and whether there is an adequate remedy at law for a wrong, are questions that are not decided by narrow and artificial rules. The Courts proceed realistically if the threatened wrong involves actual damage; the mere uncertainty of fixing the measure of such damage to the injured party may itself be sufficient to justify the exercise of equitable jurisdiction; and if the available legal remedy in a given case reduces itself to a matter of words, rather than to a matter of efficacy, because of its impracticability, or because the threatened acts may continue during the progress of an action at law, or because successive actions at law would be necessary to protect the plaintiff's rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power.

Id. at 477-78, 189 S.E.2d at 311-12 (quoting Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939)).

proof, procedure, timing, or compensation at law entitle him to equitable relief.

III. PRACTICAL CONSIDERATIONS FOR LITIGATION

It is hoped that the discussion of the origin and development of the "inadequacy of legal remedy" requirement, its purpose after the merger of law and equity, and its use in South Carolina, will yield some pragmatic suggestions. What follows is a resource list of things both petitioners and defendants should consider in a suit for equitable relief.

The petitioner seeking equitable relief should realize that South Carolina courts apparently do not apply the "inadequacy of legal remedy" rule to certain types of inherently equitable actions. The petitioner should, therefore, attempt to structure his case to fit within one of these categories, or should argue that the rationale against applying the rule extends to his present action. In this way, the petitioner may cast his suit as one inherently equitable in nature and cognizable in equity without consideration of alternate legal remedies.[80]

A review of the cases, however, reveals that the traditional rule still applies to most pleas for equitable relief. In particular, it applies in the three areas of actions for an accounting, for specific performance, and for injunctions. Therefore, if the petitioner desires any of these types of relief, he must be prepared to show that his remedy at law is inadequate.

The court's treatment of "inadequacy" in these areas, while not setting forth clear guidelines, does give petitioners latitude to make imaginative arguments. Following *Chisolm*, if the petitioner can show that the legal remedy is in any significant way less efficient, practical, or prompt than equitable relief, the court may be prepared to question the adequacy of that legal remedy. The petitioner, relying on the general language of cases like *Chisolm* and the traditional exercise of equity to rectify flaws in the common law, should attempt to focus the court's attention on this simple question: *Will anything in the treatment of this*

80. In South Carolina, law and equity have concurrent jurisdiction of a matter arising out of fraud. Military Art Novelty Co. v. Fayonsky, 113 S.C. 470, 473, 101 S.E. 818, 819 (1920); Fass v. Liverpool London & Globe Fire Ins. Co., 105 S.C. 364, 378, 89 S.E. 1040, 1043 (1916).

case at law impair the working of complete justice? If the answer is "yes," then the petitioner may reasonably claim that he is entitled to equitable relief because his legal remedy is inadequate. The petitioner should endeavor to promote this broad, flexible view of "inadequacy" as consistent both with the historic origins and aims of equity, and with the South Carolina Supreme Court's concern that the legal remedy be as efficient, practical and prompt as that in equity.

In resisting equitable intervention, the defendant has available two basic approaches. The first is to shift the focus to the social and moral importance of the interest in dispute, while the second is to raise a jurisdictional objection.

If the court chooses to interpret the traditional rule as a device for uncovering and rectifying the deficiencies of litigating a particular case at law, the defendant will usually fail in his attempt to avoid equitable intervention. A reasonably imaginative petitioner will be able to devise a reason, in any given case, why equity offers more complete justice than does law. The defendant must, therefore, try to shift the framework of the debate. He should portray the issue as whether the interest at hand is of such significance that it merits protection in equity, rather than whether one form of relief provides justice.

This is the position of Chafee and Rendleman. They view the traditional rule as a guide to decision, raising the question in each case of whether the violated right is so fundamental that the coercive remedies of equity should issue in its protection. Therefore, even if equity offers some procedural or technical advantage over pursuing the action at law, equity will intervene under this scheme only if the interest is sufficiently vital to deserve the more potent protection of equity.

This version of the "inadequacy" rule is more beneficial to the defendant. It allows the court to concede that equity may offer some advantage to the petitioner, yet still confine him to his legal remedy if his interest is one that, in the whole spectrum of rights, is not central and can be adequately protected by legal remedies. The defendant may question the social importance of the interest at stake, forcing the petitioner to advocate why society, through the courts, should protect this particular interest with its most extraordinary sanctions, the coercive remedies of equity. The defendant should urge upon the court the notion that the proper role of the rule today is, in fact, to force a de

facto prioritization of rights, with some warranting equitable protection and others not calling for such protection. Thus, the defendant can shift the focus away from the easily-demonstrated failings of legal remedy to the underlying social and moral worth of the petitioner's right.

The defendant may also object to equity jurisdiction. Although the dominant theme in South Carolina is that the "inadequacy" rule is not concerned with jurisdiction, some post-merger cases apply the rule in jurisdictional terms. Thus, the question of whether an adequate legal remedy actually strips the lower court of equity jurisdiction has not been squarely decided. It would not, therefore, constitute bad faith for a defendant to demur to a petition if an alternate remedy was available at law, and if that remedy appears to the defendant, from the face of the complaint, to be adequate.

This course would probably be of small utility, however. Even if the demurrer was sustained, the general practice in South Carolina is to permit a claimant to "plead over," or to redraft his pleading so as to remove the defect.[81] Thus, the petitioner could simply set forth in his amended pleading those specific inadequacies of legal remedy which compel him to resort to equity.

Also, the weight of modern authority seems to be against viewing the rule as jurisdictional. While a court might have reservations about whether equitable relief is proper in a given case, it would not likely question its own power to act. An appeal to the propriety of relief, rather than to the jurisdiction of the courts, seems more promising. However, a court, unsure as to whether it ought to grant equitable relief in a given case, might dismiss the petition using jurisdictional grounds to mask its own uncertainty. For this reason, a defendant should file a jurisdictional demurrer, although he should also expect it to be overruled.

The defendant's best tactic appears to be to frame the question in terms of whether the petitioner's interest merits equitable protection and, simultaneously, to be prepared to counter the petitioner's specific assertions of inadequacy in case the court views the traditional rule as a mandate to alleviate all the

81. *See* S.C. CODE § 15-13-340 (1976).

defects of a legal action. This approach, coupled with a jurisdictional demurrer if an adequate legal remedy appears on the face of the complaint, will assure a potential defendant that he has an argument to counter whatever view of the rule the petitioner advances.

Val H. Stieglitz