INJUNCTIONS — BALANCE OF EQUITIES — PUBLIC INTEREST. — Plaintiff sought a mandatory injunction to compel the reconstruction of a twenty story building in order to make it conform to the "set back" requirements of the zoning ordinance of Chicago. The cost of reconstruction was found to be $343,837.07. The district court denied the injunction. *Held* on appeal: decree reversed and mandatory injunction granted. *Welton et al. v. 40 East Oak St. Building Corporation* (C. C. A. 7, 1934) 70 F (2d) 377.

The court in this case recognized and approved the "balance of equities" doctrine to the effect that when the granting of an injunction will cause great financial loss to the defendant and relatively little benefit to the plaintiff the injunction should be refused. In this case the injury to the plaintiff, although it constituted special damages so as to allow the plaintiff to bring the suit, was not really substantial. The decision, however, rests on the fact that in balancing the equities the public interest also must be taken into account, and when such public interest favors the granting of the injunction, the combination of the benefit to the plaintiff and to the public will outweigh any financial loss to the defendant.

Some jurisdictions take the view that a court has no discretion to refuse an injunction when a clear legal right is or is about to be invaded and will not balance the relative hardships. *Hulbert v. California Cement Co.* (1911) 161 Cal. 239, 118 Pac. 928; *Arizona Copper Co. v. Gillespie* (1909) 12 Ariz. 203, 100 Pac. 465; *Mobile & Ohio Ry. Co. v. Zimmern* (1921) 206 Ala. 37, 89 So. 475; 5 Pomeroy, *Equity Jurisprudence,* (2nd ed. 1919) sec. 1922 & 1944. The contrary view regards the issuance of an injunction as discretionary under all the facts and circumstances presented to the court. *McCarthy v. Bunker Hill and Sullivan Mining and Concentrating Co.* (C. C. A. 9, 1908) 164 F. 927; *Smith v. Stasa Milling Co.* (C. C. A. 2 1927) 18 F. (2d) 736; *Barker v. Mintz* (1923) 73 Colo. 262, 215 Pac. 534; *Schopp v. Schopp* (1912) 162 Mo. App. 558, 142 S. W. 740; *Hamilton et al v. Foster* (1922) 272 Pa. 95, Atl 50. But in *Baldocchiet et al. v. Four Fifty Sutter Corp.* (1933) 129 Cal. App. 383, 18 Pac. (2d) 682 it is said, "It seems to be the rule in all jurisdictions that the doctrine has no application where the act complained of is of a tortious character and when the balancing of conveniences extinguishes a valuable vested right."

In those jurisdictions which recognize the "balance of equities" rule, it is generally held that if the injunction would have the effect of greatly injuring or inconveniencing the public, it may be refused even though as against the defendant the complainant would be entitled to its issuance. *Johnson v. United Ry. Co. of St. Louis et al.* (1910) 227 Mo. 423, 127 S. W. 63 (interference with the operation of a public utility); *Craven v. Davison* (Tex. Civil App. 1921) 233 S. W. 872 (interference with the building of a public highway); *Stewart Wire Co. v. Lehigh Coal etc. Co.* (1902) 203 Pa. 474, 53 Atl 352 (interference with the supply of electricity); *South Atlantic Waste Co. v. Raleigh etc. R. Co.* (1914) 167 N. C. 340, 83 S. E. 618 (deprivation of a necessary railroad). The instant case differs from the cases cited only that the court was able to give public interest and convenience as a reason not for refusing but for granting an injunction.

Analogous cases appear in another field of equity. Despite the general rule that equity will not specifically enforce contracts for the conduct of operations requiring time, special knowledge, skill and personal oversight, specific performance of such contracts has been granted where the public welfare was involved. Pomeroy, *Specific Performance of Contracts* (3rd ed. 1926) sec. 23; *Joy v. St. Louis* (1890) 138 U. S. 1; *Union Pacific Ry. Co. v. Chicago, Rock Island & Pacific Ry. Co.* (1896) 163 U. S. 564; *Municipal Gas Co. v. Lone Star Gas Co.* (Tex. Civil App. 1924) 259 S. W. 684; *Edison Illuminating Co. v. Eastern Pennyslvania Power Co.* (1916) 253 Pa. 457, 98 Atl 652. In these cases, as in the principal case, the interest of the public helped to give to the complainant what ordinarily would not be granted him. A. J. G., '36.

PHYSICIANS AND SURGEONS—REASONABLE COMPENSATION—WEALTH OF PATIENT.—Plaintiff-surgeon rendered valuable services to the minor daughter of the defendant at the defendant's request. Plaintiff made seventy-two professional calls on the patient, gave her ten treatments, performed two paracenteses, participated in five consultations and performed a very difficult and dangerous mastoid operation. Plaintiff then rendered a bill for $2,400 which the defendant refused to pay and this suit was brought. At trial plaintiff introduced testimony to show that the reasonable charge for services should be based in part on the wealth of the patient and in a life saving operation should be 10% of the net annual income. The defendant objected to this testimony but the court refused to strike it out. *Held,* reversible error, notwithstanding the fact that no evidence was introduced as to the defendant's wealth or annual income. *Scholz v. Mackay et ux.* (Mo. App. 1934) 75 S. W. (2) 605.

The decision of the court was placed squarely on the authority of *Morrell v. Lawrence* (1907) 203 Mo. 363, 101 S. W. 571, where it was emphatically said "He (physician) is entitled to a verdict for the reasonable value of his services, although the defendant be a poor man. He is not entitled to a verdict for more than the reasonable value of his services, although the defendant may be a man of great wealth. The jury in a case of this kind have no concern with the defendant's ability to satisfy the judgment." This position was affirmed in the case of *Glenn v. Thompson* (Mo. App. 1932-33) 45 S. W. (2d) 948, 61 S. W. (2d) 210. Accord, *Robinson v. Campbell* (1878) 47 Iowa 625. The Missouri authorities, however, make one, somewhat tenuous, distinction; in cases where the defendant has introduced evidence that the plaintiff has charged other patients smaller fees for similar services, the plaintiff in rebuttal may show that these fees were made less than reasonable because of the patient's poverty, and may then show defendant's ability to pay, solely for the purpose of proving that he is not entitled to similar indulgence. The practical wisdom of such an exception may be questioned.

The majority of the courts in other jurisdictions, however, hold that the wealth of the patient and his ability to pay is a factor to be taken into consideration by the jury in fixing a reasonable charge, most holding that