SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

CAROL A. YANNACONE, individually and on the behalf of all the people of the County of Suffolk,

Plaintiffs,

-against-

H. LEE DENNISON, Suffolk County Executive; THE SUFFOLK COUNTY MOSQUITO CONTROL COMMISSION, and the COUNTY OF SUFFOLK,

Defendants

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I. THE ACTION

April 25, 1966 — An Order to Show Cause was submitted to the Hon. Henry Tasker, together with an affidavit by the Plaintiff and a copy of the Summons and verified Complaint in this action. Judge Tasker refused to sign the order, writing on the face of the original order,

> "Order unsigned. This action may be commenced by the service of a Summons and Complaint. No basis for issuance of Order to Show Cause."

Accordingly, the Summons and Verified Complaint were that day served upon the Defendants.

April 27, 1966 — An answer was verified by Christian T. Williamson, as Executive Director of the Suffolk County Mosquito Control Commission, which answer was served by mail upon the Plaintiffs' counsel on May 3, 1966

May 10, 1966 — A Note of Issue was served and filed, by Plaintiffs' counsel, and the action bears Suffolk County Index N°. 139,050-66, and Calendar N°. 6530.

June 7, 1966 — Upon the affidavits of the Plaintiff, Carol A. Yannacone, counsel, Victor John Yannacone, jr., and George M. Woodwell, Ph.D., an Order to Show Cause was signed by Hon. D. Ormande Ritchie, directing the Defendants to show cause why they should not be restrained from

> "using chlorinated hydrocarbon pesticides or insecticides, in particular DDT, anywhere in the County of Suffolk during the pendency of this action . . ."

June 14, 1966 — The Order to Show Cause was returned before Hon. D. Ormande Ritchie and Defendant Mosquito Control Commission submitted the affidavit of Christian T. Williamson, sworn to April 27, 1966, in opposition to Plaintiffs' application for a temporary restraining order; and the Plaintiffs submitted, at the request of the Court, in lieu of testimony, affidavits in support of Plaintiffs' application from Charles

F. Wurster, Jr., Ph.D., Assistant Professor of Biological Science State University at Stony Brook; George M. Woodwell, Ph.D., Ecologist, Brookhaven National Laboratory; Anthony S. Taormina, Regional Supervisor of Fish & Game, Region 9 (Long Island), Conservation Department of the State of New York; Arthur P. Cooley, M.S.; and Dennis Puleston, and an extensive Technical Appendix.

June 24, 1966 Defendants submitted an affidavit of Christian T. Williamson together with minutes of a meeting of the Suffolk County Mosquito Control Commission dated June 22, 1966, all in opposition to the Plaintiffs' application for a temporary restraining order.

June 30, 1966 Plaintiffs counsel submitted a Memorandum of Law in support of Plaintiffs' application together with an affidavit in reply by the Plaintiff.

August 15, 1966 In an opinion by Hon. D. Ormande Ritchie, the Court determined,

> ". . . Upon all the facts before the Court, the Court is of the opinion that sufficient grounds exist for the exercise of the discretion vested in the Court to stay a practice injurious to the County and its residents. The application is granted."

September 2, 1966 Upon the affidavit of the Plaintiff, Hon. John P. Cohalan, issued an order to show cause why an order should not be granted adding certain additional defendants engaged in the business of applying insecticides to trees and shrubs throughout the County of Suffolk.

September 15, 1966 The order to show cause was returned before Hon. Henry Tasker, and upon consent of the Plaintiffs, certain parties sought to be added as defendants were eliminated from the motion upon their submission of affidavits indicating they did not use DDT in their operations, and the County Attorney and John C. Ceparano, counsel to the remaining parties sought to be added as defendants were heard in opposition to Plaintiffs application. Upon averment by the County Attorney that the addition of parties defendant would prevent the speedy trial of the action, Plaintiff withdrew the application and an

order upon such withdrawal was duly entered on

September 21, 1966.

October 17, 1966 — The action appeared on the ready calendar in Special Term, Part II, and the County Attorney made application for an adjournment. Hon. D. Ormande Ritchie directed that the matter be set down peremptorily at the head of the Calendar for Special Term, Part II, on November 14, 1966.

November 14, 1966 — Hon. Arthur Cromarty presiding at Special Term, Part II voluntarily disqualified himself from hearing the matter by virtue of the fact that he served on the Suffolk County Board of Supervisors.

JUDGMENT SOUGHT

". . . the Plaintiff herein, individually and on behalf of all others similarly situated, and all the residents of the County of Suffolk, prays judgment of this Court:

(a) Declaring the rights of the residents of the County of Suffolk to the full benefit, use and enjoyment of the natural resources of said County, without diminution thereof resulting from the continued use of chlorinated hydrocarbon pesticides, in particular DDT.

(b) Impressing upon the Defendants a trust for the benefit of the Plaintiff and all others similarly situated, for the maintenance of the natural resources of the County of Suffolk, without diminution thereof, resulting from the continued use of chlorinated hydrocarbon pesticides, in particular DDT.

(c) Restraining the Defendants from the use of chlorinated hydrocarbon pesticides, in particular DDT, throughout the County of Suffolk.

(d) Together with such other and further relief as to this Court shall seem just and proper under the circumstances, all together with the costs and disbursements of this action. "

DENIALS

By virtue of Defendants denials, the Plaintiffs must prove the following allegations contained in the verified complaint:

"3. . . . Defendant SUFFOLK COUNTY MOSQUITO CONTROL COMMISSION is an agency of the County of Suffolk, and under the jurisdiction and control of Defendant H. LEE DENNISON, in his capacity as Suffolk County Executive."

"7. . . . the injury to natural resources caused by the use of chlorinated hydrocarbon pesticides, is substantial, permanent and irreparable."

"8. That the plaintiff herein, and all others similarly situated, in particular children living within the County of Suffolk, and those children yet unborn who shall live within the County of Suffolk, will suffer, serious, permanent and irreparable damage if the Defendants are permitted to continue the use of chlorinated hudrocarbon pesticides, such as DDT."

AFFIRMATIVE DEFENSES

The Defendants have set forth three Affirmative Defenses by their answers, none of the allegations in which have been admitted.

The FIRST AFFIRMATIVE DEFENSE:

"3. The Commission is a body corporate and politic, pursuant to §1523 of the Public Health Law and the actions taken pursuant to Title II of Article 15 of said Law."

"4. Defendant H. Lee Dennison has no control or direction over the Commission."

ADMISSIONS

The Defendants have admitted the following allegations of the Plaintiffs' verified complaint:

"1. That Defendant H. LEE DENNISON is the duly elected County Executive of the County of Suffolk and by virtue of the Suffolk County Charter and the laws of the State of New York, is the chief executive officer of the County of Suffolk."

"2. That the Defendant COUNTY OF SUFFOLK, is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York."

"4. That the Plaintiff CAROL A. YANNACONE, is a resident of the Town of Brookhaven, County of Suffolk, New York."

"5. . . .that in the past, the defendant Suffolk County Mosquito Commission, hereinafter referred to as the Commission used chlorinated hydrocarbon pesticides to spray some places within its jurisdiction and plans to do so in 1966, . . "

"6. . . .the use of such chlorinated hydrocarbon pesticides cause injury to the natural resources of the County of Suffolk."

"9. That the Plaintiff herein, and all others similarly situated have no adequate remedy at law."

Defendants' answer contains additional admissions:

"11. The Commission is aware of the low biodegradability of such chemicals as DDT, its potential destructive effect on beneficial as well as harmful insects, and its ecological magnification in food organisms. . ."

"13. The Commission is aware that such substances as kerosene can be used to inhibit the breeding of mosquitos, and that there are other chemicals than DDT, albeit more costly, that do equally as effective a job in eliminating the pest. . ."

The SECOND AFFIRMATIVE DEFENSE:

"3. The Commission is a body corporate and politic, pursuant to §1523 of the Public Health Law and the actions taken pursuant to Title II of Article 15 of the said law."

"6. The Commission does not have and does not exercise jurisdiction over and throughout Suffolk County."

"7. Suffolk County, as a municipal corporation, has no control and direction over the Commission."

The THIRD AFFIRMATIVE DEFENSE:

"8. That injury to the natural resources of Suffolk County is a constant process in which, in addition to nature itself, the participants are, among others, many of the residents of Suffolk County, on whose behalf the action is allegedly brought, including commercial and sports fishermen, baymen, hunters, farmers and the public generally."

"9. That for the most part, the natural resources which are injured by the admitted use by the Commission of chlorinated hydrocarbon pesticides are mosquitos, which are insects legislatively found to be detrimental to the health of the people of the State of New York; it is the statutory duty of the Commission to rid the area over which it has jurisdiction of mosquitos."

"10. The injury to other natural resources than mosquitos by the Commission's use of chlorinated hydrocarbon pesticides is insignificant and has, if any, a de minimus effect on the balance of nature."

"11. The Commission is aware of the low biodegradability of such chemicals as DDT, its potential destructive effect on beneficial as well as harmful insects and its ecological magnification in food organisms, and so controls and curtails the use of such chemicals and limits their use to a tolerable degree where its destructiveness to fish is not unduly harmful and its ability to cumulate in man through food organisms is not dangerous."

"12. The Commission does not generally spray areas with such chemicals as DDT; such spraying is in definitely marked places where stagnant water becomes a likely place for the breeding of mosquitos."

"13. The Commission is aware that such substances as kerosene can be used to inhibit the breeding of mosquitos, and that there are other chemicals than DDT, albeit more costly, that do equally as effective a job in eliminating the pest. In making a judgment to use DDT to the limited extent it does, the Commission takes into consideration all facets of the problem and does not use substances potentially harmful to natural resources, the balance of nature, or man, to a degree that is substantial or that will cause dangerously permanent or irreparable injuries."

I. THE COURT HAS JURISDICTION IN EQUITY TO DETERMINE THE PLAINTIFF'S CLAIMS.

A. THE ORIGIN OF JURISDICTION IN EQUITY.

In twentieth century America, we tend to think of Equity as that system of remedial law administered by Chancery in England, and by courts in the United States which exercised like powers and administered a like system of law. However, from the beginning of English law, equity was administered by the king - together with the witan during the Saxon time, and the great court of the nation, which succeeded the witan, after the Norman conquest. The king's prerogative included the power to do justice in any case between his subjects brought to his attention by petition or otherwise. He was the fountain of all justice, and in him, acting with the advice and consent of his witan, court or council, resided the final power to do what justice and right might require.

This regular administration of law by the Curia Regis was royal law, based on the same ultimate and supreme power in the king to do justice as was the special relief in exceptional cases through the king's prerogative of grace, which later came to be called equity.

The common law, as distinguished from the customary law of the popular courts originated in the establishment by Henry II of a national court administering a law for the entire nation, and by the end of the reign of Henry II, we find established a Curia Regis, a court of the king, which was a true court of law in the modern sense, administering a national law, common to the entire country, and which had largely displaced the customary laws of the different parts of the country. This continued during the thirteenth century,

so that by its close the common law was definitely established as the law of the nation, displacing the customary law and the local courts which were limited to local petty matters or relatively unimportant survivals. The law of the Curia Regis, which had been the law of the very great, scarcely touching the mass of the people, had become the law of the land, extended and adapted to the needs of the people so as to become the common law of a nation.

> "In this new legal evolution (of the common law), the following principle is fundamental from the very beginning: The new procedure and the new machinery are the king's private property; they are no part of the public machinery of the state to which any individual may appeal in his personal need as he might to the shire or hundred court."
>
> Adams, The Origin of English Equity (1916)
> 16 Columbia Law Review 87

During the first half of the thirteenth century, a class of writs the breve magistralia, were freely issued by clerks in chancery to meet new cases where justice seemed to require that an action be allowed. The use of these writs was probably the immediate and effective cause of the rapid development of the law during this period.

With this flexible power to issue writs to meet any situation which seemed to require relief, there was little or no occasion to appeal to the king for relief under his prerogative of grace. The king's justice was being dispensed by his judges and without unreasonable restriction and many forms of relief, distinctly equitable in character, according to the later classification were administered by the king's judges as part of the common law in Bracton's time.

> ". . . Justice Holmes in a brilliant and daring essay set on foot an inquiry which has revealed the remote beginnings of equity. Equity and common law originated in one and the same procedure and existed for a long time, not only side by side, but quite undifferentiated from each other. Their origin is to be found in the system of royal justice which the genius of Henry II converted into the common law. . . . There was no equity as a separate body of law; for the king's justices felt themselves able to dispense such equity as justice required."
>
> Barbour, Some Aspects of Fifteenth Century Chancery
> 31 Harvard Law Review 834 (1918)

So long as the common law remained a flexible system with its field undefined, its power of inclusion unlimited, and its organs undifferentiated, there was no reason for distinguishing between the Common Law and Equity. Only when the Common Law became a hard and fast system, as men began to ask themselves about boundaries of actions, and limitations upon the new, that a new need arose for the action of the royal prerogative in securing general justice.

The manner in which equity in this sense disappeared from the common law is common knowledge. The jealousy of Parliament was really a reflection of the attitude of the community at large. The realization that the power to make new writs was the power to make new law, forced the writs into a closed cycle, and put an end to the free development of the common law. The law became so fixed and inflexible and its practitioners so absorbed in nice questions of form and pleading, there was no longer room for equity. By the early fourteenth century, the common law, which had supplanted the ancient customary law, had now, in its turn, become the regular system of remedial justice, but with gaps and

defects where no sufficient remedies were provided, and resort was necessary to the ancient power of the king as the fountain of all justice.

During the fifteenth century, Chancery permitted relief where a remedy at law existed, but that remedy was inadequate. Chancery even granted injunctions to stay waste and to restrain other wrongdoings, although this form of equitable relief was not destined to develop fully until the eighteenth and nineteeth centuries.

The extensive jurisdiction of the Chancellor's Court, was not attained without strong opposition, first from Parliament, and later from the Law Courts. Finally, during the reign of James I, the controversy came to a head between Chief Justice Coke and Lord Chancellor Ellesmere. The Chancellor appealed to the king who referred the matter to a body of lawyers including the Attorney General and Sir Francis Bacon, and they upheld the power of the Chancellor. This decision finally settled the power of Chancery to make good its decree though directly opposed to the results of the same controversy at law. The supremacy of equity over the common law in cases of conflict was definitely and finally established.

It has been usual for judges and legal writers to assert that no real conflict exists or can exist between law and equity:

> "And the first thing that we have to observe is that this relation (of law and equity) was not one of conflict. Equity had come not to destroy the law, but to fulfil it. Every jot and tittle of the law was to be obeyed, but when all this had been done something might yet be needed, something that equity would require."

Maitland, Lectures on Equity, 18

> "Equity did not, as is sometimes said, set up a conflicting system of law in which it contested the existence of settled legal rights. Recognizing those rights, it insisted that the holder of them, if he acquired them or retained them unconscientiously, or if he used them unconscientiously after acquired, should be subjected to the decree of the Chancellor 'in personam', and that such decree should be framed in such manner as to render complete justice in accordance with the principles of equity."
>
> 12 ColumbiaLawReview 756 (1912)

While it is true, that as a matter of form and procedure, equity did not directly attack legal rules or judgments, since either law or equity would have been overthrown in an unseemly struggle of that kind, nevertheless, in every case where the result reached in equity differed materially from the judgment a court of law would give, there was an open direct conflict between the two systems of law. This is illustrated by practically every case in which equitable, as distinguished from common law, relief was given through the fifteenth century, and still further evidenced by the development of equity during the sixteenth and seventeenth centuries.

At law in the case of uses prior to the Statute of Uses, and thereafter in the case of trusts, the cestui que trust was not recognized as having any rights whatever, but in equity he was the real owner of the property.

Equitable waste, though such a particularly clear case of conflict, even Professor Maitland (Maitland, Lectures on Equity, 157) questioned his position that no conflict between law and equity exists or has existed, is merely another illustration. At law there

is no waste, and therefore no remedy; in equity the plaintiff gets relief, an injunction preventing further waste, together with damages for past waste; or damages alone in the event the waste has been committed and no further waste is feared.

Equity intervened at an early date to restrain tenants for life or for years, "without impeachment of waste," from acts of unconscionable destruction, such as cutting ornamental timber, holding that trees growing naturally as well as those planted will be protected if they are for ornament or a shelter to the dwelling.

Packington's Case (1744)
3 Atk. 215; 26 Eng. Rep. 925; 1 Cook, Cases Eq. 482

There are not many American cases of this kind, as limitations, "without impeachment of waste," are rare. Equity intervened in those cases because the law gave no relief, and reason and conscience required that such acts be restrained as unconscionable wrongs to the remainderman or reversioner not justified by any reasonable exercise of the power expressly given by the clause "without impeachment of waste.

In 1848, New York led the way and finally merged law and equity under a single unified system of procedure, substituting the single civil action for all the different forms of action then existing at law and equity, and abolishing the technical rules of pleading and practice at common law, so far as they differed from the rules of pleading and practice in equity.

This Court is now free to draw upon the entire body of equity jurisprudence reaching back into the thirteenth century in order to do justice and grant the Plaintiff the relief she seeks, for herself, and for all the residents of Suffolk County.

B. PLAINTIFF HAS ESTABLISHED THE PRESENCE OF ALL THE ELEMENTS OF EQUITABLE JURISDICTION.

The jurisdiction of equity is generally dependent upon a number of factors, particularly:

(1) The equitable nature of the matter in dispute.

(2) The want of an adequate remedy at law; and

(3) The equitable character of the relief requested.

However, most of the jurisdiction of equity falls into two categories.

The one, generally exclusive, depends upon the substantive character of the right sought to be enforced and is predicated upon matters historically in the province of a chancery court.

The other, generally concurrent, depends, as a rule, upon the inadequacy of the legal remedy.

As a general proposition, the jurisdiction of a court of equity depends upon the position of the plaintiff and the relief he is entitled to at the time of bringing his action.

Van Rensselaer -v- Van Rensselaer
113 NY 207, 21 NE 75 (1889)
Valentine -v- Richardt
126 NY 272, 27 NE 255 (1891)
VanAllen -v- New York Elevated Railway Co.
144 NY 174, 38 NE 997 (1894)
McGean -v- Metropolitan Elevated Railway Co.
133 NY 16, (1892)
Koehler -v- N.Y. Elevated Railroad Co.
159 NY 218, 53 NE 1114 (1899)

1. THE MATTER IN DISPUTE IS EQUITABLE IN NATURE.

A court of equity may assume jurisdiction of a cause on the ground of preventing irreparable injury.

> "Legal actions are designed to afford redress for injuries alread inflicted and rights of persons or property actually invaded. Equitable actions, however, are not only remedial in their nature, but may also be brought for the purpose of restraining the infliction of contemplated wrongs or injuries and the prevention of threatened illegal action, which may be the occasion of serious injury to others. The creation of equity jurisdiction arose out of the inability of courts of law, through the inflexibility of their rules, and want of power to adapt judgments to the special circumstances of cases to reach and do complete justice in all cases. It is, therefore, a cardinal rule of equity that it will not entertain jurisdiction of cases where there is an adequate remedy at law, or grant relief, unless for the purpose of preventing serious and irreparable injury. * * *
> These principals are elementary and lie at the foundation of all equitable jurisdiction. Equity, therefore, interferes in the transactions of men by preventive measures only when irreparable injury is threatened, and the law does not afford an adequate remedy for the contemplated wrong."

Thomas -v- The Musical Mutual Protective Union
121 NY 45, 51, 24 NE 24 (1890)

Where a continued use or threatened danger is such as to cause reasonable fear of irreparable injury, it is not essential that there be actual damage, or even a completed violation of the plaintiff's rights, in order to entitle her to the protection of equity.

Caliendo -v- McFarland
13 Misc2d 183, 175 Supp2d 869 (1958)

An injury is irreparable when it cannot be adequately compensated in damages, or there is no certain pecuniary standard for the measurement of damages.

Republic Aviation Corp. -v- Republic Lodge IAM
10 Misc2d 783, 169 Supp2d 651

". . . The law will protect a flower or a vine as well as an oak. (Cook -v- Forbes, L. R., 5 Eq. Ca., 166; Broadbent -v- Imperial Gas Co., 7 DeG, McN, & G., 436) These damages are irreparable too, because the trees and vines cannot be replaced, and the law will not compel a person to take money rather than the objects of beauty and utility which he places around his dwelling to gratify his taste or to promote his comfort and his health."

Campbell, et al. -v- Seaman,
63 NY 583; (1876)

2. THE WANT OF AN ADEQUATE REMEDY AT LAW EXISTS.

The existence or nonexistence of an adequate remedy at law is a factor which determines the court's decision in withholding or granting any equitable remedy such as injunction.

Where an adequate remedy at law is provided, the reason for granting equitable relief disappears.

Lewis -v- Lockport
276 NY 336, 12 NE2d 431 (1937)

Equity will not do for a person what that person can do for himself through legal remedies without the aid of equity.

Cone - Ballou
140 Misc 913, 251 NYS 791

However, in order to warrant the denial of an injunction because of the existence of an adequate remedy at law, such remedy must be plain, adequate and complete, and must be as practicable and efficient as is the equitable remedy. The remedy at law may be considered inadequate where any damages sustained would be speculative or not capable of measurement.

Republic Aviation Corp. -v- Republic Lodge IAM
10 Misc2d 783, 169 Supp2d 651 (1957, Sup. Queens)

The existence of an administrative remedy does not bar the aid of equity.

La Basin -v- President Realty Holding Corp.
209 Supp2d 496

Where the continuance of a proceeding before an administrative commission, and plaintiff's right to participate therein are matters of grace, it cannot be said that the remedy so afforded the plaintiff

is adequate.

Dederick -v- North American Co.
48 Fed Supp 410

". . .But it does not follow that because equity will decline to exercise its power where there is an adequate remedy at law, meaning an action at law, that, therefore, its doors are closed to petitioners because of the existence of an administrative remedy, an appropriate criminal proceeding--or even the availability of self-help. (4 Pomeroy, Equity Jurisprudence, 5th ed., §1349; 1 High, Injunctions, 4th ed., §§745, 752, 762, 823; 66 C.J.S., Nuisances, pp. 831, 832, 886.) It suffices, in any event, that equity, traditionally, in this country and in England, has granted injunctions in cases of public nuisance, although even from the days of the common law, indictment lay, and still lies, for a public nuisance (see, e.g. Rex -v- Cross, 3 Camp. 224; 2 Story, Equity Jurisprudence, 14th ed., §1248, et seq.). Indeed, if the situation were otherwise, there never could be an injunction to restrain a public nuisance, because, by its very nature and nomenclature, a public nuisance is one for which there is a public remedy (Penal Law, §1530, et seq.).

Graceland Corp. -v- Consolidated Laundries
7 AD2d 93, 94 (1958, First Department)

The Defendants have admitted paragraph 9 of the Complaint,

"That the Plaintiff herein, and all others similarly situated, have no adequate remedy at law."

3. PLAINTIFF SEEKS RELIEF THAT IS CLEARLY EQUITABLE IN CHARACTER.

In those cases where the distinction between equity and law must still be noted, modern jurisprudence has practically defined equity jurisdiction in terms of the relief sought from or required of remedial justice.

There can be no dispute that the declaratory judgment and injunction demanded by the Plaintiff in this action are equitable remedies. However, the plaintiff in an equity case is not confined to the relief demanded specifically by the complaint. A prayer for general relief,

> "such other and further relief as to this Court shall seem just and proper under the circumstances, . . ."

is as broad as the equitable powers of the court, and under it the court may properly shape its decree in accordance with the equities of the case. The fact that the specific relief demanded is inadequate to the relief about to be granted will not prevent the court from granting a proper judgment, where the complaint demands "such other and further relief as shall be just and proper."

Bonham -v- Coe
249 AD 428, 292 NYS 423; aff'd 276 NY 540,

II. PLAINTIFF PROPERLY SEEKS PROTECTION OF HER CONSTITUTIONAL RIGHTS IN A COURT OF EQUITY.

Constitutional rights of a personal nature may be tested in a plenary action in equity brought for that purpose. The Court of Appeals in 1944, said

> ". . . The Appellate Division, reversing the dismissal order, treated the complaint as being, 'in a plenary action in equity' against a public officer, which, said that court, 'is the classic method of testing the constitutionality of the statute under which he purports to act'. 'The only adequate remedy available to appellant (plaintiff)' wrote Justice Hefernan for a unanimous court, 'is that which it has chosen'. (267 AD 241) The Appellate Division expressed itself as not being much impressed by the argument that the plaintiff must await the Commission's fixation of the rent, then resist an action by the State to collect that rent."
>
> Niagra Falls Power Co. -v- White
> 292 NY 472, 479; 55 NE 2d 742 (1944)

Such constitutional rights of a personal nature should also be protected by equity. Jurisdiction in equity of an injunction suit to restrain the defendants from conduct denying the plaintiff the equal protection of the laws in violation of the Fourteenth Amendment was sustained.

> Burt -v- New York
> 156 Fed2d 791

More recently, equity has been charged with testing the rights of an individual to equal protection with respect to legislative apportionment.

> Seaman -v- Fedourich
> 45 Misc2d 940 (1965, Supreme, Broome)

III. EQUITY WILL NOT SUFFER A WRONG TO BE WITHOUT A REMEDY.

> ". . . But when a party has done all that is possible for him to do to prepare the way for his case to equitable cognizance, he is not to be denied access to the only tribunal capable of granting relief, merely because he had proceeded no further than he was, without any fault or laches on his part, permitted to go. That would be repugnant to the maxim that "there is no wrong without a remedy." And while that maxim is not absolutely true, it expresses a principle, and it is for that rather than precedent that courts will seek in considering whether any or what remedy may be had in the administration of justice."

The National Tradesmen's Bank -v- Wetmore
240 NY 241, 251 (1891)

Equity is to provide a remedy rather than suffer a wrong to be without a remedy.

Ilyin -v- Avon Publications, Inc.
144 Fed. Supp. 368

The dissenting opinion of Judge Gray, in which Judges Bartlett and Haight concurred, of the Court of Appeals in 1902 was soon to become the law of the issue, and the equitable principles stated in that dissent were not disputed in principle then, and are still the guides of equity jurisprudence,

> ". . . When, as here, there is an alleged invasion of some personal right, or privilege, the absence of exact precedent and the fact that early commentators upon the common law have no discussion upon the subject are of no material importance in awarding equitable relief. That the exercise of the

preventive power of a court of equity is demanded in a novel case, is not a fatal objection. (Niagra Falls International Bridge Co. -v- Great Western Railway Co., 39 Barb. 212; Sherman -v- Skuse, 166 NY 352; Hamilton -v- Whitridge, 11 Md. 145.) In the social evolution, with the march of the arts and sciences and in the resultant effects upon organized society, it is quite intelligible that new conditions must arise in personal relations, which the rules of the common law, cast in the rigid mould of an earlier status, were not designed to meet. It would be a reproach to equitable jurisprudence, if equity were powerless to extend the application of the principles of common law, or of natural justice, in remedying a wrong, which, in the progress of civilization, has been made possible as the result of new social, or commercial conditions.

Sir Henry Maine, in his work on Ancient Law, has observed of equity, that it is an agency "by which law is brought into harmony with society," and that it is one of the factors which operate in judicial evolution. It succeeds legal fictions, or those judicial assumptions, through which a rule of law is modified in its operation, and it precedes legislation. (See: Maine's Ancient Law, pp. 22-28)

Equity has neither fixed boundaries, nor logical subdivisions and its origin, both in Rome and in England, was that there was a wrong for which there was no remedy at law. (See: 1st Story's Equity Jurisprudence, §671, note).

Lord Chancellor Cottenham observed, in Wallworth -v- Holt, (4 Myl&C 619),

> 'I think it is the duty of this court, (meaning equity), to adopt its practice and course of proceeding to the existing state of society and not, by a strict adherence to forms and rules, under different circumstances, to decline to administer justice and enforce rights for which there is no other remedy. * * * If it were necessary to go much further than it is, in opposition to some sanctioned opinions, in order to open the doors of this court to those who could not obtain it elsewhere, I should not shirk from the responsibility of doing so.'
> As I have suggested, that the exercise of this peculiar preventive power of a court of equity is not found in some precisely analogous case, furnishes no valid objection, at all to the assumption of jurisdiction, if the particular circumstances of the case show the performance, or the threatened performance, of an act by a defendant, which is wrongful, because constituting an invasion, in some novel form, of a right to something, which is, or should be conceded to be, the plaintiff's and as to which the law provides no adequate remedy. It would be a justifiable exercise of power, whether the principle of interference be rested upon analogy to some established common-law principle, or whether it is one of natural justice."
>
> Roberson -v- Rochester Folding Box Co.
> 171 NY 538, at 561, 562 (1902)

A distinguishing feature of equity jurisdiction is that it will apply settled rules to unusual conditions, and mold its decrees so as to do equity between the parties. Peculiar and extraordinary cases will arise in the complex and diversified affairs of men, which,

perhaps, cannot be classed under any of the distinct heads of equity jurisdiction, but which must be acknowledged, nevertheless, to come within the legitimate powers of a chancellor, because complete justice cannot otherwise be done between the parties. Therefore, when no remedy exists at law, courts of equity, to prevent injustice and in many cases on principles of general policy, will go far in granting relief. The rules of equity are susceptible of the necessary expansion to reach new conditions, to apply old principles thereto, in order that the court may make the adjudication which conscience demands. In the administration of justice a court of equity should never hesitate to adapt itself in the application of old principles to new situations. Where grounds calling for the exercise of equitable power to furnish a remedy exist, the court must not hesitate to act, else gross injustice under the guise of forms of law, might otherwise be perpetrated.

Morris -v- Morris
138 Misc 682; 247 NYS 28
aff'd 234 AD 187; 254 NYS 429;
aff'd 260 NY 650; 184 NE 131 (1932)

Rice -v- Van Vranken
132 Misc 82; 229 NYS 32,
aff'd 225 AD 179; 232 NYS 506,
aff'd 255 NY 541; 175 NE 304 (1930)

Livingston -v- Bauchens
254 AD 692; 3 Supp2d 776

Duncan -v- Laury
249 AD 314; 292 NYS 138

Piper -v- Hoard
107 NY 73; 13 NE 626 (1887)

Equity is not stayed because a name does not fit or one is not at hand accurately to describe a wrong of a kind necessarily infrequent.

Associated Press -v- International News Service
245 F 244; aff'd 248 US 215, 63 LEd 211, 39 SCt 68

IV. THE CONTINUED APPLICATION OF DDT BY THE DEFENDANTS CONSTITUTES A NUISANCE.

"For time out of mind, the term nuisance has been regarded as incapable of definition so as to fit all cases, because the controlling facts are seldom alike, and each case stands on its own footing. We are not aided by the classification into public and private nuisances, because the difference between them does not depend on the nature of the thing done, but on the fact that one affects the public at large, and the other a limited number only. The primary meaning of the word, suggested by its derivation, is that which injures, or, in the quaint phrase of ancient times, 'that which worketh hurt.' The injury may be to person or property, to health, comfort, safety or morality. It may be a crime. . . . Courts of high standing (citing Ala., Me., Ind.) have held that a nuisance at law, or a nuisance per se, exists only when the act done is a nuisance at all times and under any circumstances, regardless of location or surroundings. Other courts make fitness of locality the standard and give controlling effect to surrounding circumstances, holding certain acts not permissible as a matter of law under some circumstances, but permissible under others and under others still not permissible if the jury find them nuisances as matter of fact. The weight of authority in this state and elsewhere is in accordance with the latter view, except when the act is malum in se, when the surrounding circumstances have no bearing on the question.

We think that each case must depend on its own facts for classification as a nuisance at law, or in fact, or neither.

* * *

> Without attempting a general definition we are of the opinion that as applied . . . if the natural tendency of the act complained of is to create danger and inflict injury upon person or property, it may properly be found a nuisance as a matter of fact; but if the act in its inherent nature is so hazardous as to make the danger extreme and serious injury so probable as to be almost a certainty, it should be held a nuisance as a matter of law. While this definition lies on the border of the domain of fact, any definition of a nuisance at law must necessarily lie there, for it is a fact, but so conclusive in legal effect as to be treated as a matter of law. Locality, surroundings, methods, the degree of danger, and the custom of the country are the important factors.
>
> Melker -v- The City of New York 190 NY 481, 487, 488; 83 NE 565 (1908)

There can be little doubt but as to the natural resources of Suffolk County, ranging from microscopic plankton to the largest mammals, exclusive of man himself for the purpose of this action, DDT is a substance so hazardous as to make the danger in its use extreme. Serious injury to the animal resources of Suffolk County is so probable as a result of the continued use of DDT as to be considered a certainty as far as modern science is able to ascertain.

Defendants adduced no scientific testimony to refute the statements of Plaintiff's experts, Mr. Taormina, Regional Director of Fish & Game for the New York State Conservation Department, Dr. Wurster, Professor of Biological Science at State University of New York at Stony Brook, and Dr. Woodwell, Ecologist at

Brookhaven National Laboratory, and Dr. Whittaker of the University of California, that DDT has caused and will cause serious, permanent and irreparable injury to the animal resources of the County of Suffolk, and that the continued use of DDT by the Defendants herein, no matter how small that use, will cause such damage.

The Court has already determined that DDT kills animals. It has been stipulated,

> ". . .that DDT, as such, is harmful to animals, birds, bees, and you name it."

and Plaintiff's offer of proof that there exist,

> ". . .permanent geological, biological, and chemical cycles affecting the environment of not only Suffolk County but the world. Further that DDT has entered these cycles and has become and environmental parameter; that by virtue of becoming such an environmental parameter, DDT has become, from a biological standpoint, a different element than other types of pesticides. . . .that the continued injection of DDT in any quantity will cause serious, permanent, and irreparable damages to natural resources.
>
> Further that the converse of that statement is true. The elimination of any additional increment of DDT, no matter how small that increment will contribute in some measure towards alleviating this." (pages 1118, 1119)

has been accepted by the Court and the Defendants.

It has been further conceded, and the Court has judicially noticed that the County of Suffolk is uniquely blessed with natural resources, not the least of which are the animals and birds, and the lesser creatures upon which they depend for food.

It is therefore apparent that, as a matter of law, the

continued use of DDT by these Defendants, or by any user who injects the substance into the general environment in such a way that it can enter the permanent geo-bio-chemical cycles of the Suffolk County ecosystem constitutes a nuisance as a matter of law in accordance with the definition so clearly set forth by Judge Vann in 1908. (Melker -v- City of New York, supra).

Because of the elasticity of the word, "nuisance," courts of equity will grant relief in almost any situation which threatens injury to the interests of the public.

> "That a court of equity will not undertake the enforcement of a crime is a principle of equity jurisprudence that is settled beyond any question. There can equally be no doubt that the criminal nature of an act will not deprive equity of the jurisdiction that would otherwise attach. (Cranford -v- Tyrrell, 128 NY 341; Davis -v- Zimmerman, 91 Hun 489; Matter of Debs, 158 US 564, 593).
> Whether or not the act sought to be enjoined is a crime is immaterial. Equity does not seek to enjoin it simply because it is a crime; it seeks to protect some property interest. If the interest sought to be protected is one of which equity will take cognizance, it will not refuse to take jurisdiction on the ground that the act which invades that interest is punishable by the penal statutes of the State. Equity does not pretend to punish the perpetrator for the act; it attempts to protect the right of the party. . . seeking relief, and to prevent the performance of the act or acts, which here may injure many."
>
> People, ex rel. Bennett -v- Laman 277 NY 368, 14 NE2d 439 (1938)

". . . The wrongfulness must have been in the acts themselves rather than in the failure to use the requisite degree of care in doing them, and therein lies the distinction, under the facts of this case, between nuisance and negligence. The one is a violation of an absolute duty, the other a failure to use the degree of care required in the particular circumstances--a violation of a relative duty.
A nuisance may be created or maintained with the highest degree of care and the negligence of a defendant, unless in exceptional cases, is not material."

Herman -v- City of Buffalo
214 NY 316, 108 NE 451 (1915)

Where the damage is the necessary consequence of just what the defendant is doing, or is incident to the business itself or the manner in which it is conducted, the law of negligence has no application, and the law of nuisance applies.

Bohan -v- Port Jervis Gas Light Co.
122 NY 18; 25 NE 246 (1890)
McKeon -v- See
51 NY 300
Hay -v- Cohoes Co.
2 NY 159

Although it might be reasonably inferred from the testimony of the Executive Director of Defendant Suffolk County Mosquito Commission that the Defendant Commission was negligent in its use of DDT, there is no issue of negligence raised in the pleadings or argument of counsel. Plaintiffs contend that the use of DDT in the County of Suffolk by the Defendants is under the circumstances a nuisance as a matter of law in accordance with the rule set forth by Judge Vann in Melker -v- The City of New York

(supra), and the degree of care exercised by the Defendants is not material.

Historically, the term nuisance was applied to torts of two distinct groups; first, acts of wrongful user by an owner or possessor of land resulting in an unreasonable interference with the rights of enjoyment of the owner or possessor of neighboring land, and considered under the ancient maxim, Sic utere tuo ut alienum non laedas, (So use your own, as not to injure another's); and second, wrongful interferences with easements or other incorporeal rights. No distinction was ever made during the progress of this historical development between nuisances arising from wrongful user of neighboring property, and nuisances arising from violations of easements; the action on the case took the place of the assize of nuisance, and became the only action at law for both forms of nuisance. The tendency to treat these two classes of cases as differing fundamentally seems to be a recent product of the law schools, recent when compared with the origin of the common law.

Holdsworth, 3 History of English Law 154-157
Holdsworth, 7 History of English Law 328-331

Nevertheless, the law has been burdened with much commentary on the need to make this artificial distinction. Perhaps it is time to refer to the clear-cut statement of Lord Justice James in 1877,

> "Whether you call it an easement or a natural right incident to property, or a right of property, it seems to me that those are only different modes of expressing the origin of the right, and do not express any difference in the right itself."
>
> Birmingham -v- Allen, 6 Ch. D 284

V. THE PLAINTIFF PROPERLY SEEKS EQUITABLE RELIEF TO ABATE DEFENDANTS' NUISANCE.

During the thirteenth and the early part of the fourteenth centuries, when specific relief of an equitable character could be had in the King's Court, specific relief against nuisances was given with some freedom. Intervention by equity to restrain nuisances by injunction is a comparatively modern development.

Bush -v- Western
Prec. Ch 530, 24 Eng. Rep 237 (1720)

The subsequent development of the jurisdiction of equity in nuisance cases, has progressed so far that as a practical matter equitable relief, with damages awarded as incidental thereto, has very largely displaced the remedy at law.

A court of equity may enjoin a threatened or anticipated nuisance, public or private, where it clearly appears that a nuisance will necessarily result from the contemplated act or thing which it is sought to enjoin.

> "Relaxation of controls cannot be had simply because the lapse of time between discharge and pollution may be 5, 10 or even 20 years."

Leone -v- Paris
43 Misc2d 442, 448 (1964)
mod. 24 AD 508(6) (1965) in other respects

A Court of equity need go no further than is absolutely necessary to protect the rights of the complaining parties.

Russell -v- Nostrand Athletic Club
240 NY 681, 148 NE 756 (1925)

If the business of the Defendants can be so conducted as not to

constitute a nuisance, the injunction may be limited to prohibiting the acts complained of which constitute the nuisance, leaving the defendant free to operate in a proper manner.

In another decision by Judge Vann, the Court of Appeals in 1907 stated,

> ". . . This is not a case where the defendant cannot carry on its business without injury to neighboring property, for all damage can be avoided by the use of hard coal, as is done by one of its competitors in the same kind of business in the same locality, or possibly by the use of some modern appliance such as a smoke consumer, although either would involve an increase in expense. * * *
> The defendant therefore, should be permitted to apply at Special Term, upon proper notice at any time, for a modification of the decree at the foot thereof, permitting it to burn soft coal, upon proof of such a change of facts as to make such use of its property no longer unreasonable."
>
> McCarty -v- Natural Carbonic Gas Co.
> 189 NY 40, at 50, 51, 81 NE 549 (1907)

Here is the essence of the matter before the Court at this time. Defendant used DDT in the past, has stopped for the time being by reason of an order of this court, and threatens to use DDT at some time in the future when it determines such use is necessary. Testimony indicates that there is no review or notice of such determination. Plaintiff has shown that the use of DDT causes serious, permanent and irreparable damage to the natural resources of Suffolk County, and any further use of DDT will cause further damage. Plaintiff seeks a decree from this Court in Equity per-

manently restraining the Defendants from using DDT in Suffolk County, however, Plaintiffs do not object to permitting the Defendants the opportunity to seek modification of such decree upon a showing that such use will not cause serious, permanent and irreparable damage to the natural resources of Suffolk County.

The essence of scientific progress lies in the continual review and reevaluation of data, leading to the regular modification of scientific opinion. A Court of Equity is by its very nature most receptive to consideration of such matters. In 1946, DDT may have been hailed as the saviour of mankind from the scourge of malaria. In 1966, scientific opinion based on continually gathered evidence indicates that rather than saviour, DDT may very well be the environmental scourge of the next generation.

Let the defendant be permitted to show a need for the use of DDT in the control of noxious insects in Suffolk County. Let the defendant make application for modification of the order of injunction upon the presentation of better evidence than was presented on the trial of this action.

Plaintiff contends that the burden of showing need to use an inherently harmful environmental contaminant like DDT must rest upon the user not the victim of such use.

VI. IT IS IMMATERIAL TO GRANTING PLAINTIFF EQUITABLE RELIEF WHETHER DEFENDANTS' NUISANCE IS CLASSIFIED AS A PUBLIC OR A PRIVATE NUISANCE.

It has been said that the difference between a public and private nuisance does not depend on the nature of the thing done, but on the fact that one affects the public at large and the other a limited number only.

Melker -v- New York
190 NY 481, 83 NY 565

In any event, if the danger or damage threatens the public at large the nuisance is classified as common; while if it threatens one person or a few, it is then called a private nuisance.

Khoury -v- Saratoga County
243 AD 195, 277 NYS 3,
aff'd 267 NY 384, 196 NE 299

The other differences between public and private nuisance are classical manifestations of the obfuscations engrafted on simple legal principles and rendering the Common Law such an inviting target for such diverse talents as William Shakespeare and W.S. Gilbert. For example the following excerpt from 42 New York Jurisprudence, Equity §4, should suffice:

> "There are other distinctions between public and private nuisances. One is that although individuals may sue to enjoin a nuisance that invades private rights, no criminal prosecution lies unless the nuisance interferes with rights common to the general public. Another is that in a suit to abate a nuisance arising from the conduct of a lawful business proof that the defendant acted negligently may not be re-

> quired, but in a criminal prosecution evidence of improper or defective methods is essential. The difference between a public and a private nuisance is significant primarily because
> (1) only a public nuisance may be made the basis for a criminal prosecution, and
> (2) only the public, through the proper officer, may sue to enjoin or abate a public nuisance, whereas
> only a private individual may sue to abate a private nuisance.
> However, in some situations a public nuisance may also so violate private rights as to constitute also a private nuisance, giving rise to a right of action by a private individual."

The Appellate Division, First Department, as recently as 1958 in the Graceland Corp. case (7 AD2d 91) blandly states as law not even requiring the citation of precedent,

> ". . .In the absence of special damage to another, such public nuisance is subject to correction only at the hands of public authority. It is equally clear however, that one who suffers damage or injury, beyond that of the general inconvenience to the public at large, may recover for such nuisance in damages or obtain injunction to prevent its continuance. This is old law."

It may very well be old law, and it is certainly bad law. It is time to look at its origin, recognize it as a product of eighteenth century English fear of free access by the common people to the Courts for redress of grievances. The same fear that led George III to commit such administrative blunders as to lead inevitably to the Declaration of Independence, and establishment of a new

form of representative government, based on a philosophy of Government unacceptable to England,

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. . . ."
>
> Declaration of Independence, ¶2

There is a theory that a state is composed of two elements, sovereign and subjects. This has been called the Byzantine theory, and its classic expression is the proposition that the will of the Emperor has the force of law. This dual concept has been totally rejected in the United States;

> Chisholm -v- Georgia
> 2 Dall(US) 419, 471 (1793)
> Penhallow -v- Doane's Administrators
> 3 Dall(US) 54, 93 (1795)

and even the English dual concept is different.

The state of England grew out of feudalism, and although James I affected sparkles of Divinity, the historic result, before our independence, was rejection of the Byzantine concept, and development of another aptly called that of sovereignty in trust.

> Pollock & Maitland, 1 History of English Law, chapters 5, 6, 7.

The American concept is that all sovereignty -all the power to control the conduct of men by use of the public force- is inherent in the people. The government is their agency, and al-

though the Constitution is the fundamental law, the sovereignty of the people does not depend on or arise from it, but is superior to it.

The supreme agency of the Federal government with respect to ordinary civil operations is the Supreme Court of the United States, and by virtue of its power to determine whether the operations of their goverments stay within the field reserved to the States, and in that field, conform to the pertinent provisions of the Constitution of the United States, the Supreme Court is also the supreme agency of government with respect to the several states. The Court of Appeals, subject to the power of the Supreme Court of the United States is the supreme agency of government in New York State so far as ordinary civil operations are concerned. This unique feature of American governments is generally called judicial supremecy.

A. F. L. -v- American Sash & Door Co.
335 US 538, (1949)

In the Byzantine concept, the power of the Emperor is defined as absolute,

> ". . . whatever is the will of the Emperor has the force of law, the people having conferred on him all authority and power by the lex regia which was passed concerning his office and authority."
>
> Institutes of Justinian 1, 2 §6

The English concept, though it retains the formula of soverign and subjects, defines the power of the King as power in trust.

> "Justice is not derived of the king, as from his free gift; but he is the steward of the public, to dispense it to whom it is due."
>
> 1 Blackstone's Commentaries 266

> "The idea of justice starts with the right of the community to avenge its wrongs by its own hand and ends with the right of the sovereign as the representative of his people."
>
> Maine, Ancient Law 382

The English concept of sovereignty was received in this country along with the Common Law, and from it evolved the American doctrine of the sovereignty of the people, a doctrine based on three elements: (1) the principle that the supreme power of government is a power held in trust; (2) the population consisting of the citizens subject as individuals to such power, and the non-citizens within the territory over which the power is exercised; and (3) the sovereign power of the citizens to enforce the trust.

In England, the King in Parliament is the ultimate interpreter of the fundamental law, however in the United States, the Court is the final interpreter of the fundamental law. Courts of last resort in the United States exercise a vast and so far as jurisdiction is concerned, ultimate power of supervision. This exercise of supervisory power is more extensive than anything the King in Parliament does in England. If the supreme agency within a government is the de facto sovereign, it appears that this sovereign is the Supreme Court of the United States, and as far as

the State of New York is concerned, the Court of Appeals.

In its regular course, the American government operates under the superintendence of the courts of last resort, especially the Supreme Court of the United States, whose decisions are the last word in "the definition and limitation of power."

Yick Wo -v- Hopkins
118 US 356, 370 (1886)

The decisions are made by the judges by their making choices among the alternatives which confront them. In making these choices, the judges are guided by what they think justice is; and the concept that the people are the sovereign has an influence on what they think justice is. Justice, it is said, is the principles of liberty and justice rooted in the traditions and conscience of the people.

West Virginia Board of Education -v- Barnette
319 US 624, 652 (1943)
Snyder -v- Massachusetts
291 US 97, 105 (1934)

It is apparent that the concepts of Justice and Sovereignty are inextricably interwoven, and the ultimate determination is made by whatever institution holds the power to decide, the final answerer of disputed questions.

It is time to uncover the source of the doctrine and the rationale by which Courts of equity deny a private citizen the right to seek redress of a common or public nuisance. Case after case, textbook after textbook accept the doctrine as a matter of law without question or inquiry into its justification. Legal fictions are created and perpetrated to circumvent its manifestly harsh and unjust effect. The Appellate Division in the Graceland Corp. case (7 AD2d 91) relies on the fiction of private injury making a public or common

nuisance actionable by a private individual. All to do honor to a rule of law without justification in American Jurisprudence. A rule of law inherited from the rigid formalism of the Law of England during the eighteenth century, the very rigid formalism that led to the evolution of Equity as a separate, and fortunately superior system of jurisprudence. In 1858, the Court of Appeals tells us the source and indicates the justification for this onerous rule,

> ". . .In Bigelow -v- The Hartford Bridge Company (14 Conn 565), the plaintiff filed a bill to restrain the defendants from re-building a causeway across certain meadows adjoining the Connecticut river, which the plaintiff apprehended would cause the stream to overflow his lands and those of others. . . The court dismissed on the ground . . . that the injury should it happen, was not peculiar to the plaintiff, but common to the public generally. 'To preserve and enforce the rights of persons, as individuals, and not as members of the community at large, is the very object of all suits, both at law and in equity. The remedy which the law provides in cases where the rights of the public are affected, and especially in cases of public nuisance, are ample and appropriate.' . . .
>
> These authorities are sufficient to show the principle upon which the courts act in such cases. . . . The doctrine of the cases referred to is at least as applicable to other acts, where the injury is common to the whole community as to questions of nuisance. . . .
>
> A contrary rule would be productive of very great inconveniences. . . . No private person or number of persons can assume to be the champions of the community and in its behalf, challenge the public officers

to meet them in the courts of justice
to defend their official acts.

Doolittle -v- Supervisors of Broome County
18 NY 155, at pages 161, 162, 163

The Court continues and discusses the theory of the decision,

". . .The general rule is that for wrongs against the public, whether actually committed or only apprehended, the remedy, whether civil or criminal, is by a prosecution instituted by the state in its political character, or by some officer authorized by law to act in its behalf. . . .Where a crime committed against the public also includes a private injury, the latter may, it is true, be prosecuted at the suit of the party injured; but where there is no direct individual injury, no action can be maintained by a citizen on the ground that his interests as a member of the state have been interfered with or disturbed; though in a general sense, every citizen has an interest in the maintenance of order and the prevention of crime. . . . The principle is further exemplified in questions respecting nuisances. Common or public nuisances, which are such as are inconvenient or injurious to the whole community in general, are, as all are aware, indictable only, and not actionable; for as BLACKSTONE (boldface in original) says,

> 'it would be unreasonable to multiply suits by giving every man a separate right of action for what damnifies him in common only with the rest of his fellow-citizens.'
> Blackstone's Commentaries, Book 4, 167

As this sort of injury, if actually committed can only be redressed by a public prosecution, so where it is only threatened, the preventive

> remedy by injunction can only be sought in the same manner. (cases cited) Where the act complained of, or which is apprehended, besides being a public nuisance, is specially injurious to a private person, he may maintain an action or a bill for an injunction in his own name."
>
> Doolittle -v- Supervisors of Broome County
> 18 NY 159, 160

For 108 years the Courts of this State have been burdened with this rule. Look at its antecedents, the bastard offspring of Connecticut Railroad and Canal interests during the laisez-faire days of the robber barons, and Blackstone's Commentaries. Binding the law of equity in a straight-jacket requiring the most intricate of judicial convulsions to operate within and still do justice, or attempt it.

If this Court shrinks from the opportunity to unfetter equity from its century old prison there is still a proper showing by the Plaintiffs of damage which is the common misfortune of a given class of persons, the residents of Suffolk County, but not common to the whole public.

Lansing -v- Smith
4 Wend 9

Just who was Sir William Blackstone that he should exert such a restraint on the general application of equitable principles. Referring to the Eleventh edition of the Encyclopaedia Britannica, published in 1911 and drawing on continual revisions from the first English edition in 1771, the following information may be elicited under the entry, "Blackstone, Sir William (1723-1780)".

". . .In 1746 he was called to the bar. Though but little known or distinguished as a pleader, he was actively employed during his occasional residences at the university (Oxford), in taking part in the internal management of his college. In May 1749, as a small reward for his services, and to give him further opportunity of advancing the interests of the college, Blackstone was appointed steward of its manors. In the same year, on the resignation of his uncle, he was elected recorder of the Borough of Wallingford. In 1750 he became doctor of civil law. . . .In November 1765, he published the first volume, under the title of Commentaries on the Laws of England. The remaining parts of the work were given to the world in the course of the four succeeding years. . . .In 1770 he declined the place of solicitor general; but shortly afterwards, . . .he accepted a seat on the bench, and on the death of Sir Joseph (Yates) succeeded him (in the court of common pleas). He died on the 14th of February 1780. . . .

Blackstone was by no means what would now be called a scientific jurist. He has only the vaguest possible grasp of the elementary conceptions of law. . . . Austin, who accused him of following slavishly the method of Hale's Analysis of the Law, declares that he "blindly adopts the mistakes of his rude and compendious model; missing invariably, with a nice and surprising infelicity, the pregnant but obscure suggestions which it proffered to his attention, and which would have guided a discerning and inventive writer to an arrangement comparatively just.' . . . Even in discussing a subject of such immense importance as equity, he hardly takes pains to discriminate between the legal and popular senses of the word, and

from the small place which equity jurisprudence occupies in his arrangement, he would scarcely seem to have realized its true position in the law of England. . . .

Blackstone, by no means confines himself to the work of a legal commentator. It is his business, especially when he touches on the framework of society, to find a basis in history and reason for all the most characteristic English institutions. There is not much either of philosophy or fairness in this part of his work. Whether through the natural conservatism of a lawyer, or through his own timidity and subservience as a man and a politician, he is always found to be a specious defender of the existing order of things. Bentham accuses him of being the enemy of all reform, and the unscrupulous champion of every from of professional chicanery. Austin says that he truckled to the sinister influences and mischievous prejudices of power, and that he flattered the overweening conceit of the English in their own institutions. He displays much ingenuity in giving a plausible form to common prejudices and fallacies. . .

It is more correct to regard it (Commentaries) as a handbook of law for laymen rather than as a legal treatise; and as the first and only book of its kind in England it has been received with somewhat indiscriminating reverence. . . .It is curious to observe how much importance is attached to the ipissima verba of a writer who aimed more at presenting a picture intelligible to laymen than at recording the principles of the law with technical accuracy of detail."

For more than a century the opinion of one man has stood in the way of a proper disciplined application of a fundamental principle of equity jurisprudence, "equity will not suffer a wrong without a remedy."

The sole justification, repeated, when a justification is mentioned at all, for the rule,

> ". . .If the action can be sustained, any tax-paying citizen may compel the public authorities to litigate, in the courts, the acts of any administrative board or officer in the state, and thus proceedings, which are intended to be summary and inexpensive, can only be perfected by the judgment of the court of final appeal. Every person may legally question the constitutional validity of an act of the legislature which affects his private rights; but if a citizen may maintain an action for such a purpose in respect to his rights as a voter and taxpayer, the courts may regularly be called upon to revise all laws which may be passed. . . .But upon the plaintiffs' position in this case, the state and county officers might be compelled to litigate the question of constitutionality with any taxpayer who should see fit to question a state or local tax in any and every case, and thus the fiscal business of the state would come to be transacted mainly in the courts. The law does not in my opinion afford such an opportunity for excessive litigation. . . ."
>
> Doolittle -v- Supervisors of Broome County
> 18 NY 155, at page 162

VII. THIS COURT MAY IGNORE THE RULE Public nuisance, without special damage to an individual, is subject only to correction at the hands of public authority, OR EXPRESSLY OVERRULE IT SUBSTITUTING AS THE BASIS FOR GRANTING PLAINTIFF'S APPLICATION FOR EQUITABLE RELIEF THE FUNDAMENTAL MAXIM, Equity suffers no wrong to be without a remedy.

There is little need to refer the Court to the vast body of equitable law arising out of the current tests of civil rights throughout the country. It is a tribute to the American system of Jurisprudence, that the Equity system is able to respond and provide remedies for the wrongs presented, and obviate the need for the needless formalism of constitutional test arising out of civil disobedience. The instrument of the declaratory judgment is more in keeping with the maintenance of established principles of American jurisprudence than violence and revolution. The Courts of this State have had the courage to act in support of a right, even to the extent of admitting the error of prior decisions.

In 1896, the Court of Appeals laid down the rule,

> ". . .While the authorities are not harmonious upon this question, we think the most reliable and better considered cases, as well as public policy, fully justify us in holding that the plaintiff cannot recover for injuries occasioned by fright as there was no immediate personal injury."
>
> Mitchell -v- Rochester Railway Co
> 151 NY 107 (1896)

justifying their decision for the following reason,

> "If the right of recovery in this class of cases should be once established, it would naturally result in a flood of litigation in cases where the injury complained of may be easily feigned without detection and where the damages must rest upon mere conjecture or speculation. The difficulty which often exists in cases of alleged physical injury, in determining whether they exist, and if so, whether they were caused by the negligent act of the defendant, would not only be greatly increased, but a wide field would be opened for fictitious or speculative claims. To establish such a doctrine would be contrary to principles of public policy. . . .
>
> These considerations lead to the conclusion that no recover can be had for injuries sustained by fright occasioned by the negligence of another, where there is no immediate personal injury."
>
> Mitchell -v- Rochester Railway Co.
> 151 NY 110

During the next fifty years, the rule was relaxed. In 1931, the Court of Appeals modified the rule by saying,

> ". . .Mental suffering or disturbance, even without consequences of physical injury, may in fact constitute actual damage; nevertheless the courts generally do not regard it as such damage as gives rise to a cause of action, though it be the direct result of the careless act. Whether the true explanation of that conclusion lies in an historical conception of injury or in supposed considerations of public policy may for the present be put aside. In either event the reason fails where fright or nervous shock causes visible physical injury."
>
> Comstock -v- Wilson, (1931) 257 NY 231, 235

And further exceptions were found in the cases involving contaminated food, a courageous Supreme Court Judge stated,

> ". . . There seems to be no reason for the rule announced in the Mitchell case. It is said that the rule was adopted as one of public policy, or as one of necessity to avoid the perpetration of fraud. Whatever may have been the prevailing conditions when this rule was announced, there is now no need of it on the score of public policy or necessity."
>
> Sider -v- Reid Ice Cream Co.
> 125 Misc 835, at page 836

Finally in 1959, the Court of Appeals permitted recovery for purely mental suffering arising from information the plaintiff received from a doctor. The court said,

> ". . . Freedom from mental disturbance is now a protected interest in this State"

and quoting from Prosser on Torts, §34, continued,

> " 'The only valid objection against recovery for mental injury is the danger of vexatious suits and fictitious claims, which has loomed very large in the opinions as an obstacle. The danger is a real one and must be met. Mental disturbance is easily simulated, and courts which are plagued with fraudulent personal injury claims may well be unwilling to open the door to an even more dubious field. But the difficulty is not insuperable. Not only fright and shock, but other kinds of mental injury are marked by definite physical symptoms, which are capable of clear medical proof. . . . The problem is one of adequate proof, and it is not necessary to deny a remedy in all cases because some claims

> may be false. The very clear tendency of the recent cases is to refuse to admit incompetence to deal with such a problem, and to find some basis for redress in a proper case.' "

Ferrara -v- Galluchio
5 NY2d 16, 21, (1959)

In 1960, the Battalla case began its historic journey through the Courts, destined to shatter forever the unjust rule of the Mitchell case.

Here the case was against the State of New York and the Court of Claims held,

> "The trial of the claim will be determinative of its merits. The emotional and neurological disturbances with residual physical manifestations alleged to have been sustained by claimant will become at such time the subject of clear medial proof. If such proof is deemed adequate by the court, then the possibility that the claim of mental disturbance has been simulated will have been negated. On the other hand, if the medical testimony fails to sustain the claimant, she will fail in her action. In either event, neither public policy, nor common sense will be offended. On the basis of her claim as presented, however, it is the opinion of the court that she cannot be denied the right of a trial. The Court will not deny claimant a remedy for mental injury allegedly sustained merely because of a possibility that the claim is false."

Battala -v- State of New York
17 Misc2d 548, at page 553

The Appellate Division for the Third Department, in 1960, reversed the Court of Claims, stating,

> ". . .we think the case is controlled by Mitchell -v- Rochester Ry. Co. (151 NY 107) . . .We are of the opinion the Court of Claims was required to follow the authority of that case. Although, of course, as it was held in Ferrara -v- Galluchio (cit.) mental suffering and disturbance are a part of damage for physical injury, nothing there decided or said disavows the Rochester Ry. Co. Rule."
>
> Battalla -v- State of New York
> 11 AD2d 613 (4)

At last on July 7, 1961, after 65 years, the Court of Appeals looked an unjust precedent squarely in the eye and overruled it,

> "It is our opinion that Mitchell should be overruled. It is undisputed that a rigorous application of its rule would be unjust, as well as opposed to experience and logic. On the other hand resort to the somewhat inconsistent exceptions would merely add further confusion to a legal situation which presently lacks that coherence which precedent should possess. 'We act in the finest common-law tradition when we adopt and alter decisional law to produce common-sense justice. * * * Legislative action there could, of course, be, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule.' (Woods -v- Lancet, 303 NY 349, 355). . . .
> Moreover, it is the opinion of scholars that the right to bring an action should

> be enforced.
>
> It is fundamental to our common-law system that one may seek redress for every substantial wrong. . . .A departure from this axiom was introduced by Mitchell. . . the court reasoned that a recovery would be contrary to public policy because that type of injury could be feigned without detection and it would result in a flood of litigation where damages must rest on speculation. . . . We presently feel that even the public policy argument is subject to challenge. Although fraud, extra litigation and a measure of speculation are, of course, possibilities, it is no reason for a court to eschew a measure of its jurisdiction. 'The argument from mere expediency cannot commend itself to a Court of justice, resulting in the denial of a logical legal right and remedy in all cases because in some a fictitious injury may be urged as a real one.' (Green -v- Shoemaker & Co., 111 Md 69, 81). . . . In any event, even if a flood of litigation were realized by abolition of the exception, it is the duty of the courts to willingly accept the opportunity to settle these disputes."
>
> Battalla -v- State of New York
> 10 NY2d 237, pp. 239, 240, 242

In Battalla -v- State of New York, equitable jurisprudence was not involved, and the Court might properly have considered technical problems of the common-law, and might have very properly engrafted another exception onto the Mitchell rule. They did not. They overruled Mitchell and expanded the doctrine of Woods -v- Lancet, freeing this Court from slavish acceptance of Blackstone.

VIII. PLAINTIFF HAS SHOWN SPECIAL DAMAGE SUFFICIENT TO JUSTIFY EQUITABLE RELIEF EVEN UNDER THE ERRONEOUS BLACKSTONE RULE.

The lengths to which Courts were forced to go to still quote the erroneous Blackstone Rule, and yet do some semblence of equity between the parties is no better exemplified than in the majority opinion of the Court of Appeals in 1863, where the trial court made a finding,

> " '. . .the railroad will be specially injurious to the property of the plaintiffs, and other property similarly situated in the same part of Broadway,' "

and the defendants contended that this finding,

> "shows the case to be one of public nuisance only, without any special injury to the plaintiffs that the finding of a special injury to one, and to others similarly situated, is the finding of a common and like injury to all, and such a common injury is a common or public nuisance."

and the Court of Appeals resolved the problem by holding,

> "This is not a fair interpretation of the finding at the special term. . . The fair meaning of the language is, that the railroad would be specially injurious to the property of each of the plaintiffs in severalty, and in like manner specially injurious to the separate property of others similarly situated; that although the cause of the injury would be common, the special injury to each would be several and direct and not merely consequential. This interpretation of the language in question, which is the natural and obvious one when

> it is read in connection with the other facts of the case, answers the objection of the defendants' counsel, . . ."

while in the concurring opinion, the reasonsing went this way,

> "It certainly would have been no objection to the granting of relief to the plaintiff in that case that the property of a number of other persons upon the same street, similarly situated was injured, and its value impaired by the same cause. In Lansing -v- Smith (4 Wend 10) the chancellor held that every individual who suffers actual damage, whether direct or consequential, from a public nuisance may maintain an action for his own peculiar injury, although there may be many others equally damnified."
>
> Milhau -v- Sharp
> 27 NY 611, at pp. 625, 626, 628

In 1873, an operator of a tannery and glue factory moved to dismiss a complaint for abatement of anuisance on the ground,

> ". . .that as the stench injured a large number of houses, the nuisance was common, and therefore no one could maintain an action for his particular injury, the only remedy being an indictment for the common injury to the public."

A unanimous Court of Appeals made short work of that argument, stating bluntly,

> "The error of this is obvious both upon principle and authority. The idea that if by a wrongful act a serious injury is inflicted upon a single individual a recovery may be had therefor against the wrong-doer, and that if by the same act numbers are so injured, no recovery can

> be had by anyone, is absurd. This, stripped of verbiage, is the ground of the motion. It is said that holding the defendant liable to respond in such an action to each one injured will lead to a multiplicity of suits. This is true, but it is no defence to a wrongdoer when called upon to compensate for the damages sustained from his wrongful act to show that he by the same act inflicted the like injury upon numerous other persons. . . . The rule is that one maintaining a common nuisance is not liable to an action at the suit of one who has sustained no damage therefrom except such as is common to the entire community, yet he is liable at the suit of one who has sustained damage peculiar to himself. No matter how numerous the persons may be who have sustained this peculiar damage, each is entitled to compensation for his injury."
>
> Francis -v- Schoellkopf
> 53 NY 152, 154 (1873)

In 1891, the Court of Appeals continued to spell out modifications of the Blackstone Rule, holding

> ". . . That the perpetrator of the nuisance is amenable to the provisions and penalties of the criminal law is not an answer to an action against him by a private person to recover for injury sustained, and for an injunction against the continued use of his premises in such a manner. The principle has been long settled that the objection that the nuisance was a common one is not available if it be shown that special damage was suffered.
>
> Cranford -v- Tyrrell
> 128 NY 341, 344 (1891)

IX. THE DE MINIMUS ARGUMENT OF DEFENDANTS, EVEN IF SUPPORTED BY SCIENTIFIC EVIDENCE, IS NO DEFENSE TO PLAINTIFF'S APPLICATION FOR EQUITABLE RELIEF.

Defendant's contend,

> "The relative pittance of the stuff that the Commission uses is of no real moment in the over-all conditions prevailing world-wide."

and this has been the basic element of their defense, first on the application for a preliminary injunction, and later throughout the trial of the action. The evidence shows, from the testimony of Mr. Williamson himself, that the Defendants are the only major applicators of DDT to the marine environment of the County, and that they are the only applicators of DDT to the sewers, sumps and catch basins throughout the county. Plaintiff's expert testimony indicates that such applications were sufficient to cause serious, permanent and irreparable damage to the natural resources of Suffolk County, and continued application of even small amounts of DDT to the general environment of the County would case more of such damage. Defendant's experts did not have sufficient knowledge of the subject matter to render scientific opinions on this issue. Nevertheless, Defendants would have this Court deny equitable relief to the Plaintiff on the ground that it has not been shown that these Defendants are wholly responsible for the damage which has occurred and which may occur.

It has long been the settled law of this state that it is no defense to an action to abate a nuisance, that the defendant may be one of many contributors to the nuisance, the opinion of Judge Vann

speaking for a unanimous Court of Appeals in 1900 is clearly the law applicable to this case,

> ". . . The waters of the creek have become so salt at times as to be unfit for the watering of cattle as well as for many other uses both domestic and mechanical. The effect has been to destroy most of the fish and certain kinds of vegetation growing in the stream or upon the margin. . . . . . Salt is the leading industry of the Oatka Valley. . . . It furnishes employment to more than one hundred men and women. . . .
> (the trial judge in the court below) relies largely upon a case in Pennsylvania, which held that one operating a coal mine . . . may. . . . drain or pump the water that percolates into his mine into a stream . . . although the quantity of water may thereby be increased and its quality so affected as to render it totally unfit for domestic purposes by the lower riparian owners. (Pennsylvania Coal Company -v- Sanderson, 113 PaSt 126) That case had a varied history and it was not until it came before the court for the fourth time that, influenced by the necessities of a great industry, the rule was laid down as indicated.
>
> The case was first considered in 1878, when the claim of the lower riparian owner was sustained upon the principle of sic utere tuo, ut alienum non laedus. In reply to the argument of counsel that the law must be adjusted to our great industrial interests, the court said:

"In the argument here the ground was distinctly taken that immense public and private interests demand that the right which the defendants exercised in ejecting the water from their mine should have recognition and be established. It was said that in more than a thousand collieries in the anthracite regions of the state the mining of coal can only be carried on by pumping out the percolating water which accumulates in every tunnel, slope and shaft, and which, when brought to the surface, must find its way by a natural flow to some surface stream. It was urged that the law should be adjusted to the exigencies of the great industrial interests of the Commonwealth and that the production of an indispensible mineral reaching to the annual extent of twenty millions of tons, should not be crippled and endangered by adopting a rule that would make colliers answerable in damages for corrupting a stream into which mine water would naturally run. * * * The consequences that would flow from the adoption of the doctrine contended for could be readily foretold. Relaxation of legal liabilities and remission of legal duties to meet the current needs of great business organizations, in one direction would logically be followed by the same relaxation and remission, on the same grounds, in all other directions. One invasion of individual rights would follow another, and it might be only a question of time, when, under the operations of even a single colliery, a whole countryside would be depopulated.'

In 1880, the case was reviewed a second time and it was again urged that the rights of the riparian owners should yield to the immense public interest involved. The court, however, reaffirmed its former decision and, among other things, said:

'The mining interests of the defendant do not involve the public interest, but are conducted solely for the purposes of private gain. Incidentally, all lawful industries result in the general good; they are, however, not the less instituted and conducted for private gain, and are used and enjoyed as private rights over which the public has not control. It follows that none of them, however, important, can justly claim the right to take and use the property of the citizen without compensation.' (Pennsylvania Coal Co. -v- Sanderson, 94 Penn St. 302)

In 1883, the court heard the case for the third time with the same result, but on the last review in 1886, by a vote of four to three, it reversed its previous decisions and held,

'the use and enjoyment of a stream by the lower riparian owners, who purchased their land, built their houses and laid out their grounds before the opening of the coal mine, the acidulated waters from which rendered the stream entirely useless for domestic purposes, must ex necessitate give way to the interests of the community in order to permit the development of the natural resources of the country and to make possible the prosecution of the lawful business of mining coal.'

The extensive coal mines of the State of Pennsylvania were regarded as of sufficient importance to warrant the court in departing from the law as previously laid down by itself in the same case, as well as from the rule which prevails in England and in this Country, except in some states where mining is extensively carried on. . . Courts of the highest standing have refused to follow the Sanderson case . . .and its doctrine was finally limited by the court which announced it. The Court below, however, manifestly followed the Pennsylvania rule without limitation. . .We have never adopted that rule in this state, and no public necessity exists therefor, even if it would ever warrant the courts in relaxing rules for the protection of property of small value in the interest of some business required to develop the resources of the state, and in which much capital had embarked, giving employment to a great number of people. . . .

The fact that other salt manufacturers are doing the same thing as the defendant, instead of preventing relief, may require it. Where there is a large number of persons mining on a small stream, if each should deteriorate the water a little, although the injury from the act of one might be small, the combined result of the acts of all might render the water utterly unfit for further use; and if each could defend successfully an action on the ground that his act alone did not materially affect the water, the prior appropriator might be deprived of its use, and at the same time be without a remedy."

Strobel -v- Kerr Salt Co., 164 NY 303

X. UNLESS EQUITABLE RELIEF IS GRANTED PLAINTIFF AS PRAYED, PLAINTIFF WILL BE DENIED THE EQUAL PROTECTION OF THE LAW AND DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

The question has been raised repeatedly by the Court and counsel for the Defendants, whether Plaintiffs are in the right forum. Plaintiffs submit, that if this Court of Equity is not the right forum, Plaintiffs have no forum.

There is no forum at the present time available to the Plaintiffs wherein the Defendants can be stayed from the continuance of a practice admittedly harmful to the natural resources of the County of Suffolk.

> ". . . Our court (Court of Appeals) said long ago, that it had not only the right, but the duty to re-examine a question where justice demands it (Rumsey -v- N. Y. & N. E. R. R. Co., 133 NY 79, 85, 86, . . .) That opinion notes that Chancellor Kent, more than a century ago, had stated that upwards of a thousand cases could then be pointed out in the English and American reports 'which had been overruled, doubted or limited in their application', and that the great Chancellor had declared that decisions which seem contrary to reason 'ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error.' And Justice Sutherland, writing for the Supreme Court, in Funk -v- United States (290 US 371, 382), said that while legislative bodies have the power to change

old rules of law, nevertheless, when they fail to act, it is the duty of the court to bring the law into accordance with present day standards of wisdom and justice rather than 'with some outworn and antiquated rule of the past'. . . . The sum of the argument against the plaintiff here is that there is no New York decision in which such a claim has been enforced. Winfield's answer to that (4 U. of Toronto L. J. 29) will serve: 'if that were a valid objection, the common law would now be what it was in the Plantagenet period.' And we can borrow from our British friends another mot: 'When those ghosts of the past stand in the path of justice clanking their mediaeval chains the proper course for the judge is to pass through them undeterred' (Lord Atkin in United Australia Ltd. -v- Barclay's Bank, Ltd., 1941, AC 1, 29) We act in the finest common-law tradition when we adapt and alter decisional law to produce common-sense justice.

The same answer goes to the argument that the change we here propose should come from the Legislature, not the courts. . . . 'The common law does not go on the theory that a case of first impression presents a problem of legislative as opposed to judicial power.' "

Woods -v- Lancet
303 NY 349, at 354-356 (1951)

XI. SUFFICIENT GROUNDS EXIST FOR THE EXERCISE OF THE DISCRETION VESTED IN THE COURT TO STAY A PRACTICE INJURIOUS TO THE COUNTY AND ITS RESIDENTS.

On August 15, 1966, this Court by Hon. D. Ormande Ritchie, found that sufficient grounds exist for the exercise of the discretion vested in the Court to stay a practice injurious to the County and its residents, and Plaintiff's application for a temporary injunction was granted. Defendants have not presented any more scientific evidence in support of their contentions to this Court than they did to the Court on the application for a temporary injunction. There is no reason why the injunction should not be now made permanent.

DATED: Patchogue, New York
December 22, 1966

Respectfully submitted,

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Victor John Yannacone jr.

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TO: GEORGE W. PERCY, JR.,
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