

IN CHANCERY OF NEW JERSEY...

Interstate commission on the
Delaware River basin

DEPOSITORY COPY
Do Not Remove From Library

974.90
D 343
1942

174.90
343
1942 2

NEW JERSEY STATE LIBRARY
3 3009 00503 0848

PROPERTY OF
RECEIVED
MAR 22 1947
NEW JERSEY STATE LIBRARY
TRENTON

In Chancery of New Jersey

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

On Bill for Injunction

ON MOTION FOR LEAVE TO FILE A BRIEF

Amicus Curiae

Notice, Petition and Brief

HOBART, MINARD & COOPER
*Solicitors for: Interstate Commission on
Delaware River Basin,
1180 Raymond Boulevard,
Newark, New Jersey*

DUANE E. MINARD
G. ADDISON HOBART
of Counsel.

December 7, 1942.

I N D E X

CITATIONS:	<i>Page</i>
Federal Statutes.....	ii
New Jersey Statutes.....	ii
New Jersey Revised Statutes.....	ii
Federal Constitution.....	ii
Public Documents.....	iii
House of Representatives (U.S.) Reports.....	iii
Text Books.....	iii
Table of Cases.....	iii
NOTICE OF MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.....	vi
PETITION.....	viii
PROOF OF SERVICE OF NOTICE, PETITION AND BRIEF.....	xii
FORM OF ORDER.....	xiv
ATTORNEY GENERAL'S CONSENT TO ORDER....	xiv

B R I E F I N D E X

STATEMENT.....	1
ARGUMENT.....	8
I Statutes are Presumed Constitutional.....	8
II First Defense filed by Both Defendants.....	8
III Second Defense filed by Both Defendants.....	12
Co-Operative Agreement.....	24
State Jurisdiction over Delaware River.....	26
IV Third Defense filed by Both Defendants.....	27
V Fourth and Fifth Defenses filed by Both De- fendants.....	40
VI Tenth Defense filed by the City of Camden.....	48
VII Eleventh Defense filed by the City of Camden....	49
CONCLUSION.....	50

FEDERAL STATUTES

Title 16, Sec. 552 (U.S.C.A.) p. 373.....	9
44, Secs. 301-11 (44 U.S.C.A.) pp. 28-33.....	31

NEW JERSEY STATUTES

P.L. 1899, p. 538.....	15
1900, p.115.....	15
1929, p. 823.....	1
1939, Chap. 146, pp. 477-479.....	1
1939, pp. 481, 483.....	4
p. 479.....	7, 9
p. 482.....	13
p. 489.....	17
pp. 478, 487.....	22
p. 488.....	23
p. 487.....	39
Article III, pp. 483-7.....	49

NEW JERSEY REVISED STATUTES

R.S. 17:34-22.....	32
24:1-1 (e).....	32
24:1-2.....	32
26:2-27.....	14, 24
26:2-28.....	15, 24
26:2-33.....	15, 24
26:2-65.....	15, 24
45:14-19.....	31
45:14-20.....	32
58:12-3.....	16
58:10-10.....	16
58:10-42.....	16

FEDERAL CONSTITUTION

Article I, Section 1.....	20
Section 10.....	8
Article VI, Articles of Confederation.....	11

PUBLIC DOCUMENTS

Federal Register, Vol. 7, No. 238, Dec. 5, 1942, pp. 10158-60.....	29
House Document No. 155, 76th Congress, 1st Session, (Feb. 15, 1939).....	4

HOUSE OF REPRESENTATIVES (U.S.) REPORTS

Appendix to report of hearings on H.R. 2711, H. R. 2300 and H.R. 3419, (Second report of Water Pollution Committee of National Resources Committee, presented before Committee on Rivers and Harbors of House of Representatives, April 7, 1937).....	3
---	---

TEXT BOOKS

20 American Jurisprudence, p. 111.....	31
Bigelow on Equity, p. 300.....	48
Bouvier's Law Dictionary, (Rawles, Third Rev. 1914), p. 1882.....	34
Corpus Juris, Sec. 13, p. 38.....	9
Corpus Juris, (59), p. 37.....	12
3 Daniel's Chancery Pl. & Pr., 1739, 1740.....	48
1 Pollock &c. Maitland's Hist. of English Law (2d ed.) p. 467.....	34
15 Ruling Case Law, p. 1127.....	31
2 Story's Eq. Jurisp., Secs. 2147-50, (14 ed.) p. 596....	48

TABLE OF CASES

Adams v. Milwaukee, 144 Wis. 371; 43 L.R.A. (N.S.) p. 1066.....	36
Aikins v. Kingsbury, 247 U.S. 484; 62 L. Ed., p. 1226..	14
Albright v. Sussex Co. Lake Com., 68 N.J.L. 523.....	46
Attorney General v. Del. & B.B.R. Co., 27 N.J.E. 1; aff. 27 N.J.E. 631.....	26

Barr v. State, 231 Pac. 322 (Criminal Court of Appeals of Okla., 1924).....	31
Borden's Milk Co. v. Board of Health, 81 N.J.L. 218...	34
Brinkerhoff v. Newark & Hackensack R.R., 66 N.J.L. 478.....	42
Burlington v. Pennsylvania R.R. Co., 104 N.J.L. 649..	42
Buttfield v. Stranahan, 192 U.S. 470.....	19, 38
Caruso v. Porter, 102 N.J.L. 71.....	46
Collingswood v. Water Supply Commission, 84 N.J.L. 104.....	18
Cookendorfer v. Preston, 4 Howard 317 (1946).....	38
Coward v. N. Plainfield, 34 Id. 61; 63 N.J.L. 61.....	43
Dixie Wholesale Grocery, Inc. v. Marlin, 278 Ky. 705; Cert. denied, 308 U.S. 609; 84 L. Ed. 509.....	11
Easton & Amboy R.R. v. Central R.R., 52 N.J.L. 267..	45, 48
Eleventh Ward Bldg. & Loan Ass'n, Re, 130 N.J.E. 414.	14
Elizabeth, In Re Comm. of, 49 N.J.L. 488.....	43
Erie R.R. Co. v. Public Utilities Com'rs., 89 N.J.L. 57, (Aff. 90 N.J.L. 672; 254 U.S. 394).....	18
Heald v. Dist. Columbia, 259 U.S. 114.....	14
Hudson County Water Co. v. McCarter, 209 U.S. 349..	27, 28
Hulme v. Commissioners, 95 N.J.L. 30; aff. Id. 545....	47
Jersey City v. Martin, 126 N.J.L. 353.....	42
JerseyCity v. State Water Policy Comm., 118 N.J.L. 72	21
Kluczek v. State, 115 N.J.L. 105.....	47
Merritt v. Welsh, 104 U.S. 694.....	38
McHenry County v. Brady, 163 N.W. 540 (N.D. 1917)	12
Nelson v. Minneapolis, 112 Minn. 16; 29 L.R.A. (N.S.), p. 260.....	35
Newark v. Mt. Pleasant Cemetery Co., 58 N.J.L. 168.....	43, 44, 45
New Jersey v. New York, 283 U.S. 341.....	2, 6, 33, 39
O'Banner v. Pendlsbury, 107 N.J.L. 245.....	46

Ott v. Braddock, 119 N.J.L. 507.....	47
Petranto v. Board, 125 N.J.L. 391.....	47
Premier-Pabst Sales Co. v. Grosscup, 298 U.S. 226; 80 L. Ed. 1155.....	14
Public Service Electric &c. Co. v. Camden, 118 N.J.L. 245.....	41
Reiner v. Fidelity Union Trust Co., 126 N.J.E. 78, (Rev. on another grounds, 127 N.J.E. 377).....	13
Rubinstein v. Charline's Cut Rate, Inc., 132 N.J.E. 254	21
State v. Czarnicki, 124 N.J.L. 43.....	47
State Board of Health v. Diamond Mills Paper Co., 63 N.J.E. 111.....	17
State v. Guida, 119 N.J.L. 464.....	47
State Board v. Johnson, 6 N.J. Misc. 455; aff. 105 N.J.L. 498.....	47
State Board of Milk Control v. Newark Milk Co., 118 N.J.E. 504.....	8, 21
State v. Nelson, 66 Minn. 318; 34 L.R.A. 318.....	36
State Board of Health v. Town of Phillipsburg, 84 N.J.E. 402; aff. 85 N.J.E. 161.....	17, 25, 26, 47
State v. Van Vlack, 172 Pac. 563.....	31
St. Louis v. Grafeman Co., 190 Mo. 507; 1 L.R.A. (N.S.) p. 926.....	37
St. Louis v. Liessing, 190 Mo. 464; 1 L.R.A. (N.S.) 918.	36
Stockton v. Central R.R., 50 N.J.E. 52.....	43, 44, 45
Thompson v. Bader, 102 N.J.L. 227.....	47
Vandegrift v. Meihle, 66 N.J.L. 92.....	39
Veix v. Seneca B. & L. Ass'n., 126 N.J.L. 314.....	20
Virginia v. Tennessee, 148 U.S. 501.....	9, 10
Walter v. Union, 4 Yr. 350.....	43
Wharton v. Wise, 153 U.S. 155.....	11

vi

Notice.

In Chancery of New Jersey

On Bill for Injunction

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

ON MOTION FOR LEAVE TO FILE A BRIEF

Amicus Curiae.

TO: VINCENT deP. COSTELLO,
Solicitor for Defendant,
The Mayor and Council of Gloucester City.

EDWARD V. MARTINO,
Solicitor for the Defendant,
City of Camden.

GENTLEMEN:

PLEASE TAKE NOTICE that on January 11, 1943, at 10 o'clock in the forenoon, Eastern War Time, or at the same time on such other date as said Court shall hear the motion of the Attorney General, noticed November 25, 1942, to strike the answers in this suit, we shall apply to the Chancellor at the

Chancery Chambers in the City of Camden, New Jersey, for an order granting leave to file a brief *amicus curiae* on behalf of Interstate Commission on The Delaware River Basin, in the above entitled matter.

On that application we will present the attached Petition and Brief.

Respectfully,

HOBART, MINARD & COOPER,
Solicitors For:
Interstate Commission on The Delaware
River Basin,
1180 Raymond Boulevard,
Newark, N. J.

DUANE E. MINARD
G. ADDISON HOBART,
Of Counsel.

December 7, 1942.

viii

Petition.

In Chancery of New Jersey

On Bill for Injunction

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

PETITION FOR LEAVE TO FILE A BRIEF .

Amicus Curiae.

The petition of Interstate Commission on The Delaware River Basin respectfully shows:

1. Petitioner was organized in 1936 for the formulation and promotion of a co-ordinated, unified plan looking forward to the wise use, development and control of the resources of the Delaware River Basin as a whole. It is an unincorporated co-operative agency composed of four duly appointed representatives of each of the states of Delaware, New Jersey, New York and Pennsylvania, as follows:

Delaware: A member each of the Senate and House of Representatives, the State Sanitary Engineer, and the Secretary of the Wilmington Board of Harbor Commissioners.

New Jersey: One member of the Senate, two members of the New Jersey Commission on Interstate Co-operation created by

chapter 21 of the laws of 1936 (p. 32) approved March 4, 1936, and the Chairman of the State Planning Board.

New York: One member of the Senate and two members of the Assembly appointed pursuant to a joint resolution of the legislature, and the Commissioner of the Division of Commerce.

Pennsylvania: One member each of the Senate and House of Representatives, the Secretary of Commerce and the Director of the State Planning Board.

General: The Regional Representative of the Council of State Governments comprising all of said states.

2. It was organized and established, and is maintained by cooperative appropriations made by said states, as a regional commission for the purpose of entering upon a program to study the conservation, water supply, pollution and other potential uses and benefits of, and to develop integrated plans to conserve and safeguard the waters of the Delaware river basin, in the following specified particulars: (*P.L. 1939. p. 478*)

"A. To serve as a fact-co-ordinating body and to develop the means and procedure by which the general plans and policies proposed for the development of the region may be carried out;

B. To sponsor the carrying out of properly developed plans which result from surveys and research concerning population, land and water resources and uses, and other related subjects;

C. To co-ordinate the activities of the Commissions and Committees on Interstate Co-operation and their joint agency, the Council of State Governments, with the work of the appropriate State and Federal agencies for the prevention and abatement of pollution.

D. To encourage interstate compacts and the enactment of uniform State laws for the abatement of water pollution, for

flood control and for the proper general use and control of the waters of the Delaware river.

E. To advance, perpetuate, and outline the work recommended by its conferences, and to develop and propose new objectives;”

3. The sanitary code prescribed in Chapter 146 of the laws of New Jersey (*P.L. 1939, p. 477*) was prepared through the agency of petitioner to eliminate confusion and conflict among the said States by the promotion and enactment of uniform laws in said States to preserve in a safe and sanitary condition the waters and watershed of the said Delaware river basin and to provide uniform concurrent regulations for the control and the enforcement of the elimination of pollution of the waters thereof in said states, respectively.

4. Said sanitary code was prepared in co-operation with the Health Departments of said States, respectively, and the National Resources Committee and the Public Health Service of the Federal Government, after a joint and co-operative study of said river and its tributaries in said Delaware river basin, and said sanitary code has been formally approved, ratified and accepted by the health departments of each of said states in the form prescribed in said Chapter 146 of the laws of New Jersey (*P.L. 1939, pp. 479-488*), and has been enacted into law in the States of New York (*Chapter 600, laws of 1939*) and Delaware (*passed May 8, 1941*) by acts of the legislature in substantially the same form as Chapter 146 of the laws of New Jersey for 1939, above mentioned.

5. Said chapter 146 of the laws of 1939 was drafted under the auspices of petitioner, as a uniform act to be enacted in each of said states for the purposes therein expressed in co-operation with officers and counsel representing each of said states and the National Resources Committee, and was introduced in the legis-

latures of said states by members of Petitioner who were members thereof, respectively.

6. The constitutionality of said Act and the validity of said sanitary code have been challenged in the separate answers of the defendants in the above entitled suit, in which the Attorney General, solicitor for complainant, has noticed, under date of November 25, 1942, a motion to strike the separate answers of the defendants on the grounds stated in said notices; said motion is set down for hearing on January 11, 1943.

7. As the official co-operative agency established as aforesaid to promote the purposes of said act, petitioner has an interest in said act, and its support in answer to the attacks thereon made in the answers above mentioned.

8. Petitioner therefore prays leave to enter an appearance by counsel, to file the attached brief *amicus curiae*, and to participate in the argument of said motion, on the questions therein discussed.

Respectfully Submitted,

INTERSTATE COMMISSION ON THE DELA-
WARE RIVER BASIN,

By.....
David W. Robinson, Executive Secretary

Date: December 7, 1942.

Proof of Service.

In Chancery of New Jersey

On Bill for Injunction

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendant.

ON MOTION FOR LEAVE TO FILE A BRIEF

Amicus Curiae.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN. } ss.

Fred L. Strong, of dull age, of the City and County of Camden and State of New Jersey, being duly sworn according to law upon his oath deposes and says:

1. On Wednesday, December 16, 1942, he served the Notice and Petition, and proposed Brief, Amicus Curiae, referred to in said Notice upon Vincent de P. Costello, Solicitor for Defendant, The Mayor and Council of Gloucester City, by delivering to him personally at his office, N. W. Corner Seventh & Market Streets, Camden, N. J., copies of said Notice and Petition and Proposed Brief, Amicus Curiae.

2. On Wednesday, December 16, 1942, he served the Notice and Petition, and proposed Brief, Amicus Curiae, referred to in said Notice upon Gene R. Mariano, Solicitor for Defendant, City of Camden, by delivering to him personally at his office in the City Hall, Camden, N. J., copies of said Notice and Petition and Proposed Brief, Amicus Curiae.

Fred L. Strong.

Sworn and subscribed before me this 17th day of December, 1942.

Bertha C Hack
Notary Public of N. J.

My commission expires Dec. 15, 1947.

Form of Order.

In Chancery of New Jersey

On Bill for Injunction

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

ORDER FOR LEAVE TO FILE BRIEF

Amicus Curiae.

Upon reading and filing the notice and petition, dated December 7, 1942 of Interstate Commission on Delaware River Basin, for leave to file a brief *amicus curiae* in the above entitled suit, and it appearing that said notice of this application, dated December 7, 1942, together with a copy of said petition and said proposed brief *amicus curiae* were, on December 16, 1942, served personally upon Vincent de P. Costello, solicitor for defendant, the Mayor and Council of the City of Gloucester, and upon Gene R. Mariano (successor to Edward V. Martino) solicitor for defendant, City of Camden, and good cause being shown, it is on this day of January, 1943, on motion of Hobart, Minard & Cooper, solicitors for Interstate Commission on Delaware River Basin,

O R D E R E D that the petitioner, Interstate Commission on Delaware River Basin, be and the same hereby is granted leave to enter an appearance by counsel, file a brief *amicus curiae*, and participate in the argument of a motion by the Attorney General, solicitor for complainant, to strike the separate answers of the defendants on the notice of such motion dated November 25, 1942, and for such other purposes as the court may direct.

Respectfully advised,

C.

V.C.

I hereby consent to the entry of the foregoing order.

David T. Wilentz, Attorney General
Solicitor for Complainant.

Brief.

In Chancery of New Jersey

On Bill for Injunction

Between

DEPARTMENT OF HEALTH OF THE STATE OF
NEW JERSEY, *Complainant,*

and

CITY OF GLOUCESTER CITY and CITY OF CAMDEN,
Defendants.

BRIEF AMICUS CURIAE

*ON BEHALF OF INTERSTATE COMMISSION ON
THE DELAWARE RIVER BASIN*

STATEMENT

The Interstate Commission on The Delaware River Basin, (hereinafter called "Incodel") on whose behalf this brief is respectfully submitted, is a voluntary association formed, and maintained, by the states whose territories (in part) comprise the Delaware River watershed, in the manner, and for the purposes, recited in the Preamble of Chapter 146, of the laws of 1939 (pp. 477-479).

A brief summary of the historical background of Incodel will aid in the consideration of its interest, and part, in the abatement of pollution in the Delaware River.

Pursuant to Joint Resolution 14 (*N.J.P.L.* 1929, p. 823) what is known as the "Delaware Diversion Case" was instituted as an original suit in equity by complaint filed May 1, 1929 in the

Supreme Court of the United States by the State of New Jersey to enjoin the State of New York and the City of New York, (in which the Commonwealth of Pennsylvania intervened on the side of the defendants) from undertaking the proposed immediate diversion of 600, and the ultimate diversion of 2400, million gallons per day from the upper tributaries of the Delaware River located within the State of New York.

The complaint alleged injuries to the use of the river in New Jersey for water power, navigation, sanitation, industries, oyster culture, fisheries, water supply, agriculture and recreation. In the preparation and presentation of that case exhaustive research was made, and extensive and complete data was compiled and presented in evidence, on each of these subjects with relation to the Delaware River and its watershed. They were all evaluated and decided in the Master's report, which was confirmed by the court (*New Jersey v. New York, et als.*, 283 U. S. 341).

Because the fruits of that research and the material accumulated in that record were too valuable to be disregarded or lost, all of the states interested, and the State of Delaware, decided to utilize them as a basis for the future conservation, development and protection of the vast resources of that river.

To that end they established, and have since maintained, Incodel, as a co-operative agency, in the manner and for the purposes described in the Preamble of Chapter 146, laws of 1939. A program has been formulated to develop co-operative action, and uniform laws, in the several constituent states to conserve, develop and protect the various uses of the river involved in the "Delaware Diversion Case."

Naturally, the first, and necessarily basic project was the control of pollution, and the act in question was the result of that effort. A similar co-operative project, in the form of uniform laws,

is now before the legislature of New Jersey, and the other states for the rationing and utilization of the river waters for public water supply. The plan is to promote similar co-operation, and uniform laws, covering other river uses according to their relative importance, but the control of pollution is the primary, and basic, necessity for the utilization of all other resources of the river.

The sanitary code in question is implemented with a nationwide pollution abatement plan of the various interested agencies of the federal government. In the second report of the Water Pollution Committee of the National Resources Committee, presented before the Committee on Rivers and Harbors of the House of Representatives, April 7, 1937 (*Appendix to report of hearings on H.R. 2711, H.R. 2300 and H.R. 3419*), the recommendations included (*pp.* 8-9) the following:

“(2) prepare comprehensive programs, covering the various drainage basins of the United States, designed to eliminate or reduce pollution and to improve conditions affecting the various interests concerned; and (3) encourage uniform and simplified State pollution-control legislation. Such drainage-basin programs should be reconciled with plans conserving water and promoting its use as needed for public-water supplies; propagation, conservation and use of fish, waterfowl, and other aquatic life; for recreational purposes; agriculture and other uses.”

Reference is therein made (*p.* 9) to discussions held and tentative organization formed for the Delaware watershed.

On February 15, 1939, the President transmitted to the Congress of the United States a report on Water Pollution in the United States, prepared at his request by a special advisory committee of the National Resources Committee composed of ex-

perts from the Departments of War, Treasury, Interior, Agriculture and Commerce, and from private and state agencies (*House Document No. 155, 76 Cong., 1st Session*).

The following extracts are taken from that report:

(p. 57.)

“No single standard is applicable generally, but it is practicable and desirable to set standards for selected portions of drainage basins with due regard for the natural conditions of the water for its present and potential use.”

“First, interstate organizations have agreed upon standards for water zones in two large areas having severe pollution problems—the New York-New Jersey coastal waters and the Delaware Basin;”

“Practical application of this principle has been made during the past year by the Interstate Commission on the Delaware River Basin. It divided the basin into four zones as follows:”

Here follows (*pp. 59-60*) descriptions of the zones specified in Article II of the code (*P.L. 1939, pp. 481-483*), and reference to, and a statement of the reasons for, the several standards of quality prescribed for each zone (*P.L. 1939, pp. 483-487*).

(p. 72) **“C. Need for Interstate Compacts and Agreements.**

Inasmuch as many heavily polluted streams flow through more than one state, enforcement by states individually may prove ineffective. The chief interstate drainage areas which have serious pollution problems are the x x x Delaware, x x x. However, in the remaining areas where pollution is serious, the interstate compact or agreement offers a possible remedy to the ills resulting from inconsistent and non-uniform state laws.”

(p. 73) x x. "an informal agreement on standards of water quality has been adopted by the Interstate Commission on the Delaware River Basin."

(p. 76). "**Delaware Basin Reciprocal Agreement.**

Rapid strides toward pollution abatement in an interstate area have been taken in the Delaware Basin under the leadership of the Interstate Commission on the Delaware River Basin. This group is composed of legislative members of Delaware, New Jersey, New York and Pennsylvania, appointed under provisions of State legislation establishing commissions on interstate co-operation. As a part of its program for the development of the Delaware Basin, 'In-codel' has brought about agreement on standards of quality as described in section (Article) III (*P.L. 1939, pp. 481-483*) and on a schedule of needed construction.

"The commission and the responsible administrative agencies in the four states have ratified a classification of the waters of the basin along lines which are described in section III. It is the commission's opinion that further or additional pollution of the waters of the river is definitely prevented by the terms of the reciprocal agreement."

In the Delaware Diversion case the City of New York was allowed to divert a maximum of 440 million gallons a day from the tributaries of the Delaware river in that state, but only on two conditions:

(a) Treatment of water by New York City to provide a specified maximum of animal and chemical pollution of the water at the New York-New Jersey state line.

(b) Maintenance of an established minimum flow at Port Jervis and Trenton by means of additional reservoir capacity to

avoid unsanitary effects of the diminished flow. (*New Jersey v. New York*, 283 U.S. 341, 346-7).

Those conditions were imposed to prevent the river between Pennsylvania and New Jersey from suffering increased pollution resulting from the diversion of water from its tributaries and to enable those states to preserve a suitable sanitary condition for water supply, recreation, industry, agriculture, fishing, oysters, and other beneficial uses. They were adopted by the court on the recommendation of the Master, who said in his report (*pp.* 126-7):

“After the waters of the Delaware River leave New York State, it is then the problem of Pennsylvania and New Jersey to see to it that the waters of the river are not unduly polluted from sources on the New Jersey side and the Pennsylvania side. All three states have laws relative to preserving the sanitary condition of their waters x x (referring to existing sanitary code agreements between the Health Departments of Pennsylvania, New Jersey and New York) for preserving the Delaware River in a sanitary condition. x x x The agreements provide for a high degree of treatment of sewage before it is discharged into the Delaware River above Easton, Pennsylvania, and Phillipsburg, New Jersey, and provide for a sedimentation of sewage before it is discharged into the river below said points x x x Mr. Stevenson (Chief Engineer of the Pa. Dept. of Health) testified that these agreements had been fruitful of good results.

x x x I find that there is an effort on the part of all three states to require the treatment of sewage and industrial wastes so as to preserve the sanitary condition of the Delaware river, and these efforts are progressive and may be expected still further to reduce pollution of the stream, but there remains much yet to be done in that regard.”

The sanitary code, embodied in Chapter 146 (laws of 1939) to establish standards of quality of water, is the result of further co-operative efforts of the states mentioned, and of the National Resources Committee and Public Health Service of the federal government (*p.* 479). A definite, uniform public policy for the prevention of pollution, and the protection and preservation of potable water supplies is declared in the act.

This is one of many acts of concurrent legislation enacted pursuant to mutual agreements between states prescribing reciprocal and uniform regulations of sanitation or other matters within their territorial limits, respectively, in bodies, or streams, of water lying between or adjacent to the constituent states. The object is to avoid conflicts between the laws and regulations of such states which might, and often do, interfere with the health and welfare of their respective citizens.

This case involves an act of the legislature of New Jersey, adopted in the furtherance of the co-operation of the constituent states respecting the Delaware River watershed, in which New Jersey, as well as the other states involved, has a common interest in the objects above mentioned (*p.* 477).

Such co-operative enterprises are so obviously beneficial to the public interest that public policy requires their encouragement, and they should not be stricken down unless a state (in this instance New Jersey) attempts to exercise a jurisdiction that would be unlawful if exercised within its own territorial limits if the co-operative feature was not involved.

This brief discusses certain defenses raised by the defendants, respectively, in which they challenge the constitutionality of Chapter 146, P.L. 1939. The other defenses presented in the answers will be considered in a brief to be filed by the Attorney-General.

ARGUMENT

I.

Statutes Are Presumed Constitutional.

The burden of showing that a statute is unconstitutional is upon the person alleging that it violates the constitution.

State Board v. Newark Milk Co., 118 N.J.E. 504, 519 (E. & A. 1935).

“A legislative enactment should not be set aside unless its constitutionality indisputably appears. If there be a permissible doubt as to the existence of the constitutional limitation invoked against the validity of an act, the courts will not declare the act to be contrary to the constitution.

Attorney-general v. McGuinness, 78 N.J. Law 346.”

II.

First Defense Filed by Both Defendants.

The First Defense filed by both the defendants alleges that Chapter 146, P.L. 1939 is unconstitutional and void, because it is an agreement or compact entered into by one state with another state without the consent of Congress, in violation of Article I, section 10 of the Constitution of the United States.

The applicable provisions of the U. S. Constitution are: “No state shall enter into any Treaty, Alliance, or Confederation,” and “No state shall, without the Consent of Congress . . . enter into any agreement or Compact with another State.”

(Article I, Section 10.)

Since only the interests of the United States can be adversely affected by a compact between states, it lies not in the mouth of

these defendants, as creatures of the state which has sanctioned this agreement by legislative action, to make such an objection. As appears from the recitals in the Statement at the beginning of this brief, and the fourth recital in the Preamble of the act (*P.L.* 1939, *p.* 479), this agreement was made pursuant to recommendation of, and in co-operation with, the responsible agencies of the federal government. If there is any question about the lack of Congressional approval only the federal government can (and it does not) make such objection. Congress has given its blanket approval of such agreements:—

“Consent of the Congress of the United States is given to each of the several States of the Union to enter into any agreement or compact, not in conflict, with any law of the United States, with any other State or States for the purpose of conserving the forests and the water supply of the States entering into such agreement or compact.” (*Title 16, Sec. 552, USCA. p. 373*). Mar. 1, 1911.

Congressional consent in advance of an agreement is equally valid with one given afterwards, *Virginia v. Tennessee*, 148 U.S. 501, 521, 59 *Corpus Juris*, sec. 13, p. 38. Three other instances have been noted in the federal statutes of Acts of Congress giving advance blanket authority for interstate agreements or compacts relating to various other subjects.

We think the foregoing consent of Congress is amply clear and comprehensive, but if it is urged that it is too narrow, or of doubtful application to this reciprocal code, there is ample authority to show that this is not a “Treaty, Alliance, Confederation,” or an “Agreement or Compact,” requiring congressional approval.

This is not a matter involving a *joint* enterprise, like the Port of New York Authority, or the Delaware River Joint Commission, where a *joint* administrative, or governmental, agency is set up

to operate an interstate facility. Here, each state deals reciprocally, but separately through its established agencies, with a problem clearly within its jurisdiction, and solely within its own territorial limits.

Although the National Resources Committee and the Public Health Service of the federal government participated in the deliberations on this code, (*P.L.* 1939, *p.* 479), its promulgation and enforcement involves no question of federal jurisdiction and is not inconsistent with any federal law. The purification of navigable inland waters is as beneficial to navigation, water power, or any other federal interest, as it is to other uses of the waters of the river, and federal governmental approval is unnecessary unless an obstruction to navigation occurs.

The question of what state compacts or agreements must be approved by Congress was considered by the United States Supreme Court in *State of Virginia v. State of Tennessee*, 148 U.S. 501, 518, (37 L. ed. 537, 542), where the court upheld a compact fixing the boundary line. We quote (*p.* 542-3 *in* 37 L Ed.):

“There are many matters upon which different states may agree that can in no respect concern the United States. x x x If the bordering line of two states should cross some malarious and disease producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering states to agree to unite in draining the district, and thus remove the cause of the disease.”

The Court held that compacts or agreements which do not affect the political influence of either state or the Federal government are not within the prohibition.

In *Wharton v. Wise*, 153 U.S. 155, the court dealt with a compact between Virginia and Maryland to regulate oyster fishing in boundary waters. It quoted and followed the decision in *Virginia v. Tennessee* and held that such a compact did not require approval of Congress for the reasons stated in the *Virginia-Tennessee* case.

The *Wharton* decision (pp. 370-3) states that:

“Various compacts were entered into between Pennsylvania and New Jersey and between Pennsylvania and Virginia, x x x in reference to boundaries between them, and the rights of fishery in their waters, and to titles to land in their respective states, without the consent of Congress, which indicated that such consent was not deemed essential to their validity.”

The compacts between Pennsylvania and New Jersey above referred to are found in Revised Statutes sections 52:28-23 to 52:28-32, and were adopted as the present one was, without Congressional approval. They have been in force, and respected, throughout the entire history of the State of New Jersey.

When those compacts were made Article VI of the Articles of Confederation, provided as follows:—

“No State without the consent of the United States shall x x x enter into any agreement, alliance or treaty with any x x x state; x x x. No two or more States shall enter into any treaty confederation or alliance whatever between them, without the consent of the United States in Congress assembled” (Title Constitution, N. J. Code Annotated, p. 19).

In *Dixie Wholesale Grocery, Inc. v. Marlin*, 278 Ky. 705, (Cert. denied, 308 U.S. 609; 84 L. Ed. 509) the court held that section 10 applied only to political compacts, alliances and

treaties. Under the agreement in that case one state agreed to supply another state with certain sales figures to aid in enforcing sales taxes. The court held that a mere reading of this section (10) shows conclusively that it has no application to the *reciprocal* agreement under attack.

In *McHenry County v. Brady*, 163 N.W. 540 (N.D. 1917) there was an agreement to drain a certain river. The court said that the prohibition applies only to a treaty of alliance or some *joint* scheme of commercial or industrial enterprise, and does not apply when one state wishes to agree with an adjoining state to erect a levee in the latter state. Other illustrations of state agreements which do not require congressional consent are given. The prohibition applies only to such an agreement or compact as is in its nature political, and does not apply to the drainage agreement in question.

The rule is stated in 59 *Corpus Juris*, p. 37, as follows:

“This provision does not apply to every possible agreement or compact between two states, but only to such as might tend to alter the political power of the states affected, and thus encroach on, or interfere with, the supremacy of the United States; agreements incapable of operating thus may be made by the states without the consent of congress.”

On either basis of the above argument, it is clear that this defense is frivolous, or sham, according to the view taken, and invalid on its merits, and should be stricken out.

III

Second Defense Filed by Both Defendants.

The second defense filed by both the defendants alleges that Chapter 146, P.L. 1939 is unconstitutional and void in that section

4 thereof authorizes and directs the Department of Health to approve and adopt modifications, changes or alterations in the zones and in the standards of quality of water in Delaware River and its tributaries and is an unlawful delegation of legislative power which violates Article IV, section 1, of the Constitution of the State of New Jersey.

The applicable part of this section provides "The legislative power shall be vested in a senate and general assembly."

Both of the defendant municipalities are located in Zone III as defined in the Statute (*P.L. 1939, p. 482*). The statute specifies permissible limits of pollution in this Zone. (*Par. 5 of the Bill of Complaint*). While it is true that the Department of Health is authorized to adopt reasonable modifications in these standards under certain conditions, these standards and requirements have not been changed and are made specifically applicable to this suit, (*Par. 5 and 15 of the Bill of Complaint*).

The defendants here are in no position to insist on this ground, because the standards as they are applied to them have not been changed from the original standards adopted by the legislature.

In *Reiner v. Fidelity Union Trust Company*, 126 N.J.E. 78, 90, (rev. on another ground, 127 N.J.E. 377) the Chancery court said:

"It is fundamental that a person seeking to rely upon constitutional rights must rely upon those which he himself possesses not upon those of others and he must show that he is injured." Citing 11 *Am. Jur.* 748; *Aikins v. Kingsbury*, 247 U.S. 484, *Red River Valley Bank v. Craig*, 181 U.S. 548; *Premier-Pabst Sales Co. v. Grosscup*, 298 U.S. 226, "and a legion of other cases."

In *Re Eleventh Ward Bldg. and Loan Ass'n.*, 130 N.J.E. 414, 426, the court of Errors and Appeals said that one cannot allege that a statute is unconstitutional because of a provision with respect to notice, if that provision did not prejudice him.

In *Premier-Pabst Sales Co. v. Grosscup*, 298 U.S. 226, 227; 80 L. Ed. 1155, 1156, the Court said "One who would strike down a state statute as obnoxious to the Federal Constitution must show that the alleged unconstitutional feature injures him. *Heald v. Dist. Columbia*, 259 U.S. 114, 123; 66 L. Ed. 852, 854."

In *Aikins v. Kingsbury*, 247 U.S. 484, 489; 62 L. Ed. 1226, 1229, the court said that the plaintiff in error was—

"not in any position to attack the constitutionality of the act involved for an omission which does not injure him, and which if supplied, would not benefit him. He who would successfully assail a law as unconstitutional must come showing that the feature of the act complained of *operates to deprive him* of some constitutional right." (Citing cases) (Italics ours).

The *Aikins* case is analogous to the case at bar because the portion of the statute here complained of does not now, and if taken away would not, affect the defendants.

While it is clear that this defense is invalid in this case, there is ample legislative and judicial authority for the provision of the statute.

Before reviewing the decisions, a review of the other statutory powers of the State Department of Health will be useful.

That Department already had a statutory *mandate* to enact a sanitary code, containing rules for the promotion of health and the prevention of disease (*R.S.* 26:2-27). Under this mandate, first imposed by chapter 288, of the laws of 1915 (*p.* 518), the

Department has issued such sanitary codes in the years 1916, 1917, 1919, 1920, 1925 and 1928, published under the title of "The sanitary code enacted by the Department of Health of the State of New Jersey." This code may be amended and supplemented as the need therefor arises, and has "the force and effect of law," and "shall supersede as to those matters to which it relates all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local authorities." (R.S. 26:2-28).

The director of the Department is authorized to enter upon, examine and survey any source or means of water supply, sewage disposal plant, sewage system &c. (R.S. 26:2-33). He is also empowered to fix *standards of quality* of any water used or available for use for drinking or culinary purposes or for cleansing utensils used in preparing food or drink for public consumption, so that "shall be of a quality safe for such use and meet standards of quality" so fixed (R.S. 26:2-65).

By R.S. 58:11-1 the Department is empowered to restrict the distribution and sale of water which "*in the opinion of the state department of health . . . is polluted, contaminated or impure,*" "unless purification by filtration or other means *acceptable to the department* shall be accomplished before the water is distributed."

In R.S. 58:12-2 it provides: "If the department finds any of said waters are being polluted *in such manner as to cause or threaten injury* to any of the inhabitants of this State, either in their health, comfort or property, or that any sewage treatment works are inadequate in capacity or unit design to *properly care for, treat and dispose of sewage.*" That section empowers the Department (since 1899, *P.L.* 1899, p. 538; *Am. P.L.* 1900, p. 115) to prescribe methods of sewage disposal, determine the adequacy of, and require alterations, additions and improvements in,

sewage treatment works, determine the nature and extent of pollution of waters which may threaten injury to the health, comfort or property of any of the inhabitants of the state, and to abate pollution.

Section 58:12-3 of Revised statutes vests in the State Department of Health the power and *discretion* to determine the conditions, and to approve plans, under which municipalities may construct and operate sewage systems whose effluent is discharged into streams.

R.S. 58:10-10 provides that "No effluent from any sewage disposal system x x x shall be discharged into any of the potable waters of this state, which, *in the opinion of the department*, is of such a character as will or may cause or threaten injury to the users of any of such waters."

R.S. 58:10-42 provides "No person or municipality shall x x x discharge any sewage or other polluting water into the Waters of the Hackensack river x x x unless the sewage or other polluting matter is subjected to a minimum purification process, including sedimentation and intermittent sand filtration." No specific standards are set up in this statute which provides that the department may institute suits "as may be *deemed necessary or appropriate* to enforce the provisions" thereof.

The discretionary powers conferred by the above cited acts have been uniformly sustained over a period of more than forty years.

It clearly appears from the statutes and authorities above quoted, or cited, that, to the extent questioned in this defense, the Department, and its Director, enjoys a delegation of legislative authority (if it may be so called) to fix standards of quality for the above mentioned purposes, and to enforce them, in-

dependent of the particular act in question, and that this is a proceeding for such enforcement, under Title 26, chapter 2, sections 43-47 of Revised Statutes, "as are now or may hereafter be provided under the laws and practice of this state." (*P.L.* 1939, p. 489).

The delegated powers contained in the foregoing acts are much broader than those delegated in the act in question and their exercise is expressly directed by Section 3 of this act. By the provisions of this act the Department is restricted to "reasonable modifications" of the specified standards, whereas in the statutes and cases cited standards were not defined specifically and considerable latitude was permitted.

A reasonable practical standard is sufficient.

The power of the State Board of Health (independent of the act in question) to adopt standards of purity of water, determine harmful standards of pollution, and prevent threatened, as well as actual, pollution of streams in general is settled in *State Board of Health v. Diamond Mills Paper Co.*, 63 N.J.E. 111, which involved the discharge of industrial waste in Rahway River, and in *State Board of Health v. Town of Phillipsburg*, 83 N.J.E. 402, 415, *et seq.*, affirmed 85 N.J.E. 161, 164, which involved the discharge of municipal sewage on the New Jersey side of Delaware River.

In *State Board of Health v. Diamond Mills Paper Co.*, 63 N.J. E. 111, 114, Vice Chancellor Stevens dealt with the challenge of the powers of the State Board under chapter 41, P.L. 1899, p. 73. on the ground that it affected some municipalities and locations while others were not affected. The principles of the *Diamond Mills* case are analogous to those urged by defendants in this case relating to different zones and standards prescribed for different locations in the act in question.

The discretion reposed in the State Department of Health by the statute in question is similar to that reposed in the Board of Public Utilities Commissioners and the Water Policy Commission. The discretion of the Board was challenged as a delegation of legislative powers in *Erie R. R. Co. v. Public Com'rs.*, 89 N.J.L. 57. At page 73, the decision of the Supreme Court held:—

“So, there is a line of authorities which hold that the agencies of government do not act automatically. It is necessary to vest in its officers certain general powers with a discretion in the governmental agents as to their exercise. It would be as impracticable, as it is undesirable, to attempt to formulate in advance a set of hard and fast rules by which every conceivable public act should be governed. In order to accomplish the ends of local government, it has been found expedient to create various boards and commissions, which are charged with the duty of supervising, directing and controlling particular subjects. It has been held that the granting of such power by the legislature was not a grant of either legislative or judicial power” (citing numerous cases).

That decision was affirmed by the Court of Errors and Appeals on the opinion below (90 N.J.L. 672), and by the Supreme Court of the United States, 254 U.S. 394; 65 L. ed. 322. At page 413 (of 254 U.S.) of his opinion in the last mentioned court, *Mr. Justice Holmes* observed, on this point:

“If they (the words of the statute) leave a discretion, it is subject to review by the courts and this court has no concern with the question how far legislative or quasi-legislative powers may be delegated to a commission or board.” (Citing 3 decisions of that court).

The discretion of the Water Policy Commission was challenged as a delegation of legislative power in *Collingswood v. Water*

Supply Commission, 84 N.J.L. 104, 111, wherein *Justice Parker* exhaustively reviewed acts of the legislature declaring, and the decisions of the courts supporting, a strong public policy to protect the water supplies and resources of the state. The intention of the legislature to vest the Commission "as a state agency with the fullest control" over the subjects of its jurisdiction, "to charge it" "with the duty of prudently and economically dealing with the supply so as best to subserve the interests of the people of the state at large," "and to vest in the commission a judicial discretion x x x, such discretion to be within the limits laid down by the statute and subject to review by the courts 'for reasonableness, legality and form'", are discussed, and sustained.

In *Buttfield v. Stranahan*, 192 U.S. 470, 496; 48 L. ed. 525, 536, the United States Supreme Court upheld a statute which provided that upon the recommendation of a board of tea experts, the Secretary of the Treasury "shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of tea imported into the United States." The statute provided for testing according to the usages and customs of the tea trade. Tea which was inferior in purity, quality and fitness for consumption, according to the standards fixed by the Treasury, was not to be imported. The statute was claimed to be an improper delegation of legislative power.

The court said that the statute—

"expresses the purpose to exclude the lowest grades of tea, whether demonstrably of inferior purity, or unfit for consumption, or presumably so because of their inferior quality. This, in effect, was the fixing of a primary standard, and devolved upon the Secretary of the Treasury the mere executive duty to effectuate the legislative policy declared in

the statute . . . The legislation does not in any real sense invest administrative officials with the power of legislation. Congress legislated on the subject as far as was reasonably practical, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount to but declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted."

It will be noted that the clause in the Federal Constitution provides that "all legislative power x x x shall be vested in a Congress." (*Art. I, Sec. 1*). The *Buttfield* case was cited with approval by our Court of Errors and Appeals to sustain a New Jersey statute under the substantially similar clause in the state Constitution in *Veix v. Seneca Building and Loan Ass'n.*, 126 N.J.L. 314, where a statute gave the Commissioner broad powers to regulate the method of paying for shares, to effectuate reorganizations when he deemed necessary, etc.

The court said (*p. 323*):

"But the order when so made by the Commissioner must, in accordance with the express interdict of the statute be made, 'for the purpose of conserving the assets of the building and loan associations in this state.'"

The court pointed out that, while it is true that legislative power cannot be delegated, the legislature may select some governmental agency to make findings or rules after the legislature prescribes standards and policies. It upheld the statute, using the following language:—

"He was entitled to a measure—a full measure—of reasonable discretionary leeway. The criterion, or standard

prescribed to govern his orders, was as definitely described, as was 'reasonably practical' under the necessities of the circumstance. That is sufficient. (Citing the *Buttfield* case) The challenged legislation is constitutional."

In *State Board of Milk Control v. Newark Milk Co.*, 118 N.J. E. 504, the court of Errors and Appeals upheld a statute which stated that it was passed because it was "necessary for the immediate preservation of the public peace, health and safety." To correct the expressed evils, a milk control board was created with broad powers to license milk dealers, fix prices, provide for a reasonable return, etc. In approving the act, the court pointed out that the board did not have unrestricted power, but was to be guided by the policy expressed in the statute. Many instances were cited of boards created to secure the health and safety of the people, including laws giving boards power to determine rates and regulate public utilities and other businesses.

In *Jersey City v. State Water Policy Comm.*, 118 N.J.L. 72, the Court of Errors and Appeals noted that the protection of streams against pollution was a primary function of government, and that the toll in health and economic loss from polluted water was very great.

In *Rubinstein v. Charline's Cut Rate, Inc.*, 132 N.J.E. 254, 257, the Chancery Court upheld a price fixing act, under which a Price Administrator was given broad powers to regulate prices "as in his judgment will be generally fair and equitable and will effectuate the purposes of this act." The waters of Delaware River (within the territorial jurisdiction of New Jersey) are used for municipal water supply by the cities of Phillipsburg, Trenton, and Burlington, and for domestic consumption or industrial purposes at many other places. Water is also taken from the other side of that river for potable water supply and industrial

purposes in many cities and municipalities in Pennsylvania and Delaware. The provision, and protection, of the necessary standards of purity of its waters, are matters within its jurisdiction, are duties, of the Department of Health. The act states that the purpose, among other things, is to encourage "the abatement of water pollution." (*P.L.* 1939, *p.* 478). The statute notes that there has been "increasingly serious pollution" (*p.* 479), which constitutes "a grave menace to health, welfare, x x x and occasions great economic loss." "The control of future pollution and the correction of existing pollution x x x is of prime importance." (*p.* 480).

As previously quoted from the report on "Water Pollution in the United States"—

"No single standard is applicable generally, but it is practicable and desirable to set standards for selected portions of drainage basins with due regard for the natural condition of the water for its present and potential use."

For that reason the sanitary code in question divided the river into four specified zones and minimum standards are specified for each zone. As the legislature pointed out (*P.L.* 1939, *p.* 487), "Due to the many variable factors involved, however, and to the impossibility of forecasting future development with certainty, it may be necessary to impose additional requirements." Consequently the Department is authorized by section 4—

"to approve, adopt and enforce within this State, such *reasonable* modifications, changes or alterations in the zones or standards of quality of water in said river and tributaries as may, from time to time, be recommended by the said Interstate Commission on the Delaware River Basin, and

approved by the departments of health of the other three States constituent to said Delaware river basin."

It was appropriate that uniform standards of quality be fixed for those waters in the various zones to avoid the pollution of water supplies on both sides by effluents discharged on either side at any point throughout the entire fresh water portion of the river. To that end the Departments of Health of the States of New York, New Jersey, Pennsylvania and Delaware agreed, with the approval of the appropriate federal agencies, upon a code prescribing uniform standards of quality of water in, and according to the conditions and requirements of, the different sections (or "Zones") of the River, which those Departments adopted, and undertook to enforce to the extent of their existing or future statutory powers within their respective jurisdictions.

That code was enacted by the legislature of New Jersey, in Chapter 146 of the laws of 1939, and also by the legislature of New York and Delaware. Section 1 of the act (*P.L. 1939, p. 488*), declared and established that part of the Delaware River basin, "lying within this State," "to be a component part of an interstate region for intergovernmental *co-operation*" by all of the border states, "in the conservation, protection and development of the water resources thereof" by means therein described.

In Section 2 the legislature ratified "the reciprocal agreement" comprising that code as "applied to the waters and watershed of said Delaware river basin *within the territorial limits of this state,*" and provided for such adjustments, if any, in the laws applicable to that area as were necessary to produce harmony with that "reciprocal agreement," or code.

Section 3 empowered the Department of Health to apply, and carry out, the provisions of that code, "within the territorial limits of this State," by such means "as are now or may here-

after be provided under the laws and practice of this State." This suit is thus authorized.

The authority conferred upon the Department by section 4 (which is the subject of criticism in this defense) to "approve, adopt and enforce within this state, such reasonable modifications, changes or alterations in the zones or standards of quality of water", is not greater, or different, and is no more of a delegation of legislative authority, than the Department theretofore possessed to approve, adopt and enforce a sanitary code (*R.S. 26:2-27*, or to fix and enforce standards of quality for potable waters (*R.S. 26:2-65*).

If the Department, without additional legislative expression, had adopted as its own, and incorporated in its sanitary code, the standards of quality prescribed in this reciprocal agreement, existing statutory authority would have been sufficient to justify its adoption and enforcement. Hence, chapter 146 of the laws of 1939 is not subject to criticism as attempting a delegation of legislative power different from, greater than, or in addition to, such powers already enjoyed under existing laws.

The benefits to the citizens of New Jersey in having a code of standards of purity uniformly applicable to all users of Delaware river water, is too obvious to need elaboration.

Co-Operative Agreement

Previous co-operative agreements between the Departments of Health of Pennsylvania, and New York, and those of Pennsylvania and New Jersey for preserving the sanitary condition of Delaware River, were in existence prior to, and are commended in the Master's Report (*pp. 126 and 127*), filed February 2, 1931 in the Delaware Diversion case. Those agreements were difficult of enforcement because their standards lacked the sanction of express legislative approval.

An illustration is found in the case of *State Board of Health v. Town of Phillipsburg*, 83 N.J.E. 402, *aff.* 85 N.J.E. 161, in which, the municipality urged, as Camden does here in its seventh defense, that it should not be forced to abate pollution on the New Jersey side while municipalities on the Pennsylvania side are permitted to do so. In that connection Chancellor Walker said (83 N.J.E. at page 420):

“It is idle for the defendant to ask of what avail it would be to stop the Town of Phillipsburg from discharging its sewage in the Delaware, when the sewage of the city of Easton opposite, and polluting the flow of the Lehigh, are discharged into the same stream in the same locality.”

(p. 421)

“And I said, when vice chancellor, in *State v. Town of Phillipsburg*, post p. 422. ‘Because Easton is polluting the river much more than Phillipsburg (which is regrettable) is no ground for denying an injunction, even if issuance of the writ would be “futile or unequitable,” as claimed by defendant.’ ”

Although Pennsylvania has not yet enacted the 1939 code into law, as have Delaware, New York and New Jersey, the Department of Health of Pennsylvania has subscribed to it and is exerting all of its powers to enforce it. As a result of its efforts the pollution of the River by Easton sewage, mentioned in the above quotations from the *Phillipsburg* case, has been abated by the construction and operation of an effective sewage treatment plant. So far, the Pennsylvania Department of Health has been unable to overcome the opposition of a few other politically powerful municipalities who, like these defendants, are concerned only with their selfish conveniences and have been able to prevent legislative action at either of the bi-ennial ses-

sions since the code was formulated. There is, however, every reason to believe that the code will be enacted in Pennsylvania. This failure, however, cannot impair the validity, or influence, of the act respecting the abatement of pollution within the territorial limits of New Jersey. New Jersey could do this alone if none of the other states were involved.

The lack of *concurrent* powers of uniform application in the states bordering on the river, has long hindered the purification of its waters. A co-operative effort, under uniform standards, and reciprocal obligations, has long been a crying need, and should not now be frustrated on technical grounds that will benefit nobody; much less the present challengers who have so long existed along the "sea of sewage" emanating from recalcitrant municipalities.

A conspicuous example of concurrent jurisdiction of border states in the waters of Delaware River between New Jersey and Pennsylvania, with each state exercising its separate sovereign powers on its own side of the thalweg of the stream, is found in *Attorney General v. Del. and B. B. R. Co.*, 27 N.J.E. 1, affirmed *ibid* 631, followed in *State Board of Health v. Town of Phillipsburg*, 83 N.J.E. 402, 415—affirmed 85 N.J.E. 161, 164.

State Jurisdiction Over Delaware River.

Jurisdiction over Delaware River to prevent purprestures was settled in *Attorney General v. Del. & B. B. R. Co.*, 27 N.J.E. 1, affirmed *ibid* 631, and to prevent pollution in *State Board of Health v. Town of Phillipsburg*, 83 N.J.E. 402, 415 *et seq.*, affirmed 85 N.J.E. 161, 164, relating expressly to the prevention of pollution therein (83 N.J.E. at pages 415, 420).

Respecting this river, *Mr. Justice Holmes* said:

"A river is more than an amenity, it is a treasure. It

offers a necessity of life that must be rationed among those who have power over it." *New Jersey v. New York*, 283 U.S. 341, 342.

In *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 357, the same learned Justice observed: "x x there are benefits from a great river that might escape a lawyer's view."

The states "who have power over" this river have here attempted to have its uses "rationed," for the benefit of their respective citizens, in a manner which, in the judgment of their respective competent health agencies, will best conserve its usefulness to all. Their judgment has been confirmed, and adopted, by the legislature of New Jersey.

This defense cannot be presented by the defendants because they are not prejudiced by this section 4 of the statute. Furthermore, the contention of the defendants has no merit and this defense should be stricken out.

IV

Third Defense filed by Both Defendants.

The third defense filed by both the defendants alleges that Chapter 146, P.L. 1939 is unconstitutional and void in that the reciprocal agreement therein ratified provides "Analyses and tests regarding the minimum requirements herein prescribed, shall be determined in accordance with the provisions contained in the American Public Health Association's latest edition of 'Standard Methods for the Examination of Water and Sewage' ", and is an unlawful delegation of legislative power and violates Article IV, section 1 of the Constitution of the State of New Jersey.

The statutory and judicial authorities cited, and the arguments, under part III of this brief, respecting the Second de-

fense filed by both defendants, apply here. If the Department of Health has the power to fix standards of quality it has equal power to choose the scientific methods, or formulae, by which conformity with those standards is to be tested and determined. In this instance not only has the Department chosen such a scientific method, but the legislature, in the exercise of its undoubted right, has adopted and specified that method in the act itself.

Since the act specifies the "minimum requirements" therein "prescribed", it is immaterial what "methods" are used to determine them.

In *Hudson County Water Co. v. McCarter*, 209 U.S. 349, 356-7, the court said:—

"We are of opinion, further, that the constitutional power of the state to insist that its natural advantages shall remain unimpaired by its citizens is not dependent upon any nice estimate of the extent of present use or speculation as to future needs. The legal conception of the necessary is apt to be confined to somewhat rudimentary wants, and there are benefits from a great river that might escape a lawyer's view. But the state is not required to submit even to an aesthetic analysis. Any analysis may be inadequate. It finds itself in possession of what all admit to be a great public good, and what it has it may keep and give no one a reason for its will."

The method of analysis to be used in determining the prescribed "minimum requirements", was mentioned in the code for the purpose of obtaining uniform results in analysis and conditions among the different states, and to inform the public how these minimum requirements were obtained.

The "Standard Methods for the Examination of Water and Sewage" was first adopted in 1905. Its current (eighth) edition, published in 1936, as the joint publication of the American Public Health Association and the American Water Works Association, was prepared through the joint agency of those two nation-wide scientific associations with the co-operation of the Committee on Methods for the Examination of Water and Sewage of the American Chemical Society, the Committee on Methods of Analysis of the Federation of Sewage Works Associations, the Society of American Bacteriologists, the British Ministry of Health, and the Joint Research Committee on Boiler Feedwater Studies Sponsored by American Boiler Manufacturers Association, American Railway Engineering Association, American Society of Mechanical Engineers, American Society for Testing Materials and Edison Electric Institute.

This "Who's Who" of scientific societies is highly impressive and should be judicially noticed by the Court.

The following are extracts from the Federal Register (The National Archives of the United States, 1934) Vol. 7, No. 238, December 5, 1942, (pp. 10158-10160); Title 42- Public Health, Chapter I- Public Health Service, Federal Security Agency, Part 12- Interstate Quarantine Water Supplies:

(p. 10158)

"Pursuant to the provisions of the Act of Congress approved Feb. 15, 1893, (ch. 114, 27 Stat. L. 450; 42 U.S.C. 92), secs. 12.43, 12.44, and 12.45, promulgated June 20, 1925, are hereby amended to read as follows:

Sec. 12.43 *Definition of terms.* For the purpose of these Standards the terms designated herein below shall be defined as follows:"

“(g) The coliform group of bacteria is defined, for the purpose of this standard, as including all organisms considered in the coli aerogenes group as set forth in the Standard Methods for the Examination of Water and Sewage, Eighth Edition, (1936), prepared, approved and published jointly by the American Public Health Association and the American Water Works Association, New York City.”

* * * * *

“Note: This reference shall apply to all details of technique in the bacteriological examination, including the selection and preparation of apparatus and media, the collection and handling of samples, and the intervals and conditions of storage allowable between collection and examination of the water sample.”

* * * * *

“In freeing samples of chlorine or chloramines, the procedure given on page 286 in the Standard Methods for the Examination of Water and Sewage, 8th Edition (1936), paragraph A-1 Option 1, or paragraph A-2, shall be followed.

* * * * *

(p. 10160)

“(e) *Recommended methods of analysis.* (1) Ions with required limits of concentration.”

* * * * *

“*Fluoride (F).* Standard Methods for the Examination of Water and Sewage, American Public Health Association, 1936, p. 36; also Methods of Determining Fluorides, Committee Report, A. P. Black, Chairman, Journal American Water Works Association, 33, pp. 1965-2017, (1941).

“*Lead (Pb).* Standard Methods for the Examination of Water and Sewage, American Public Health Association, 1936, p. 26.”

"Copper (Cu). Standard Methods for the Examination of Water and Sewage, American Public Health Association, 1936, p. 25."

The "Federal Register" is an official publication of the United States government under Act of Congress, Chapter 8b, Sections 301-311, (44 U.S.C.A, pp. 28-33), Section 307 (44 U.S.C.A p. 32) provides, in the last sentence, as follows:—

"The contents of the Federal Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number."

Judicial notice is taken of scientific facts which are generally or universally known or including scientific methods. 20 *Am. Jur.* 111. For example, in *Barr v. State* (Criminal Court of Appeals of Okla., 1924) 231 Pac. 322, the defendant contended that there should be proof that morphine sulphate was a narcotic drug. This was overruled. The court said: "Judicial notice will be taken of scientific facts, which are universally known or which may be found in standard dictionaries, encyclopedias and the United States pharmacopoeia." (15 R.C.L. 1127). "The U.S. Pharmacopoeia, a standard publication used by pharmacists and physicians, indicates that morphine sulphate is a narcotic drug and that doses vary from one-twelfth to one-half grain."

In *State v. Vlack*, 172 Pac. 563, L.R.A., 1918 E. 108, 110 the Washington Supreme Court took judicial notice of scientific facts relating to the life of clams, after stating that a court will take judicial notice of scientific facts which are well known and which may be found in encyclopedias and other standard publications, 15 R.C.L. 1127. The court cites encyclopedias and an article issued by a University and written by Meade and Barnes. A New Jersey statute which refers to reference books is R.S. 45:14-19 which provides that no person shall sell certain

poisons which according to "standard works on medicine, materia medica or toxicology" have certain destructive effects. The same phrase is used in R. S. 45:14-20.

Another New Jersey Statute which refers to textbooks is R.S. 17:34-22, which provides that the Commissioner of Banking and Insurance shall value life insurance policies outstanding in this state "according to the actuaries' table of mortality", except in cases where the insurance company values the policies according to the "American experience table of mortality" or "American men ultimate table of mortality." Policies subsequent to 1901 shall be valued "according to the American experience table of mortality" unless the Company uses "American experience table of mortality" or the "American men ultimate table of mortality". Minimum standards for group policies shall be valued under the "American men ultimate table of mortality".

The Commissioner may vary the standards in some cases.

Another statute is R. S. 24:1-1 (e) where "Drug" is defined as "(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them." These books with supplements are admissible as evidence under the statute (R.S. 24:1-2).

The "Standard Methods for the Examination of Water and Sewage" is the "Bible" of the Sewerage and Water Engineer, and the engineers of the defendant municipalities undoubtedly use it as an acceptable authority. The statute requires that the latest edition be used, thus taking full advantage of any improvements in the methods of examination. Its method of adoption is very similar to the U.S. Pharmacopoeia, where many experts collaborate in its formation. The Standard Methods book certainly is much more scientific and accurate than the study

of clam life, which the court took judicial notice of in the *Van Vlack* case, which was prepared by only two experts.

The "Standard Methods" mentioned are the result of many years' of research, experiment and experience by the most eminent scientific authorities, and have been recognized and accepted for more than 35 years as dependable and valid for determining the presence of harmful impurities in water. They represent the incontrovertible universal experience of the learned professions involved in determining the public or private standards permissible for the use of water for any human use. It is a test formula which has a definite scientific basis rooted in great research, and it has the validity of the multiplication tables or the law of gravity to the professions involved.

Precisely these standard methods (by name) were used for the analysis of the river waters in the Delaware Diversion Case, (*S.M.* 2012). In the Master's report (p. 110) he said:

"These are the usual tests adopted by sanitary engineers."

Upon that test he based his report and it was confirmed in *New Jersey v. New York*, 283 U.S. 341, 346.

The defendants cannot, and will not challenge the validity, or dependability, of those methods for the purposes intended in the act.

Unofficial standards of quality or materials have existed, without legislative enactment but with legislative and judicial recognition and acceptance, since the middle ages. The common law of England had its sole foundation in early customs and usages which ripened into established standards of the quality and conduct.

None of the established units of measurement, weight, time, temperatures or value were created by legislative enactment;

such weights, from grams to tons via either the avoirdupois or troy standards or by stones or quintals; distance, from inches to light-years; temperature by fahrenheit or centigrade; British thermal units for measuring the heat value of fuel; the Schick test to determine the susceptibility to dyptheria; the Rump-Leeds test for determining the fragility of blood vessels and capillaries; the "Sterling" standard to determine the qualification of silver; the tide tables; the mortality tables; the axioms of mathematics and geometry; and a thousand other standard rules or methods. Nevertheless, they are accepted and received judicial notice as a matter of course.

One of the most ancient of such standards is that governing the usages and customs relating to merchants and mariners, known as "Law Merchant," constituting—

"The general body of commercial usages in matters relative to commerce." *Bouvier's Law Dict., Rawles, Third Rev., 1914 p. 1882.*

In the discussion of that subject, Rawle cites 1 Blackstone's Com. 75; 1 Steph. Com. 54 and 3 Kent's Com., 2, as authority to show the universal recognition and acceptance of the usages of and customs regulating the dealings of merchants and mariners in all the commercial countries of the civilized world, of which the judges take notice *ex officio*.

"These special mercantile rules were conceived as being specially known to merchants. x x; they are, we may say the *ius gentium* known to merchants throughout Christendom, x x." 1 *Pollock & Maitland's Hist. of Eng. Law (2d. ed.) 467.*

In *Borden's Milk v. Board of Health*, 81 N.J.L. 218, the court considered an ordinance which provided that milk could be

sold only from cows that passed "the tuberculin test." The complaint was that the right to sell milk was made dependent not on the existence of disease, but upon the result of a *specific method of diagnosis*—the use of the tuberculin test. Justice Swayse upheld the ordinance, saying (p. 220):

"It must be conceded that where, as in this case, the board of health makes the determination of the existence of disease depend upon a special method of diagnosis, that method must be, if not the most reliable, as reliable as any. * * * All that can be fairly required in the determination of the fact of disease, is that the method of diagnosis should be well recognized, thoroughly approved and as reliable as any. We find that the tuberculin test is the most reliable method of diagnosis of tuberculosis in cattle now known; that while it is not perfect the percentage of error is as small as in any method suggested; and that it is more accurate than the method by physical examination."

This method of testing the cows, as adopted and set forth in the sanitary code adopted by the Department of Health, was approved, even though other methods of testing the milk could be used. This case is particularly pertinent as an illustration of the power of the State Department of Health to adopt formulas or methods, as it, and the other states, did in the present instance. If the Department can do this without legislative specification, certainly it could do so in this case *with* the express sanction of the legislature.

In *Nelson v. Minneapolis*, 112 Minn. 16, 29 L.R.A. (N.S.) 260 an ordinance providing that cows shall be tested with the tuberculin test was approved even though other methods of testing might be superior.

“The legislative determination of the methods, restrictions and regulations is final, except when so arbitrary as to be violative of the constitutional rights of the citizen. In the case at bar the city council, duly authorized thereto by legislative grant, determined that the tuberculin test of cows was the most feasible and practicable method of insuring a pure milk supply. This involved a matter of legislative judgment and discretion, and necessarily a comparison with other methods designed to secure the same result, including the theory of pasteurization. The court cannot make this comparison, weigh the feasibility and the practicability of each, and substitute their judgment and discretion for that of the legislative body whose determination of the question they are called upon to review.” citing cases (P. 263 of 29 L. R. A., N. S.)

In *State v. Nelson*, 66 Minn. 318, 34 L. R. A. 318, an ordinance which authorized the tuberculin test on cows was approved, even if its value might be debatable.

In *Adams v. Milwaukee*, 144 Wis. 371, 43 L. R. A. (N.S.) 1066, an ordinance authorizing the tuberculin test was upheld.

“When there are conflicting scientific beliefs or theories in such matters, it is for the city council to determine upon what theory it will base its police regulations, and unless it is clearly and manifestly wrong, it is not for the courts to interfere on the ground that the scientific theory on which the ordinance is based is incorrect or unsound.” citing cases (P. 1077 of 43 L. R. A., N.S.)

In *St. Louis v. Liessing*, 190 Mo. 464, 1 L. R. A. (N.S.) 918, an ordinance providing that butter fat in milk shall be not less than 3 percent estimated by the Adams paper coil process was

approved despite the fact that the evidence showed that this was not the best test.

Another case based on the same ordinance is *St. Louis v. Grafeman Co.*, 190 Mo. 507, 1 L. R. A. (N.S.) 926.

“The one question remaining is, Does the fact that the ordinance in contest requires that milk on analysis shall show not less than 3 per cent by weight of butter fat, ‘estimated gravimetrically by the Adams paper coil process,’ make it void? Having reached the conclusion that it was within the power of the municipal assembly to fix the standard of purity, this court cannot say, as a matter of law, that it was unreasonable for the assembly to provide that the weight of the butter fat should be estimated, calculated or ascertained gravimetrically, or measured by weight, nor that the adoption of the ‘Adams paper coil process’ was not a proper gravimeter. The assembly unquestionably had the right, dealing, as it was, with a scientific question to fix a scientific standard, and in the absence of all showing to the contrary, this court cannot take judicial cognizance that the Adams paper coil process was not a proper test. By so fixing it, a definite standard, controlling alike upon the city and one charged with a violation of the ordinance was established, and the weight of the milk can be ascertained scientifically, and not left to the uncertain opinion of witnesses whether experts or laymen, and the judgment of inspectors. *On the contrary, if no fixed standard or test was established by ordinance, the vendor of milk might well complain that his rights had been left to the unregulated judgment of the inspectors, or, if no one gravimeter had been specified, then he might well complain that different tests might lead to different results and to varying standards of purity.*” (italics ours) (P. 927 of 1 L.R.A.—N.S.)

In this case the standard adopted is beneficial to defendants for reasons stated in the underlined portion of the last mentioned quotation.

In *Merritt v. Welsh*, 104 U. S. 694, the court dealt with an act of Congress which imposed import duties on sugar (R.S. Sec. 2504, Ch. 127; 18 Stat. at L. 339). Schedule G of Section 3 contained five classifications, all measured by the "Dutch standard in color," which was a standard of quality established at Amsterdam by Dutch merchants dealing in Java sugar (p. 703). The act was challenged because of the adoption of that standard instead of a standard based on chemical constitution indicated by a polariscope, but the standard was sustained.

In *Buttfield v. Stranahan*, 192 U. S. 470, the court upheld an act of Congress providing for testing the quality of tea imports "according to the usages and customs of the tea trade." (p. 495)

In *Cookendorfer v. Preston*, 4 Howard 317 (1846) the Supreme Court of the United States reviewed, on certiorari to the Circuit Court of the District of Columbia, a case involving the usage relating to the presentation, and protest, of promisory notes. At page 326 the court said:

"Where a usage is sanctioned by judicial decisions, it becomes the law of the place, and no further proof is necessary to establish it: and it is said, that no evidence is admissable to controvert the fact, as laid down by the court (*Edie v. East India Co.*, 2 Burr, 1221)".

"A local usage may be changed in the same mode by which it is established. * * * The law merchant is founded upon custom, and every modification if it by local usage shows that, like other laws, it may be changed."

(p. 327)

“No confusion can therefore arise from this general commercial usage, as it conforms to the established law.”

Since the court in *New Jersey v. New York* as above quoted from the Master's report, judicially approved this particular method, for testing the waters of Delaware River, the Cookendorfer case is authority for the contention that it has the sanction of judicial decision and has become “the law of the place,” without the necessity of “further proof” “to establish it.”

The answers do not challenge this method on its merits, or question its suitability or validity. They merely interpose a technical objection to its adoption in the act, without showing, or claiming, that its adoption injures them in any way.

Having in mind the legal principle discussed in part III of this brief respecting the second defense, namely that the defendants can only attack a statute on a ground that prejudices them, it is difficult to see how this section of the statute harms them.

The cases cited above permitted a method of testing to be specified by administrative or municipal bodies, even though there might be other tests more effective, or the test specified might not be perfect. If methods of testing about which there is some doubt may be specified, then surely a statute may specify that the analysis and tests shall be determined by standard methods, about which there can be no doubt.

The method mentioned in the statute (*P.L.* 1939, *p.* 487) was promulgated by a highly scientific and unbiased recognized authority, and is in common use by engineers, and, by long use, has come to be accepted as the standard method for use in the examination of water and sewage.

The statute need not have specified the method of conducting the analysis (*Vandergrift v. Meikle*, 66 N.J.L. 92, 94) but it was

competent for the legislature to do so. If the legislature can delegate certain powers, as shown in the decisions and discussion under the second defense, it can specify the method of determining the facts upon which the exercise of these powers depend.

The third defense filed by both defendants has no merit and should be stricken out.

V

Fourth and Fifth Defenses Filed by Both Defendants.

The fourth and fifth defenses filed by both defendants are here combined because they involve a single provision of the Constitution which is generally covered in the same decisions. Taken together they allege that Chapter 146, P.L. 1939 is unconstitutional and void in that the statute embraces more than one object, and that that object is not embraced in the title, in violation of Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey.

The applicable provision of this paragraph is:

“To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.”

The title of the act in question reads:—

“An Act to promote interstate co-operation for the conservation and protection of water resources in the Delaware river basin.”

“Conservation” is defined in Funk & Wagnalls, New Standard Dictionary (1938 Ed.) as “The act of keeping or protecting from loss or injury x x x The preservation of natural resources for

economical use; specif. the preservation of forests, fisheries, rivers, harbors and the like.”

The same authority defines “protection” “x x x preservation from harm, danger, annoyance, or other evil” x x x “That which preserves or shields from injury; x x x”.

The act prescribes standards of purity of water designed to conserve and protect the water resources of the river for water supply and other pertinent purposes, by the separate, but concurrent, efforts of the established, and appropriate, departments, or agencies, of the several states involved.

The preamble of the act declares that there has been “increasingly serious pollution of the waters” (p. 479), which “pollution constitutes a grave menace to the health, welfare, and recreational facilities of the people living in the Delaware river basin, and occasions great economic loss;” (p. 480), and that “The control of future pollution and the correction of existing pollution of the waters x x x is of prime importance” (p. 480).

The statute is designed to accomplish that end and includes only matters reasonably connected with, and appropriate to, the achievement of the expressed legislative object. All sections of the statute are germane to the object expressed in the title. The *object* of the act is *single* and clearly *expressed*, in the title. The details of the act are all incidental, cognate, essential and appropriate to, and inclusive in, the accomplishment of that object. There is nothing uncertain or misleading in the title of the act. It clearly notifies the legislature and the public of the kind of legislation under consideration.

The rules, and authorities, governing this question are comprehensively collected and discussed in *Mr. Justice Heher's* opinion delivered in *Public Service Electric & Co. v. Camden*,

118 N.J.L. 245, 248-251. After a full discussion of the general rules established by the authorities, that opinion states (*pp.* 250-1):

“And it is the settled rule that a statute will not be judicially declared inoperative and unenforceable on this ground unless it is plainly in contravention of the constitutional mandate.” (Citing cases) “In this regard, statutory titles are ‘to be liberally treated, so as to validate the law to which they appertain, if such course be reasonably practicable. In such a connection hypercriticism is utterly out of place, the only requirement being that the title of the statute shall express its object in a general way so as to be intelligible to the ordinary reader.’ ”

This case was cited with approval by the Court of Errors and Appeals in *Jersey City v. Martin*, 126 N.J.L. 353, 364, where that court upheld a statute attacked on the ground that the primary object was to establish the scheduled property for the purpose of apportioning taxes thereby imposed, whereas the only object expressed in the title was the imposition of the tax.

Another comprehensive discussion of this question appears in Judge Jess's opinion in the Circuit Court in *Burlington v. Pennsylvania R.R. Co.*, quoted and adopted by the Court of Errors and Appeals as its opinion in 104 N.J.L. 649-658.

In *Brinkerhoff v. Newark & Hackensack R.R.*, 66 N.J.L. 478 a statute, which had as its object to provide for the sale of the property of certain corporations mentioned, was upheld despite the contention that it was in violation of this constitutional provision because it also constituted the purchaser thereof as a new corporation.

The court held that all of its provisions were directed to a common end of aiding creditors, (*p.* 480); that it contained no

provision which is not appropriate and necessary to effectuate that purpose; that if any provision is stricken out the sale would in some method at least be unproductive; that all the provisions are germane to the accomplishment of its one chief object; and that is, under our decisions, sufficiently expressed in the title. Citing *Walter v. Union*, 4 Vr. 350; *In Re Comm. of Elizabeth*, 20 Id. 488; *Newark v. Mt. Pleasant Cemetery*, 29 Id. 168; *Coward v. N. Plainfield*, 34 Id. 61.

In *Stockton v. Central R.R.*, 50 N.J.E. 52, Chancellor McGill upheld a statute which purported to both form and regulate railroads. We quote (from page 70):

“The requirement is to be construed in the light of the expressed reason for it. The evil condemned, for which the remedy is prescribed, is not the uniting of properly related subjects in one act, but the uniting of subjects that are foreign to each other, and which do not all tend to the promotion of a single object. Various subsidiary subjects, properly connected and relating to one comprehensive subject, may be united in the same law. The end aimed at is that each law shall have a single general object, which shall be stated in its title, and that all parts of the law shall be germane to that one subject. The purpose is that each distinct subject matter of legislation shall have independent consideration upon its merits, unaffected by the presence of foreign matter which may tend to distract, confuse, or improperly influence, and that the title shall conspicuously indicate the general object of the act, so that the intrusion of the irrelevant matter may be readily detected, and, if it shall remain in the law, be without effect, because inimical to the title. This is the accepted interpretation of this provision of our constitution in numerous decisions of our courts.” (Citing numerous authorities).

In *Newark v. Mt. Pleasant Cemetery Co.*, 58 N.J.L. 168, the court of Errors and Appeals upheld a statute the title of which stated that the object was to authorize incorporation of cemetery associations and regulate cemeteries. We quote (p. 171): (Italics ours)

“The constitution itself discloses the reason for the restriction on legislation in the provision in question. It is because of the influences which might result from the inclusion in one act of matters not properly related to each other, that it requires every law to embrace but one object.

The evil intended to be guarded against *was not the inclusion in one act of more than a single matter, but the inclusion therein of matters not properly related among themselves*. So by its obvious construction this constitutional provision justifies and permits legislation by one statute, looking toward a single general object, although it contains and enacts various and multiform matters, if those matters are properly related to each other and tend to effectuate the general object. This is the view of the provision in question taken in this court. *Payne v. Mahon*, 15 Vroom 213. The same construction has been repeatedly given it in the Supreme Court and in the Court of Chancery. The cases will be found collected in the able opinion of the learned Chancellor in *Stockton v. Central Railroad Co.*, 5 Dick. Ch. Rep. 52.

It results that when a court is called on to determine whether a statute conforms to this requirement of the constitution the first duty is to scrutinize its provisions to see if they disclose the general object of the legislation. Then, if that object be one, and the various provisions of the statute tend to carry it out, and are not incongruous or

improperly related, this requirement will have been complied with."

The court stated that regulations tended to effectuate the object of the act were not improperly related to the incorporation of associations for the establishment of such cemeteries. "In my judgment the object of the act is single within the meaning of the constitution." (p. 172).

In the *Burlington* case, it was said:

"The evil intended to be guarded against was not the inclusion in one act of more than a single matter but the inclusion therein of matters not properly related among themselves." Citing *Newark v. Mt. Pleasant Cemetery*, 58 N.J.L. 168, which cited *Stockton v. Central R. R.*, 50 N.J.E. 52.

In *Easton & Amboy R. R. v. Central R.R.*, 52 N.J.L. 267, a statute with the titular object to cede to Jersey City certain state lands and to establish a tide-water basin adjacent thereto was approved. It was claimed that more objects than one were embraced. We quote from the opinion of Justice Depue, (p. 271-2).

"The constitution does not prohibit the union in one act of several subjects, using that term in a limited sense; the interdict is against the union in one act of such things as have no proper relation to each other. In giving effect to this constitutional provision, the courts give paramount consideration to the general object of the act—the general purpose of the legislative scheme. The general object of the act being ascertained, the power of the legislature is vindicated to include in it provisions of a multiform character, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general object

of the act. The decisions to this effect in our own courts are numerous. A citation of a few is all that is necessary. *State, ex rel. Walter, v. Town of Union*, 4 Vroom 351; *Rader v. Township of Union*, 10 Id. 509; *Grover v. Trustees of Ocean Grove*, 16 Id. 399, 402; *Bergen County Savings Bank v. Township of Union*, 15 Id. 599; *In re Commissioners of Elizabeth*, 20 Id. 488, 495."

In *Albright v. Sussex Co. Lake Com.*, 68 N.J.L. 523, the court considered a statute which had as its principal object to establish places of public resort upon fresh-water lakes, with public rights of fishery. It held that the establishment of a County Commission with power to lay out roads are all incidental and reasonably necessary to the principal object; that the creation of the commission with authority to acquire the lands was simply the machinery to carry out the object of the statute; that the inclusion of roads and parks in a single act does not make the statute void as embracing more than a single object; and that in that statute "the streets are authorized, not for the purpose of laying out a system of highways but only for the purpose of giving access to the parks. The two purposes thus have an intimate connection." (p. 529).

In *O'Banner v. Pendlebury*, 107 N.J.L. 245, the court of Errors and Appeals upheld a statute which provided that if the subcontractor failed to carry workmen's compensation insurance, the contractor would be liable for compensation claims, stating that a mere reading of the statute shows that it does not embrace more than one object.

In *Caruso v. Porter*, 102 N.J.L. 71, 72, *Justice Lloyd*, referring to the contention that the Motor Vehicle Act embraced more than one object, said:

"The whole scheme of the legislation is to provide for the safe use of an instrument of transportation which, without regulation, would become a dangerous menace to persons and property. All of the provisions of the act are directed to the attainment of the one object, and all are properly incident and appropriate thereto. Paragraph 4 of article 4, section 7 of the constitution, clearly indicates the scope of the prohibited legislation, when it declares its purpose to be to 'avoid improper influences which may result from intermingling in one and the same act such things as have no proper relation to each other.' It certainly cannot be said that any part of the act is extraneous or foreign to its general object."

In *State v. Czarnicki*, 124 N.J.L. 43, *Justice Heher* upheld the adoption of the Revised Statutes, stating that (p. 45) "The object is single, even though statutory provisions otherwise unrelated in subject matter are combined in one general enactment. The constitutional command thus invoked was designed 'to prevent the concealment of the real object of the act and what is commonly called log-rolling.'" *Hulme v. Commissioners*, 95 N.J.L. 30, *aff. Id.* 545.

The decisions supporting the validity of the title to the act in question are too numerous for further review. The following additional cases will be merely cited in support of this point, *State Board v. Johnson*, 6 N.J. Misc. 455, *aff.* 105 N.J.L. 498; *Hulme v. Board*, 95 N.J.L. 30, *aff.* 95 N.J.L. 545; *Thompson v. Bader*, 102 N.J.L. 227 (Ct. of E. & A.); *Kluczek v. State*, 115 N.J.L. 105, 110; *State v. Guida*, 119 N.J.L. 464 (Ct. E. & A.); *Ott v. Braddock*, 119 N.J.L. 507, 511; *Petranto v. Board*, 125 N.J.L. 391, 392; *State Board v. Phillipsburg*, 83 N.J.E. 402, *aff.* 85 N.J.E. 162.

In the act in question the single objective is closely related to all of the provisions. As the court of Errors and Appeals said in the *Burlington* case, (104 N.J.L. 657), "The evil intended to be guarded against was not the inclusion in one act of more than a single matter but the inclusion therein of matters not properly related among themselves." And in *Easton and Amboy* case (52 N.J.L. 271) "the interdict is against the union in one act of such things as have no proper relation to each other."

Certainly the legislature or the public cannot be misled by this statute inasmuch as it has but a single object, and that object is clearly expressed in the title. This is sufficient.

We therefore respectfully urge that the fourth and fifth defenses be stricken out.

VI.

Tenth Defense Filed by the City of Camden.

The Tenth defense of the City of Camden challenges the act in question on the ground that it fails to provide for injunctive relief in this Court.

While this defense will doubtless be considered in the Attorney General's brief, it is so closely related to certain parts of this brief that it will, at the risk of duplication, be treated briefly herein.

Citations are unnecessary to support the obvious fact that the injunctive power to abate nuisances, in the form of pollution, is constitutionally inherent in the equity powers of this court, 3 *Daniel's Chy. Pl. & Pr.*, 1739-40; *Bigelow on Equity* 300; 2 *Story's Eq. Jurispr.* Secs. 1247-50, (14 Ed. pp. 596-7).

Specifically, the power of the Department of Health of New Jersey to institute this suit is conferred by section 58:10-8 and

other sections of Revised Statutes. The statutes and decisions cited under point III of this brief, respecting the second defense show clearly the powers of the Department of Health independent of the act in question. The act in question (Sec. 3) expressly provides that:

“The Department of Health is hereby empowered and directed to apply and carry into effect the proposals, terms and provisions of said reciprocal agreement, in the several zones therein prescribed, respectively, within the territorial limits of this State, and to enforce the same by the exercise of such administrative and legal authority, *and the institution and prosecution of such actions, suits or other proceedings as may be necessary or appropriate as are now or may hereafter be provided under the laws and practice of this State.*”
(*Italics ours*) (P.L. 1939, pp. 488-9)

Nothing more is needed to show that the Tenth defense of the City of Camden is frivolous, or sham, and should be stricken.

VII.

Eleventh Defense Filed by the City of Camden

The Eleventh Defense filed by the City of Camden alleges that Chapter 146, P.L. 1939 is invalid because the provisions thereof and the standards fixed therein are too uncertain, indefinite and vague.

The provisions and standards prescribed by Article III of the code (P.L.1939, pp. 483-487) are specific, clear and unmistakable. They are not uncertain, indefinite or vague.

The statutes and cases cited, and the arguments heretofore stated in this brief under point III respecting the second defense, and point IV respecting the third defense, clearly show that

the standards of purity need not be specified at all. They are within the discretion of the State Department of Health even without this act, but they have been so clearly and definitely stated in this code as to obviate any possible doubt or misunderstanding. The Engineers of defendants would have no trouble, or doubts, about those standards.

This fact is so obvious that a mere reading of the code will satisfy the lay, as well as the judicial, mind on this question.

This defense should be stricken as frivolous.

CONCLUSION

It is respectfully submitted that defenses 1 to 5 in the Answer of the City of Gloucester and defenses 1 to 5, 10 and 11 in the answer of the City of Camden should each and all be stricken, pursuant to the Attorney General's motion.

PHOTOMOUNT
PAMPHLET BINDER
PAT. NO.
877188
Manufactured by
GAYLORD BROS. Inc.
Syracuse, N. Y.
Stockton, Calif.