INDEX.

Bill of Complaint

Filed September 19, 1918.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainant, Clarence H. Hedden, of the City of Newark, Essex County, New Jersey, respectfully shows:

1. That he is and has been a resident of Essex County all his life.

2. That Valentine Braun is and has been since 1913, the record owner and owner in fee of the premises known as 504 South Orange avenue, in the City of Newark, more particularly described as follows:

Beginning at the intersection of the southerly line of South Orange avenue with the westerly line of South Eighteenth street; thence westerly along the southerly line of South Orange avenue 50 feet; thence southerly on a line at right angles to South Orange avenue 102 feet 4¾ inches, more or less; thence easterly on a line parallel with Fourteenth avenue 62 feet 10 inches, more or less, to the westerly line of South Eighteenth street; thence along the said westerly line of South Eighteenth street northerly 94 feet 11½ inches to the said southerly line of South Orange avenue and the place of beginning.

3. That Home Brewing Company is the record holder of the lease of the premises known as 504 South Orange avenue, Newark, New Jersey, and hereinbefore particularly described, and was so in possession on June 22nd, June 30th, July 7th, July 14th, August 18th, and September 15th, 1918, and has ever since remained in possession of said premises.

4. That Thomas J. Hand holds a license from the duly constituted authorities of the City of Newark to sell intoxicating liquors in the saloon on the premises hereinbefore particularly described, and as such licensee was in possession of said saloon and premises on June 22nd, June 30th, July 7th, July 14th, August 18th, and September 15th, 1918, and has ever since remained in possession of said premises.

5. That Home Brewing Company, on June 22nd, June 30th, July 7th, July 14th, August 18th, and September 15th, 1918, and continuously for some time prior thereto, did keep and maintain at the premises hereinbefore particularly described, a building and place for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of lewdness, assignation and prostitution, and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur.

6. That Thomas J. Hand, on June 22nd, June 30th, July 7th, July 14th, August 18th, and September 15th, 1918, and continuously for some time prior thereto, did keep and maintain at the premises hereinbefore particularly described, a building and place for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of lewdness, assignation and prostitution, and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur.

7. That Valentine Braun has permitted the premises hereinbefore particularly described to be used for the purposes mentioned in paragraphs 5 and 6.

Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That Valentine Braun, Home Brewing Company, and Thomas J. Hand, who are the defendants to this suit, may answer this bill of complaint, and every statement therein.

2. That an injunction may issue out of and under the seal of this honorable court, directed to the said Valentine Braun, Home Brewing Company, and Thomas J. Hand, perpetually enjoining them, their agents and lessees from maintaining or permitting such nuisance, and likewise enjoining the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from said building and place hereinbefore particularly described, pending the final hearing of this cause; and ultimately directing the removal from said building and place of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or in aiding or abetting the said nuisance, and directing the public sale thereof in the manner provided for the sale of chattels under execution (providing, however, that any and all intoxicating liquors that may be removed shall be destroyed as soon as may be after the same are no longer required for evidence), as is provided for by Chapter 154 of the Laws of New Jersey for 1916, and the amendment thereto contained in Chapter 202 of the Laws of New Jersey for 1918; and further providing that if sufficient funds should not be realized from such sale for the payment of costs, fees and expenses as provided by said acts hereinbefore mentioned, that execution shall issue for the sale of the premises hereinbefore described, in accordance with said acts; and further directing the effectual closing and disuse of the premises hereinbefore described for any purpose for the period of one year from the date of said injunction, unless sooner released by order of the Court of Chancery, as provided in said acts.

3. That an order may be made directing the defendants herein named to show cause at an early day why an injunction should not issue in accordance with the prayer of the bill, with restraint of the

furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place until the further order of the Court.

4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and abide by such decree as this Court may make in the premises.

ARTHUR T. VANDERBILT,
Solicitor and of Counsel with Complainant.

Order Amending Complaint.

Filed October 4, 1918.

This matter being opened to the Court and it appearing that the Alliance Investment Company is the record holder of the lease to the premises 504 South Orange avenue, Newark, N. J., and that the Home Brewing Company is not the record holder of the lease to said premises,

It is thereupon, upon motion of Arthur T. Vanderbilt, solicitor of complainant, on this 4th day of October, 1918, ORDERED that the bill of complaint in the above entitled cause be and it hereby is amended by striking out the words "Home Brewing Company" in paragraph 3 and in paragraph 5 of the bill of complaint, and in paragraphs 1 and 2 of the prayer for relief in said bill of complaint, and inserting in the place and stead thereof the words "Alliance Investment Company."

And it is further ordered that the said defendant, Alliance Investment Company, show cause before the Chancellor at the Chancery Chambers in the Prudential Building, Newark, New Jersey, on Saturday, the 5th day of October, 1918, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of the bill, or for such further relief as may be equitable and just.

And it is further ordered that the said defendant, Alliance Investment Company, and its agents, in the meantime and until the further order of this Court in the premises, desist and refrain from directly or indirectly maintaining or permitting the nuisance complained of in said bill of complaint, to-wit, maintaining or permitting to be maintained a place and buildings used for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of lewdness, assignation and prostitution, and the habitual sale of intoxicating liquors in violation of the law, are permitted and occur, and from removing any and all furniture, furnishings, musical instruments or other personal property, except clothing, from said place and buildings.

Motion to Strike Out Bill.

And it is further ordered that a copy of said bill and affidavits and of this order (none of which need be certified) be served on said defendant, Alliance Investment Company, within this date.

E. R. WALKER,
C.

Respectfully advised,
MERRITT LANE,
V. C.

Motion To Strike Out Bill.

Filed October 1, 1918.

To Clarence H. Hedden and Arthur T. Vanderbilt, his solicitor:

TAKE NOTICE, that I shall move before his Honor, Vice-Chancellor Lane, at the Chancery Chambers in Newark, on the 1st day of October, A. D. 1918, or as soon thereafter as counsel can be heard, to strike out the bill of complaint filed in the above entitled cause on the following grounds:

1. That Chapter 154 of the Laws of New Jersey for 1916 and the Amendments thereto contained in Chapter 202 of the Laws of New Jersey for 1918 are unconstitutional.

2. That the aforesaid law provides for the taking of property without due process of law.

3. That the aforesaid law does away with indictment and trial by jury.

4. That the aforesaid law equivalently prescribes a method of procedure and directs the Chancery Court to impose a penalty without trial by jury.

5. That the aforesaid law provides for a penalty and renders a cause *res adjudicata* with further proviso that despite the adjudication the cause may be further adjudicated in the Criminal Court and a further penalty imposed.

JNO. A. MATTHEWS,
Solicitor of Defendant,
Hillside Pleasure Park, Inc., et al.

Memorandum of Vice-Chancellor.

Filed October 14, 1918.

IN CHANCERY OF NEW JERSEY.

Between

ERNEST G. RANDALL,
Complainant,

and

HILLSIDE PLEASURE PARK COMPANY, *et als.*,
Defendants.

CLARENCE H. HEDDEN,
Complainant,

and

THOMAS J. HAND, *et als.*,
Defendants.

On Bill.

Memorandum.
(Not for Print.)

Mr. John A. Matthews, for the motion.

Mr. Arthur T. Vanderbilt, *contra.*

LANE, *V. C.*

These are motions to strike out the bills in the above entitled causes upon the ground that the act commonly known as the Abatement Act under which they are brought is unconstitutional.

The unconstitutionality of the act was questioned on the return of an order to show cause in the case of *Randal* v. *Turner,* before Vice-Chancellor Leaming. The Vice-Chancellor granted the injunction prayed for. An appeal was taken to the Court of Errors and Appeals and is to be argued at the next term. While I differ with the Vice-Chancellor that there is any distinction between the rules which are to be applied in determining the constitutionality of legislation in the Court of Appeals and in this court, yet his conclusion results in a holding that the act is constitutional, and the matter is now up for review in the higher court. My own view is that all courts having the power to declare legislation unconstitutional are bound to apply precisely the same rules in determining the question, for, if not, the poor suitor who has not the means to go to a court of last resort will not have the rights guaranteed to him by the constitution properly protected. In view of Vice-Chancellor Leaming's conclusion and the fact that his case is in the Court of Errors and Appeals and that these cases are going there and that if the orders are made at once they may be presented to the Court of Errors and Appeals at the same time as the Atlantic City case, which, to my mind, is advisable, I will, without expressing any personal view as to the constitutionality of the legislation advise orders denying the motions to

Notice of Appeal.

Order Denying Motion To Strike Out Bill.

Filed October 18, 1918.

Motion having been made by the defendant to strike out the bill of complaint, and John A. Matthews having been heard for the defendant, and Arthur T. Vanderbilt, for the complainant;

It is on this 17th day of October, 1918, Ordered that the motion to strike the bill of complaint be and the same is hereby denied, with costs.

E. R. WALKER,
C.

Respectfully advised,
MERRITT LANE,
V. C.

Notice of Appeal.

Filed Oct. 29, 1918.

The defendant, Thomas J. Hand, hereby appeals from an order made in this court in the above-stated cause, on the seventeenth day of October, 1918, denying the motion to strike out the bill of complaint, and from the whole and every part of said order to the Court of Errors and Appeals in the last resort in all causes.

JOHN A. MATTHEWS,
Solicitor of Defendant.

Dated, October 26th, 1918.

I conceive there is good cause for appeal in the above-stated cause.

HENRY L. GROSKEN,
Of Counsel with Defendant.

Acknowledgment of Service of Notice of Appeal.

Filed October 29, 1918.

Service of a copy of the notice of appeal in the above-entitled cause, is hereby acknowledged this 29th day of October, 1918.

ARTHUR T. VANDERBILT,
Solicitor of Respondent.

Petition of Appeal.

Filed October 29, 1918.

New Jersey Court of Errors and Appeals

Between CLARENCE H. HEDDEN, *Complainant-Respondent,* and THOMAS J. HAND, *Defendant-Appellant.*	*On Bill, &c.* *Petition of Appeal*

To the Honorable, the Court of Errors and Appeals of the State of New Jersey:

The petition of Thomas J. Hand, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the seventeenth day of October, 1918, in a cause wherein the said Clarence H. Hedden was complainant and the said Thomas J. Hand and Valentine Braun and Alliance Investment Company were defendants, denying appellant's motion to strike out the bill of complaint, in this respect, to wit: The Court of Chancery is without jurisdiction to adjudicate upon, hear or make any order or decree in the cause, for the reason that no such power or jurisdiction is conferred by law upon the Court of Chancery or exists therein save as purports to be conferred and to exist under an act of the Legislature of the State of New Jersey entitled "An Act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted to occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March 17th, 1916, being Chapter 154 of said laws of 1916, and the act amendatory thereto being Chapter 202 of the Laws of New Jersey for 1918, which acts so attempting to confer such jurisdiction upon said Court of Chancery is ineffective and invalid, being contrary to article I., paragraphs 7 and 8 of the Constitution of the State of New Jersey, because it deprives the appellant from the right of a trial by jury, in that it equivalently prescribes a method of procedure and directs the Court of Chancery to impose a penalty without a trial by jury, and being also contrary to article I., paragraph 9, of said constitution, in that it subjects appellant to a trial for a criminal offense, which offense is not within the exception of said paragraph, without a presentment or indictment of a grand jury, and being also contrary to article I., paragraph 16, of said constitution, in that it authorizes the taking of appellant's property for public use without just compensation; and

constitution; that by the proceedings in said cause it is sought to deprive the appellant of his property without due process of law and prevent him from having the equal benefit and advantage of the laws, contrary to the Constitution of the United States of America, and particularly to the first paragraph of the XIV amendment thereto; that said acts are harsh, unreasonable and unjust in that, said acts provide for a penalty and render a cause *res adjudicata* with further proviso that despite the adjudication and penalty which said acts impose, the appellant may be prosecuted in the Criminal Court and a further penalty imposed for the same offense; the said acts are in divers other respects contrary to the law of the land and of the rights and privileges possessed by the appellant.

Your petitioner therefore prays that the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that an order may be made striking out said bill of complaint and that your petitioner may have such further relief in the premises as to this Honorable Court shall seem meet.

JOHN A. MATTHEWS,
Solicitor of Defendant-Appellant.

HENRY L. GROSKEN,
Of Counsel with Defendant-Appellant.

Acknowledgment of Service of Petition of Appeal.

Filed Oct. 29, 1918.

Due and legal service of a copy of the petition of appeal in the above-entitled cause is hereby acknowledged this 29th day of October, 1918.

ARTHUR T. VANDERBILT,
Solicitor of Plaintiff-Respondent.

Answer To Petition of Appeal.

Filed Oct. 29, 1918.

The answer of the above named complainant-respondent to the petition of appeal of the above named defendant-appellant.

This respondent, not acknowledging any or all of the matters which in said petition of appeal are contained to be true, for answer thereto nevertheless says and admits an order was made on October 17, 1918, in this cause, denying defendant-appellant's motion to strike out the bill of complaint.

And this respondent is advised and believes that the said order is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel
with Complainant-Respondent.

INDEX.

Bill of Complaint.

Filed September 19, 1918.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey.

The complainant, Ernest G. Randal, of the Town of Belleville, Essex County, New Jersey, respectfully shows:

1. That he is and has been a resident of Essex County for more than nine years, and is Chairman of the Citizens' Committee of the Town of Belleville, in said county (said committee consisting of over one hundred citizens of said town).

2. That Otto Volkening is and has been since 1890 the record owner and owner in fee of the premises commonly known as Hillside Park, in said Town of Belleville, and more particularly described as follows:

Beginning on the westerly side of the public road leading from Belleville to Passaic, at the northeasterly corner of a lot secondly described in a deed for the same from Samuel Perry and wife to Robert Ferman, dated October 13, 1860, at a point 3 feet north from the center of the well; thence north 74 degrees, 30 minutes west 2.35 chains to a corner; thence south 16 degrees west 4.14 chains to the northerly line of the lot firstly described in said last mentioned deed; thence north 58 degrees 45 minutes west 34.52 chains to a stake; thence north 65 degrees 45 minutes west 16.52 chains to a stake; thence north 66 degrees 15 minutes west 29.75 chains to a stake; thence north 27 degrees 30 minutes east 1.20 chains to a corner; thence south 71 degrees 20 minutes east 12.40 chains to Walnut sapling at the corner of land formerly of Samuel Rutan; thence north 16 degrees 30 minutes east 7.38 chains to the northwest corner of James Moore's lot; thence along his northerly line north 73 degrees 20 minutes west 15.56 chains to the northwest corner of meadow formerly of Samuel Rutan; thence north 32 degrees 30 minutes east 6.11 chains to the corner of land formerly of Thomas Speer; thence south 78 degrees east 35.89 chains to a corner; thence south 26 degrees 30 minutes west 3.00 chains to a corner; thence south 61 degrees 40 minutes east 29.00 chains; thence south 65 degrees east 14.00 chains to a rock near the road to the southwest corner of the lot of Henry B. Mahn; thence down to the Passaic river and so along the said river southerly about 11.76 chains until it strikes the corner of lands of Rev. Peter Stryker; thence passing across the road leading from Newark to Paterson to a locust tree upon the west side of the road; thence along said road about 1.60 chains to the beginning.

3. That Hillside Pleasure Park Company is in possession of said premises described at length in paragraph 2 of this bill, and was so in possession on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and has ever since remained in possession of said premises.

4. That William E. H. Thaller holds a license from the commissioners of the Town of Belleville to conduct a pleasure park on the premises hereinbefore particularly described, and as such licensee was in possession of said premises on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and has ever since remained in possession of said premises.

5. That Edward Thaller holds a license from the commissioners of the Town of Belleville to sell intoxicating liquors on a part of the premises hereinbefore particularly described, and as such licensee was in possession of a part of said premises on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and has ever since remained in possession of a part of said premises.

6. That Hillside Pleasure Park Company, on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and continuously for some time prior thereto, did keep and maintain and now does continue to keep and maintain at the premises hereinbefore particularly described, a place and buildings for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of lewdness, assignation and prostitution, and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur.

7. That William E. H. Thaller, on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and continuously for some time prior thereto, did keep and maintain and now does continue to keep and maintain at the premises hereinbefore particularly described, a place and buildings for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of lewdness, assignation and prostitution and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur.

8. That Edward Thaller, on August 17th, 18th, 21st, 24th, 25th, 31st, September 1st, 8th, 14th, and 15th, 1918, and continuously for some time prior thereto, did keep and maintain and now does continue to keep and maintain at the premises hereinbefore particularly described, a place wherein and upon which the habitual sale of intoxicating liquors in violation of the law is permitted and occurs.

9. That Otto Volkening has permitted the premises hereinbefore particularly described to be used for the purposes mentioned in paragraphs 6, 7 and 8 of this bill.

10. Complainant is without adequate remedy in the courts of law, and therefore prays:

1. That Otto Volkening, Hillside Pleasure Park Company, William E. H. Thaller, and Edward Thaller, who are the defendants to this suit, may answer this bill of complaint, and every statement therein.

2. That an injunction may issue out of and under the seal of this Honorable Court, directed to the said Otto Volkening, Hillside Pleasure Park Company, William E. H. Thaller, and Edward Thaller, perpetually enjoining them, their agents and lessees from maintaining or permitting such nuisances, and likewise enjoining the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from said place and buildings hereinbefore particularly described, pending the final hearing of this cause; and ultimately directing the removal from said place and buildings of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or in aiding or abetting the said nuisances, and directing the public sale thereof in the manner provided for the sale of chattels under execution (providing, however, that any and all intoxicating liquors that may be removed shall be destroyed as soon as may be after the same are no longer required for evidence), as is provided for by chapter 154 of the Laws of New Jersey for 1916, and the amendment thereto contained in Chapter 202 of the Laws of New Jersey for 1918; and further providing that if sufficient funds should not be realized from such sale for the payment of costs, fees and expenses as provided by said acts hereinbefore mentioned, that execution shall issue for the sale of the premises hereinbefore described, in accordance with said acts; and further directing the effectual closing and disuse of the premises hereinbefore described for any purpose for the period of one year from the date of said injunction, unless sooner released by order of the Court of Chancery, as provided in said acts.

3. That an order may be made directing the defendants herein named to show cause at an early day why an injunction should not issue in accordance with the prayer of the bill, with restraint of the nuisance complained of and with restraint against the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said buildings or place until the further order of the Court.

4. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and abide by such decree as this Court may make in the premises.

ARTHUR T. VANDERBILT,
Solicitor and of Counsel with Complainant.

Motion to Strike Out Bill.

Filed October 1, 1918.

To Ernest G. Randal and Arthur T. Vanderbilt, his solicitor.

TAKE NOTICE, that I shall move before his Honor Vice-Chancellor Lane, at the Chancery Chambers in Newark, on the 1st day of October, A. D. 1918, or as soon thereafter as counsel can be heard, to strike out the bill of complaint filed in the above entitled cause on the following grounds.

1. That chapter 154 of the Laws of New Jersey for 1916 and the amendments thereto contained in Chapter 202 of the Laws of New Jersey for 1918 are unconstitutional.

2. That the aforesaid law provides for the taking of property without due process of law.

3. That the aforesaid law does away with indictment and trial by jury.

4. That the aforesaid law equivalently prescribes a method of procedure and directs the Chancery Court to impose a penalty without trial by jury.

5. That the aforesaid law provides for a penalty and renders a cause *res adjudicata* with further proviso that despite the adjudication the cause may be further adjudicated in the Criminal Court and a further penalty imposed.

JNO. A. MATTHEWS,
Solicitor of Defendant, Hillside Pleasure Park, Inc., et als.

Memorandum of Vice-Chancellor.

Filed October 14th, 1918.

IN CHANCERY OF NEW JERSEY.

Between

ERNEST G. RANDALL,

Complainant,

and

HILLSIDE PLEASURE PARK COMPANY, *et als.*,

Defendants.

On Bill.

Memorandum.
(Not for Print.)

CLARENCE H. HEDDEN,

Complainant,

and

THOMAS J. HAND, *et als.*,

Defendants.

Mr. John A. Matthews for the motion.
Mr. Arthur T. Vanderbilt, *contra.*

LANE, *V. C.*

These are motions to strike out the bills in the above entitled causes upon the ground that the act commonly known as the abatement act under which they are brought is unconstitutional.

The unconstitutionality of the act was questioned on the return of an order to show cause in the case of *Randal* v. *Turner*, before Vice-Chancellor Leaming. The Vice-Chancellor granted the injunction prayed for. An appeal was taken to the Court of Errors and Appeals and is to be argued at the next term. While I differ with the Vice-Chancellor that there is any distinction between the rules which are to be applied in determining the constitutionality of legislation in the Court of Appeals and in this court, yet his conclusion results in a holding that the act is constitutional, and the matter is now up for review in the higher court. My own view is that all courts having the power to declare legislation unconstitutional are bound to apply precisely the same rules in determining the question, for, if not, the poor suitor who has not the means to go to a court of last resort will not have the rights guaranteed to him by the constitution properly protected. In view of Vice-Chancellor Leaming's conclusion and the fact that his case is in the Court of Errors and Appeals and that these cases are going there and that if the orders are made at once they may be presented to the Court of Errors and Appeals

at the same time as the Atlantic City case, which, to my mind, is advisable, I will, without expressing any personal view as to the constitutionality of the legislation advise orders denying the motions to strike out the bills.

Order Denying Motion to Strike Out Bill.

Filed October 18, 1918.

Motion having been made by the defendant to strike out the bill of complaint, and John A. Matthews having been heard for the defendants, and Arthur T. Vanderbilt, for the complainant;

It is on this 17th day of October, 1918, ordered that the motion to strike the bill of complaint be and the same is hereby denied with costs.

E. R. WALKER,
C.

Respectfully advised,
MERRITT LANE, *V. C.*

Notice of Appeal.

Filed October 29, 1918.

The defendants, Hillside Pleasure Park Company, William E. Thaller and Edward Thaller, hereby appeal from an order made in this court, in the above-stated cause, on the seventeenth day of October, 1918, denying the motion to strike out the bill of complaint, and from the whole and every part of said order to the Court of Errors and Appeals in the last resort in all causes.

JOHN A. MATTHEWS,
Solicitor of Defendants.

Dated, October 25th, 1918.

I conceive there is good cause for appeal in the above-stated cause.

HENRY L. GROSKEN,
Of Counsel with Defendants.

Acknowledgment of Service of Notice of Appeal.

Filed Oct. 29, 1918.

Service of a copy of the notice of appeal in the above-entitled cause, is hereby acknowledged this 29th day of October, 1918.

ARTHUR T. VANDERBILT,
Solicitor of Respondent.

Petition of Appeal.

Filed October 29, 1918.

New Jersey Court of Errors and Appeals

Between	
Ernest G. Randal, *Complainant-Respondent,*	*On Bill, &c.*
and	*Petition of Appeal.*
Hillside Pleasure Park Company, *et als., Defendant-Appellants.*	

To the Honorable the Court of Errors and Appeals of the State of New Jersey:

The petition of Hillside Pleasure Park Company, William E. Thaller and Edward Thaller, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the seventeenth day of October, 1918, in a cause wherein the said Ernest G. Randal was complainant and the said Hillside Pleasure Park Company, William E. Thaller, Edward Thaller and Otto Volkening were defendants, denying appellants' motion to strike out the bill of complaint, in this respect, to wit: The Court of Chancery is without jurisdiction to adjudicate upon, hear or make any order or decree in the cause, for the reason that no such power or jurisdiction is conferred by law upon the Court of Chancery or exists therein save as purports to be conferred and to exist under an act of the Legislature of the State of New Jersey entitled "An Act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted to occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March 17th, 1916, being Chapter 154 of said Laws of 1916, and the act amendatory thereto being Chapter 202 of the Laws of New Jersey for 1918, which acts so attempting to confer such jurisdiction upon said Court of Chancery is ineffective and invalid, being contrary to article I., paragraphs 7 and 8 of the Constitution of the State of New Jersey, because it deprives the appellants from the right of a trial by jury, in that it equivalently prescribes a method of procedure and directs the Court of Chancery to impose a penalty without a trial by jury, and being also contrary to article I., paragraph 9, of said constitution, in that it subjects appellants to a trial for a criminal offense, which offense is not within the exception of said paragraph, without a presentment or indictment of a grand jury, and being also contrary to article I., paragraph 16, of said Constitution, in that it authorizes the taking of appellants' property for

public use without just compensation, and being also contrary to article IV., section VII., paragraph 4 of said Constitution; that by the proceedings in said cause it is sought to deprive the appellants of their property without due process of law and prevent them from having the equal benefit and advantage of the laws, contrary to the Constitution of the United States of America, and particularly to the first paragraph of the XIV amendment thereto; that the said acts are harsh, unreasonable and unjust in that, said acts provide for a penalty and render a cause *res adjudicata* with further proviso that despite the adjudication and penalty which said acts impose, the appellants may be prosecuted in the Criminal Court and a further penalty imposed for the same offense; that said acts are in divers other respects contrary to the law of the land and of the rights and privileges possessed by the appellants.

Your petitioners therefore pray that the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that an order may be made striking out said bill of complaint and that your petitioner may have such further relief in the premises as to this Honorable Court shall seem meet.

JOHN A. MATTHEWS,
Solicitor of Defendant-Appellants.

HENRY L. GROSKEN,
Of Counsel with Defendant-Appellants.

Acknowledgment of Service of Petition of Appeal.

Filed Oct. 29, 1918.

Due and legal service of a copy of the petition of appeal in the above-entitled cause is hereby acknowledged this 29th day of October, 1918.

ARTHUR T. VANDERBILT,
Solicitor of Plaintiff-Respondent.

Answer to Petition of Appeal.

Filed Oct. 29, 1918.

The answer of the above named complainant-respondent to the petition of appeal of the above named defendant-appellant.

This respondent, not acknowledging any or all of the matters which in said petition of appeals are contained to be true, for answer thereto nevertheless says and admits an order was made on October 17, 1918 in this cause, denying defendant-appellants' motion to strike out the bill of complaint.

And this respondent is advised and believes that the said order is agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel with Complainant-Respondent.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between
CLARENCE H. HEDDEN,
Complainant-Respondent,
and
THOMAS J. HAND,
Defendant-Appellant.

ERNEST G. RANDAL,
Complainant-Respondent,
and
HILLSIDE PLEASURE PARK COMPANY, WILLIAM E. THALLER and EDWARD THALLER,
Defendants-Appellants.

On Bill, &c.

Brief of Complainants-Respondents.

The statement of facts in the brief of defendants-appellants is correct, with the exception of a typographical error as to the dates set forth in the bill of complaint in *Hedden* v. *Hand*. The dates therein mentioned are June 22nd, June 30th, July 7th, July 14th, August 18th, and September 15th, 1918. The prayer in each bill is for relief in accordance with Chapter 154 of the Laws of 1916 and the amendment thereto contained in Chapter 202 of the Laws of 1918. The appellants in both cases are appealing from the order of the Court of Chancery denying their motion to strike out the bill of complaint on the ground that the said acts are repugnant to various provisions of the State and Federal Constitutions. The several constitutional objections are answered in this brief in subsantially the same order in which they are raised in the appellants' brief.

I.

THE COURT OF CHANCERY HAS JURISDICTION (INDEPENDENTLY OF THE STATUTES UNDER REVIEW) TO ENJOIN AND ABATE THE NUISANCES ENUMERATED IN THE STATUTES.

"Buildings and places wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of intoxicating liquors in violation of law are permitted or occur" (Laws of 1918, p. 739) are public or common nuisances by the common law.

> "All disorderly inns or ale-houses, bawdy-houses, gaming houses * * * are public nuisances and may upon indictment be suppressed and fined." *Blackstone's Commentaries,* Chase's 4th Ed., p. 927.
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> "What constitutes a disorderly house has been frequently declared by the courts of this state. In the case of *State* v. *Williams,* 1 Vroom, 102, it was defined by Chief Justice Whelpley, speaking for the Supreme Court, as 'Any place of public resort, whether an inn, a dwelling-house, a storehouse, or any other building or garden in which illegal practices are habitually carried on.' In *State* v. *Hall,* 3 *Id.,* 158, Chief Justice Beasley, delivering the opinion of the same court, says: 'In a legal point of view a house may be disorderly in two ways, *viz.,* first, from the end or purpose to which it is appropriated, and second, from the mode in which it is kept. The end or purpose for which the house is designed will render the keeping of such house illegal, if it be such as, of necessity, contravenes the provisions of any public statute.' In the case of *McClean* v. *State,* 20 *Id.,* 471, the Court adopted the definition of a disorderly house given in *State* v. *Williams, supra,* and declared that 'Any house of public resort in which illegal practices are habitually carried on' is a disorderly house. This definition was again approved by this Court in *Haring* v. *State,* 24 *Id.,* 664. In the earlier case of *Meyer* v. *State,* 13 *Id.,* 145, we declared that 'A person who habitually keeps his house open * * * for a purpose which the statute interdicts' is guilty of the offense of keeping a disorderly house. In view of this line of decisions, it must be accepted as settled that any place in which illegal practices are habitually carried on is a disorderly house." *State* v. *Martin,* 77 N. J. L., 652. (Court of Errors and Appeals, by Chief Justice Gummere.)
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> See also *Wood on Nuisances,* 3rd Ed.), Section 29; 14 Cyc., 484, 486; 9 Am. & Eng. Ency., 509.

The legislature has full power to declare "buildings and places wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of liquors in violation of law are permitted or occur" to be nuisances.

> "Is it necessary that the unlawful practices which are habitually indulged in must contain an element of criminality or of moral turpitude in order to render the place in which they are carried on a disorderly house? The sale of intoxicating liquor is not criminal *per se*. It is only made so by statute when the sale is unlicensed or occurs on Sunday, and not always then. See *Meyer* v. *State, supra*. Nor does it, in the eye of the state, involve moral turpitude, whatever opinion we, as individuals, may entertain upon the subject, for the state grants permission to selected persons to make such sales, and collects revenue for the permission, and the idea that the state, for motives of gain, is willing to become a party to an act which, in its judgment, involves moral turpitude, cannot be tolerated for a moment. And yet it is settled in this state that a house in which unlawful sales of liquor are habitually made is a nuisance, and he who maintains it is guilty of keeping a disorderly house. *Parker* v. *State,* 32 Vroom, 308; *S. C. on error,* 33 *Id.,* 801. The logical conclusion to be drawn from the case just cited, and those like it, as it seems to us, is that the declaration of Chief Justice Beasley, in *State* v. *Hall,* and our own statement, in *Meyer* v. *State,* that a place where practices which are interdicted by statute are habitually carried on is a disorderly house, is sound in its fullest extent." *State* v. *Martin,* cited *supra,* 77 N. J. L., 652, at 655.
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> "While the legislature has no right arbitrarily to declare that to be a nuisance which is clearly not so, a good deal must be left to its discretion in that regard; and if the object to be accomplished is conducive to the public interests, it may exercise a large liberty of choice in the means employed. *Railway Co.* v. *Hunt,* 50 N. J. L., 308; *Print Works* v. *Lawrence,* 21 N. J. L., 248." Per Mr. Justice Brown, in *Lawton* v. *Steele,* 152 U. S., 133.
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> "It results that the Werts law made any sale of the liquors to which it applied, without an appropriate license, an offense, and called that offense 'keeping a disorderly house.' This seems an inappropriate name to characterize a crime committed by a single act, because the common law offense of keeping a disorderly house could be committed only by a series of acts done habitually. But the legislative power was plainly sufficient to determine what should constitute a crime, and how such a crime should be named or characterized and by what evidence it should be

proved." *Parker* v. *State,* 61 N. J. L., 308, at 310, affirmed 62 N. J. L., 801.

See also *State* v. *Beardsley,* 108 Iowa, 396; *Commonwealth* v. *Howe,* 13 Gray, 26.

The Court of Chancery has jurisdiction independently of the statutes in question to abate public nuisances on the suit of the Attorney-General. *Attorney-General* v. *Delaware & Bound Brook R. R. Co.,* 27 N. J. Eq., 1, was an information brought by the Attorney-General to abate as a public nuisance a bridge being constructed across the Delaware River. Chancellor Runyon, at page 5, says:

"The answer insists, and on the argument it was urged, that the information cannot be maintained in its present form, inasmuch as it is exhibited without a relator. This objection is not well taken. The practice is settled. Where, as in this case, the suit immediately concerns the rights of the state, the information is generally exhibited without a relator. *Laussat's Fonblanque,* p. 5, n.; *Mitford's Plead.,* by Jeremy, 99; 1 Newland's Prac., 55; Blake's Chancery Prac., 40; Cooper's Eq., 101, 102. While in practice it is usual to name a relator, and the contrary course may tend to oppression, since, if there is no relator the defendant can recover no costs, still in matters of purely public concern, as where the property of the state, owned by it in its political capacity, or where public rights in which no merely private interest is involved, are in question, the courts are open to the state without requiring security for costs."

"When the ground on which a nuisance is attacked is the injury to the public, the ordinary and proper remedy is doubtless by bill or information on the party of the Attorney-General. *Wood on Nuisances,* Sec. 811; *Attorney-General* v. *D. & B. R. R. Co.,* 12 C. E. Gr., 1." *Hutchinson* v. *Board of Health of the City of Trenton,* 39 N. J. Eq., 569, at 573. See also *Township of Rariton* v. *Port Reading R. R. Co.,* 49 N. J. Eq., 11, at 16.

"In regard to public nuisances, the jurisdiction of courts of equity seems to be of a very ancient date, and has been distinctly traced back to the reign of Queen Elizabeth. The jurisdiction is applicable not only to public nuisances, strictly so called, but also to purprestures upon public rights and property. * * * In case of public nuisances, properly so called, an indictment lies to abate them, and to punish the offenders. But an information also lies in equity to redress the grievance by way of injunction." 2 Story, Eq., pp. 921, 922.

The reason underlying this phase of equity jurisdiction is well stated by Vice-Chancellor Emery in *State* v. *Dupont,* 79 N. J. Eq., 31, at 34:

> "The Attorney-General, as representing the public, may have the right to file a bill or information to enjoin a public nuisance of the character alleged—*Hutchinson* v. *Board of Health* (Court of Errors and Appeals, 1885), 39 N. J. Eq. (12 Stew.), 569, 573 (Mr. Justice Magie)—and such proceeding for injunction might better work out the public right in cases where, as in the present case, the nuisance alleged, if it exists, arises from the method of use of defendant's property, and control of the method of use, rather than the destruction or removal of the property used, is the object finally sought."

The English practice is similar to ours. See *Attorney-General* v. *Richards* (1794), 2 Anstr., 603, where the Court restrained erection of wharves between high and low water mark and ordered those already erected to be abated. In *Attorney-General* v. *Johnson* (1819), 2 Wils. Ch., 87, Lord Eldon granted a *temporary* injunction pending the trial of an indictment in a similar case. In *Attorney-General* v. *Cambridge Consumers' Gas Company* (1868), L. R., 4 Ch. App., 71, the Court of Appeals by Lord Justice Selwyn, said, at page 86, "He (the Attorney-General) sues as representing the public by an original independent title, viz., as protector of the rights of the public against a nuisance to the public highway."

It is conceded, as argued in appellant's brief, that the Court of Chancery will not administer the criminal law in this State, nor will it, in the absence of statute, enjoin a public nuisance at the suit of a private citizen, unless he suffers special damage. But the mere fact that the subject matter of the nuisance constitutes a crime does not prevent the Court of Chancery from enjoining and abating the nuisance. Appellant relies on the opinion of Lord Eldon in *Attorney-General* v. *Clever* (1811), 18 Vesey, Jr., 217. Lord Eldon's opinion and decision in *Attorney-General* v. *Johnson* (1819), 2 Wils. Ch., 87, cited *supra,* is a complete answer to this objection. The report of the case is lengthy and not particularly quotable as the matter was before the Chancellor several times. Nevertheless, the syllabus completely sums up the decision of the case:

> "On the filing of an information by an Attorney-General, at the relation of an individual, and a bill by the relator, the Lord Chancellor granted an injunction *ex parte* on affidavits to restrain a purpresture in the River Thames; and it appearing that there had been no previous

writ of *ad quod dammum,* and that an indictment in the King's Bench was depending against the defendants for the same act, the Lord Chancellor refused to dissolve the injunction before the trial of the indictment, notwithstanding that there were some affidavits on the part of the defendants stating that the act complained of was beneficial to navigation. And it was held to be immaterial to whom the soil belonged, it not being competent either to the crown or to a subject to use it for any purpose amounting to a nuisance."

It is unthinkable that Lord Eldon would have sustained a *preliminary* injunction on a doubtful branch of equity jurisdiction. The law in our own State is similar.

"The jurisdiction of the Court of Chancery to enjoin a continuing trespass or injury to property, although it may involve a crime, is entirely settled. The Court ignores the crime and protects the complainant's property or business from civil injury. The jurisdiction of a Court of Equity to restrain acts like these charged in the bill, is entirely established. *Barr* v. *Essex Trades Union,* 8 Dick. Ch. Rep., 101; *In re Debs,* 158 U. S., 564; *Coeur D'Alene Consolidated Mining Co.* v. *Miners' Union,* 51 Fed. Rep., 260." *Cumberland Glass Manufacturing Co.* v. *Glass Blowers' Association,* 59 N. J. Eq., 49, at 56.

II.

THE SUBJECT-MATTER OF THE ACTS UNDER REVIEW IS APPROPRIATE TO THE JURISDICTION OF THE COURT OF CHANCERY.

As has been pointed out, houses of ill repute and places where intoxicating liquors are habitually sold contrary to law are nuisances at common law and may likewise be so declared by statute. The Attorney-General has the right to file his bill in equity to enjoin and suppress a public nuisance. But the legislature may go further, as in the acts in question, and give the Court of Chancery jurisdiction to restrain and abate the nuisances in question on the suit of the prosecutor or any resident of the county.

The propriety and wisdom of equitable jurisdiction in the premises is clearly pointed out by the decision of Vice-Chancellor Emery in *State* v. *Dupont,* quoted *supra.* See also, *State* v. *Saunders,* 18 L. R. A., 646; *Carleton* v. *Rugg,* 5 L. R. A., 193; *Hutchinson* v. *Feik,* 44 Miss., 536. Indeed, there can be no

question as to the propriety of the injunctive remedy in such a class of cases:

> "That the legislature may direct the exercise of the injunction power by this Court in a new class of cases, to which the remedy is appropriate, seems to me clear. The legislature not infrequently extends the jurisdiction of courts both of law and of equity to new cases, and it assigns them to the one court or the other, in conformity with the remedy each is accustomed to administer. Extensions of the remedy given by the Mechanics' Lien and Attachment acts afford familiar illustrations of new cases brought under the jurisdiction of the Supreme and Circuit Courts, and the acts to secure the payment of laborers employed upon works of public improvement (*Delafield Construction Co.* v. *Sayre,* 31 Vr., 449); the act to compel the determination of claims to estates in remainder (*Haley* v. *Goodheart,* 13 Dick. Ch. Rep., 368; affirmed on appeal), and the act of 1896 giving the Attorney-General the right to apply for an injunction against delinquent corporations to aid the state in collecting its taxes (*American Surety Co.* v. *Great White Spirit Co.,* 13 Dick. Ch. Rep., 526), are instances of an added jurisdiction conferred upon the Court of Chancery. In the case in hand it must be conceded that the exercise of the injunction power is an appropriate remedy to attain the end in view, *viz.,* the prevention of the pollution of potable waters." *State Board of Health* v. *Diamond Mills Paper Company,* 63 N. J. Eq., 11, at 115.

It is not essential that the application for the injunction be made by the Attorney-General alone, if the legislature provides otherwise. It has the power to authorize persons or public bodies, other than the Attorney-General, to institute suits in equity to enjoin and abate public nuisances. It has often exercised this power as to boards of health and municipalities. See *Inhabitants of Greenwich* v. *Easton & Amboy R. R. Co.,* 24 N. J. Eq., 217; affirmed 25 N. J. Eq., 565; *State ex rel Board of Health of Hackensack* v. *Freeholders of Bergen,* 46 N. J. Eq., 173; *Township of Raritan* v. *Port Reading R. R. Co.,* 49 N. J. Eq., 11, at 16; *Hutchinson* v. *State ex rel Board of Health of Trenton,* 39 N. J. Eq., 569, at page 576, where the Court says, "The ninth section of the act of 1883 above referred to provides that any Board of Health so organized may inquire into the existence of nuisances hazardous to public health, and the tenth section provides that any such Board may file a bill in the Court of Chancery in the name of the State for an injunction to prohibit the continuance of such nuisances."

Similarly the State may, as in the acts in question (see Laws 1916, p. 315) confer the right to bring suit to enjoin and abate the nuisance on "the prosecutor of the pleas or any resident of the county." When the resident brings suit, he brings it, not in his common law right to enjoin and abate a public nuisance where he is specially damaged (see *Blackstone's Commentaries,* Chase's 4th ed., p. 621; *Hitchner* v. *Richman,* 74 N. J. L., 234), but in his statutory right as a substitute for the Attorney-General. The Attorney-General does not have to prove special damage, because he acts for the State. The resident when he acts by the statute, likewise, does not have to prove special damage to entitle him to sue. The legislature went to some pains to indicate that the resident of the county was not acting under his common law right but under his statutory right as complainant by providing expressly that "it shall be unnecessary to allege or prove personal or special damage." (Laws 1916, p. 315, sec. 4.) See *English* v. *Fanning,* 147 N. W., 215; *Davis* v. *Auld,* 96 Me., 559; *Littleton* v. *Fritz,* 65 Ia., 488.

It is no objection to the equitable nature of the proceedings provided for under the acts in question that it is made unnecessary by the statute to prove special damages. The right to enjoin and abate a public nuisance does not depend upon the money damage involved. A reference to the public health cases hereinbefore cited and quoted proves this fact beyond question. Actions by private citizens have been sustained even where the act did not provide that the allegations or proof of special damage was unnecessary. See, for example, *Littleton* v. *Fritz,* 65 Ia., 488:

> "Courts constantly enjoin nuisances where no damages can be estimated in money, and where the nuisance produces mere annoyance and discomfort to the complaining party; as a manufacture producing discomfort to individuals (*Catlin* v. *Valentine,* 5 Paige, 575; a blacksmith shop near plaintiff's dwelling (*Faucher* v. *Grass,* 6 Ala., 506); a livery stable (*Shiras* v. *Olinger,* 50 Ia., 571); a hog lot (*Richards* v. *Holt,* 61 Ia., 529). These, and many other cases which might be cited, show a very great relaxation of the old rule that no action will lie to restain and abate a public or common nuisance unless the plaintiff, in the language of Blackstone, 'suffers some extraordinary damage beyond the rest of the King's subject's by a public nuisance, in which case he shall have private satisfaction by action; as if, by means of a ditch dug across a public highway, which is a common nuisance, a man or his horse suffer any injury by falling therein, for this particular

damage, which is not common to others, the party shall have his action.'

"It is not easy to perceive why the lawmaking power may not authorize the suppression of the saloon nuisance by injunction because no property rights are involved. It was always allowable to enjoin the obstruction of a public highway or a navigable stream by an action in equity at the suit of the public. This was done because it was claimed that a property right in the public was involved; and such proceedings were authorized without the aid of any statute. Such nuisances are detrimental to the public, because they obstruct travel and impede navigation. But the damages to the public are no more susceptible of computation than the injuries to the public by the unlawful maintenance of a saloon. In *State* v. *Iron Cliffs Co.,* in discussing the power of the legislature under this provision of the constitution, it is said that 'its power to create and enlarge equitable jurisdiction is not only undoubted, but unlimited.' Without further dwelling upon this branch of the case, we conclude that the statute in question, so far as it authorizes the action, is not repugnant to the constitution."

III.

THE ACTS IN QUESTION, BEING APPROPRIATELY ADMINISTERED BY CHANCERY, ARE NOT UNCONSTITUTIONAL IN NOT PROVIDING FOR TRIAL BY JURY.

The appellants contend that the acts under review are unconstitutional in that they deprive them of the right of trial by jury, contrary to the provisions of paragraphs 7 and 8 of article I of the New Jersey Constitution. Appellants rely upon *ex parte Allison,* 9 S. W., 870, 1 L. R. A. (N. S.), 1113, and *North Pennsylvania Coal Company* v. *Snowden.* The quotation from *ex parte Allison* is mere *dictum.* The other case, *North Pennsylvania Coal Company* v. *Snowden,* is not in point. The courts of law alone have always had power to try title to land. What was apparently attempted in that case was to create an entirely new branch of equity jurisdiction at the expense of the courts of law. In the acts under review, however, the legislature has not attempted to create any new branch of equity jurisdiction by hampering or limiting the jurisdiction of the law courts, but simply to declare certain acts public nuisances and to regulate part of the procedure of the Court of Chancery in the exercise of its admitted jurisdiction over public nuisances. This it unquestionably has the right to do,

without affording the defendants trial by jury. In the public health cases, cited *supra,* where the action is brought by the local board of health, it has never been contended that the defendants to the action to enjoin the nuisance are entitled to trial by jury. The proceeding is so plainly equitable as to admit of no argument. A similar example is found in the case of the *Municipal Liens Act of 1892,* 3 C. S., 3315. Ordinary mechanics' liens are enforced by courts of law and there may be a trial by jury, but under the Municipal Improvements Act of 1892, jurisdiction has been held to be vested in the Court of Chancery, *Construction Company* v. *Sayre,* 60 N. J. L., 449, because "the remedy now under consideration comes completely within the ordinary remedial functions of the Court of Chancery." Other examples are cited in *State Board of Health* v. *Diamond Mills Paper Co., supra.* The cases arising under these acts being under the jurisdiction of chancery, it has never been contended that the parties were entitled to a trial by jury. Whether or not the parties are entitled to trial by jury will depend not upon the date of the adoption of the statute under review, but upon the question of whether or not the subject matter is proper equity jurisdiction. If it comes within the equity jurisdiction, the defendants are not entitled to trial by jury. *Wood* v. *Tallman,* 1 N. J. L., 153, at 158.

Nor does anything in the Federal Constitution impose trial by jury in those cases. In sustaining contempt proceedings without trial by jury and upholding the prohibition law of Iowa, Mr. Justice Miller said, in *Eilenbecker* v. *District Court of Plymouth County,* 134 U. S., 31, at page 40, 33 Law. Ed., 801, at 805:

> "If the objection to the statute is that it authorizes a proceeding in the nature of a suit in equity to suppress the manufacture and sale of intoxicating liquors which are by law prohibited and to abate the nuisance which the statute declares such acts to be, wherever carried on, we respond that, so far as at present advised, it appears to us that all of the powers of a court, whether at common law or in chancery, may be called into operation by a legislative body for the purpose of suppressing this objectionable traffic; and we know of no hindrance in the Constitution of the United States to the form of proceedings, or to the court in which this remedy shall be had. *Certainly it seems to us to be quite as wise to use due processes of the law and the powers of the court to prevent the evil as to punish the offense as a crime after it has been committed.*"

Similarly, in *Mugler* v. *Kansas,* 123 U. S., 623, 31 Law. Ed., 205, it was held at page 673 (Law. Ed., p. 214), "As to the objection that the statute makes no provisions for a jury trial in cases like this one, it is sufficient to say that such a mode is not required in suits in equity brought to abate a public nuisance." See also *English* v. *Fanning,* 147 N. W., 215; *State* v. *Gilbert,* 147 N. W., 953; *Carleton* v. *Rugg,* 149 Mass., 550; *State* v. *Murphy,* 71 Vt., 127; *State* v. *Saunders,* 66 N. H., 39; *State* v. *Marshall,* 100 Miss., 626; *Davis* v. *Auld, supra,* 96 Me., 559; *Littleton* v. *Fritz, supra,* 65 Ia., 488.

Even if the Court should find (which seems most unlikely, in view of the foregoing State and Federal decisions) that a trial by jury was necessary to preserve the constitutional rights of the defendants, the acts in question would not be unconstitutional as denying the defendants such alleged right. By Section 8 of the Chancery Act of 1915 (Chapter 116 of the Laws of 1915), it is provided "that if a question ordinarily determinable at law and requiring jury trial, arise in a suit of which the Court of Chancery has jurisdiction, a jury trial, *if required,* may be ordered," &c. If it be admitted that a jury trial is necessary to sustain the constitutionality of the act (which the respondent, of course, does not admit), then by the act of 1915 (notwithstanding that the word "may" is expressly stated in the act not to be used in a mandatory sense), it is, when taken with the words "when required" capable of a mandatory construction and should be so construed by the Court, if necessary, to sustain the constitutionality of the act.

IV.

THE ACTS UNDER REVIEW ARE NOT REPUGNANT TO PARAGRAPH 9 OF ARTICLE I OF THE NEW JERSEY CONSTITUTION.

The appellants contend that the acts under review are unconstitutional in that they subject the defendants to a trial for a criminal offense without the presentment or an indictment of a grand jury. The error in appellants' argument is that they consider the action in chancery as a criminal proceeding because the subject matter of the suit happens to involve a crime. The basis of the equitable jurisdiction lies in the fact of a public nuisance, and not in the fact that the

nuisance constitutes a crime. We can only repeat here the language of the Court in *Cumberland Glass Manufacturing Company* v. *Glass Blowers' Association,* 59 N. J. Eq., 49, at page 56, which was quoted above:

> "The jurisdiction of the Court of Chancery to enjoin a continuing trespass or injury to property, although it may involve a crime, is entirely settled. The Court ignores the crime and protects complainant's property or business from civil injury."

In fact, this objection is expressly guarded against in the act itself. The act of 1916 under review, by section 14, expressly provides: "14. Nothing herein contained nor any proceeding or order in accordance herewith, shall be held to repeal or limit the operations of any law of this State relating to the punishment of crime, but the powers and rights hereby created shall be held to be in addition thereto."

But the appellants contend that, notwithstanding the language of the act, the defendants are required to answer in chancery for a criminal offense and to interpose the same defense which they would be required to interpose to defend themselves in a criminal court. This constitutes no defense. A man accused of embezzlement may be indicted and tried by the State in the criminal courts and at the same time be sued by the person whom he has defrauded, either in tort or in quasi-contract. The defendant must prove the same facts to clear himself in each case. Likewise, a burglar may be indicted and tried by the State, and at the same time sued by his victim in all three sorts of trespass. The defendant must prove the same facts to clear himself in each of these cases. The modern law will not accept it as a defense in a civil action that he is or will be under indictment at the hands of the State for an offense arising out of the same subject matter. The civil and criminal aspects of the defendants' acts are distinct and independent. See *Attorney-General* v. *R. R. Co.,* 6 N. J. Eq., 136; *Littleton* v. *Fritz,* 65 Ia., 488; *Davis* v. *Auld,* 96 Me., 559; *State* v. *Gilbert,* 147 N. W., 953. The argument that the defendant may be punished in contempt proceedings for violating an injunction without trial by jury in a case where the contempt constitutes an indictable defense is fully met by the case of *Eilenbecker* v. *District Court of Plymouth County,* 134 U. S., 31, quoted *supra.* If dissatisfied with the injunction the defendants' remedy is by appeal, not by violating and disobeying the injunction.

V.

THE FACT THAT THE ACTS UNDER REVIEW DO NOT REQUIRE KNOWLEDGE ON THE PART OF THE OWNER OF THE UNLAWFUL USE OF THE PREMISES DOES NOT RENDER THE ACTS UNCONSTITUTIONAL. THE OWNER IS PRESUMED TO KNOW THE BUSINESS CONDUCTED THEREON.

This point has been clearly decided by the United States Supreme Court in *Hodge* v. *Muscatine County,* 196 U. S., 276, at 280 (49 Law. Ed., 481). In sustaining a tax on the owner of real estate occupied by cigarette dealers, Mr. Justice Brown said:

> "It was within the power of the legislature to make the tax a lien upon the property whereon the business was carried. If general taxes upon real estate and specific taxes for improvements thereto, including pavements, sidewalks, sewers, the opening of streets and keeping them clean, may be made liens upon the property affected, it is difficult to see why a tax upon the business carried on upon such property may not be made a lien as well as a claim against the owner. *The owner is not only chargeable with a knowledge of the law in respect thereto, but is presumed to know the business there carried on, and to have let the property with knowledge that it might become encumbered by a tax imposed upon such business. Sheldon* v. *Van Buskirk,* 2 N. Y., 473; *Brown Shoe Co.* v. *Hunt,* 103 Iowa, 586; 39 L. R. A., 291; 64 Am. St. Rep., 198; 72 N. W., 765; *Polk County* v. *Hierb,* 37 Iowa, 367; *State* v. *Snyder,* 34 Kan., 425; 8 Pac., 860; *Hardten* v. *State,* 32 Kan., 637; 5 Pac., 212; *Sears* v. *Cottrell,* 5 Mich., 251; *Waldron* v. *Lee,* 5 Pick., 323; *Spencer* v. *M'Gowen,* 13 Wend., 256; *Simpson* v. *Serviss,* 3 Ohio C. C., 433."

So, too, in *English* v. *Fanning,* 147 N. W., 215:

> "If knowledge and either active or tacit consent to the illegal use of the building is necessary to justify a decree closing a building, then the decree in this respect is erroneous. This question also has arisen in Iowa. As we understand the cases of *Martin* v. *Blattner, supra,* and *Morgan* v. *Koestner,* 83 Ia., 134, that Court held that under such a state of facts the unlawful use of the building in which the illegal practices are carried on constitutes it a public nuisance which the Court should abate, even though the evidence as to the lack of knowledge on the part of the owner is such that it does not warrant an injunction or a judgment for costs against him. Of course, the owner by giving bond may procure its release at once as provided by section 8781. The granting of the tem-

> porary injunction was notice to the defendant Fanning that illegal practices were charged to be carried on in the building. The owner should then have taken steps to abate the nuisance or at least to determine by legal proceedings whether the terms of his lease were being violated; failing this, he accepted as an alternative the contingency of having the building declared a nuisance and being compelled to give the statutory bond for its release."

It may be frankly conceded that the common law rule is that where a nuisance originates from the use of the premises by a tenant in possession the owner who is without right of re-entry during the term cannot be charged with its maintenance. *Board of Health* v. *Eastlack,* 68 N. J. L., 585. But the force of this rule is abrogated by the statute under review. Laws of 1914, page 316, section 12, which provides:

> "12. If a tenant or occupant of a place defined in this act uses or permits the use thereof in such manner as to create a nuisance as herein defined, the lease or title of such tenant or occupant shall be thereby annulled, and the right of re-entry shall, without notice or process of law, rest forthwith in the owner."

The effect of this decision, then, is to bring the cases under the New Jersey acts within the reasoning of the above cited cases of *Hode* v. *Muscatine County,* and *State* v. *Gilbert.*

Commonwealth v. *Howe,* 13 Gray, 26, was a case involving the constitutionality of a statute declaring all buildings used for the illegal sale or keeping of intoxicating liquors to be common nuisances and to be regarded and treated as such. In attacking the constitutionality of the act, counsel for appellant urged (page 30) that "it does not even require a knowledge of the unlawful use on the part of the owner. * * * But the legislature cannot provide for the destruction of any recognized species of property without giving an opportunity to the owner to protect his property in proceedings in due course of law." (Citing authorities.) Notwithstanding this contention the Court affirmed the constitutionality of the acts.

The constitutional requirement of due process of law is safeguarded to each defendant who is made a party to the suit and received notice of the hearings according to the practice of the Court of Chancery. See *Littleton* v. *Fritz,* 65 Ia., 488, 22 N. W., 641; *State* v. *Jordan,* 72 Ia., 377, 34 N. W., 285; *Schear* v. *Green,* 73 Ia., 688, 36 N. W., 642.

VI.

PROVISIONS OF SECTIONS 8, 9, 10 AND 11 OF THE ACT UNDER REVIEW DO NOT WORK A FORFEITURE. ON THE CONTRARY THEY ARE CLEARLY WITHIN THE LEGISLATIVE POWER OVER NUISANCES.

Appellants contend that the effect of the sections cited providing for the removal and sale of "all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or in aiding and abetting the said nuisance," and directing for the public sale thereof, and also ordering the destruction of all intoxicating liquors, and directing the closing and disuse of the buildings and place for one year from the date of the permanent injunction (unless sooner released) as provided in Section 11 by the filing of a bond by the owner, is a forfeiture, and so contrary to the State and Federal constitution. It is difficult to perceive the force of this argument, in view of the decisions either of the United States Supreme Court or the courts of this State. The right to abate a public nuisance without court order is well recognized at common law. *Blackstone's Commentaries,* Chase's 4th Ed., 533, 1038. Indeed, there is authority for the summary destruction by administrative process, without judicial determination of the fact of a nuisance, of gaming apparatus, and intoxicating liquors. See *Berry* v. *De Maris,* 76 N. J. L., 301, at 309. See also *Lawton* v. *Steele,* 152 U. S., 133, justifying the summary destruction, without judicial process, of fish nets valued at $525.

But whatever may be the limitations upon administrative abatement of nuisances in the exercise of the police power in advance of the judicial determination there can be no doubt whatever of the legislative power to order the effectual abatement of a nuisance *after* a judicial determination of the facts upon which the abatement is to be based. In the Berry case, *supra,* the Court clearly recognizes this fundamental rule, at page 312:

> "While there is no constitutional prohibition against a statutory provision for the forfeiture of property used to commit an unlawful act, such a statutory provision is not in the exercise of the policy power, but a provision which must be executed through the judicial power." *Freund Pol. Pow.,* 525, 526.

In *Smith* v. *Maryland,* 18 How., 71, the United States Supreme Court sustained the destruction of a vessel engaged in unlawful oyster fishing. See also *State* v. *Jerome,* 141 Pac. R., 753, at 757.

> "The closing of a building for a period of six months was a consequence of the unlawful acts of the defendants and was designed to secure the enforcement of the law. In providing for the abatement of a nuisance the legislature may confer upon the Court power to order the personal property used in connection therewith sold, and the proceeds applied in payment of the costs, and that the dwelling house in the absence of the giving of a bond, as provided in the statute, closed for a period of six months." *State* v. *Adams,* 81 Ia., 594; 47 N. W., 770; *Craig* v. *Werthmuller,* 78 Ia., 598; 43 N. W., 606.

VII.

THE AMENDMENT OF 1918 DOES NOT CONTRAVENE ARTICLE IV, SECTION VII, PARAGRAPH 4 OF THE NEW JERSEY CONSTITUTION.

Appellants contend that the amendment of 1918 (chapter 202) is repugnant to the provision of the State Constitution that "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 of 1916 is "An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances and providing for the abatement thereof by the Court of Chancery." The title of the amendment of 1918 is "An Act *to amend the title of and the provisions of* an act entitled 'An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery,' approved March seventeenth, one thousand nine hundred and sixteen."

Appellants rely on *Sawter* v. *Shoenthal,* 83 N. J. L., 499. An examination of the amendment will reveal that its title does conform to the first test laid down by Mr. Justice Swayze's opinion (p. 501); its title does express its immediate object. There is nothing in the amendment which is not *an amendment of the title and the provisions of* the original act of 1916.

But the title also conforms to the other canon laid down in Mr. Justice Swayze's opinion (p. 501), "The true rule is that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law," as that canon is explained by the Court in its opinion (pp. 503-504), and is in exact line with that case. The contention against the acts under review is that "*or intoxicating liquors are habitually sold in violation of law,*" (which words constitute the gist of the amendment, aside from its first section, setting forth the amended title) are not set forth specifically in the title of the amendment.

Compare this state of facts with the facts of the Sawter case. The act of 1874 was "An act to tax intestates' estates, gifts, legacies, devises and collateral inheritances in certain cases." The amendment of 1906 contained in its title the words "An act to tax legacies, etc.," while its body proposed to tax the transfer of legacies, and the amendment was accordingly declared unconstitutional in *Dixon* v. *Russell,* 49 Vr., 296; 50 *id.,* 490. Then came the amendment of 1909, sustained in the Sawter case, and which revived the defective amendment of 1906. It is entitled: "An act to change and amend the title of an act entitled 'An act to tax intestates' estates, gifts, legacies, devises and collateral inheritances in certain cases, approved May 15, 1894." Note that a "tax on the *transfer* of legacies, etc." is *not mentioned* in the title, nor even hinted at; but the amendment of 1906 is sustained, because the title of the act of 1909, "gives notice of the effect of the legislation to one conversant with the existing state of the law." "The habitual sale of intoxicating liquors contrary to law" need not appear in the title in the case at bar any more than "tax on the transfer of legacies, etc." does in the Sawter suit. The analogy is complete. If anything, the case at bar is stronger, because here there is no effort to revive legislation previously unenforceable, but only to extend it to a cognate matter.

The title to the amendment of 1918, finally, is in line with the last restriction mentioned by Mr. Justice Swayze in commenting on *Allison* v. *Corker,* 38 Vr., 596, at page 503 of his opinion: "Under our decision in *Allison* v. *Corker,* 38 Vroom, 596, it is permissible for the legislature to validate an unconstitutional statute by subsequent legislation, provided that it is not attempted by the amendment of the title to import incongruous legislation into an existing statute. The illustrations given by Mr. Justice Collins indicate the line of cleavage. An

act respecting wills, as he says, cannot by amendment of the title be given effect as to transactions *inter vivos;* but an act to repeal an unconstitutional act may be efficacious to compel payment of claims incurred under it, as was held in *Rader* v. *Township of Union,* 10 *id.,* 509." The amendment under review does not attempt to ingraft on the act of 1916 incongruous matters. Both acts deal with nuisances and provide identical remedies. There is a close relation (in fact, in the opinion of experts a causal relation) between the nuisance of prostitution and the nuisance of illegal liquor selling. There is, therefore, no "intermixing in one and the same act of such things as have no proper relation to each other" (Constitution, IV, VII, 4). Beyond question the act and amendment would be valid if it were merely "an act concerning nuisances and the abatement thereof in Chancery." A particular object may be divided into details of particularity, but such details are not essential to a constitutional title.

The matter was thus disposed of in *Walter* v. *The Town of Union,* 4 Vr., p. 350. This case, though in the Supreme Court, has never been reversed or commented upon adversely. On the contrary, it appears to have been accepted as the settled law and cited with approval in opinions rendered in the Court of Errors and Appeals. There the rule is thus stated:

> "The unity of the object must be sought in the end which the legislative act purposes to accomplish, and not in the *details* provided to reach that end. The degree of particularity which must be used in the title of an act rests in legislative discretion. There are many cases where the object might, with great propriety, be more specifically stated, yet the generality of the title will not be fatal to an act, if by fair intendment, it can be connected with it."

The unity of the object which the legislative act proposes to accomplish in the matter before us is to change and amend the original act. The particulars of this change and the details of this amendment were inconsequential. The unity of the object was expressed, and upon the authority just quoted, it is respectfully insisted that "the degree of particularity which must be used in the title of an act, rests in legislative discretion." The soundness of the objection here made can only be justified upon the theory that a particular object fairly expressed in a title must further be subdivided into one or more particulars before the constitutional duty has been fully met. In other words, not only the particular object of the

title must be expressed, but the particulars by which this particular object becomes effective must also be indicated. Such a theory seems to contravene the settled law of this State, not only as determined in the case just quoted, but in the following cases which elucidate the same principle more fully. *Easton R. R. Co.* v. *Central R. R. Co.*, 23 Vr., 267; *Kirkpatrick* v. *New Brunswick,* 13 Stew., 51; *Bumsted* v. *Govern,* 18 Vr., 373; *Seaside Railroad, &c.* v. *Atlantic City,* 71 Atl. Rep., p. 912.

In the case of *City of Beatrice* v. *Edminson,* 117 Federal Reporter, p. 427, the United States Circuit Court of Appeals of the Eighth Circuit, considered the question as to whether an act entitled "An act to amend the title and sections 1, 2, 3 and 4 of an act entitled 'An act to provide for the organization, government and powers of cities of the second class having more than ten thousand inhabitants,'" was obnoxious to Article III. Section 2, of the Constitution of the State of Nebraska, which provided "that no bill shall contain more than one subject and the same shall be clearly expressed in its title." It will be observed that the constitutional provision there under review was practically the same as the clause found in our constitution, and which is controlling in the case at bar. It was strenuously insisted in the case just cited that the object of the amendatory act had not been expressed in its title. The amendment there attacked (in its body) provided that the title of the original act should be changed so as to make it apply to cities having more than five thousand inhabitants, whereas the original act applied, as stated in its title, only to cities having more than ten thousand inhabitants. In disposing of the matter the United States Circuit Court of Appeals for the Eighth Circuit, said:

> "That title is not obnoxious to the provisions of section II, art. 3, of the constitution of Nebraska, but it sufficiently complies with the terms of that section. It clearly and plainly expresses the entire subject treated by the act, the amendment of the title and of the act itself relative to the organization and government of cities of the second class, and the bill treats of but one subject, the subject expressed in the title. No court has ever held, so far as we are advised, * * * that this title was defective, or that the title or the act passed under it was unconstitutional or invalid."

In the case of the *Dyker Meadow Land Co.* v. *Cook,* Appellate Division of the Supreme Court of New York, Vol. 3, the Court held that an act entitled "An act to amend the title of

and to amend an act, entitled 'An act relating to the assessment of real property in the city of Brooklyn, county of Kings, owned and occupied by charitable corporations, societies or institutions,' did not contravene the provisions of Art. III, Sec. 16 of the constitution of the State of New York, which provided that "No private or local bill which may be passed by the legislature shall embrace more than one subject, and that shall be expressed in the title," although the Court held that the act in question was a local law. In this case the change made in the title of the act was to eliminate the words "city of Brooklyn," so that the title as amended expressed the intention of legislating for all property so occupied in the County of Kings. In dealing with the matter, the Court said:

> "All that the act contains is the necessary change in the title and body of the law, and *its provisions relate to the details of one general subject.* It was not essential that the amendment should appear in the title. An expression of the general subject is sufficient. (*People ex rel. Crowell* v. *Lawrence,* 41 N. Y., 137; *Neuendorff* v. *Duryea,* 69 id., 557.)
>
> "An act which purports to amend an existing local law expresses its subject sufficiently in its title if it refers to the law which is amended. (*People ex rel. City of R.* v. *Briggs,* 50 N. Y., 553.)
>
> "In that case it was said, 'It is not requisite that the most expressive title should be adopted, nor should courts criticise too rigidly the details of a bill to find extraneous matter. Every presumption is in favor of the validity of legislative acts, and they are to be upheld, unless there is a substantial departure from the organic law'."

The authority quoted would seem to support the theory upon which our insistence is here presented.

Again, any other view of the matter would impeach the constitutionality of innumerable statutes which have been amended in respect to their titles and contents by precisely this same method.

Some illustrations will serve the purpose of showing the trend of legislative practice:

1. *Chapter 125 of the Laws of 1906, p. 232,* entitled: An act to amend the title and body of an act entitled "An act to provide for the purchase of sites for and the erection and equipment of armories in cities of the first and second class and make appropriations therefor and to provide for the taking of real estate for such sites by commission in case the same

cannot be purchased by agreement," approved March twenty-third, one thousand eight hundred and eighty-eight.

2. *Chapter 124 of the Laws of 1908, p. 187,* entitled: An Act to amend the title and body of an act entitled "An act to regulate the practice of embalming, burial and disposal of dead human bodies; to license undertakers and embalmers, and to punish persons violating the provision thereof," approved May twelfth, nineteen hundred and six.

3. *Chapter 52 of the Laws of 1909, p. 74,* entitled: An Act to amend the title and body of an act, entitled "An act to provide for the purchase of sites for and the erection and equipment of armories in counties of the third class, and making appropriations therefor, and to provide for the taking of real estate for such sites by the commission in case the same cannot be purchased by agreement," approved June eighteenth, one thousand nine hundred and seven.

4. *Chapter 117 of the Laws of 1909, p. 183,* entitled: An act to amend the title and body of an act entitled "An act authorizing the incorporated cities, towns, townships and boroughs of this State to find their floating indebtedness and their matured and maturing bonds," approved March twenty-third, one thousand eight hundred and ninety-nine, as amended by chapter three of the laws of one thousand nine hundred and one, and further amended by Chapter one hundred and ten of the laws of one thousand nine hundred and seven, so as to include villages.

5. *Chapter 142 of the Laws of 1909, p. 215,* entitled: An act to change and amend the title and body of an act entitled "a supplement to an act entitled 'An act to prevent the pollution of the waters of this State by the establishment of a State Sewerage Commission, and authorizing the creation of sewerage districts and district sewerage boards, and prescribing, defining and regulating the powers and duties of such commission and such boards,' approved March twenty-fourth, one thousand eight hundred and ninety-nine," approved April sixteenth, one thousand nine hundred and eight.

6. *Chapter 131 of the Laws of 1910, p. 222,* entitled: An act to amend the title and body of and to supplement an act entitled "An act to permit the retirement, on pension, from public office or position, after forty years' continuous service

therein, of honorably discharged Union soldiers, sailors and marines who served in the War of the Rebellion," approved May seventeenth, one thousand nine hundred and six.

7. *Chapter 136 of the Laws of 1910, p. 232,* entitled: An act to amend the title and body of an act entitled "An act to enable counties to sell and convey or to lease public lands which are not used, needed or desirable for public purposes," approved April thirteenth, one thousand nine hundred and nine.

8. *Chapter 239 of the Laws of 1910, p. 392,* entitled: An act to amend the title and body of an act entitled "An act to provide for the purchase of sites for and the erection of armories in cities of the first and second class in this State, and cavalry armories in municipalities of this State wherein there is now, or hereafter shall be, located the headquarters of a troop of cavalry of the national guard of this State which has been or shall have been, in the service of this State not less than ten years, and making appropriations therefor, and to provide for the taking of real estate for such sites by commission in case the same cannot be purchased by agreement," approved March twenty-third, one thousand eight hundred and eighty-eight.

9. *Chapter 164 of the Laws of 1911, p. 244,* entitled: An act to amend the title of, and a supplement and amendment of, an act entitled "An act for the preservation of sheep, lambs, domestic animals and poultry in the several townships of this State," approved March twenty-second, one thousand nine hundred and one.

10. *Chapter 291 of the Laws of 1911, p. 618,* entitled: An act to amend the title and body of and to further supplement an act entitled "An act to permit the retirement, on pension, from public office or position, after forty years' continuous service therein, of honorably discharged Union soldiers, sailors and marines who served in the War of the Rebellion," approved May seventeenth, one thousand nine hundred and six.

11. *Chapter 304 of the Laws of 1911, p. 660,* entitled: An act to amend the title of and a supplement to an act entitled, "An act to provide for the acquirement of turnpike roads for free public use, and for the permanent improvement and maintenance of the same," approved March twenty-second, one thousand nine hundred and one.

The function and usefulness of legislative practice and practical exposition, and the needless danger to vested and established rights in departing from it, is thus commented upon in *Wallace* v. *Bradshaw*, 25 Vr. at page 178. This opinion was rendered by Chief Justice Beasley, speaking for the Court of Errors and Appeals.

> "Another consideration which is thought to be of great moment in favor of the foregoing view is, that it is in harmony with the opinions on the subject theretofore entertained by the legislature, the executive and by the entire judiciary of the state. No one can even glance at the statute books and fail to perceive that such has always been the practical exposition of this constitutional provision. This is so completely the case that it may be doubted whether an instance can be found where there has been a re-enactment of a repealed law, the repealer of the same having been repealed. In such situations it seems to have been the invariable course to rely for the revival of the original act on the force of the last repealing act; and this practice of legislation has so long prevailed that the establishment, at this late day, of a doctrine rendering this multitude of laws invalid would be attended with the utmost confusion and embarrassment. I cannot hesitate to say that, in my opinion, a number of private titles would be jeoparded and many public interests embroiled or subverted. I am afraid that the laws affecting our taxes and municipalities would be disastrously disturbed. I have made no elaborate study with respect to the extent of the evils that would probably result from this cause, but upon almost casually opening the statute book have chanced upon a few illustrations," etc.

See also the opinion in *Sawter* v. *Shoenthal,* 83 N. J. L., 499, at 502, to the same effect.

It is therefore submitted that the amendment of 1918 conforms to every test of *Sawter* v. *Shoenthal* and to the test of continued usage.

VIII.

THE ACTS UNDER REVIEW ARE IN CONFORMITY WITH THE LEGISLATURE OF THE MAJORITY OF THE STATES OF THE UNION AND CONFORM TO SOUND PRINCIPLES OF LEGISLATIVE AND ADMINISTRATIVE THEORY.

Acts similar to the acts under review are now in force in more than half of the states in the Union: Arizona, Civil Code

(1913), Secs. 4340-9; California, Laws (1913), Ch. 17; Colorado, Laws (1915), Ch. 123; Connecticut; District of Columbia, Public No. 52, 63d Congress (1914); Georgia; Idaho, Laws (1915), Ch. 43; Illinois, Laws (1915), page 371; Indiana, Laws (1915), Ch. 122; Iowa, Code (1915), Secs. 4944-hl-hll; Kansas, Laws (1913), Ch. 179; Maine, Rev. Stat. (1903), Ch. 22, Secs. 1-4; Massachusetts, Laws (1915), Ch. 624; Michigan, Laws (1915), No. 272; Minnesota, General Statutes (1913), Secs. 8717-26; Nebraska, Rev. Stat. (1913), Secs. 8775-82; New York, Laws (1914), Ch. 365; North Carolina, Laws (1913), Ch. 761; North Dakota, Comp. Laws (1913), Secs. 9644-51; Ohio; Oregon, Laws (1913), Ch. 274; Pennsylvania, Laws (1913), No. 852; South Dakota, Penal Code (1913), page 603; Tennessee, Laws (1913), 2nd Spec. Sess., Ch. 2; Texas, Penal Code (1916), Arts. 501-6; Utah, Laws (1913), Ch. 99; Virginia, Laws (1916), Ch. 463; Washington, Code Supp. (1913), Title 135, Secs. 1701-15; Wisconsin, Statutes (1915), Secs. 3185-b-h.

Throughout the many citations to decisions under these acts, no case has been found where the legislative scheme for controlling the evils resulting from these nuisances has been overthrown as unconstitutional. This notwithstanding the fact that some of these laws are much more thorough-going than the statutes under review; *e. g.*, in imposing a $300 tax on the real estate. (See *Hodge* v. *Muscatine County,* 196 U. S., 276; *State* v. *Gilbert, supra; State* v. *Jerome, supra; English* v. *Fanning, supra*). On the contrary, similar acts have been sustained by judicial decisions in most of the states above mentioned.

The acts in question, moreover, represent sound legislative and administrative policy. The time has long since passed when the health, morals and safety of the people of the State may be protected simply by labeling the objectionable practice as a crime and imposing a punishment upon its commission. Such a system may work in an agricultural or rural community, but it is not adapted to our modern social and industrial civilization, with its conglomerate masses of population concentrated in urban districts. This fact is well recognized in other branches of the police power. Examples of the modern practice have already been given. If the State would protect the health of its citizens, it gives supervisory powers to boards of health, together with the right to call on the aid of the Court of Chancery. In the nuisances under consideration, however, supervision is not desired, but complete eradication and

extermination of the nuisances. How better accomplish this object than by putting it within the power of the prosecutor of the pleas or of any resident of the County to invoke the aid of equity? As the United States Supreme Court said, in *Eilenbecker* v. *District Court,* 134 U. S., 31, cited *supra:*

> "Certainly it seems to be quite as wise to use due process of the law and the powers of the Court to prevent the evil, as to punish the offense as a crime after it has been committed."

The act of 1916 is subsaantially the same as is being urged upon the states which have not yet adopted it by the Federal Committee on Training Camp Activities (Raymond B. Fosdick, chairman). In the preface to a pamphlet entitled "Standard Forms of Laws for the Repression of Prostitution, etc." (War and Navy Department, Commissions on Training Camp Activities, Washington, D. C.), Mr. Fosdick says:

> "That prostitution and venereal disease at the beginning of the period of mobilization presented the greatest single menace to military efficiency cannot now be doubted. That prostitution and venereal disease can be greatly reduced has been demonstrated by the combined experience of the country in the past eighteen months. If these twin evils menace the efficiency of the military forces in time of war they present a constant menace to the whole population in time of peace. If it is a military necessity to combat them to keep the soldier and sailor fit to fight, it is equally as vital that in times of peace society must defeat these greatest of all foes to civilian happiness and efficiency.
>
> "The Standard Forms of Law herein presented have been prepared by the Law Enforcement Division of the Commission on Training Camp Activities for presentation to the legislatures of the various states for their consideration. * * * In the preparation of them the combined experience of the country in its fight on vice and venereal disease since the beginning of the mobilization has been taken into account."

The third of the seven standard forms (p. 12) "is based largely on the law of Minnesota." The scope and contents are substantially the same as in the act under review, as may be seen from the section headings: terms defined; who are guilty; action to enjoin and abate and who may maintain same; jurisdiction and procedure—temporary injunction; trial proceedings, permanent injunction; order of abatement; duty of county attorney, proceeds; punishment for contempt; tax of $300; imposi-

tion of tax against property—service on owner; other sections to stand if one or more are declared unconstitutional.

The legislation in the many states which have passed the act and the attitude of the Federal authorities is important and significant in revealing the true nature of the acts as a wise and discriminatory exercise of the police power.

IX.

IT IS THEREFORE RESPECTFULLY SUBMITTED THAT THE ACTS IN QUESTION ARE NOT ONLY CONSISTENT WITH THE FEDERAL AND STATE CONSTITUTIONS, BUT THAT THEY ARE INSTANCES OF THE WISE USE OF THE LEGISLATIVE AND ADMINISTRATIVE POWERS OF THE STATE.

ARTHUR T. VANDERBILT,
Solicitor for and of Counsel with Complainant-Respondents.

CHAPTER 154, LAWS, SESSION OF 1916.

An Act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Every building or place used for the purpose of lewdness, assignation or prostitution, or wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur, is hereby declared to be a nuisance, which shall be abated as hereinafter provided.

2. For the purposes of this act, the word "building" shall be held to mean and include so much of any structure of any kind as is or may be reached through the same outside entrance. The word "place" shall be held to mean and include any privately-owned park, picnic or recreation ground. The word "person" shall be held to mean and include any one or more individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees.

3. Whenever there is reason to believe that such a nuisance is kept, maintained or exists, the prosecutor of the pleas, or any resident of the county, shall have power and authority to maintain an action in the Court of Chancery to abate and prevent such nuisance and to enjoin perpetually the person or persons maintaining or permitting the same, and the owner, lessee or agent of the building or place in or upon which such nuisance exists, from directly or indirectly maintaining or permitting such nuisance.

4. The action shall be brought in the name of the said prosecutor or the said resident, and it shall be unnecessary to allege or prove personal or special damage.

5. The action shall be commenced by filing a verified bill of complaint and the issue of subpœna. All proceedings in such action shall be in accordance with the usual practice in the Court of Chancery.

6. Upon the filing of any such bill the Chancellor, being satisfied of the sufficiency thereof, shall issue an order upon the defendants named therein to show cause on such day as shall be fixed why an injunction should not issue in accordance with the prayer of the bill, with restraint of the alleged nuisance and the

removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place pending the further order of the court. And upon the return of the said rule, if the Chancellor shall be satisfied of the sufficiency of the proofs submitted, he shall issue a temporary injunction, without bond, enjoining and abating the nuisance complained of, and enjoining the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place until the further order of the court.

7. Evidence as to the general reputation of the building or place of the alleged nuisance, or the person or persons in occupation thereof, shall be received, as well as an admission or finding of guilt against any such person or persons, upon a charge involving prostitution, lewdness or assignation, for the purpose of proving the existence of the said nuisance.

8. If the existence of the nuisance complained of shall be established to the satisfaction of the court upon final hearing, an injunction shall issue perpetually enjoining the person or persons maintaining or permitting such nuisance and the owner, or his agent, and the lessee and his agent, of the building or place in and upon which the nuisance exists, from directly or indirectly maintaining or permitting such nuisance. And the said injunction shall likewise direct the removal from the building or place of the said nuisance, of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or aiding and abetting the said nuisance, and shall direct the public sale thereof in the manner provided for the sale of chattels under execution. The said injunction shall likewise direct the effectual closing and disuse of the building or place of the said nuisance for any purpose for the period of one year from the date of the said injunction, unless sooner released, as hereinafter provided. While such injunction or any restraining order, or temporary injunction, remains in effect such building or place shall be and remain as though in the custody of the court.

9. If the court shall determine that the nuisance complained of exists as alleged, there shall be allowed to the complainant resident, in addition to the usual costs, a reasonable sum for counsel fees and expenses incurred. But if the court shall find that the action was instituted without reasonable cause, then the usual costs shall be taxed against the complaining resident. For removing and selling the movable property the officer shall be entitled to receive the same fees as are allowed for a levy upon and sale of chattels under execu-

tion. For closing the building or place and keeping the same closed a reasonable sum shall be allowed by the court.

10. The proceeds of the sale of movable property under the preceding section shall be applied, first, to the fees and costs of such removal and sale; second, to the allowances and costs of closing and keeping closed such building or place; third, to the payment of plaintiff's costs and allowances. The balance, if any, shall be paid in the poor fund of the municipality in which such building or place is located. If the proceeds of such sale do not fully discharge all such costs, fees and allowances, unless the balance is paid by the owner of such building or place, or his agent, execution shall issue and the building or place be sold, and the proceeds of such sale be applied in like manner as the proceeds of the sale of movable property, except that any balance of proceeds from the sale of real estate shall be paid to the owner of the property sold.

11. If the owner of the building or place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees and allowances which are a lien on the building or place and files a bond in the full value of the property, to be ascertained by the court, with sureties to be approved by the court, conditioned that he will immediately abate any such nuisance that may exist at such building or place and prevent the same from being established or kept thereat within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed to be delivered to said owner, and said order cancelled so far as the same may relate to said property. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

12. If a tenant or occupant of a place defined in this act uses or permits the use thereof in such manner as to create a nuisance as herein defined, the lease or title of such tenant or occupant shall be thereby annulled, and the right of re-entry shall, without notice or process of law, rest forthwith in the owner.

13. Any violation or disobedience of either any injunction or order expressly provided for by this act shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

14. Nothing herein contained, nor any proceeding or order in accordance herewith, shall be held to repeal or limit the operations

of any law of this State relating to the punishment of crime, but the powers and rights hereby created shall be held to be in addition thereto.

15. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 17, 1916.

CHAPTER 202, LAWS OF 1918.

An Act to amend the title of and the provisions of an act entitled "An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March seventeenth, one thousand nine hundred and sixteen.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The title of the above entitled act be and the same is hereby amended to read as follows:

An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of intoxicating liquors in violation of law are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery.

2. That section one of the act to which this is an amendment be and the same is hereby amended to read as follows:

1. Every building or place used for the purpose of lewdness, assignation or prostitution, or wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of intoxicating liquors in violation of law, are permitted or occur, is hereby declared to be a nuisance, which shall be abated as hereinafter provided.

3. That section eight of the act to which this is an amendment be and the same is hereby amended to read as follows:

8. If the existence of the nuisance complained of shall be established to the satisfaction of the court upon final hearing, an injunction shall issue perpetually enjoining the person or persons maintaining or permitting such nuisance and the owner, or his agent, and the lessee and his agent, of the building or place in and upon which

the nuisance exists, from directly or indirectly maintaining or permitting such nuisance. And the said injunction shall likewise direct the removal from the building or place of the said nuisance, of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or in aiding and abetting the said nuisance, and shall direct the public sale thereof in the manner provided for the sale of chattels under execution; *provided, however,* that any and all intoxicating liquors that may be removed shall be destroyed as soon as may be after the same are no longer required for evidence. The said injunction shall likewise direct the effectual closing and disuse of the building or place of the said nuisance for any purpose for the period of one year from the date of the said injunction, unless sooner released, as hereinafter provided. While such injunction or any restraining order, or temporary injunction, remains in effect, such building or place shall be and remain as though in the custody of the court.

4. That section nine of the act to which this is an amendment be and the same is hereby amended to read as follows:

9. If the court shall determine that the nuisance complained of exists as alleged, there shall be allowed to the complainant resident, in addition to the usual costs, a reasonable sum for counsel fees and expenses incurred. But if the court shall find that the action was instituted without reasonable cause, then the usual costs shall be taxed against the complainant resident. For removing and selling the movable property (except intoxicating liquors) the officer shall be entitled to receive the same fees as are allowed for a levy upon and sale of chattels under execution. For closing the building or place, and keeping the same closed, a reasonable sum shall be allowed by the court.

5. That section ten of the act to which this is an amendment be and the same is hereby amended to read as follows:

10. The proceeds of the sale of movable property (except intoxicating liquors) under the preceding section shall be applied, first, to the fees and costs of such removal and sale; second, to the allowances and costs of closing and keeping closed such building or place; third, to the payment of plaintiff's costs and allowances. The balance, if any, shall be paid in the poor fund of the municipality in which such building or place is located. If the proceeds of such sale do not fully discharge all such costs, fees and allowances, unless the balance is paid by the owner of such building or place, or his

agent, execution shall issue and the building or place be sold, and the proceeds of such sale be applied in like manner as the proceeds of the sale of movable property, except that any balance of proceeds from the sale of real estate shall be paid to the owner of the property sold.

6. This act shall take effect immediately.

Approved March 4, 1918.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between
CLARENCE H. HEDDEN,
Complainant-Respondent,
and
THOMAS J. HAND,
Defendant-Appellant.

ERNEST G. RANDAL,
Complainant-Respondent,
and
HILLSIDE PLEASURE PARK COMPANY, WILLIAM E. THALLER and EDWARD THALLER,
Defendant-Appellants.

On Bill, &c.

Brief of Defendant-Appellants.

BRIEF OF DEFENDANT-APPELLANTS

The bill in the Hedden case alleges that at the time of its filing and on January 2nd, January 30th, July 7th, July 14th, August 18th and September 15th, 1918, all of which dates, except the first, are Sundays, and continuously for some time prior to said dates, appellant Thomas J. Hand, did keep and maintain at the premises known and designated as No. 504 South Orange avenue, Newark, N. J., a building and place for the purpose of lewdness, assignation and prostitution and other indecent and disorderly acts and wherein and upon which acts of lewdness, assignation and prostitution and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur. The bill in the Randal case alleges that at the time of its filing and on August 17, 18, 21, 24, 25, 31, September 1, 8, 14 and 15, 1918, and continuously for some time prior thereto, the appellant, Hillside Pleasure Park Company and the appellant, William E. H. Thaller, did keep and maintain at the premises known as Hillside Park, in the Town of Belleville, N. J., a place and buildings for the purpose of lewdness, assignation and prostitution, and other indecent and disorderly acts, and wherein and upon which acts of

lewdness, assignation and prostitution, and the habitual sale of intoxicating liquors in violation of the law, and other indecent and disorderly acts are permitted and occur, and that the appellant, Edward Thaller, at the time and on the days aforementioned, and continuously for some time prior thereto, did keep and maintain at the premises aforesaid a place wherein and upon which the habitual sale of intoxicating liquors in violation of the law is permitted and occurs.

The prayer for relief in each bill is that an injunction may issue out of and under the seal of the Court of Chancery, directed to the appellants perpetually enjoining them, their agents, and lessees from maintaining or permitting such nuisance, and likewise enjoining the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from said buildings and places, pending the final hearing of this cause; and ultimately directing the removal from said buildings and places of all furniture, furnishings, musical instruments and personal property, excepting clothing, used or capable of being used in the maintenance of or in aiding or abetting the said nuisance, and directing the public sale thereof in the manner provided for the sale of chattels under execution (providing, however, that any and all intoxicating liquors that may be removed shall be destroyed as soon as may be after the same are no longer required for evidence), as is provided by chapter 154 of the Laws of New Jersey for 1916, and the amendment thereto contained in chapter 202 of the Laws of New Jersey for 1918; and further providing that if sufficient funds should not be realized from such sale for the payment of costs, fees and expenses as provided by said acts hereinbefore mentioned, that execution shall issue for the sale of the said premises, in accordance with said acts; and further directing the effectual closing and disuse of said premises for any purpose for the period of one year from the date of said injunction, unless sooner released by order of the Court of Chancery, as provided in said acts (Case, pages 1-3).

The appellants in both cases moved to strike out the bills on the ground that chapter 154 of the Laws of New Jersey for 1916 and the amendments thereto contained in chapter 202 of the Laws of New Jersey for 1918, under which these suits were instituted are unconstitutional (Case, page 4).

From an order denying the motion to strike out the bill of complaint (Case, page 6) the appellants appeal on the following grounds: The Court of Chancery is without jurisdiction to

adjudicate upon, hear or make any order or decree in the cause, for the reason that no such power or jurisdiction is conferred by law upon the Court of Chancery or exists therein save as purports to be conferred and to exist under an act of the Legislature of the State of New Jersey entitled "An Act declaring all buildings and places wherein and upon which acts of lewdness, assignation or prostitution are permitted to occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March 17th, 1916, being chapter 154 of said laws of 1916, and the act amendatory thereto being chapter 202 of the Laws of New Jersey for 1918, which said acts so attempting to confer such jurisdiction upon said Court of Chancery are ineffective and invalid, being contrary to article I., paragraphs 7 and 8 of the Constitution of the State of New Jersey, because they deprive the appellants of the right of trial by jury in that they equivalently prescribe a method of procedure and direct the Court of Chancery to impose a penalty without a trial by jury, and being also contrary to article I., paragraph 9, of said Constitution, in that they subject appellants to a trial for a criminal offense, which offense is not within the exception of said paragraph, without a presentment or indictment of a grand jury, and being also contrary to article I, paragraph 16, of said Constitution, in that they authorize the taking of appellants' property for public use without just compensation; and being also contrary to article IV, section VII, paragraph 4 of said Constitution; that by the proceedings in said cause it is sought to deprive the appellants of their property without due process of law and prevent them from having the equal benefit and advantage of the laws, contrary to the Constitution of the United States of America, and particularly to the first paragraph of the XIV amendment thereto; that said acts are harsh, unreasonable and unjust in that, said acts provide for a penalty and render a cause *res adjudicata* with further proviso that despite the adjudication and penalty which said acts impose, the appellants may be prosecuted in the Criminal Court and a further penalty imposed for the same offense and that the said acts are in divers other respects contrary to the law of the land and of the rights and privileges possessed by the appellants.

The Court of Chancery is without jurisdiction to adjudicate upon, hear or make any order or decree in these causes independent of any law conferring such jurisdiction.

The offense charged in the bills of complaint constitute a public nuisance, indictable at common law and in our State punishable by fine and imprisonment in the State prison.

Inns & Taverns Act, Section 66, Compiled Statutes, page 2902.

State v. *Williams,* 30 N. J. L., 102.

State v. *Anderson,* 40 N. J. L., 224.

The Court of Chancery will not administer the criminal law of the State, nor will it enjoin a public nuisance at the suit of a private citizen unless he suffers, either in the person or his property, some special injury which is peculiar to himself and not as one of the public.

16 Am. & Eng. Enc. Law, 2nd Ed., p. 363.

Humphreys v. *Eastlack,* 63 N. J. E., 136.

Van Wagenan v. *Cooney,* 45 N. J. E., 25.

Attorney General v. *New Jersey Railroad & Transportation Co.,* 3 N. J. E., 136.

Morris & Essex Railroad Co. v. *Prudden,* 20 N. J. E., 530.

Hinchman, et al. v. *Paterson Horse Railroad Co.,* 17 N. J. E., 75.

Attorney General v. *Utica Insurance Co.,* 2 Johns. Ch. 371.

People ex rel. L'Abbe, et al. v. *District Court of Lake County,* 58 Pac. Rep. 604 (Spt. Ct. Col. 1899).

"There is the highest authority for the refusal to allow an injunction simply to prevent the commission of a crime." *Ocean City Ass'n* v. *Schurch,* 57 N. J. E., 268.

"It is a trueism that Courts of Equity are not fitted for the administration of criminal law, and attempts to extend their jurisdiction to that field, in any degree, should receive no favor from those whose duty it is to preserve the landmarks of the law."

Heber, et al. v. *Portland Gold Mining Company,* 172 Pac. Rep., 12 (Supreme Court, Colorado, 1918).

No special injury to the respondents is complained of in the bills of complaint. (Case, pages 1-3.)

The Act of the Legislature of the State of New Jersey entitled "An Act declaring all buildings and places wherein or

upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March 17th, 1916, being Chapter 154 of said laws of 1916, and the act amendatory thereto, being Chapter 202 of the laws of New Jersey for 1918, which acts attempt to confer such jurisdiction upon the Court of Chancery, are ineffective and invalid, being contrary to the Constitution of the State of New Jersey and also contrary to the Constitution of the United States of America.

The above acts are contrary to article 1, paragraphs 7 and 8 of the Constitution of the State of New Jersey, because they deprive the appellants of the right of trial by jury in that they equivalently prescribe a method of procedure and direct the Court of Chancery to impose a penalty without a trial by jury.

The North Pennsylvania Coal Company v. *Snowden,* 42 Penn., 488, Sup. Ct. Penn., 1862.

Ex Parte Allison, 90 S. W., 870, 2 L. R. A. (N. S.), 1111.

Attorney General v. *Clever,* 18 Vesey, Jr., 217.

In *Ex Parte Allison,* which was an application for a writ of habeas corpus to secure the release of petitioner from custody to which he had been committed for failure to obey an injunction forbidding his operating a gambling house, and where, as in this case, it was contended that the act under which the action was brought was unconstitutional, the Court said:

> "The main argument against the power the Legislature has attempted to exercise by the passage of the Act in question is that it deprives the defendant in the action of the right of a trial by jury and therefore violates the provision of our Bill of Rights, which declares that 'The right of a trial by jury shall remain inviolate.' This may present a serious difficulty in those jurisdictions in which, as at Common Law, legal and equitable remedies were kept distinct and administered in separate Courts. In courts of law the parties are entitled to have the issues of fact determined by a jury, which is not the case in a court of equity. Hence it might be that in such jurisdiction a statute which attempted to confer upon a court of equity the power to try a cause which was previously cognizable in a court of law would be held obnoxious to the objection that it deprived the parties of the right of trial by jury. But under our system, in which law

> and equity are blended and the right of a trial by jury exists, whether the remedy be legal or equitable, the difficulty vanishes. Before the injunction could be made perpetual under the statute in question, it is the right of the defendant to have the jury pass upon the facts."

The case of *The North Pennsylvania Coal Company* v. *Snowden, supra,* was a suit in equity pursuant to an act of the Legislature of Pennsylvania providing, among other things, that any person claiming to be a tenant in common, joint tenants or otherwise interested in any coal or iron mines, etc., and which said tenancy claim or right shall be denied or resisted by any other person or persons claiming the same, it shall be lawful for such tenant in common, etc., to apply by bill or petition in equity to the Court of Common Pleas setting forth the right or interest he claims, etc., and that the existence of such right or interest is denied by the persons claiming the same, whereupon the Court shall proceed to examine, adjudicate and determine the rights of the several parties agreeably to the course of a Court of Chancery.

The Trial Court sustained the bill.

The Supreme Court of Pennsylvania reversed the decree of the lower Court on the ground that the Legislature in authorizing the trial of such cases "agreeably to the course of a Court of Chancery" deprived the appellant of his constitutional right of a trial by a jury.

Mr. Justice Strong, who delivered the opinion of the Court said, among other things:

> "Then what is the bill more than an attempt to obtain, through a decree of the Chancellor, the possession and enjoyment of certain mining rights, from which he claims he has been deforced? * * * The bill seeks to secure precisely what would be obtained by the common-law action of ejectment. * * * The distinction between what are known as equity cases and those which are not, has always been recognized in this State, from its earliest existence as a commonwealth. If the complainant's case, then, is not saved by the act of Assembly of April 22d, 1856, his bill should have been dismissed, because it presented no case of which the Court could assume jurisdiction in equity. * * * It is noticeable that this act changes not so much the tribunals in which the controversies of which it speaks may be tried, as it does the

mode of trial. The controversies must be adjudicated in the manner prescribed in the act of 1850, and that expressly enacts that the Court shall proceed 'agreeably to the course of a Court of Chancery.' What that course is, is well known. The Chancellor adjudicates not only upon the equities of the case, but he determines the facts out of which the equities arise. He may, indeed, call in the aid of a jury, but their verdict is not binding upon him as it is upon a court of law; he may disregard it, and decree in opposition to it. Trial, according to the course of a Court of Chancery, then is trial by a single judge. But if there is any right to which, more than all others, the people of Pennsylvania have clung with unrelaxing grasp, it is that of trial by jury. They brought it with them from the land of their fathers. In every constitution which has been adopted, they have taken care to secure it against infringement, and put it beyond the power of either the executive, the Legislature, or the courts to take it away from any individual * * *.

The Constitution of 1790 and the amended one of 1838 contain substantially the same provisions, though, if possible, more emphatically stated. Their language is, 'Trial by jury shall be as heretofore and the right thereof remain inviolate.' What can this mean, but that the right of having controverted question of fact in common law cases, decided by a jury, should be beyond the reach of any department of the government, whether it be the Legislature, executive or the judiciary? This was the right which had always been enjoyed before, and if the constitutional provisions were not intended to protect that in all its length and breadth, they can mean nothing. It is true, the Legislature are authorized to vest in the courts such powers (beyond those enumerated), to grant relief in equity, as shall be found necessary (Art. V, sec. 6), but this must be understood as referring to powers in equity cases, in that class of cases of which Chancery has jurisdiction. Such an understanding is necessary to make the different parts of the Constitution consistent with each other, and to give effect to all. It cannot mean that the Legislature may confer upon the Supreme Court and the Courts of Common Pleas the power of trying, according to the course of Chancery, any question which has always been triable

according to the course of law by a jury. If it can, then an ejectment founded solely on a legal title, an action of debt on bond, or replevin, or an action of trespass may be sent into Chancery, all contested facts in it be decided by the judge, and the intervention of a jury be unknown. Then, what has become of the constitutional right of the citizen? Such a doctrine would startle the people of the commonwealth, and justly, for it would deprive them of one of their most valuable privileges. No power in our government can take from the litigant the right to have his case tried by a jury, substantially in the mode and with the same effect as that which belonged to jury trials in similar cases, when the Constitution of 1776 was adopted. What is law and what is equity is a judicial question. It belongs, therefore, exclusively to judiciary, but, were it admitted that the Legislature could authoritively convert a legal right into an equitable one, a court of equity could not, as such, enforce it. The judiciary, no more than the Legislature, can deny to any litigant the right of trial by jury, in a case appropriate to such a mode of trial.

The act of 1856 then is applicable only to cases in which the rights of a complainant are equitable. It would conflict with the Constitution if it had a more extended application.

The defendants in this case had a right to a trial according to the rules of law. Of this mode of trial they could not be deprived, and even the act of 1856 furnished no sufficient warrant for denying it to them. It follows that this was not a case of which a court of equity had jurisdiction, and the decree must therefore be reversed."

In the case of *Attorney General* v. *Clever, supra,* at page 217, which was a suit by the attorney general at the instance of certain individuals, to restrain the defendant from carrying on the manufacture of soap, an industry very obnoxious and offensive to the residents in the neighborhood of the factory, Lord Chancellor Eldon said:

"The instance of the interposition of this Court upon the subject of nuisance being very confined and rare, more is, I believe, to be collected from what has been done in the Court of Exchequer upon discussion of the

right of the attorney general by some species of information to seek on the equitable side of the court relief as to nuisance; and, if I may use those terms, preventative relief. The case, cited by Lord Hardwick as having occurred before Lord King, was an information here by the attorney general against a public nuisance by stopping a highway. Analogous to that there have been many cases in the Court of Exchequer of nuisance to harbors; which are a species of highway; and, if the soil belongs to the Crown, there is one species of remedy for that: The Crown may abate the obstruction, as it is upon the King's soil. Where it is not upon the King's soil, but merely a public nuisance to all the King's subjects, though the suit may be in the same form, the law is laid down in treatises, particularly by Lord Hale, De Portibus Maris (chapter VII., Hargrave's Law Tracts, Volume 1, p. 85), then upon the ground of public nuisance, and not as an obstruction upon the King's soil, it is a question of fact, which must be tried by a jury; and, though the suit may be entertained, the Court would be bound to try the fact by the intervention of a jury."

In our jurisdiction the Court of Chancery may, in its discretion, authorize a jury if necessity demands, but the Court is not bound by the findings of the jury.

Carpenter v. *Easton & Amboy R. R. Co.*, 26 N. J. E. 168.

Section 8 of Chapter 116 of the Laws of 1915 provides as follows:

"8. Jury Trial. If any question, ordinarily determinable at law and requiring jury trial, arise in a suit of which the Court of Chancery has jurisdiction, a jury trial, if required, may be ordered, but shall be deemed to be waived unless demanded in the pleadings. In case of such demand, if the issue be one requiring a jury trial, the Court shall send such issue of fact to a Court of Law for trial according to the existing practice.

But in all cases referred to in this section the Court of Chancery shall retain the cause until the legal question shall be determined, or until an adequate opportunity to determine the same shall have been given, unless justice or the public interest requires a dismissal of the cause."

That this provision as to jury trial is not mandatory is evi-

dent from its language and this is further shown by Section 2 of the same act which says, "The word 'may' is not mandatory."

The above acts are contrary to Article I, paragraph 9 of the Constitution of the State of New Jersey in that they subject the appellant to a trial for a criminal offense without a presentment or indictment of a grand jury.

As the offenses charged against the appellants in the bill constitute a public nuisance, a crime indictable at common law and in this State punishable by fine and imprisonment in the State prison, the appellants should not be required to answer for the same unless on the presentment or indictment of a grand jury, and the Legislature cannot, by giving the Court of Chancery jurisdiction over such offenses, deprive a person of his constitutional safeguard.

State v. *Anderson,* 40 N. J. L. 224 (N. J. Sup. Ct., 1878).

Atlantic City v. *Rollins,* 76 N. J. L. 254 (Sup. Ct., 1908).

State v. *Rodgers,* 90 N. J. L. 60 (Sup. Ct., 1917).

In the case of *State* v. *Anderson, supra,* the defendant, who conducted a saloon in the City of Paterson, was indicted for keeping a disorderly house, by frequently selling therein ardent spirits contrary to law.

By an act approved March 26, 1874, it was declared that where the ordinance of a city provided for the punishment of the offense of keeping a disorderly house, it should not thereafter be lawful to prosecute, by indictment, any person accused of keeping a disorderly house in such city where the alleged offense consists only of the continuous or frequent violation of the provisions of the laws inhibiting the sale of ardent spirits by unqualified persons.

At the time in question there was an ordinance in the City of Paterson forbidding the keeping of a disorderly house within the city under penalty of twenty-five dollars.

On case certified from the Passaic Quarter Sessions to the Supreme Court, the question of the constitutionality of the above provision of the said act was squarely presented. In holding the same unconstitutional and sustaining the indictment Chief Justice Beasley, who rendered the opinion of the Court, said,

"The keeping of a disorderly house is a crime indictable at common law and in this State it is punishable by a fine and imprisonment in the State prison. Therefore, it is clear that if this offense can, for the purpose of crimination, trial and punishment, be put into the hands of these municipal authorities, it follows that all common law offenses of the same grade can be, in like manner, so deposited. This, I think, cannot be conceded. Such an arrangement would, in a very plain way, infringe an important provision of the constitution of this State. Article I, section 9, of that instrument declares that 'No person shall be held to answer for a criminal offense, unless on the presentment or indictment of a grand jury, except in cases of impeachment, or in cases cognizable by justices of the peace,' &c. The purpose of this clause was to prevent the bringing of any citizen under the reproach of being arraigned for crime before the public, unless, by a previous examination taken in private, the grand inquest had certified that there existed some solid grounds for making the charge. It took from the law officer of the State, the attorney-general, one of the established prerogatives of his office: that of filing his information against supposed offenders, and thus putting them on trial at his own volition. The reputation of every man was thus put under the care of a single specified body. The language of the constitutional clause is very comprehensive, and the specified exceptions show conclusively that it was intended to cover the residue of the entire field of criminal accusation. In the presence of such a prohibition, how then is it permissible to put a man on trial before a city court, charged with this common law offense, without the preliminary sanction of a grand jury. If it be said the punishment is only a fine, the answer is, the restraining clause in question has nothing to do with the result or effect of the trial, its object being to save from the shame of being brought before the bar of a criminal court, except in the authorized method after an antecedent inquisition. I am clearly of opinion that a trial of a person for this offense before the municipal court would be an act utterly void."

In the case of *Atlantic City* v. *Rollins, supra,* the certiorari brought up a judgment rendered by the recorder of Atlantic City convicting the prosecutrix of keeping a disorderly house.

It was contended that the conviction was authorized by city ordinance and that such ordinance was authorized by "An Act relating to, regulating and providing for the government of cities." (P. L. 1902, p. 284.)

In setting aside the conviction, the Supreme Court through Mr. Justice Garrison said:

> "If the statute cited or any other statute purports to authorize the prosecution and conviction of the offense of keeping a disorderly house otherwise than upon an indictment by the grand jury, such statute is invalid upon constitutional grounds. This is established in this court by the case of State *v.* Anderson, 40 N. J. Law, 224."

In the case of *State* v. *Rodgers, supra,* the defendant was convicted by the recorder of being a disorderly person under Chapter 67 of the Laws of 1913. (Pamph. L., p. 103), which act provides that any person who operates an automobile, motor or any other vehicle over any public street or highway while under the influence of intoxicating liquors shall be adjudged to be a disorderly person, and upon conviction thereof shall be punished by an imprisonment of not less than thirty days and not more than six months.

The Supreme Court in reversing the judgment said that the offense charged against the defendant was a public nuisance indictable at common law and that the Legislature could not deprive the defendant of his constitutional safeguard by authorizing the prosecution and imprisonment of the defendant as a disorderly person.

If the Legislature cannot require a person to answer for an offense indictable at common law, unless upon a presentment or indictment by a grand jury, even though the punishment for said offense is made less severe, how can it be contended that the Legislature can authorize the Court of Chancery to require a person to answer for such an offense and forfeit his property without such preliminary sanction of a grand jury?

If it be contended that the Court of Chancery is not a Criminal Court and that the proceedings in question are not criminal proceedings, the fact remains, that the defendants are required to answer for a criminal offense, namely, the maintaining of a public nuisance, and are required to interpose the same defense that they would be required to interpose in defending themselves in a Criminal Court if they were placed on trial pur-

suant to an indictment; and in order to sustain this suit, the complainants must prove such facts as would be necessary for the State to prove in order to convict the defendants of maintaining a common nuisance.

The defendants in these cases are placed under the reproach of being arraigned for a crime before the public, and the fact that they are arraigned before a Court of Chancery and not a Criminal Court does not make the shame to which they are brought any the less.

The Constitutional provision requiring an indictment before a person is required to answer for a criminal offense is for the very purpose of preventing the bringing of any person under such reproach and for the purpose of protecting his reputation. The Legislature, however, in this instance, destroys this Constitutional safeguard and places the reputation of a person in the hands of another, who, through malice or some other ulterior motive, may wreck and ruin such reputation with little, if any danger to himself.

It is clear that the objects of the acts in question are not only to abate the nuisance but to punish the offender. This is evident from the nature of the forfeiture imposed which may, in a good many instances, be more severe than a penalty imposed by law in cases where the defendant is convicted in a Criminal Court of the offense charged in the bill.

Let us take a step further and let us suppose a case where an injunction has been issued pursuant to the provisions of the above acts, and sometime thereafter the defendant is charged with maintaining the nuisance in violation of the injunction and a rule is made requiring the defendant to show cause why he should not be punished for contempt. In these proceedings the defendant is charged with nothing more or less than maintaining a common nuisance, which is an indictable offense. If found guilty, the penalty is not discretionary with the Court as generally in cases of contempt, but is fixed by Section 13, of the Act of 1916, which provides as follows: "Any violation or disobedience of either any injunction or order expressly provided for by this act shall be punished as a contempt of court by a fine of not less than $200, nor more than $1,000 or by imprisonment in the county jail for not less than one month nor more than six months or by both such fine and imprisonment."

Although the case presents questions of fact, the very same questions that would necessarily go to a jury in case of a trial

after indictment, yet, in these proceedings the right of a trial by jury is denied, the Legislature terming the offense, "Contempt of Court." It is evident that the very purpose of the Legislature in so terming the offense is to circumvent the Constitutional inhibition.

In the case of *State* v. *Rodger, supra,* Justice Swayze, in delivering the opinion of the Court, said:

> "Since the statute applies to offenses that may not be a crime at common law, as well as offenses that may be, we must look to the facts of the case to determine whether the present proceeding is an attempt to convict Rodgers of a crime without an indictment by a grand jury as required by the constitution or whether it is an attempt to convict him merely of disorderly conduct which may properly be done by summary proceedings before a magistrate. This question is not to be determined by the mere language of the statute. The Legislature cannot, for instance, deprive a man of the constitutional safeguard when he is charged with larceny by authorizing his prosecution and imprisonment under the Disorderly Act for a statutory conversion or a statutory stealing. State *v.* Randall, 53 *Id.* 485. The question of a man's constitutional rights cannot be made to depend on a mere matter of nomenclature."

In the case of *Heber, et al.,* v. *Portland Gold Mining Company, supra,* which was a suit to enjoin the defendants from carrying on the business of purchasing knowingly stolen ores and concentrates and from purchasing, receiving, or in any way handling or dealing with, directly or indirectly, any ores and concentrates which they may know, or have reason to believe, were stolen, the Supreme Court of Colorado, reversing the judgment of the District Court in granting an injunction, said:

> "Another effect of the injunction would be to deny one cited for contempt a trial by jury in what is in effect a criminal case. In other words, a Court, without a jury, might convict persons of an offense which the statutes of the State make a felony, and, upon conviction, might inflict such punishment as to the Court seemed proper. This fact alone should limit the right to an injunction to cases in which its direct effect is the protection of rights or property, and where it is necessary to such

protection. It is a trueism that Courts of Equity are not fitted for the administration of criminal law, and attempts to extend their jurisdiction to that field, in any degree, should receive no favor from those whose duty it is to preserve the landmarks of the law."

The case of *People ex rel. L'Abbe, et al.*, v. *District Court of Lake County, supra,* was a suit to enjoin L'Abbe and others from maintaining a gambling house. Upon filing of the complaint a temporary injunction was issued. A demurrer to the complaint was interposed and overruled and a motion to dissolve the injunction denied, whereupon application was made to the Supreme Court for a writ restraining respondents from further proceeding with the case.

The Court, in granting the writ, said:

> "In other words, it is a plain attempt, through the aid of a Court of Equity, to prevent the violation of the penal statutes of the State, and to confer upon that Court the administration of criminal law, solely, because the sworn officers neglected or refused to perform their duty in this regard. The failure of these officers to perform their duty constitutes no ground for the interference of the Court of Equity * * *. However, desirable or convenient it might appear to put a stop to criminal practices by invoking the extraordinary writ of injunction, we cannot permit the Constitution and statutory rights of individuals to be thus violated. We cannot allow the writ of injunction to usurp and take the place of the orderly processes of the criminal law which the Constitution and Legislature have provided. Such a course as the District Court Judge adopted, would make of a single judge, both court and jury in the trial of a criminal action, whose sole object is to punish one for committing a crime; and if a defendant refuse to obey his injunctive order there could be no redress from a sentence for contempt imposed for his violation."

Said acts are contrary to Artice I, paragraph 16, of the Constitution of New Jersey in that they contemplate, not only a destruction of certain kind of property, namely, intoxicating liquors, but also the confiscation and sale of all other property, excepting clothing, that may be found on the premises, used or capable of being used in the maintenance of or in aiding or abetting the said nuisance, the proceeds of which

sale, after deducting the certain costs and expenses, is directed to be paid in the poor fund of the municipality in which said premises is located.

THE AMENDATORY ACT OF 1918 IS CONTRARY TO ARTICLE IV, SECTION VII, PARAGRAPH 4, OF THE CONSTITUTION OF NEW JERSEY IN THAT THE OBJECT OF SAID ACT IS NOT EXPRESSED IN ITS TITLE.

The Act of 1916 makes no reference to the sale of intoxicating liquors and therefore was not applicable to cases where the offense complained of is the maintaining of a place or building wherein liquors are habitually sold in violation of the law. In order to bring such cases within the operation of the law of 1916, the Legislature attempts, by Chapter 202 of the Laws of 1918, to amend the title and provisions of the Act of 1916 including in the definition of nuisances "the habitual sale of intoxicating liquors in violation of law." No where in the title to the act of 1916 or the title to the amendatory act of 1918 is there any mention of intoxicating liquors.

In the title to the act of 1916, which reads as follows: "An Act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances and providing for the abatement thereof by the Court of Chancery," the Legislature particularizes certain acts, the permission or occurrence of any of which would constitute a place or building a nuisance and thereby impliedly exclude from the operation of the law all other acts, no matter how wrongful.

As stated by Mr. Justice Swayze in *Sawter, et al.,* v. *Shoenthal,* 83 N. J. L., 499, 83 Atl. Rep. 1004, the most natural and obvious, if not the only, reason for amending the title to an act, is to make the title cover the subject-matter of the act. The title to the act of 1916 sufficiently covers its provisions, therefore, the only object in amending it is to make it broad enough to cover the intended amendment contained in the body of the act of 1918. What that intended amendment is to be the title of the act of 1918 gives no intimation. It reads, "An Act to amend the title of and the provisions of an act entitled, 'An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery,' approved March seventeenth, one thousand nine hundred and sixteen." While it sets forth the immediate

object of the act, namely to amend the title of and the provisions of, etc., yet, it gives no warning of its ultimate object. It does not meet the rule laid down by this court in the case of *Sawter* v. *Shoenthal, supra,* that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law.

The Legislature has attempted by the use of the simple word "*amend*" to circumvent the constitutional provision that every law shall embrace but one object and that shall be expressed in the title. If this be permitted, the danger illustrated by Mr. Justice Garrison in his opinion for the Supreme Court in *Sawter, et al.,* v. *Shoenthal,* 81 N. J. L. 197, and remarks by Mr. Justice Swayze in his opinion for this court in the same case, becomes very apparent.

We need no better illustration than the case in question. In 1916 the Legislature passed a law affecting certain wrongful acts, namely, lewdness, assignation and prostitution. By the Act of 1918 that body seeks to put additional legislation on our statute books. What that additional legislation might be can only be learned by having recourse to the body of the act.

The said acts are harsh, unreasonable and unjust in that they provide for a penalty and render a cause *res adjudicata* with further proviso that despite the adjudication and penalty suffered, the appellants may be prosecuted in the criminal court and a further penalty imposed for the same offense.

The acts provide as follows: "If the existence of the nuisance complained of shall be established to the satisfaction of the Court upon final hearing an injunction shall issue enjoining the nuisance" and then it goes on to impose the penalty, of, namely, the sale of the nuisance contributing chattels, the closing of the building against the owner for a year and in the case of liquor the absolute destruction of the property. This is a penalty not against the commission of future acts but for the commission of past acts. And on top of all this the acts explicitly authorize a further prosecution for the same offense by saying, "nothing herein contained, nor any proceedings or order in accordance herewith, shall be held to repeal or limit the operations of any law of this State relating to the punishment of crime, but the powers and rights hereby created shall be held to be in addition thereto."

The obvious result of the acts therefore is that the appellants are not only enjoined from committing crime, but are punished

for their alleged crimes and are subject to indictment, trial and punishment in the Criminal Courts for the very same alleged crimes.

On this point of unreasonableness may also be considered the wholesale confiscatory provisions of the Acts. The preliminary restraint forbids the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place and if the rule to show cause is made absolute the same inhibition remains until final hearing. And further, if the permanent injunction be granted upon final hearing, the removal and sale is authorized of all furniture, furnishings, musical instruments and personal property, except clothing, *used or capable of being used* in the maintenance of or aiding or abetting the said nuisance, and in the case of liquor, the liquor shall be destroyed and even in certain cases the premises may be sold. The penalty imposed is without limit. The appellants may be deprived of all of their property whether it be worth a dollar or a million dollars, as long as such property is found on the premises complained of. The acts are so sweeping in that respect that it is hard to imagine any property incapable of being used directly or indirectly in aiding or abetting the alleged nuisance.

Said acts are further objectionable because they authorize the taking of property without due process of law.

This objection is particularly aimed at the indiscriminate confiscation of property.

The acts provide for the removal and sale of all personal property (excepting clothing), used and capable of being used in maintaining of or in aiding or abetting the nuisance. This includes, not only the property of the appellants but also the property of others, which may be innocently on the premises, and permits the confiscation of such property without notice to its owners or without regard as to whether or not said owners are in any way at fault. The acts also authorize the sale of the premises involved, though the owner thereof be innocent and ignorant of any wrong doing, without giving such owner an opportunity to interpose such a defense. In other words, the statutes permit the penalizing of a person, no matter how innocent he be.

The case of *Dougherty* v. *Thomas,* 174 Michigan, 371, 140 Northwestern Rep. 615, is in point.

In that case a suit was brought against the defendant pursuant to a statute which provided that the owner of a motor vehicle shall be liable for any injury occasioned by the negligent operation thereof by any person except that the owner shall not be liable in case the vehicle shall have been stolen.

The Supreme Court of Michigan in setting aside the judgment against the defendant held, "That, since such section renders the owner of a motor vehicle liable for injuries caused by the negligent operation thereof by a mere stranger or wilful trespasser, not sustaining to such owner, the relation of servant, agent or employee without reference to how careful the owner has been himself, it is not a proper exercise of police power, but is unconstitutional as depriving the owner of such vehicle of his property without due process of law."

The said acts are also objectionable because they impose an excessive and unusual penalty, making that penalty co-extensive with the amount of personal property the defendants may have on said premises.

It is therefore respectfully submitted that the Court of Chancery is without jurisdiction to adjudicate upon, hear or make any order or decree in said causes and the bills therein filed should be dismissed.

JOHN A. MATTHEWS,
Solicitor of Defendants-Appellants.

HENRY L. GROSKEN,
Of Counsel with Defendants-Appellants.

CHAPTER 154, LAWS, SESSION OF 1916.

An Act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Every building or place used for the purpose of lewdness, assignation or prostitution, or wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur, is hereby declared to be a nuisance, which shall be abated as hereinafter provided.

2. For the purposes of this act, the word "building" shall be held to mean and include so much of any structure of any kind as is or may be reached through the same outside entrance. The word "place" shall be held to mean and include any privately-owned park, picnic or recreation ground. The word "person" shall be held to mean and include any one or more individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees.

3. Whenever there is reason to believe that such a nuisance is kept, maintained or exists, the prosecutor of the pleas, or any resident of the county, shall have power and authority to maintain an action in the Court of Chancery to abate and prevent such nuisance and to enjoin perpetually the person or persons maintaining or permitting the same, and the owner, lessee or agent of the building or place in or upon which such nuisance exists, from directly or indirectly maintaining or permitting such nuisance.

4. The action shall be brought in the name of the said prosecutor or the said resident, and it shall be unnecessary to allege or prove personal or special damage.

5. The action shall be commenced by filing a verified bill of complaint and the issue of subpœna. All proceedings in such action shall be in accordance with the usual practice in the Court of Chancery.

6. Upon the filing of any such bill the Chancellor, being satisfied of the sufficiency thereof, shall issue an order upon the defendants named therein to show cause on such day as shall be fixed why an injunction should not issue in accordance with the prayer of the bill, with restraint of the alleged nuisance and the

removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place pending the further order of the court. And upon the return of the said rule, if the Chancellor shall be satisfied of the sufficiency of the proofs submitted, he shall issue a temporary injunction, without bond, enjoining and abating the nuisance complained of, and enjoining the removal of any furniture, furnishings, musical instruments or other personal property, except clothing, from the said building or place until the further order of the court.

7. Evidence as to the general reputation of the building or place of the alleged nuisance, or the person or persons in occupation thereof, shall be received, as well as an admission or finding of guilt against any such person or persons, upon a charge involving prostitution, lewdness or assignation, for the purpose of proving the existence of the said nuisance.

8. If the existence of the nuisance complained of shall be established to the satisfaction of the court upon final hearing, an injunction shall issue perpetually enjoining the person or persons maintaining or permitting such nuisance and the owner, or his agent, and the lessee and his agent, of the building or place in and upon which the nuisance exists, from directly or indirectly maintaining or permitting such nuisance. And the said injunction shall likewise direct the removal from the building or place of the said nuisance, of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or aiding and abetting the said nuisance, and shall direct the public sale thereof in the manner provided for the sale of chattels under execution. The said injunction shall likewise direct the effectual closing and disuse of the building or place of the said nuisance for any purpose for the period of one year from the date of the said injunction, unless sooner released, as hereinafter provided. While such injunction or any restraining order, or temporary injunction, remains in effect such building or place shall be and remain as though in the custody of the court.

9. If the court shall determine that the nuisance complained of exists as alleged, there shall be allowed to the complainant resident, in addition to the usual costs, a reasonable sum for counsel fees and expenses incurred. But if the court shall find that the action was instituted without reasonable cause, then the usual costs shall be taxed against the complaining resident. For removing and selling the movable property the officer shall be entitled to receive the same fees as are allowed for a levy upon and sale of chattels under execu-

tion. For closing the building or place and keeping the same closed a reasonable sum shall be allowed by the court.

10. The proceeds of the sale of movable property under the preceding section shall be applied, first, to the fees and costs of such removal and sale; second, to the allowances and costs of closing and keeping closed such building or place; third, to the payment of plaintiff's costs and allowances. The balance, if any, shall be paid in the poor fund of the municipality in which such building or place is located. If the proceeds of such sale do not fully discharge all such costs, fees and allowances, unless the balance is paid by the owner of such building or place, or his agent, execution shall issue and the building or place be sold, and the proceeds of such sale be applied in like manner as the proceeds of the sale of movable property, except that any balance of proceeds from the sale of real estate shall be paid to the owner of the property sold.

11. If the owner of the building or place has not been guilty of any contempt of court in the proceedings, and appears and pays all costs, fees and allowances which are a lien on the building or place and files a bond in the full value of the property, to be ascertained by the court, with sureties to be approved by the court, conditioned that he will immediately abate any such nuisance that may exist at such building or place and prevent the same from being established or kept thereat within a period of one year thereafter, the court may, if satisfied of his good faith, order the premises closed to be delivered to said owner, and said order cancelled so far as the same may relate to said property. The release of the property under the provisions of this section shall not release it from any judgment, lien, penalty or liability to which it may be subject by law.

12. If a tenant or occupant of a place defined in this act uses or permits the use thereof in such manner as to create a nuisance as herein defined, the lease or title of such tenant or occupant shall be thereby annulled, and the right of re-entry shall, without notice or process of law, rest forthwith in the owner.

13. Any violation or disobedience of either any injunction or order expressly provided for by this act shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

14. Nothing herein contained, nor any proceeding or order in accordance herewith, shall be held to repeal or limit the operations

of any law of this State relating to the punishment of crime, but the powers and rights hereby created shall be held to be in addition thereto.

15. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 17, 1916.

CHAPTER 202, LAWS OF 1918.

An Act to amend the title of and the provisions of an act entitled "An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery," approved March seventeenth, one thousand nine hundred and sixteen.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The title of the above entitled act be and the same is hereby amended to read as follows:

An act declaring all buildings and places wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of intoxicating liquors in violation of law are permitted or occur to be nuisances, and providing for the abatement thereof by the Court of Chancery.

2. That section one of the act to which this is an amendment be and the same is hereby amended to read as follows:

1. Every building or place used for the purpose of lewdness, assignation or prostitution, or wherein or upon which acts of lewdness, assignation or prostitution or the habitual sale of intoxicating liquors in violation of law, are permitted or occur, is hereby declared to be a nuisance, which shall be abated as hereinafter provided.

3. That section eight of the act to which this is an amendment be and the same is hereby amended to read as follows:

8. If the existence of the nuisance complained of shall be established to the satisfaction of the court upon final hearing, an injunction shall issue perpetually enjoining the person or persons maintaining or permitting such nuisance and the owner, or his agent, and the lessee and his agent, of the building or place in and upon which

the nuisance exists, from directly or indirectly maintaining or permitting such nuisance. And the said injunction shall likewise direct the removal from the building or place of the said nuisance, of all furniture, furnishings, musical instruments and personal property, except clothing, used or capable of being used in the maintenance of or in aiding and abetting the said nuisance, and shall direct the public sale thereof in the manner provided for the sale of chattels under execution; *provided, however,* that any and all intoxicating liquors that may be removed shall be destroyed as soon as may be after the same are no longer required for evidence. The said injunction shall likewise direct the effectual closing and disuse of the building or place of the said nuisance for any purpose for the period of one year from the date of the said injunction, unless sooner released, as hereinafter provided. While such injunction or any restraining order, or temporary injunction, remains in effect, such building or place shall be and remain as though in the custody of the court.

4. That section nine of the act to which this is an amendment be and the same is hereby amended to read as follows:

9. If the court shall determine that the nuisance complained of exists as alleged, there shall be allowed to the complainant resident, in addition to the usual costs, a reasonable sum for counsel fees and expenses incurred. But if the court shall find that the action was instituted without reasonable cause, then the usual costs shall be taxed against the complainant resident. For removing and selling the movable property (except intoxicating liquors) the officer shall be entitled to receive the same fees as are allowed for a levy upon and sale of chattels under execution. For closing the building or place, and keeping the same closed, a reasonable sum shall be allowed by the court.

5. That section ten of the act to which this is an amendment be and the same is hereby amended to read as follows:

10. The proceeds of the sale of movable property (except intoxicating liquors) under the preceding section shall be applied, first, to the fees and costs of such removal and sale; second, to the allowances and costs of closing and keeping closed such building or place; third, to the payment of plaintiff's costs and allowances. The balance, if any, shall be paid in the poor fund of the municipality in which such building or place is located. If the proceeds of such sale do not fully discharge all such costs, fees and allowances, unless the balance is paid by the owner of such building or place, or his

agent, execution shall issue and the building or place be sold, and the proceeds of such sale be applied in like manner as the proceeds of the sale of movable property, except that any balance of proceeds from the sale of real estate shall be paid to the owner of the property sold.

6. This act shall take effect immediately.

Approved March 4, 1918.

Commonitorium

Southern Road