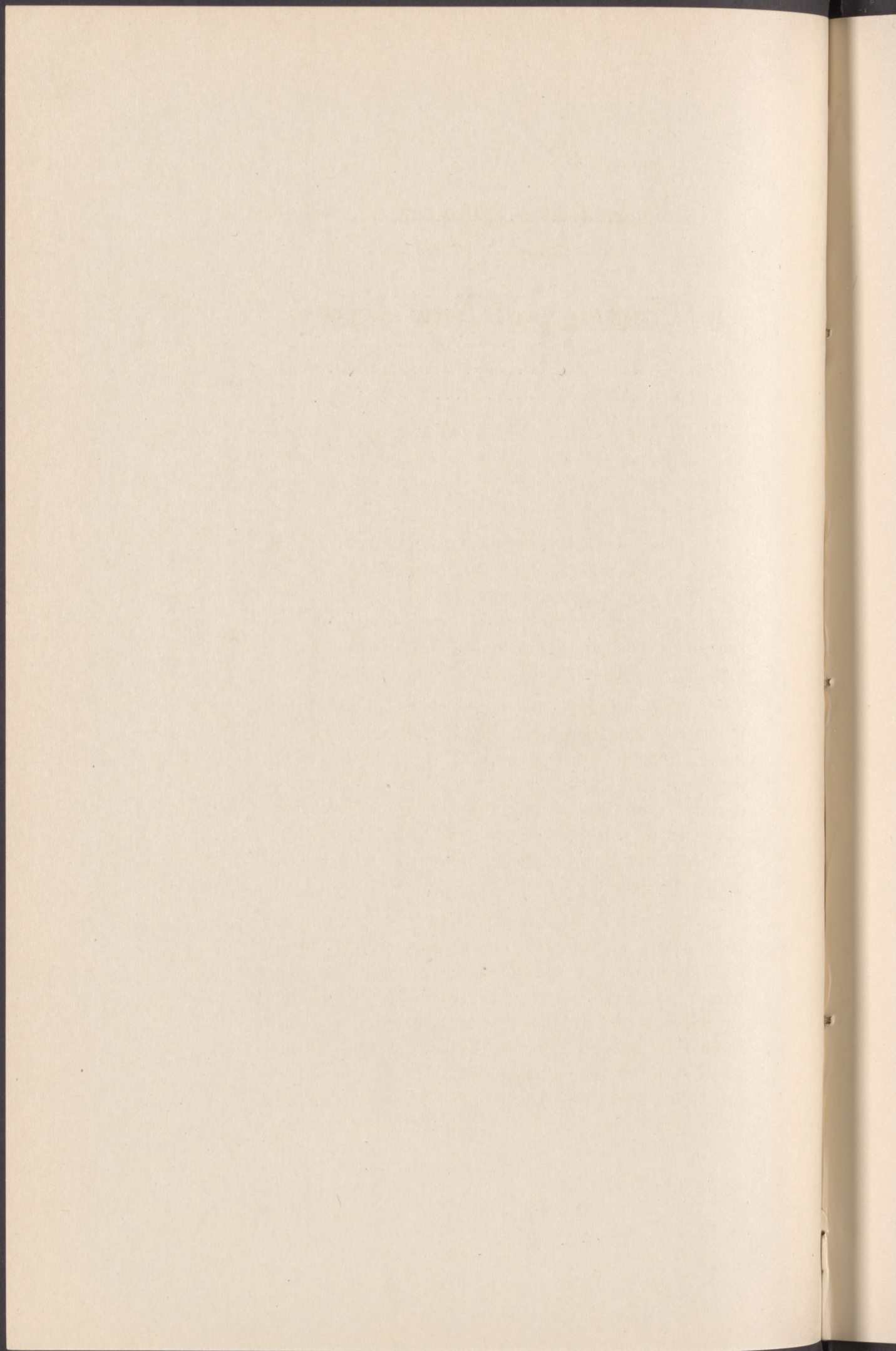


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Bill of Complaint.

BILL OF COMPLAINT.

Filed January 19, 1926.

In Chancery of New Jersey

*To His Honor Edwin Robert Walker, Chancellor
of the State of New Jersey:* 10

The complainants, Edward Kaan and Arthur V. V. Livingston of the City of Paterson, in the County of Passaic and State of New Jersey, respectfully show that:

1. They are the lessees of a certain store and premises known as No. 191 Market street, in the City of Paterson, County of Passaic and State of New Jersey, and that they conduct therein a certain haberdashery store under the firm name and style of Kaan and Livingston. 20

2. Complainants leased said premises from the Alexander Hamilton Hotel Company on August 15, 1925, for the term of three years from September 1, 1925, for said purposes and immediately upon the leasing thereof did move their store into said premises and have been and still are conducting their business in a lawful manner therein. 30

3. On or about the first day of December, 1925, and continuously thereafter, John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, engaged in the business of transporting persons from Paterson to Newark, New York and Ridgewood did for the convenience of his passengers hire the premises known as No. 189 Market street, Paterson, N. J., for the establishment of 40

Bill of Complaint.

10 a waiting room. That said premises rented by the defendant, John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, are fourteen feet in width fronting on said Market street and that the busses parked in front of said premises are about twenty-five feet long.

4. That since December 1, 1925, and continuously thereafter said John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, has publicly invited the passengers of his bus lines to use said store at 189 Market street, Paterson, N. J., for the purpose of better accommodating these persons.

20 5. That although this store is engaged as a passenger waiting room for said bus lines the aforesaid John H. Stoddard, trading as the Arrow Bus Company, by his drivers, starters, workmen, servants, passengers and other persons unknown to the complainants have caused the busses controlled by the defendant to be parked in front of the store rented by the defendant and also in front of the store leased by the complainants, continuously so as to deprive
30 the complainants and their customers and other persons doing business with complainants of the use of that portion of the public street immediately in front of their store making the public street a terminal for his bus lines.

6. That said John H. Stoddard, trading as the Arrow Bus Company aforesaid, has not acquired any license or franchise to use the street adjacent to said premises 191 Market street leased by the complainants as aforesaid for spe-

Bill of Complaint.

cial purposes from the City of Paterson or from the complainants.

7. That by virtue of the establishment of said bus terminal by the defendant large numbers of persons including drivers, starters, workmen, servants, passengers, agents and other persons to congregate in front of the complainants' premises, thereby interfering with the business conducted by the complainants. 10

8. That defendant by its agents, drivers, starters, workmen, servants, passengers and other persons, have from time to time under an assumed authority directed customers of complainants desiring to park their vehicles in the space immediately in front of the complainants' store, that they had no right there as it was a bus terminal and in consequence of said direction said customers were inconvenienced and complainants lost their trade. 20

9. That as a result of said unlawful interference of defendant, his drivers, starters, workmen, servants, agents and other persons with customers and prospective customers of the complainants upon the street and sidewalk in front of the complainants' leased premises, namely 191 Market street, complainants are greatly and irreparably damaged and such action of defendant causes complainants great and unnecessary inconvenience and losses. 30

Complainants are without an adequate remedy in the courts of law and therefore pray:

1. That John H. Stoddard, trading and doing business as the Arrow Bus Company, who is the defendant in this suit, may answer this bill of complaint and each statement therein made. 40

Affidavit of Edward Kaan.

2. That the said John H. Stoddard trading and doing business as the Arrow Bus Company, and his drivers, starters, workmen, agents, servants and other persons may be enjoined from parking his busses and loitering in front of the complainants' premises.

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

JAMES N. WRIGHT,
Solicitor for Complainants.

GEORGE T. ANDERSON, JR.,
Of Counsel with Complainants.

20 STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss.

EDWARD KAAAN, of full age, being duly sworn, upon his oath says:

1. I am the complainant in the foregoing bill of complaint and am familiar with the contents thereof and the matters and things therein set forth are true.

- 30 2. I reside at No. 14 Smith street, Paterson, N. J., and conduct a haberdashery business in partnership with Arthur V. V. Livingston at No. 191 Market street, Paterson, N. J.

3. My partner and myself leased said premises from the Alexander Hamilton Hotel Company on August 15, 1925, for the term of three years from September 1, 1925, for said purposes and immediately upon the leasing thereof did move our store into said premises and have

Affidavit of Edward Kaan.

been and still are conducting our business in a lawful manner therein.

4. On or about the first day of December, 1925, and continuously thereafter, John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, engaged in the business of transporting persons from Paterson, to Newark, New York and Ridgewood, did for the convenience of his passengers hire the premises known as No. 189 Market street, Paterson, N. J., for the establishment of a waiting room. That said premises rented by the defendant, John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, are fourteen feet in width fronting on said Market street and that the busses parked in front of said premises are about twenty-five feet long.

5. That since December 1, 1925, and continuously thereafter, said John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, has publicly invited the passengers of his bus lines to use said store at 189 Market street, Paterson, N. J., for the purpose of better accommodating these persons.

6. That although this store is engaged as a passenger waiting room for said bus lines the aforesaid John H. Stoddard, trading as the Arrow Bus Company, by his drivers, starters, workmen, servants, passengers and other persons unknown to me, have caused the busses controlled by the defendant to be parked in front of the store rented by the defendant and also in front of the store leased by my partner and

Affidavit of Edward Kaan.

I, continuously, so as to deprive the complainants and their customers and other persons doing business with us of the use of that portion of the public street immediately in front of our store making the public street a terminal for his bus lines.

10 7. That said John H. Stoddard, trading as the Arrow Bus Company aforesaid, has not acquired any license or franchise to use the street adjacent to said premises 191 Market street, leased by us as aforesaid, for special purposes from the City of Paterson from us.

20 8. That by virtue of the establishment of said bus terminal by the defendant large numbers of persons including drivers, starters, workmen, servants, passengers, agents and other persons to congregate in front of the complainants' premises, thereby interfering with the business conducted by us.

30 9. That defendant, by its agents, drivers, starters, workmen, servants, passengers and other persons, have from time to time under an assumed authority directed customers of ours desiring to park their vehicles in the space immediately in front of our store, that they had no right there as it was a bus terminal and in consequence of said direction said customers were inconvenienced and we lost our trade.

40 10. That as a result of said unlawful interference of defendant, his drivers, starters, workmen, servants, agents and other persons with customers and prospective customers of ours upon the street and sidewalk in front of our leased premises, namely 191 Market street, we are greatly and irreparably damaged and such

Affidavit of Arthur V. V. Livingston.

action of defendant causes us great and unnecessary inconvenience and losses.

EDWARD KAAAN.

Sworn to and subscribed before me
this 15th day on January, A. D.
1926.

10

LOUIS DWORETZ,
Attorney at Law of N. J.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } ss.

ARTHUR V. V. LIVINGSTON, of full age, being
duly sworn, upon his oath says:

1. I am the complainant in the foregoing
bill of complaint and am familiar with the con-
tents thereof and the matters and things therein
set forth are true. 20

2. I reside at No. 436 Ellison street, Pater-
son, N. J., and conduct a haberdashery business
in partnership with Edward Kaan at No. 191
Market street, Paterson, N. J.

3. My partner and myself leased said prem-
ises from the Alexander Hamilton Hotel Com-
pany on August 15, 1925, for the term of three
years from September 1, 1925, for said purposes
and immediately upon the leasing thereof did
move our store into said premises and have
been and still are conducting our business in
a lawful manner therein. 30

4. On or about the first day of December,
1925, and continuously thereafter, John H. Stod-
dard, trading and doing business under the firm
name and style of the Arrow Bus Company,
engaged in the business of transporting persons 40

Affidavit of Arthur V. V. Livingston.

from Paterson to Newark, New York and Ridgewood, did for the convenience of his passengers hire the premises known as No. 189 Market street, Paterson, N. J., for the establishment of a waiting room. That said premises rented by the defendant, John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, are fourteen feet in width fronting on said Market street and that the busses parked in front of said premises are about twenty-five feet long.

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5. That since December 1, 1925, and continuously thereafter said John H. Stoddard, trading and doing business under the firm name and style of the Arrow Bus Company, has publicly invited the passengers of his bus lines to use said store at 189 Market street, Paterson, N. J., for the purpose of better accommodating these persons.

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6. That although this store is engaged as a passenger waiting room for said bus lines the aforesaid John H. Stoddard, trading as the Arrow Bus Company, by his drivers, starters, workmen, servants, passengers and other persons unknown to me, have caused the busses controlled by the defendant to be parked in front of the store rented by the defendant and also in front of the store leased by my partner and I, continuously so as to deprive the complainants and their customers and other persons doing business with us of the use of that portion of the public street immediately in front of our store making the public street a terminal for his bus lines.

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7. That said John H. Stoddard, trading as the Arrow Bus Company aforesaid, has not acquired any license or franchise to use the street

Affidavit of Arthur V. V. Livingston.

adjacent to said premises 191 Market street leased by us as aforesaid, for special purposes from the City of Paterson from us.

8. That by virtue of the establishment of said bus terminal by the defendant, large numbers of persons including drivers, starters, workmen, servants, passengers, agents and other persons, to congregate in front of the complainants' premises, thereby interfering with the business conducted by us. 10

9. That defendant by its agents, drivers, starters, workmen, servants, passengers and other persons have from time to time under an assumed authority, directed customers of ours desiring to park their vehicles in the space immediately in front of our store, that they had no right there as it was a bus terminal and in consequence of said direction said customers were inconvenienced and we lost our trade. 20

10. That as a result of said unlawful interference of defendant, his drivers, starters, workmen, servants, agents and other persons with customers and prospective customers of ours upon the street and sidewalk in front of our leased premises, namely 191 Market street, we are greatly and irreparably damaged and such action of defendant causes us great and unnecessary inconvenience and losses. 30

ARTHUR V. V. LIVINGSTON.

Sworn to and subscribed before me
this 15th day of January, A. D.
1926.

LOUIS DWORETZ,
Attorney at Law of N. J.

*Order.***ORDER.**

IN CHANCERY OF NEW JERSEY.

10	ARTHUR V. V. LIVINGSTON and EDWARD KAAAN, partners trad- ing and doing business under the firm name and style of KAAAN AND LIVINGSTON, <div style="text-align: right;"><i>Complainants,</i></div>	<i>On Bill, Etc.</i> <i>Order.</i>
	<i>vs.</i>	
	JOHN H. STODDARD, trading and doing business as the ARROW BUS COMPANY, <div style="text-align: right;"><i>Defendant.</i></div>	

20 This matter being opened to the Court by James N. Wright, solicitor of complainants, and the Court having read the bill of complaint in the above-entitled cause and the affidavits thereunto annexed;

It is, on this nineteenth day of January, 1926, ORDERED, that the defendant, John H. Stoddard, trading and doing business as the Arrow Bus Company, show cause before the Chancellor at
 30 the Chancery Chambers in the City of Paterson on the twenty-fifth day of January, 1926, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard why the said John H. Stoddard, trading and doing business as the Arrow Bus Company, his drivers, agents, starters, workmen, servants, passengers and other persons should not be restricted and enjoined according to the prayer of said bill.

It is further ordered that the said defendant,
 40 John H. Stoddard, trading and doing business

Order.

as the Arrow Bus Company, and his drivers, agents, starters, workmen, servants, passengers and other persons in the meantime and until further order of this Court in the premises, desist and refrain from using the sidewalk and street-front of the store known as 191 Market street, as a bus terminal and desist and refrain from parking his vehicles and busses in front of said premises known as 191 Market street. 10

It is further ordered that true but uncertified copy of said bill of complaint and the affidavits thereto annexed and of this order be served upon said defendant within two days from the date hereof.

It is further ordered that either party may have leave to serve affidavit upon the other within four days of the return date of this order.

Application for a modification of the restraint herein imposed may be made on three (3) days' notice to complainants. 20

E. R. WALKER,
Chancellor.

Respectfully advised,

VIVIAN M. LEWIS,
V. C.

A true copy. 30

JAMES N. WRIGHT,
Solicitor of Complainants.

Service of a copy of the within is hereby acknowledged this 22nd day of January, 1926.

H. V. OSBORNE.

Notice of Motion to Strike Out.

NOTICE OF MOTION TO STRIKE OUT.

Filed March 8, 1926.

IN CHANCERY OF NEW JERSEY.

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Between

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners
trading and doing business
under the firm name and
style of KAAAN and LIVING-
STON,

Complainants,

and

20

JOHN H. STODDARD, trading
and doing business as the
ARROW BUS COMPANY,

Defendant.

On Bill, &c.

*Notice of
Motion to
Strike Out.*

To the complainants, Edward Kaan and Arthur
V. V. Livingston:

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TAKE NOTICE, that on Monday, the 8th day of
March, 1926, at the hour of ten o'clock in the
forenoon, or as soon thereafter as counsel can
be heard, at the Chancery Chambers in the City
of Jersey City, County of Hudson and State of
New Jersey, I shall apply to the Chancellor for
an order striking out the bill of complaint filed
by you in the above-entitled cause for the fol-
lowing reasons:

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1. The said bill of complaint discloses no
cause of action in that the allegations do not
show any rights in the complainant in that
portion of the public street alleged to be used

Notice of Motion to Strike Out.

by the defendant which are damaged by the defendant, and from which an irreparable injury is threatened.

OSBORNE, CORNISH & SCHECK,
Solicitors and of Counsel with Defendant,
John H. Stoddard.

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Order Denying Motion to Strike Out.

ORDER DENYING MOTION TO STRIKE OUT.

Filed March 12, 1926.

IN CHANCERY OF NEW JERSEY.

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Between

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners
trading and doing business
under the firm name and
style of KAAAN AND LIVING-
STON,

Complainants,

and

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JOHN H. STODDARD, trading
and doing business as the
ARROW BUS COMPANY,

Defendant.

On Bill, Etc.

*Order
Denying
Motion to
Strike Out.*

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A motion having been made by Harry V. Os-
borne, of Osborne, Cornish and Scheck, solicitors
and of counsel with the defendant, John H.
Stoddard, to strike out the bill of complaint
filed herein, on the ground that the complainants
have no right which is being violated to their
irreparable damage, and it appearing that due
notice of such motion has been given to the com-
plainants, Edward Kaan and Arthur V. V. Liv-
ingston, and the Court having heard the argu-
ments of Harry V. Osborne, solicitor of said
defendant, John H. Stoddard, and of James N.
Wright, solicitor of said complainants, Edward
Kaan and Arthur V. V. Livingston, and being
of the opinion that the objections taken by the
defendant are not well founded;

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Order Denying Motion to Strike Out.

It is, thereupon, on this ninth day of March, one thousand nine hundred and twenty-six, ORDERED, that the aforesaid motion be and the same is hereby denied.

And it is further ordered that the said defendant pay to the complainant the costs of this motion to be taxed, the sum of fifty dollars, as a counsel fee, and that the said defendant file his answer to the complainants' bill of complaint herein within ten days after the service of a true but uncertified copy of this order upon him. 10

E. R. WALKER,
C.

Respectfully advised,

VIVIAN M. LEWIS,
V. C. 20

A true copy.

JAMES N. WRIGHT,
Solicitor of Defendant.

Service acknowledged March 9, 1926.

ABRAM H. CORNISH.

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Notice of Appeal.

NOTICE OF APPEAL.

Filed March 17, 1926.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p>ARTHUR V. V. LIVINGSTON and EDWARD KAAAN, partners trading and doing business under the firm name and style of KAAAN AND LIVING- STON,</p> <p style="text-align: right;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>JOHN H. STODDARD, trading and doing business as the ARROW BUS COMPANY,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p><i>On Bill, Etc.</i></p> <p><i>Notice of</i></p> <p><i>Appeal.</i></p>
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The defendant, John H. Stoddard, hereby ap-
peals from the final decree made in the above-
entitled cause on March 9, 1926, and from the
whole and every part thereof, to the Court of
Errors and Appeals in the last resort in all
causes.

Dated March 10, 1926.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel with
Defendant, John H. Stoddard.

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

HARRY V. OSBORNE,
Of Counsel with Defendant,
John H. Stoddard.

Petition of Appeal.

PETITION OF APPEAL.

Filed March 26, 1926.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners trad-
ing and doing business under
the firm name and style of
KAAAN AND LIVINGSTON,
Complainants-Appellees,
vs.

JOHN H. STODDARD, trading and
doing business as the ARROW
BUS COMPANY,
Defendant-Appellant.

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*On Appeal
from the
Petition of
Appeal.*

*Court of
Chancery.*

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To the Honorable Court of Errors and Appeals
in the last resort in all causes:

The petition of John H. Stoddard, appellant
in the above-entitled cause, respectfully shows:

1. Petitioner finds himself aggrieved by an
interlocutory order made in the Court of Chan-
cery by his Honor, Edwin Robert Walker, Chan-
cellor of the State of New Jersey, bearing date
the ninth day of March, one thousand nine
hundred and twenty-six, in a certain cause in
said Court of Chancery wherein the said Arthur
V. V. Livingston and Edward Kaan, partners as
aforesaid, were complainants, and said John H.
Stoddard was defendant, in this respect, to wit:
That the said order adjudges that the motion of
the defendant applying to the Chancellor for an
order striking out the bill of complaint filed by

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Petition of Appeal.

the complainants in the above-entitled cause be denied; and further in this respect, to wit, that the defendant was directed by said order to pay to the complainants the costs of the said motion to be taxed and the sum of \$50.00 as a counsel fee; and further in this respect, to wit, that by
 10 said order the said defendant was directed to file his answer to the complainants' bill of complaint in said cause within ten days after the service of a true but uncertified copy of the said order upon him.

2. And the petitioner appeals from the said order of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that the said bill of complaint discloses no
 20 cause of action in that the allegations do not show any rights in the complainant in that portion of the public street alleged to be used by the defendant which are damaged by the defendant and from which an irreparable injury is threatened and said order should have directed that the said bill of complaint be stricken out with costs and counsel fee to the said defendant.

Petitioner therefore prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden and
 30 that the petitioner may have such other relief in the premises as to this Court shall seem proper.

OSBORNE, CORNISH & SCHECK,
 Solicitors for and of Counsel with
 Appellant.

I hereby acknowledge service of the within
 Petition of Appeal this 25th day of March, 1926.

40 JAMES N. WRIGHT,
 Solicitor for Appellees.

Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed April 14, 1926.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners trad-
ing and doing business under
the firm name and style of
KAAAN AND LIVINGSTON,
Complainants-Appellees,

vs.

JOHN H. STODDARD, trading and
doing business as the ARROW
BUS COMPANY,
Defendant-Appellant.

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*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition of
Appeal.*

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The answer of Arthur V. V. Livingston and Edward Kaan, partners trading and doing business under the firm name and style of Kaan and Livingston, the above-named appellees, to the petition of appeal of John H. Stoddard, the above-named appellant.

These appellees, not admitting the truth of any or all of the matters in said petition of appeal contained, for answer thereto nevertheless admits that an interlocutory order was, on the ninth day of March, 1926, made and entered in the Court of Chancery of New Jersey in the above-entitled cause for the purpose in said petition mentioned and as therein set forth; but as to the substance and form of said order, these appellees beg leave to refer thereto when the same shall be produced.

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Answer to Petition of Appeal.

These appellees are advised and believe that the said order is agreeable to equity; and they pray that the same may be affirmed with costs to be taxed in favor of these appellees.

JAMES N. WRIGHT,
Solicitor for Appellees.

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GEORGE T. ANDERSON, JR.,
Of Counsel.

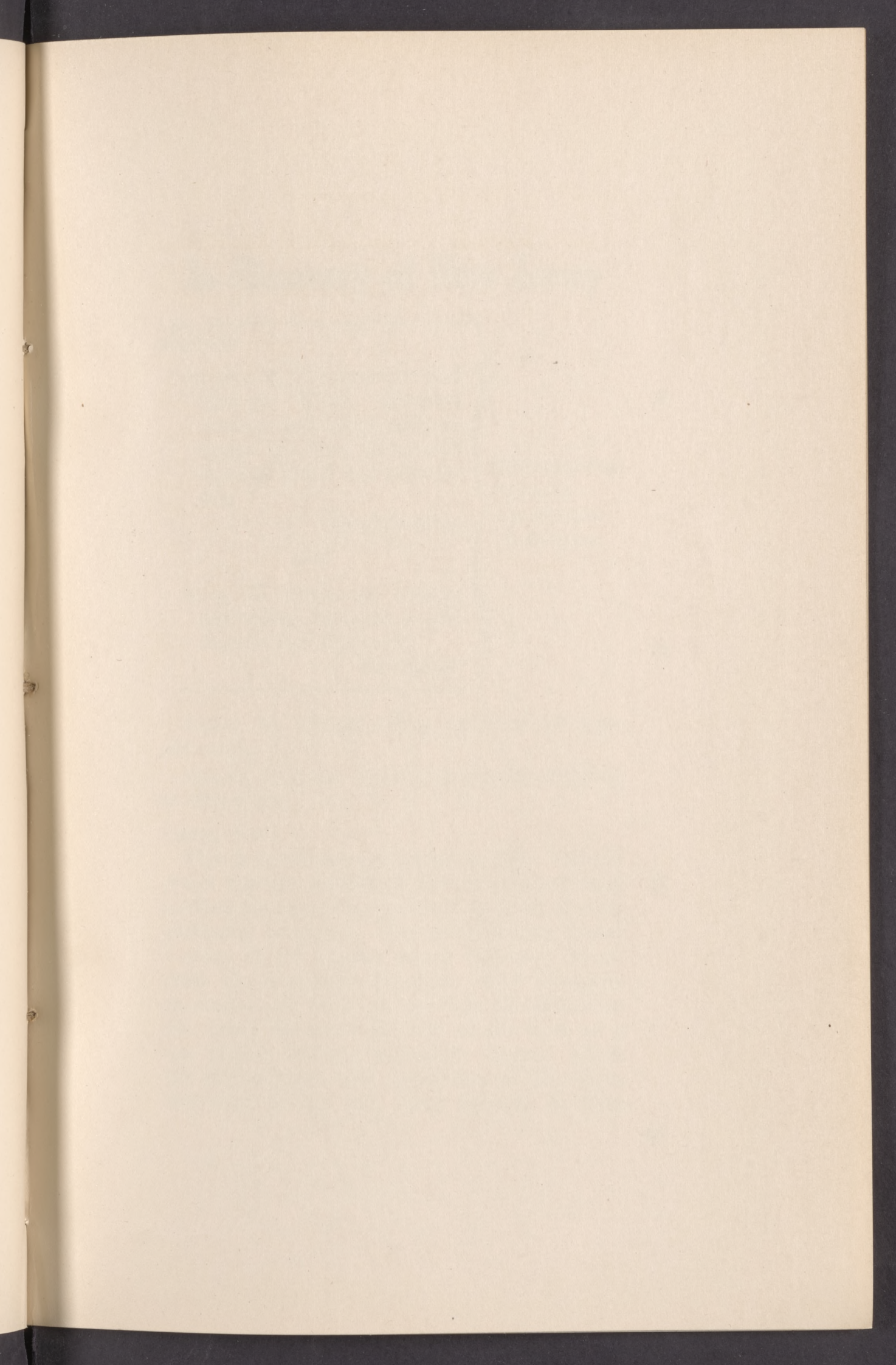
We hereby acknowledge service of the within Answer to Petition of Appeal this 7th day of April, 1926.

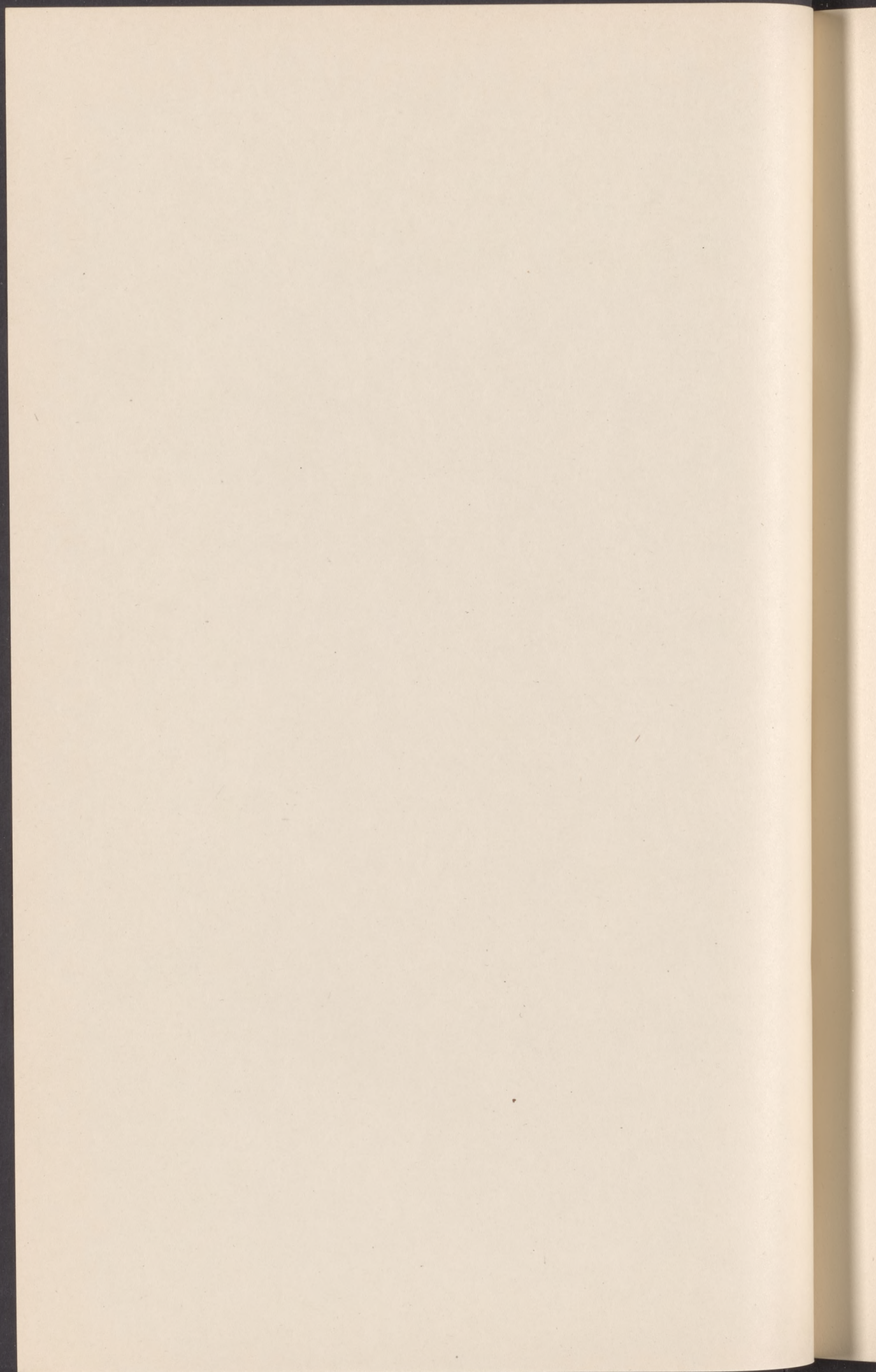
OSBORNE, CORNISH & SCHECK,
Solicitors for Appellant.

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In Chancery of New Jersey

Between

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners
trading and doing business
under the firm name and
style of Kaan and Livings-
ton,

Complainants,

and

JOHN H. STODDARD, trading
and doing business as the
ARROW BUS COMPANY,

Defendant.

10

*Memorandum
Opinion
on Motion
to Dismiss.*

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James N. Wright, Esq., solicitor of com-
plainants.

Messrs. Osborne, Cornish & Scheck, solicitors
of defendant.

LEWIS, V.-C.

This is on motion to dismiss the bill. The bill
prays that the defendant may be enjoined from 30
parking his busses and loitering in front of com-
plainants' premises. The complainants leased
a store at 191 Market street, Paterson, N. J.,
from the Alexander Hamilton Hotel Company
on August 13, 1925. At the time the defendant
was using the street in front of the store as a
bus station for his intra-state busses. When
the complainants took possession of the store,
according to the bill, there appears to have

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been no resolution or ordinance giving the defendant the right or license in front of the complainants' property. In October, 1925, the defendant leased the store next to the complainants for a waiting room together with a right to park his busses in the street, subject to the rights of the other tenants in said street. After he made this lease and on or about December 1, 1925, he started a bus line carrying inter-state passengers and used the public streets in front of both premises as a terminal for inter-state and intra-state lines. The bill sets forth that the defendant has continuously since that time parked his busses in front of his own waiting room and in front of the complainants' store; his starters have driven the complainants' customers away; his drivers have molested the complainants' customers and the complainants, by these acts, have lost business, customers and profits.

It appears that the defendant did not make use of the highway in front of complainants' property simply to receive and discharge passengers but lingered there for an hour at a time—in fact, the bill says that his busses were continually in front of complainants' premises, one departing being relieved by another. If all this be true, this destroyed the primary object of the highway, *i. e.*: the passage of the public, and in fact usurped all the rights of the complainants in the highway in front of their property. It is difficult to conceive of any right by which the defendant could appropriate the public street in this manner. Thompson, in his work on Real Property, says that "the tenant becomes entitled, by virtue of his lease, to a free and unobstructed street encumbered only with the ease-

ment of the public and the privileges of the municipality. The right to the use of the street in front of leased premises is his, including the right to air and light, access, ingress and egress."

The facts alleged constitute a nuisance and it has been so held in this and other jurisdictions. If the defendant is to be permitted to continue the practice he has established, it must result in irreparable damage to the complainants in the loss of their customers. 10

The motion to dismiss should be denied.

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New Jersey Court of Errors and Appeals

Between

Arthur V. V. Livingston and
Edward Kaan, partners
trading and doing business
under the firm name and
style of Kaan and Living-
ston,

Complainants-Appellees,

and

John H. Stoddard, trading
and doing business as the
Arrow Bus Company,
Defendant-Appellant.

On Bill, etc.

On Appeal from
the Court of
Chancery

BRIEF FOR COMPLAINANT-APPELLEES

This is an appeal from an order of the Court of Chancery, denying a motion to strike out the bill.

The bill is one for an injunction, that being the only relief prayed for.

On such a motion the allegations of the bill are assumed to be true.

ALLEGATIONS OF THE BILL

The bill alleges that the complainants are the lessees of a store known as Number 191 Market Street, in the City of Paterson, under a three years' lease from the owner, and conduct a haberdashery store therein.

That the defendant runs a line of motor busses and has adopted that part of the street immediately in front of complainants' store as a terminal for his bus line, and has busses continuously parked there.

That defendant has no authority from the city to use this particular place as a bus terminal.

That his servants have ordered away persons who attempt to stop their vehicles in front of complainants' store, telling such persons that it was a bus terminal and they could not stop there.

That by reason of the establishment of the bus terminal defendant's employees congregate in front of complainants' premises in such numbers as to interfere with complainants' business.

That as a result the business of complainants has been interfered with.

That they have suffered a loss of trade and have been irreparably injured.

ARGUMENT

(1) The conduct of the defendant, as set forth in the bill, constitutes a trespass upon the vested property rights existing in the complainants, and said trespass is a continuing one and results in injury for which they cannot be adequately compensated by a suit at law.

(2) That the conduct of the defendant constitutes a public nuisance from the maintenance of which the complainants suffer a private injury.

(3) That the damage of the complainants is irreparable and they have no adequate remedy at law.

AS TO TRESPASS

That the title of an abutting land owner extends to the center of the street, subject only to the public easement therein, and that he has the right to control the use of the street in front of his property at least to the extent of preventing any additional burden being placed thereon, is well established.

State vs. Laverack, 34 N. J. Law, 201.

Salter vs. Jonas, 39 N. J. Law, 469.

Hinchman vs. Paterson Horse Car Railroad Co., 17 N. J. Equity, 75.

A deed conveying property described as Number 191 Market Street, without more, would convey the property to the middle of the street, and there seems to be no sound reason why the same construction should not apply to a lease as well as to a deed, or why the rule established as to freeholds should not apply with equal force to all tenures.

The precise question does not seem to have been considered in this state, but the general rule as laid down in "Thompson on Real Property" is quoted at length in the brief of the appellant.

The bill in this case contains nothing to indicate the size of the building in which complainants' store is located, and therefore any discussion of the rights of tenants in apartments or offices are beyond the limits of the precise issue presented.

The complainants contend, however, that the tenant under a lease of a ground floor store, acquires the rights of the landlord in the abutting street.

In the case of Edminson vs. Lowry, S. Dak., (17 L. R. A. 275) the defendant was a tenant in possession of a ground floor store and cellar in a three story brick building under a lease from the owners. The Supreme Court of South Dakota in citing the case said:

“The lease of the premises to the defendant included all rights, incidents and easements belonging to the property not specially reserved in the lease. In this case no reservation is shown. The defendant, therefore, under his lease, acquired all rights to the use of the street in front of the leased premises, including the right to air and light, access, ingress, and egress, incident to the property, not only as against the public, but as against the plaintiffs. The defendant became entitled, by virtue of his lease, to a free and unobstructed street, incumbered only with the easement of the public and the rights of the municipality, and this right constituted a part of the leased premises. This being so, when the plaintiffs obstructed the street in front of the leased premises, and took possession of the same by depositing lumber and other building material therein, they evicted the defendant from an important part of the leased premises. The defendant's right to the free use of the street

in front of his premises for the approach of carriages, express wagons and other vehicles, either belonging to himself, customers or others and of access, ingress and egress by the public, subject to the easements and rights above mentioned, was as full and complete as his right to the part of the building he occupied, and his right to the one could no more be lawfully obstructed by the plaintiffs than that of the other."

The case of *Hill vs. Schultz*, 40 N. J. Equity 164, cited by the defendant-appellant, is not in point, as in that case the tenant under a lease which expressly excepted part of the cellar, sought to prevent the landlord from using the entrance to the part excepted, which was visible at the time he hired the premises, and the case turned upon the construction of the particular lease.

In the case of the *United States Restaurant & Realty Company vs. Schultz*, 124 N. Y. Supplement, page 835, cited by the appellant, the tenant himself assumed to use the street as a bus stand and the decision was put upon the ground that there had been "no actual exclusion from any use to which the tenants might lawfully devote their street frontage.

The continuous occupancy of the street in front of the complainants premises by the defendant, so as to exclude the complainants and their customers from all use of that part of the street, is a trespass upon the rights of the complainants.

The continuous congregating of the defendant's employees in front of the store so as to hinder and drive away complainants' customers, imposed a burden upon this particular part of the street, over and above the proper use of the street by the public, and also constituted a trespass upon the rights of complainants.

AS TO NUISANCE

The defendant, in appropriating a definite part of the public street to his own use, to the exclusion of every one else, and warning others not to stop there, created a public nuisance, especially as it was done without any authority from the municipality.

Complainants being prevented from driving to a point directly in front of their place of business with their own vehicles suffered a special injury while using the street as a street, and the fact that customers could not drive up in front of their store or approach it from a vehicle in the street or from directly across the street, by reason of the continuous obstruction maintained by the defendant, with the result that they lost trade, was also a special injury to them.

The congregating of a number of workmen, servants and agents of the defendant in front of complainants' premises continuously, all day long and day after day, thereby interfering with the public use of the sidewalk, is also a nuisance and one from which complainants suffer a special injury.

Injunctions have been allowed in similar cases: McDonald vs. Newark, 42 N. J. Equity, 136. Lippincott vs. Lasher, 44 N. J. Equity, 120.

**THE DAMAGE IS IRREPARABLE AND
THERE IS NO LEGAL REMEDY**

As a result of the acts complained of, the complainants assert that their business has been interfered with and that they have lost customers.

An irreparable injury warranting an injunction was defined in the case of Sherman vs. Stern, et al³ N. J. Equity, 626, at page 630, as follows:

“An injury is irreparable when it cannot be adequately compensated in damages or when there exists no certain pecuniary standard for the measurement of damages. Inadequacy of damages as a compensation may be due to the nature of the injury itself or the nature of the right or property injured. Acts destroying a complainant's business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction.”

The injury in this case is a continuing one and there exists no certain standard for the measurement of damages.

We respectfully submit that upon the allegations of the bill a proper case is made out for an injunction, and that the order of the Court of

Chancery denying the motion to strike out the bill should be affirmed.

JAMES N. WRIGHT,
Solicitor for Arthur V. V. Livingston
and Edward Kaan
Complainants-Appellees.

GEORGE T. ANDERSON, JR.,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners
trading and doing business
under the firm name and
style of Kaan and Living-
ston,

Complainants-Appellees,
and

JOHN H. STODDARD, trading
and doing business as the
Arrow Bus Company,
Defendant-Appellant.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

REPLY BRIEF FOR DEFENDANT- APPELLANT.

Nothing appears in the brief of the Complainants-Appellees that has not been covered in the brief for the defendant-appellant, except the case of *Edminson v. Lowry*, South Dakota, 17 L. R. A. 275. That case has no application to this controversy, as will appear by careful examination of it. It was an action for rent.

Statement of Facts by Court.

“The defendant admits that the rent * * * has not been paid and sets up a counter-claim that * * * plaintiffs obstructed the sidewalk and street in front of the premises leased so as to close up the entrance to the same and prevent access, ingress and egress to and from the street to the same and thereby deprived the defendant of the quiet and peaceful enjoyment of the premises * * *. Plaintiffs were the owners of a three-story brick building fronting

on Ninth street in the City of Sioux Falls, the first story and cellar of which they leased to defendant. * * * the plaintiffs erected a large stone building on the corner of Phillips avenue and Ninth street, extending back on Ninth street to or near the leased premises. In erecting this building the sidewalk from Phillips avenue along Ninth street to the leased premises was taken up and a fence erected across the sidewalk on the side of the leased premises nearest the avenue. The defendant, being thus shut off from the avenue—it appears to be one of the principal business streets of Sioux Falls—constructed a crosswalk at his own expense across Ninth street to the opposite sidewalk, thereby enabling the public to cross the street at that point in front of his drug store and pass by the same in going to and from the post office on the corner of Main and Ninth streets. There was evidence tending to prove that about August the plaintiffs commenced to deposit lumber on the street directly in front of defendant's drug store, but outside of his sidewalk, and lumber, stone, sand and other building material in the street upon the crosswalk and so continued to use the street for depositing such building material during the three months mentioned and for which rent is claimed."

"There was also evidence tending to prove that carriages and teams were, by reason of this building material deposited in the street in front of said premises, prevented from approaching the sidewalk in front of defendant's drug store and that the public was prevented from crossing the street on the crosswalk erected by defendant by reason of the obstructions mentioned during a large portion of the time during these months, * * * and that plaintiffs refused to remove the same, insisting that they had the right, as owners of the leased premises, to use the street for depositing building material."

“The case was submitted to the jury with certain instructions, the more important of which are as follows:

‘If you shall find that the plaintiffs assume exclusive control in front of the place of business and have prevented the enjoyment in the use of the premises leased for the purpose for which it was leased, then such possession and use by the plaintiffs is, for the purpose of this action, a sufficient eviction. Now understand me about this matter, if you shall find from the testimony introduced in this action that the plaintiffs used the street in front of this place of business to the exclusion of any rights which this defendant had in the street, and if by that act the defendant had been wronged by being deprived of the free use and enjoyment of these premises, that amounts to an eviction * * * ,’”

The opinion of the Court goes on as follows:

“The learned counsel for plaintiffs contends that the covenant of quiet enjoyment in a lease relates only to the possession of the leased premises and is the contract of the landlord that during the term of the tenancy the lessee shall not be evicted. The covenant is only broken by entry and expulsion or by some actual disturbance of the tenancy * * * that the obstruction shown in this case did not constitute an actual eviction, the street not being any part of the leased premises.

The learned counsel for the defendant insist that the lease of the premises fronting on the street for a drug store carries with it every right of ingress and egress and the easement of access which belonged to the property when leased and that one of these rights was that of an unobstructed use of the street in front of the leased premises to the center thereof for all purposes of access, ingress and egress, subject to the easement of the public and that the depriving of the defendant of free and unobstructed use of the street in front of the leased premises

for such purposes was, in law, an eviction of the defendant from a portion of the premises leased."

The opinion then discusses the rights of an abutting owner in the street, setting up familiar and well recognized principles. Then, referring to the rights of the tenant, the Court said,

"The lease of the premises to the defendant included all rights, incidents and easements belonging to the property not specially reserved in the lease. In this case no reservation is shown. The defendant, therefore, under his lease, acquired all rights to the use of the street in front of the leased premises including the right to air and light, access, ingress and egress incident to the property not only as against the public but as against the plaintiffs. The defendant became entitled, by virtue of the lease, to a free and unobstructed street encumbered only with the easement of the public and the rights of the municipality and this right constituting a part of the leased premises."

In support of this text the opinion cites the case of *Pridgeon v. Excelsior Boat Co.*, 66 Mich. 326; 9 West Rep. 911. In that case the lease, by express terms, included the lot extending to the channel bank of the river and

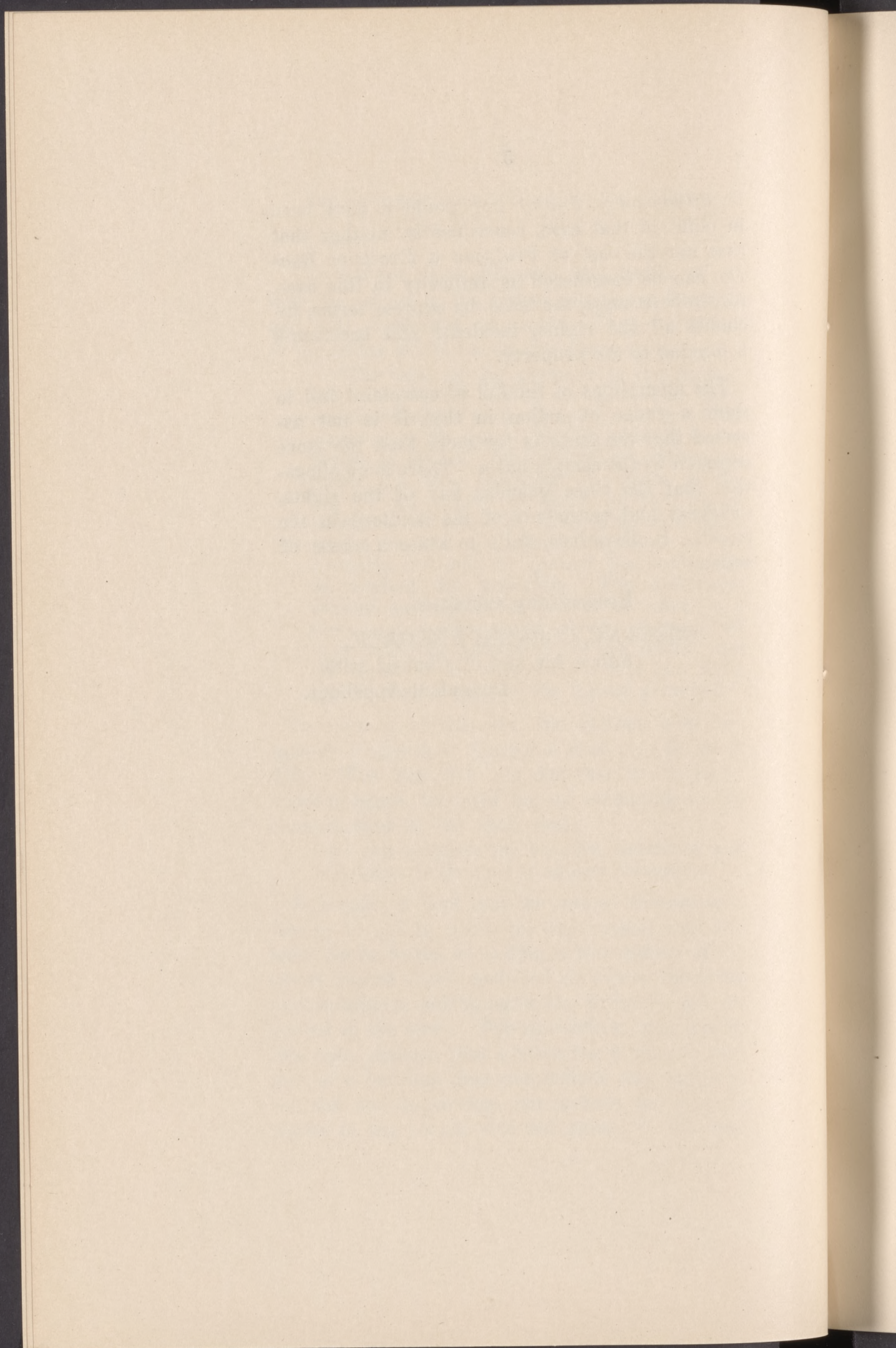
"all and singular the benefits, liabilities and privileges to the said premises belonging."

It is quite evident that the case of *Edminson v. Lowry* is not in point for the reason that the lease, by its terms, according to the opinion of the Court quoted above, included all rights, incidents and easements belonging to the property not reserved in the lease. The controlling principle in this case, namely, that a lease for a specific portion of a building does not include any rights in the soil and hence does not include the owner's rights in the street, was not raised in the case

of *Edminson v. Lowry*, nor would it have been in point in that case, consequently, neither that case nor the case of *Pridgeon v. Excelsior Boat Co.* can be considered as authority in this case, for, in both cases, the lease, by express terms, included all the rights, incidents and easements belonging to the property.

The allegations of the bill of complaint fail to show a cause of action in that it is not asserted that the lease is for more than the store occupied by the complainants. There is no allegation that the lease includes any of the rights, incidents and easements of the landlord in the street. It, therefore, fails to state a cause of action.

Respectfully submitted,
OSBORNE, CORNISH & SCHECK,
Solr's for and of Counsel with
Defendant-Appellant.



New Jersey Court of Errors and Appeals

Between

ARTHUR V. V. LIVINGSTON and
EDWARD KAAAN, partners
trading and doing business
under the firm name and
style of Kaan and Living-
ton,

Complainants-Appellees,
and

JOHN H. STODDARD, trading
and doing business as the
Arrow Bus Company,
Defendant-Appellant.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

BRIEF FOR DEFENDANT-APPELLANT.

The bill is for an injunction—the injunction being the sole relief prayed for.

On this motion the allegations of the bill are assumed to be true.

The question before the Court is—do the allegations of the bill (assuming them to be true) give the complainants the right to relief?

To give the Court jurisdiction, the bill must show

1. A personal or property right vested in the complainants.
2. An actual or anticipated violation of that right by the defendant.
3. That there is no adequate remedy at law.
4. That the damage is irreparable.

These four propositions are so familiar that they do not require citation of authorities.

The Allegations of the Bill.

As to the rights of the complainants which they claim are being violated.

They state that they lease a store known as No. 191 Market street, Paterson, N. J., and that they conduct a haberdashery business there.

The specific injuries alleged are interference with the business (conducted in the store) of complainants and loss of trade (conducted in the store) arising.

First, because complainants and complainants' customers are unable to park their automobiles in the street in front of the premises by reason of defendant's busses being parked there.

Second, because a large number of persons, including defendant's employees, congregate upon the sidewalk in front of the store.

As to the First Cause of Complaint.

The bill alleges that complainants and complainants' customers are not able to use the street immediately in front of complainants' store (state of case, p. 2, para. 5) for parking their own vehicles thereon (state of case, p. 3, par. 8). Do the allegations show (1) a right in the complainants (2) which is being violated by the defendant (3) from which complainants suffer an injury which cannot be remedied at law?

ARGUMENT.

There are two lines of cases where a private individual may claim relief by injunction against a person using the public street.

(1) The one case is where the complainant is the abutting owner and has the fee to the center of the street, and that portion of the street is obstructed by the defendant. In that case the obstruction by the defendant, beside being an obstruction of the street, is a trespass on the property of the complainant, and the complainant, in such a case, is entitled to injunction if his injury may not be remedied by suit at law and is irreparable.

Friedman v. Snare & Triest Co., 71 N. J. Law 605;

West v. Walker, 3 N. J. Eq., 279;

Wilson v. Hill, 46 N. J. Eq., 367.

(2) The other case is where the defendant obstructs the street and thereby creates a public nuisance from the maintenance of which the complainant suffers a private injury *while using the street*.

Friedman v. Snare & Triest Co., 71 N. J. Law 605;

State v. Laverack, 34 N. J. Law 201;

McDonald v. Newark, 42 N. J. Law 136.

As to Trespass.

The allegations of the complaint fail to establish in the complainants the rights in the soil which would enable them to maintain an action of trespass or invoke other remedies available to the owner of the fee.

The learned Vice-Chancellor below relied on the text in Thompson on Real Property at paragraph 1108, Vol. 2, where it is said:

“The lease of property abutting on a public street carries with it all the easements, incidents and rights of the owner in such street belonging to such property, unless especially reserved to the lessor in the lease. The tenant acquires all rights to the use of the street in front of the leased premises, including the right to air and light, access, ingress and egress, incident to the property not only as against the public but as against the landlord. He becomes entitled, by virtue of his lease, to a free and unobstructed street, incumbered only with the easement of the public and the privileges of the municipality, and this right constitutes a part of the leased premises. The tenant’s rights in this respect are as full and complete as his right to the part of the building he occupies, and his right to the one can no more be interfered with than his right to the other.”

But the Vice-Chancellor has been misled by the generality of the language of the author. The text undoubtedly contains a true statement of the law as applied to a tenant who rents the whole premises so that the rights in the soil would accrue to him as an appurtenant.

The text has no application to a tenant who rents a floor only.

In the same work, in paragraph 1105, Vol. 2, Mr. Thompson recognizes the distinction. He says,

“However a lease of certain apartments in a building is not considered a lease of land but only as a lease of apartment in the building distinct from the land.”

Citing *Keer v. Merchants Exch. Co.*, 3 Edwd. Ch. (N. Y.) 315;

Leiferman v. Osten, 167 Ill. 93, 47 N. E. 203, 39 L. R. A. 156;

Lanpher v. Glenn, 37 Minn. 4, 33 N. W. 10.

“The lessees of the middle story of a house are limited above and below as well as on the sides, yet the land is as necessary to sustain their part of the house as that below.”

Citing *Winton v. Cornish*, 5 Ohio, 477.

“So the lease of a basement and first story of a building without anything more does not transfer the land upon which the building stands to the lessee so that the mechanic could not claim a lien for materials under the mechanic’s lien law.”

Citing *Seidel v. Bloeser*, 77 Mo. App. 172.

To the same effect are

Tiffany on Landlord & Tenant, Vol. I, Sec. 24c, and *Washburn on Real Property*, 5th Ed., Bk. I, p. 577.

The complainants do not allege that their lease contains a specific grant of the land in front of the leased premises to the center of the street and no legal implication or presumption of such a grant follows from the allegations which they have made.

Hill v. Schultz, 40 N. J. Eq. 164, is in point. In that case the defendant leased a store on Broad street. At the time the lease was executed the premises were being repaired. When the work was completed the tenant entered into possession. He had not been long in possession before the owner’s (complainant’s) workmen commenced removing some old boards from a platform in front of one of the show windows, which platform formed a cover for a flight of stone steps leading to the cellar. The object in removing the platform was to open the cellar for use and to obtain access by the steps there located.

The defendant attempted to prevent the workmen from removing this platform, claiming that to remove it would prevent his prospective customers from examining closely his show windows and thus injure his business. The Court expressed the opinion that no damage was done because purchasers would not buy through show windows but, if they were interested in what they casually saw from the outside, would enter the store for a more careful examination before purchasing.

Further commenting on the right of complainants under their lease, the Court said:

“Plainly the use of the platform in question was not expressly included. It is not named nor in any sense alluded to so as to be distinguished. Nothing whatever is named but the store and the rear cellar.”

“Did the platform pass to the defendant with the store by necessary implication? Rights or interests do pass to lessees by implication (citing authorities) but where the express words of the grant are not sufficient, the implication which supplies those words flows either from a *reasonable necessity* or, considering all the circumstances, from the *manifest intention of the parties.*”

The Court then, in discussing the words “reasonable necessity” uses the language in regard to customers entering the store if they desire to purchase or carefully examine, which has been mentioned above, and then, finding that reasonable necessity did not require that the street in front be included in the lease by necessary implication, decided as to the manifest intention of the parties wholly on the ground that the instrument itself was silent and that no collateral circumstances showed that such was the intention of the parties. The implication of reasonable neces-

sity goes no further here than the right of ingress and egress.

A case directly in point on this subject is found in 124 N. Y. Supplement, p. 835, *United States Restaurant and Realty Co. v. Schultz, et al.* In that case, in an action for rent, defendants pleaded an eviction and breach of covenant of quiet enjoyment in that their sub-lessee had been excluded from certain street rights deemed by them to be appurtenant to the premises demised. The plaintiff (the landlord) used the building as a hotel and prior to making the lease to the defendant had granted to the New York Taxicab Company the exclusive privilege of maintaining a taxicab stand in front of the hotel, including the store front. The defendant sublet desk room and telephone privileges with the privilege of maintaining a sightseeing automobile at the curb in front of its store and the subtenant was prevented from using the premises in front of the store for maintaining its sightseeing bus.

The analysis of the law of the case by the Court is worthy of quotation:

"The lease to the defendants is silent as to any reservation of street rights to the tenants, and *the question is whether the landlord's license to the taxicab company is an interference with the tenants' use and enjoyment of the tenants' rights in the street as appurtenant to that lease.* As a general proposition, an owner or tenant of premises abutting on the public street cannot use the street space for his private gain, the streets being for the use of the public, subject to such regulations as the Legislature may adopt or may empower the municipality to make. *Cohen v. Mayor*, 113 N. Y. 532, 21 N. E. 700, 4 L. R. A. 406, 10 Am. St. Rep. 506; *Peace v. McAdoo*, 110 App. Div. 13, 96 N. Y. Supp. 1039. *The defendants' substantial easements* of light, air and access

have not been impaired; and, while the plaintiff, as the owner of hotel premises, could by its consent, as it did, authorize the city to license a cab stand on the street opposite the hotel (*City v. Roesing*, 38 Misc. Rep. 129, 77 N. Y. Supp. 82; *People ex rel. Thompson v. Brookfield*, 6 App. Div. 398, 39 N. Y. Supp. 673), *this deprived the defendants of nothing, since the right attached to the nature of the premises as a hotel and did not extend to a store front.* It appears that the municipal authorities have not recognized the assumed rights of the defendants to maintain a sight-seeing automobile opposite the leased premises, nor, by statute or ordinance agreeably to a statute, does such a right exist. Were the proofs such as to show that the defendants had been excluded from some lawful use of the street, through the landlord's prior consent to the maintenance of the cab stand, there might be some possible ground of defense to this action; but, as the matter is presented, *there has been no actual exclusion from any use to which the tenants may lawfully devote their street frontage. The licensing and presence of a cab stand was an incident to the hotel premises in which the store leased by the defendants was situated; and, since the lease in no way expressed a limitation upon the landlord's incidental right to approve the license and to protect the licensee, the defendants, equally with other lessees of space or hirers of accommodation in the hotel, have no cause for complaint."*

Complainant's claim, therefore, cannot be based on a trespass. They do not assert any property rights in the premises on which the defendant is alleged to stand.

As to Nuisance.

An examination of the cases in which private individuals have been given relief as the result of the maintenance of a public nuisance makes it perfectly clear that the private injury must, of necessity, be of the same character as the public injury.

Where a person creates a public nuisance by reason of noise, smoke or other incidents of that sort a private injury suffered by reason of the noise, smoke or other incidents may be redressed. But in every case it is not the fact that there is a public nuisance which gives the private individual the right to relief, but the fact that incidental to the public nuisance the private individual suffers an injury, and the private individual would thus be entitled to relief under the circumstances whether the conduct of the defendant constituted a public nuisance or not. In other words, it is the private injury which gives the private party the right to relief.

In the case of *Friedman v. Snare, etc.*, above referred to, Justice Pitney put it this way—

“If the public be unreasonably hindered or endangered, the party at fault may be indicted for maintaining a public nuisance or may be required to remove the obstruction, and further, an individual member of the public, if specially damnified by the nuisance while in the exercise of his rights in the streets may maintain an action. *But this refers only to parties injured while using the street as a street.*”

The theory of complainants as to injury is that *their business is injured*. If it were the case, it would not be an injury which occurs to either of them as one of the traveling public. They do not conduct their business in the street

nor have they any right to do so, nor have they any cause of action in themselves by reason of damage, if any, suffered by any other member of the traveling public whether such person is a customer or not.

In *State v. Laverack*, 34 N. J. Law 201, the defendants were the owners of property on the east side of Main street, south of Goodwin street, in Paterson. The City of Paterson passed an ordinance prescribing and locating certain streets (including the street in front of the defendant's property) to be used as public markets for the sale of country produce, etc. The prosecutor was selling country produce out of his farm wagon in the street directly in front of the premises of the defendants. The defendants moved the wagon, using no more force than was necessary. They were charged with assault and battery.

The Chief Justice first indicated that the defendants were the owners of the property, and had the fee to the centre of the street; and that to take their property without just compensation was a deprivation of rights preserved by the constitution. "It is the admitted duty of the courts of the state," he said, "to see that this invaluable prerogative is secure against all invasion."

McDonald v. Newark, 42 N. J. Eq., 136, was on a bill for an injunction, but the nuisance complained of, and from which the complainant suffered, were loud noises and offensive smells (see page 137).

"The noise is of the stamping of horses feet, the rumbling of wagons, the rattling of chains and harness, the shouting of men to their horses and to each other, the throwing of barrels and boxes into and upon the

sidewalk, the hawking of the goods and the hum and bustle of the crowd of purchasers. *The noises seriously disturbed the sleep of the complainant and his family and interfere with conversation in the house. The odors complained of arise from the refuse and from the smoke of the torches used by the huxters in their business and they pervade the complainant's house. That this complaint of annoyance is well founded is not denied and that the annoyances complained of constitute a nuisance is not disputed.*"

The complainants do not complain that they as units of the traveling public are excluded from traveling on this portion of the public street. They say that they and their customers *cannot park* in the public street because the defendant parks there and that in consequence the business in their store is diminished. The answer to that is that they have not alleged any right to park in the public street nor is there any interference of a right so to do. If their customers are excluded from any portion of the public street, that is an injury to the customers—not to the complainants.

If the rights of the public are violated by the defendant's conduct, that is altogether a matter for the public authorities and the remedy is by indictment or arrest for violation of traffic regulations.

As to the Second Cause of Complaint.

The bill alleges

"that by virtue of the establishment of said bus terminals by the defendant, large numbers of persons, including drivers, starters, workmen, servants, passengers, agents and other persons, congregate in front of complainants' premises thereby interfering with the business conducted by the complainants."

(State of case, p. 2, para. 77.)

There is no allegation here of any unlawful act perpetrated by the defendant, nor of any act by the defendant which infringes any right of the complainants.

The maintenance of a bus terminal is not in itself unlawful, but is consistent with the use of the street for public travel, subject to municipal regulation.

Masterson v. Short, 3 Abb. Pr. N. S., p. 157.

The congregation of persons engaged in the business of transporting the public and the congregation of the traveling public on the public street for the purpose of public travel is not an unlawful act, but is a use of streets for the purpose for which streets were made. The complainants have no right whatever to have the sidewalk in front of their premises kept clear of the traveling public. If disorder prevails on the sidewalk, the police power of the municipality is ample to control the situation. No citation of authority is necessary to sustain such elementary principles.

The complainants do not charge *the defendant* with obstructing the sidewalk, nor do they charge that the other persons mentioned have congregated on the sidewalk *by the order or authority of the defendant*.

There is absolutely nothing in this phase of the case on which the injunctive jurisdiction of the Court can be invoked.

We respectfully submit that the bill of complaint does not show any right of the complainants which is injured by the defendant and the motion to strike out the bill of complaint should have prevailed.

OSBORNE, CORNISH & SCHECK,
Solicitors for and of Counsel with
John H. Stoddard, Defendant-Appellant.

