No. 11 O.D.

Roland Park Company &c

vs

Chas. W. Hulo et ux.

Order

Filed January 16, 1901.

Roland Park Company
of Baltimore City

vs.

Charles M. Hull and
Mary A. Hull

Court of Appeals
OF
Maryland.

January Term, 1901.

The Appeal *in this case standing ready for hearing, was argued by Counsel for the respective parties, and the proceedings have since been considered by the Court.*

It is thereupon, this ~~sixteenth~~ *day of* January A. D. 1901, *by the* **Court of Appeals of Maryland**, *and by the authority thereof, adjudged, ordered and decreed that the* decree of the Circuit Court for Baltimore County sitting in Equity, made in this cause on the second day of May in the year nineteen hundred be and the same is hereby affirmed with costs.

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W. Pinkney Stone

David Fowler

John P. Briscoe

A. Hunter Boyd

James A. Pearce

Samuel D. Schmucker

J. Thomas Jones

E. No. 11[illegible] O.S. 11 Sides

Roland Park Company
of Baltimore City

vs

Charles A. Hull
and
Mary A. Hull.
his wife.

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All except Page

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Opinion by Briscoe, J.

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To be reported

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Filed January 16th, 1901.

The questions in this case, arise on a demurrer to a bill in Equity, filed in the Circuit Court for Baltimore County, asking for an injunction, to restrain a suit at law.

The Plaintiffs, in the action at law are real estate dealers and owners of valuable real estate, situate in Baltimore County, which has been subdivided into building lots.

The defendant, is a corporation known as the Roland Park Company of Baltimore City, duly incorporated under the laws of the State of Maryland and is engaged in the business of improving and developing land, at Roland Park, Baltimore County.

The declaration contains two Counts, one for an alleged nuisance, and the other for trespass, in breaking and entering the plaintiff's close.

The declaration states that the defendant corporation, prior to the 28th of April, 1897, purchased a large tract of land, known as Roland Park, lying north and west of plaintiff's property and subdivided it into building lots, and in order to induce persons to buy and build on these lots it agreed to carry off the drainage from the kitchen, bath-rooms and water-closets of the purchasers of the lots; that it constructed near and almost adjoining the plaintiff's property an extensive sewerage system, consisting of filters, drains, pipes &c. into which more than twice each day, it wrongfully and in utter disregard of the plaintiff's rights, discharged all the accumulations of the preceding twelve hours, from over one hundred cottages, the contents from which is spread in a diluted condition through the system of pipes &c. over a small area of low land, call-

ed a disposal field, lying near to and almost adjacent to the plaintiffs property, from which arises a horrible, sickening, loathsome and disease breeding stench, which with the wind is carried upon the plaintiffs property, thereby interfering with its comfortable enjoyment and making it impossible to sell either the land or the lots, so that the property has been rendered utterly valueless for selling purposes.

The relief asked by the complainant in its bill is placed upon two grounds; first, an equitable estoppel, and second, to prevent a multiplicity of suits.

The demurrer to the bill was sustained by the Court below, and the plaintiff has appealed.

The principal ground relied upon by the plaintiff, in its bill, to restrain the suit at law, is the alleged fact that the plaintiffs in the law case, sold the defendant the land called "the Disposal Field", and knew the exact purpose for which the land was purchased and the use which would be made of it, and they are equitably estopped, from claiming any damage by reason of its maintenance.

It appears, then, that the object of the suit at law, as stated in the first count of the declaration, is to recover damages for a nuisance, resulting from the maintenance of the Disposal Field, and the defence, as disclosed by the bill in Equity, to restrain the prosecution of the suit, is based upon an equitable estoppel.

This then, being the nature and character of the defence, it is clear, we think, that if the facts as alleged constitute an estoppel, they can be set up, and are as available, by way of defence,

at law as in equity.

The principle is well settled and is thus clearly stated by the Supreme Court, in the case of Phoenix Mutual Life Insurance Co. vs. Bailey, 13 Wall. 616, to be, that whenever a Court of law, competent to take cognizance of a right, has power to proceed to a judgment which affords a plain, adequate, and complete remedy without the aid of a Court of Equity, the plaintiff must in general proceed at law, because the defendant under such circumstance, has a right to trial by jury.

In the case of Atlantic Coal Co. vs. Maryland Coal Co. 62 Md. 143, this Court said: License and estoppel are legal defences in an action of trespass and could be set up in a suit at law and to the extent of their legitimate protection could be made available in that suit.

And Mr. Justice Matthews, in Drexel vs. Drexel, 122 U. S. 253, in passing upon the doctrine of equitable estoppel, and its application, said that in order to justify a resort to a Court of Equity, it is necessary to show some ground of equity other than the estoppel itself, whereby the party entitled to the benefit of it is prevented from making it available in a Court of law. In other words the case shown must be one where the forms of law are used to defeat that which in equity constitutes the right.

The same principle is applied and upheld in the cases of Kirk vs. Hamilton, 102 U. S. 76 and Dickerson vs. Calgrove, 100 U. S. 578.

The second ground of relief alleged by the bill to give a Court of Equity jurisdiction, is to prevent a multiplicity of suits.

The suit at law, is to recover for a trespass and for main-

taining what is alleged by the declaration to be an existing nuisance.

Mr. Pomeroy, in his book on Equity Jurisprudence, sec. 250, while conceding that there has arisen some conflict of decision, in the applications of the doctrine, says, it is plain that prevention of a multiplicity of suits, is not considered by itself alone, an independent source or occasion of jurisdiction in such a sense that it can create a cause of action where none at all otherwise existed. In other words, a Court of Equity cannot exercise its jurisdiction for the purpose of preventing a multiplicity of suits in cases where the plaintiff invoking such jurisdiction has not any prior existing cause of action, either equitable or legal, has not any prior existing right to some relief either equitable or legal. The very object of preventing a multiplicity of suits, assumes that there are relations between the parties out of which other litigations of some form might arise.

We find nothing in the facts of this case that would authorize the application of this doctrine.

The cases relied upon by the appellant, are distinguishable from the case presented here, and do not therefore support its contentions.

Being then of the opinion that the plaintiff is not entitled to the relief asked by its bill, the order of the Court below, for the reasons we have given, sustaining the demurrer, will be affirmed, and the plaintiff's bill will be dismissed.

Order affirmed, with costs.