# Record. No. 10

ROLAND PARK COMPANY OF BALTIMORE CITY

vs.

CHARLES W. HULL and MARY A. HULL, His Wife.

---

FRANCIS K. CAREY,
OSBORNE I. YELLOTT,
For Appellant.

D. G. McINTOSH,
ROBERT A. DOBBIN,
JOHN H. GRILL,
For Appellees.

IN THE

# COURT OF APPEALS

OF MARYLAND.

---

Appeal from the Circuit Court for Baltimore County--Equity.

---

FILED JULY 3rd, 1900.

## Appeal from the Circuit Court for Baltimore County—Equity.

**Docket Entries.**

| | |
|---|---|
| ROLAND PARK COMPANY OF BALTIMORE CITY, *Plaintiff*, *vs.* CHARLES W. HULL and MARY A. HULL, his Wife. | In the Circuit Court for Baltimore County. In Equity. |

Feby 6th 1900. Bill of Complaint for Injunction. Pltffs Exhibits A. B. C. & D filed. App of O. I. Yellott and Francis K. Carey attys for Pltff.

Same day. Nisi Order of Court for Injunction.

Same day: Spna issd and copy of order of Court sent.

Feby 15th, 1900: Summoned *Ambo* and Copy of order of Court served on Mary A. Hull one of the defendants on Feby 8th 1900, in presence &c. Shffs ret fd.

Feby 16th 1900: App of Robt Dobbin for defts order filed.

Mch 2nd 1900: Demurrer to Bill filed.

March 5th 1900: Demurrer of defts to Bill filed.

May 2nd 1900: Opinion of Court dismissing Bill filed.

May 15th 1900: Order for an Appeal from order of Court sustaining demurrer and dismissing Bill of Complaint fd.

This suit was commenced in above Court of the 6th day February 1900, by the plaintiff through Osborne I. Yellott and Francis K. Carey his solicitors filing the following bill of complaint.

---

**Bill of Complaint.**

| | |
|---|---|
| ROLAND PARK COMPANY OF BALTIMORE CITY, *Plaintiff*, *vs.* CHARLES W. HULL and MARY A. HULL, his Wife, *Defendants*. | In the Circuit Court for Baltimore County. In Equity. |

*To the Honorable, the Judge of said Court.*

Your Orator complaining says:

I

That your orator is a corporation of the State of Maryland duly incorporated under the laws of said State and is engaged

in the business of improving and developing land and that the said Charles W. Hull and Mary A. Hull, his wife, are residents of the City of Baltimore, and are real estate dealers doing business in the City of Baltimore.

II

That your orator purchased about nine years ago certain tracts of land in Baltimore County and proceeded at great expense to develop part of said land, which is now known as Roland Park, for residence purposes; that you orator expended large sums of money, in providing Roland Park with pure water, good streets, good sidewalks and furnishing it with ample light for streets and residence purposes, and with a view to promoting the health and cleanliness of said Roland Park as a place of residence, planned a general sewerage system for the use of the residents of said Roland Park which would obviate the necessity for cess pools and make it possible in the interest of the health and cleanliness of all the residents, that such cess pools should be prohibited.

III

That the drainage system adapted was what is known as "The Filtration System," which is the system now recommended by the best sanitary experts for the healthful inoffensive and disposition of sewerage, and which was constructed by your orator at a cost exceeding twenty thousand dollars ($20.000), apart from the house connections, and apart from the cost of the land used for the disposal field, as hereinafter mentioned—that under this system all the house drainage is carried through highly glazed vitrified terra cotta pipes laid in the streets of Roland Park: that at the head of each line of pipe is a large cemented tank, which tanks are constantly fed with pure water from the water mains of the Company in said streets which periodically and automatically empty themselves through said pipes, flushing them thoroughly, and so both cleaning the pipes and at the same time diluting and dissolving the sewerage, so that it becomes practically inodorious and wholly inoffensive: that on each line of pipe while still within the outlines of Roland Park and on the Company's land and long before it reaches the neighborhood of the disposal field a cemented intercepting tank is placed containing screens of less than one quarter, inch mesh which holds all except small particles of solids, and prevent their being carried to the disposal field; that all the main pipes also empty into large cemented tanks, from which the diluted matter is automatically discharged at intervals through cast iron pipes over the disposal field, which field is divided into five parts; and that the system is so operated that one of said divisions of the disposal field is used on one day in the week and the others on successive days, and in this manner by a simple process of nature, now fully recognized by the best scientific authorities as available for this purpose, the sewerage becomes purified and passes in a liquid state into the ground and through underground pipes placed throughout the disposal field, and that is now fully recognized beyond all possible question, that this system of drainage removes absolutely all danger to health, and that this fact is so

fully recognized that persons are now residing permanently on sewerage farms where this system is in use, without any impairment of their health. And your orator further says, that the disposal field now in use by your orator has been carefully prepared for the use intended, being thoroughly under-drained with terra cotta tiles, and the surface of the ground evenly graded and sodded: that it is constantly maintained by the plaintiff in good condition, both as to its effective use and attractive appearance, the grass being regularly cut with lawn mowers, and the sod taken up and relaid whenever it is necessary to do so, either for the purpose of maintaining its most effective use or preserving its appearance.

IV.

That shortly after your orator began the development of Roland Park, it became necessary for it to obtain a piece of low-lying land for use as a disposal field, in connection with its said sewerage system, and with that end in view your orator applied to the said defendants for the purchase of a certain lot of ground owned by the said defendants, and in making such application your orator explained to the said defendants, in the fullest and most particular manner, the exact purpose for which the said land was sought to be purchased and the exact use which would be made of it; and that the said defendants, with full knowledge of the purpose to which your orator proposed to put the said land, entered into an agreement of sale and sold to your orator the land which it is now using for its disposal field, and on December 24th, 1891, the said defendants executed a deed to Richard J. Capron, who was acting for your orator and who subsequently conveyed said land to your orator (it being fully known and understood by the said defendants at the time of executing said deed that the said Richard J. Capron was acting for and in behalf of your orator, and that he was subsequently to convey said land to your orator, as said Capron in fact did), said land being fully described in the said deed from Hull, &c., to Capron, dated December 24th, 1891, and recorded among the Land Records of Baltimore County in Liber L. M. B., No. 190, folio 278, &c., a certified copy thereof being filed herewith marked Plaintiff's Exhibit A, and being the same land described in said deed from Capron and wf. to the said Roland Park Co. dated the 26th day of December, 1891, a certified copy thereof being filed herewith marked Plaintiff's Exhibit B.

That at the time of making said purchase and conveyance the said defendants, because they well knew that said land designed for the disposal field of the Roland Park Company was the only land suitably located for the purpose, not only compelled your orator to buy much more land than they had any use for or desired to buy, because of its proximity to the proposed disposal field, but also charged your orator a price out of all proportion to the commercial value of the land sold, if it were to be used for any other purpose, than that for which your orator designed it should be used, and after said purchase of said land, to wit: Early in the year eighteen hundred and ninety-two your orator began to prepare said disposal *filed* for the uses for which it was designed, and to connect said disposal field by proper pipes with

the sewerage system of Roland Park; and that the entire sewerage system was completed by July 1st, 1892, or about seven and a half years ago.

VI.

That the defendants not only sold the said land to your orator for use as a disposal field, but stood by and permitted said disposal field to be prepared for use until the said disposal field was fully prepared and said sewerage system fully completed at a great cost, as above stated; and for a long period stood by and permitted your orator to spend great sums of money in building, extending and maintaining said system without challinging your orator's full and complete rights to maintain said disposal field and said sewerage system.

VII.

That during the month of December, eighteen hundred and ninety-nine, the said Charless W. Hull brought a suit by titling against your orator in the Circuit Court for Baltimore County on the law side thereof, claiming damages against your orator to the extent of forty thousand dollars ($40,000, but without alleging in docketing said suit for what such damages were asked; but subsequently, after amending said suit by making the said Mary A. Hull a party plaintiff, the defendants filed a declaration in said Circuit Coart for Baltimore County in which they claim damages for injuries alleged to be done by your orator to land near said disposal field by the maintenance of said disposal field, and your orator files herewith as part of this bill of complaint, a certified copy of the docket entries in said case marked "Plaintiff's Exhibit C," and also a copy of the aforesaid declaration, marked "Plaintiff's Exhibit D."

VIII

That it is wholly untrue, as alleged in said declaration, that there is any stench of any kind arising from the use of said disposal field or that the use of said disposed field interferes with the reasonable, comfortable and profitable enjoyment of the defendant's property, or that the presence of said disposal field, or the use of the same for the sewerage system or any part thereof, results in any of the dangers, offenses or injuries alleged in said declaration: but to the contrary thereof, all parts of said sewerage system, including said disposal field, are operated and maintained so as to be free from any offense or danger, and so as to wholly refrain from causing the defendants or any other person owning land or residing in the vicinity of it, or any part thereof, any injury whatever.

IX

Your orator further says, that even if the presence, or the use, of said disposal field did result in the injuries complained of, by the defendants cannot in equity and good conscience assert any claim for damages against your orator by reason of any such alleged injury, because as above stated the defendants sold to your orator the land now used by them for a disposal field, for the express purpose of being so used and with the fullest understanding of the exact use which would be made of said disposal

field, and inasmuch as the defendants, after selling said land for use as a disposal field, stood by and permitted your orator to expend great sums of money in connection therewith, your orator charges that the said defendants are now equitable estopped from claiming any injuries or damages against your orator by reason of the maintenance of said disposal field.

X.

That inasmuch as the claim made by the defendants in said common law suit must be based upon the theory in law that your orator is doing a continuing injury to the defendants unless relief is granted your orator by a court of equity, your orator will not only be compelled to meet at great expense the suit already brought, but will likewise be required from time to time to meet other suits of a like nature from the defendants and will be subject to a multiplicity of actions which will occasion it great expense and annoyance; and your orator further charges that for this and for other reasons your orator cannot fully and completely protect itself in a court of law or obtain adequate relief therein, and that the interposition of a court of equity to restrain by injunction either the pending suit or other suits which will follow, it is necessary for the full and complete protection of your orator's rights and for the full and adequate presentation of the equitable remedy sought to be invoked in this Bill of Complaint.

To the end therefore:

*First.* That the defendants may by injunction be restrained from proceeding with the above mentioned suit now pending in the Circuit Court for Baltimore County on the law side thereof.

*Second:* That the defendants may by injunction be restrained from bringing any other suits or actions against your orator, by reason of the maintenance of the said disposal field.

*Third:* That your orator may have such other and further relief as the case may require.

May it please your Honor to grant unto your orator the writ of subpoena directed to the said Charles W Hull and Mary A. Hull, his wife, both of whom reside in the City of Baltimore aforesaid, commanding them to be and appear in this Court on some certain day to be named therein to answer the premises and to abide by and perform such decree or decrees as may be passed therein.

And as in duty bound

ROLAND PARK COMPANY OF BALTIMORE CITY
*by* EDWARD H. BOUTON
*Vice President*

Seal

Test: RICHARD W MERCAHNT JR
*Secy & Tres.*
OSBORNE I YELLOTT
FRANCIS K. CAREY
*Solicitors for Plaintiff*

STATE OF MARYLAND

*Baltimore City, to wit:*

I hereby certify, that on this Second day of February in the year nineteen hundred, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Edward H. Bouton, the Vice-President of the Roland Park Company of Baltimore City, and made oath in due form of law that the matters and facts set forth in the aforegoing Bill of Complaint are true and *bona fide* as therein set forth.

As witness my hand and notarial seal the day and year aforesaid

{ Corporate Seals Place. }

WM H. JONES
*Notary Public*

Upon the aforegoing Bill of Complaint and affidavit, it is this 6th day of February, in the year ninetee- hundred, by the Circuit Court for Baltimore County in Equity

Ordered that an injunction issue as prayed in said Bill of Complaint unless cause to the contrary thereof be shown by the defendants on or before the 3rd day of March, in the year nineteen hundred, provided that a copy of this order be served on the defendants, or their solicitors on or before the 13th day of Feby, nineteen hundred

N CHARLES BURKE

---

**Plaintiff's Exhibit A.**

CHARLES W. HULL AND WF
Deed to
RICHARD J. CAPRON.

This deed made this twenty-fourth day of December in the year one thousand eight hundred and ninety-one by and between Charles W Hull and Mary A. Hull his wife of the City of Baltimore in the State of Maryland, parties of the first part, and Richard J. Capron of Baltimore City party of the second part.

Witnesseth that in consideration of the sum of Fourteen thousand dollars ($14,000.00) to the said parties of the first part paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part his heirs and assigns in fee simple, all that tract of land situate lying and being in Baltimore County in the State of Maryland and described as follows that is to say.

Beginning for the same at the end of the North two and one half degrees west eighty-nine and fifty-six one hundredths perches line of a tract of land described in a deed from John B. Carey and Fanny D Carey his wife and Wilson M. Carey to said Charles W. Hull and Mary A. Hull dated the 11th day of April 1890, and recorded among the land records of Baltimore County in Liber J. W. S. No 179 folio 427 &c, thence binding

on the outlines of said tract of land the eight following courses and distances, viz: North eighty-four degrees east sixteen and seven tenths perches. South twenty-three degrees east twenty-four perches, south fourteen and three fourths degrees east fourteen and six tenths perches, south thirty eight and one fourth degrees east four and four tenths perches, south fifty six and one fourth degrees east seven and eight tenths perches, south thirty one degrees east four and four tenths perches, south sixty nine and one half degrees east twelve and one tenth perches, and south fourteen degrees west four hundred and fifty feet more or less to the centre line of the right of way of the Baltimore and Lehigh Railroad, and to the end of the south fifteen degrees forty minutes east seventy eight feet line of the parcel of land described in a deed from John B. Carey and Fanny D. Carey his wife to the Baltimore and Delta Railway Company dated the 13th day of October 1881, and recorded among the Land Records aforesaid in Liber W. M. I. No. 125 folio 101 &c, thence leaving the outlines aforesaid and binding on the centre of said right of way and reversely on the south fifteen degrees forty minutes east, Seventy eight feet line of the parcel of land described in said deed from John B. Carey and wife to the Baltimore and Delta Railway Company, north fifteen degrees and forty minutes west seventy eight feet thence north eighty seven degrees, west eighteen feet more or less to the westernmost outline of said right of way of the Baltimore and Lehigh Railroad, thence along the westernmost outline of said right of way and in a nortwesterly direction one hundred and twelve feet more or less to the centre line of "A" Street as designated on the plat of "Evergreen" C. W. and B. H. Hulls, North addition to Baltimore filed for record among the Land Records of Baltimore County in Liber J. W. S. No. 1, folio 61 &c. one of the Plat books in the Clerks office of said County, thence westerly along the centre line of "A" Street one hundred and ninety-five feet more or less to meet a line drawn southerly in prolongation of the line between Lots 114 and 115 as designated on the plat aforesaid thence northerly binding on said line and on the line between Lots 114 and 115 and continuing in the same direction and binding on the line between lots No 92 and 93 as designated on said plat three hundred and fifteen feet to the centre of "B" Street, also designated on said plat, thence westerly along the centre line of "B" Street four hundred and seventy-five feet to intersect said north two and one-half degrees west eighty-nine and fifty-six one hundredths perches line of the land described in the deed from John B. Cary and Fanny D. Cary his wife and Wilson M. Cary to said Charles W. and Mary A. Hull and thence binding on said line north two and one-half degrees west eight hundred and thirty-five feet more or less to the place of Beginning.

Saving and excepting however from the grant aforesaid lots Nos. 52, 53, 54, 55, 56, 57, 62 and 63, as laid down and designated on the plat hereinbefore mentioned. Being a part of the tract of land which by a deed dated the 11th day of April 1890, and aecorded among the Land Records of Baltimore County in Liber J. W. S. No 197 folio 427 &c was granted and conveyed by John B. Cary and Fanny D. Cary his wife and Wilson M. Cary

to the said Charles W. Hull and Mary A. Hull in fee simple and an undivided moiety whereof was by deed dated the 21st day of June 1890, and recorded among the land records aforesaid in Liber J. W. S. No 180 folio 475 &c granted and conveyed by the said Charles W. and Mary A. Hull to Benjamin H. Hull and Mary E. Hull as joint tenants in fee simple, which undivided moiety was by deed dated the 23rd day of November 1891 and intended to be recorded among the Land Records aforesaid prior hereto, reconveyed by the said Benjamin H. Hull and Mary E. Hull to the said Charles W. and Mary A. Hull, see also confirmatory deed from John B. Carey and wife and Wilson M. Carey to said Charles W. Hull and wife dated December 19th 1891 and recorded among said Land Records prior hereto. Together with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, roads ways, waters privileges appurtenances and advantages thereto belonging or in any wise appertaining, and particularly the right and privileges to and unto the said party of the second part and to his heirs and assigns, so far as the parties hereto of the first part have the right and power to grant the same to lay a sewer along Cold Spring Lane to Ashland Avenue thence along Ashland Avenue to an alley twenty feet wide running parallel to "A" Street and about one hundred and thirty five feet southerly therefrom, thence easterly and northerly along said alley to its northern end at "A" Street (where said alley is fifteen feet wide) thence still easterly along "A" street to the said Baltimore and Lehigh Railway said streets and alleys to be left in a good passable condition after said sewer is laid. To have and to hold the said described tract of land and premises, except as hereinbefore excepted unto and to the proper use of the said party of the second part, his heirs and assigns in fee simple, subject however to the existing right of way of said Baltimore and Lehigh Railway Company over said land, provided however and it is hereby expressly agreed that this deed is made subject to all the rights and privileges which now attach and belong to any and all of the lots which the said parties hereto of the first part have sold or contracted to sell in said tract of land as to and concerning any and all of the Streets and alleys designated and laid off on the plat of said property and the said parties hereto of the first part covenant that they will warrant specially the property hereby granted and conveyed, and that they will execute such further assurance of said land as may be requisite.

Witness the hands and seals of said grantors on the day and date first hereinbefore mentioned.

CHARLES W. HULL [Seal]
MARY A. HULL [Seal]

Test JNO. D. LIPSCOMB

STATE OF MARYLAND,
*City of Baltimore, Sct:*

I hereby certify that on this twenty-fourth day of December in the year one thousand eight hundred and ninety-one, before me the subscriber a Justice of the Peace of the State of Maryland in and for the City of Baltimore aforesaid personally ap-

peared Charles W. Hull and Mary A. Hull his wife, the grantors in the foregoing deed and severally acknowledged the same to be their respective act and deed.

JNO. D. LIPSCOMB
*Justice of the Peace.*

NOTE. Which said copy contained certificate from Jas. Bond Clerk of the Superior Court of Baltimore City, that Jno D. Lipscom*d* was a Justice of the Peace in and for said City and also certificate from Clerk of our said Court here that the aforegoing is a true copy taken from Liber L. M. B. No 190 fol 278 &c.

---

**Plaintiff's Exhibit "B."**

RICHARD J. CAPRON AND WF
Deed to
ROLAND PARK COMPANY

This deed made this twenty-sixth day of December in the year one thousand eight hundred and ninety-one, by and between Richard J. Capron and Laura Lee Capron, his wife of the City of Baltimore, in the State of Maryland, parties of the first part, and the Roland Park Company of Baltimore City a corporation, incorporated under the Laws of the State of Maryland, party of the second part: Witnesseth that in consideration of the sum of fourteen thousand dollars ($14,000.00) to the said parties of the first part, paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said party of the second part its successors and assigns in fee simple, all that tract of land, situate, lying and being in Baltimore County in the State of Maryland and described as follows that is to say.

Beginning for the same at the end of the north two and one half degrees west eighty-nine and fifty-six one hundredths perches line of a tract of land described in a deed from John B. Cary, and Fanny D Cary his wife and Wilson M. Cary to Charles W. Hull and Mary A Hull dated the 11th day of April 1890, and recorded among the Land Records of Baltimore County in Liber J. W. S. No 179 folio 427 &c thence binding on the outlines of said tract of land the eight following courses and distances Viz: north eighty four degrees, east sixteen and seven tenth perches, south twenty three degrees east twenty four perches, south fourteen and three fourths degrees east fourteen and six tenths perches, south thirty eight and one fourth degrees east four and four tenths perches, south fifty six and one fourth degrees east seven and eight tenth perches south thirty one degrees east four and four tenths perches, south sixty nine and one half degrees east twelve and one tenth perches, and south fourteen degrees west four hundred and fifty feet more or less to the centre line of the right of way of the Baltimore and Lehigh Railroad and to the end of the south fifteen degrees forty minutes east seventy eight feet line of the parcel of land described in a deed from John B Cary and Fanny D. Cary his wife to the Baltimore and Delta Railway Company dated the 13th day of October 1881, and recorded

among the land records aforesaid in liber W. M. I. No 125 folio 101, thence leaving the outlines aforesaid and binding on the centre of said right of way and reversely on the south fifteen degrees forty minutes east seventy eight feet line of the parcel of land described in said deed from John B. Cary and wife to the Baltimore and Delta Railway Company north fifteen degrees and forty minutes west seventy eight feet thence north eighty seven degrees west eighteen feet more or less to the westernmost outline of said right of way of Baltimore and Lehigh Railroad, thence along the westernmost outline of said right of way, and in a northwesterly direction one hundred and twelve feet more or less to the centre line of " A " street as designated on the plat of " Evergreen." C. W. and B. H. Hulls addition to Baltimore filed for record among the Land Records of Baltimore County in Liber J. W. S. No 1 folio 61 &c one of the plat books in the Clerks office of said County thence westerly along the centre line of " A " street one hundred and ninety-five feet more or less to meet a line drawn southerly in prolongation of the line between lots Nos 114 and 115 as designated on the plat aforesaid thence northerly binding on said line, and on the line between lots Nos 114 and 115 and continuing the same direction and binding on the line between lots Nos 92 and 93 as designated on said plat three hundred and fifteen feet to the centre of " B " Street also designated on said plat thence westerly, along the centre line of " B " Street four hundred and seventy five feet to intersect said north two and one half degress west eighty nine and fifty-six one hundredths perches line of the land described in a deed from John B. Cary and Fanny D Cary his wife and William M Cary to the said Charles W. and Mary A Hull and thence binding on said line north two and one half degrees west eight hundred and thirty five feet more or less to the place of beginning saving and excepting however from the grant aforesaid lots Nos. 52, 53, 54, 55, 56, 57, 62 and 63, as laid down and designated on the plat hereinbefore mentioned. Being a part of the tract of land, which by deed dated the 11th day of April 1890, and recorded among the Land Records of Baltimore County in Liber J. W. S. No 197 folio 427 &c was granted and conveyed by John B Cary and Fanny D Carry, his wife and Wilson M Cary to the said Charles W. and Mary A Hull in fee simple, and an undivided moiety whereof was by deed dated the 21st day of June 1890, and recorded among the Land records aforesaid in Liber J. W. S. No 180 folio 475 &c granted and conveyed by the said Charles W. and Mary A Hull to Benjamin H. Hull and Mary E Hull as joint tenants in fee simple, which undivided moiety was by deed dated the 23rd day of November 1891 and intended to be recorded among the Land records aforesaid prior hereto reconveyed by the said Benjamin H Hull and Mary E Hull to said Charles W and Mary A Hull see also confirmatory deed from John B Carey and wife and Wilson M Cary to said Charles W Hull and wife, dated December 19th 1891 and recorded among said Land Records prior hereto.

Together with the buildings and improvements thereupon erected made or being, and all and every the rights, alleys, roads ways, waters privileges appurtenances and advantages thereto

belonging, or in any wise appertaining, and particularly the right and privilege so far as the parties hereto of the first part, have the right and power to grant the same to lay a sewer along Cold Spring Lane to Ashland Avenue thence along Ashland Avenue to an alley twenty feet wide running parallel to "A" Street and about one hundred and thirty-five feet southerly therefrom. thence easterly and northerly along said alley to its northern end of "A" Street (where said alley is fifteen feet wide). thence still easterly along "A" Street to the said Baltimore Lehigh Railway said streets and alleys to be left in a good passable condition after said sewer is laid.

To have and to hold the said described tract of land and premises except as hereinbefore excepted unto and to the proper use of the said party of the second part its successors and assigns in fee simple, subject however to the existing right of way of said Baltimore and Lehigh Railway Company over said land, and subject also to a certain mortgage for six thousand (6,000.) dollars executed by the grantors herein, in favor of said Charles W. Hull and Mary A. Hull and intended to be accorded prior hereto, and the parties hereto of the first part covenant that they will warrant specially the property hereby granted and conveyed, and that they will execute such further assurances of said land as may be requisite. Except as to the above mentioned Mortgage.

Witness the hands and seals of said grantors on the day and year first hereinbefore mentioned

RICHARD J. CAPRON [Seal]
LAURA LEE CAPRON [Seal]

Test. S. MAGRUDER TUBMAN.

STATE OF MARYLAND,

*City of Baltimore, Sct:*

I hereby certify that on this twenty-sixth day of December in the year one thousand eight hundred and ninety-one before me the subscriber, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore aforesaid personally appeared Richard J. Capron and Laura Lee Capron his wife, the grantors in the foregoing deed and severally acknowledged the same to be their respective act and deed.

S. MAGRUDER TUBMAN, *J. P.*

NOTE. To which Copy of deed was annexed a certificate from Jas Bond, Clerk of the Superior Court of Baltimore City, that S. Magruder Tubman was a Justice of the Peace of the State of Maryland in and for Baltimore City, &c and certificate from the Clerk of our said Court that the aforegoing is a true Copy taken from Liber L. M. B. No 191, folio 321 &c.

**Plaintiff's Exhibit "C."**

(Short Copy Docket Entries.)

CHARLES W. HULL AND MARY A. HULL, HIS WF.

*vs.*

THE ROLAND PARK COMPANY OF BALTIMORE CITY, A BODY CORPORATE.

December 26th 1899. Order filed, *spna* issued.

Same day: App of John H Grill Esqr for Plaintiff

Dec 30th 1899: "Summoned by service on Edward H. Bouton Vice President of the Roland Park Company of Balto City" Shffs. return filed.

Jany 12th 1900: Motion to amend case by adding the name of Mary A Hull his wife party plaintiff.

Same day: Leave granted order of Court filed.

Same day: *Nar* filed Copy sent:

Jany 19th 1900. Copy of *Nar* served on E. H. Bouton Vice President of the Roland Park Co. of Balto City a body corporate this 17th day of Jany 1900. Rule Plea.

NOTE: Certificate that the aforegoing is a true copy annexed.

---

**Plantiffs' Exhibit "D."**

CHARLES W. HULL and MARY A. HULL, his Wife,

*vs.*

THE ROLAND PARK COMPANY OF BALTIMORE CITY, a body corporate.

In the Circuit Court for Baltimore County.

Charles W. Hull and Mary A. Hull, his wife, by John H. Grill, their Attorney, sues The Roland Park Company of Baltimore City, a body corporate:

I. For that the plaintiffs are real estate dealers, doing business in the City of Baltimore, and its immediate vicinity, and the owners of a valuable piece of real estate and improvements, situate and lying on the North side of Cold Spring Lane in the 9th Election District of Baltimore County, the same having been subdivided into building lots preparatory for sale, with Streets and alleys laid out, and known as "Evergreen" and that sometime prior to the 28th day of April, 1897, the defendant corporation purchased a large tract of land lying North and West of the property of these plaintiffs, and subdivided the same, said property being known as "Roland Park" that the said defendant corporation in order to induce persons to buy and build upon the lots laid out in its said sub-division under-

took and agreed to carry off the drainage from the kitchen, bath-rooms and water-closets, for a limited period free of charge to purchasers of lots, to wit: until January 1st, 1898, and after that period the said defendant corporation undertook and agreed to carry off the drainage from the kitchens, bath-rooms and water closets of the purchasers of said lots, for a definite and specific sum of money.

That the said defendant corporation by reason of said inducement to purchase, as well as by other inducements made by it, has sold a great number of lots in said sub-division, and said village of Roland Park now contains over one hundred cottages, the drainage from all of which is carried off by the defendant corporation, in pursuance of said contracts with the purchasers of said lots: that in order to dispose of said drainage the said defendant corporation, constructed near to and almost adjoining the plaintiffs said property, an extensive system of filters, drains, pipes &c., into which more than twice each day, it, the said defendant corporation, wrongfully and in utter disregard of the rights of these plaintiffs to the reasonable, comfortable and profitable enjoyment of their said property, discharges and has been accustomed to discharge since the said 28th day of April, 1897, all the accumulations of the preceding twelve hours from the kitchens, bath-rooms and water-closets of over one hundred cottages in Roland Park, which said matter is spread out in a diluted condition through said system of pipes, drains, &c., over a small area of low land lying near to and almost adjacent to the property of these plaintiffs, from which there arises a horrible, sickening, loathsome and disease breading stench, which with every breath of wind is carried over and upon the property of these plaintiffs thereby interfering with that reasonable, comfortable and profitable enjoyment of their said property to which they are entitled, and making it impossible to sell their said land, or any portion or subdivision thereof: and by reason of said alleged wrongful acts of the said body corporate, quite a number of the lots in the said subdivision already sold by these plaintiffs, but not wholly paid for, the purchasers thereof refusing to pay for, or take the said lots, and have abandoned the same, and in consequence of which said wrongful acts of the said defendant corporation, the property of these plaintiffs have been rendered utterly valueless for selling purposes.

2. For that the plaintiffs are the owners and in the possession of a certain close in Baltimore County, and that the defendant corporation on or about the —— day of —— 1897, without the permission of these plaintiffs, with force and arms, broke and entered the said close of said plaintiffs, to their great damage.

And these plaintiffs claim $40,000.00 damages.

John H. Grill
*Attorney for plaintiffs.*

---

**Demurrer to Bill.**

The Defendants demur to the whole bill of Complaint.

First: Because *the* shows no equitable grounds for the relief sought, and

Second: Because from the face of the bill the complainants have an adequate remedy at law.

D. G. McIntosh
Robert A. Doblin
John H. Grill
*Sols for Defendants.*

March 5 1900. A demurrer identical to the aforegoing with affidavit thereto, that it was not intended for delay.

---

**Opinion of Court.**

In December 1899 Charles W. Hull and wife instituted a suit at law, in this Court against the Roland Park Company of Baltimore City, a body corporate.

The declaration contains two Counts, one of trespass on the case, and the other of trespass *quare clausam fregit.*

The first Count recites the business of the Plaintiffs, and that they are the owners of certain real estate, located in Baltimore County, and that the defendant corporation is the owner of certain valuable land and improvements in said County, and in order to carry off the drainage from the kitchens, bath-rooms, and water closets from the houses erected on said property, it "constructed near to and almost joining the plaintiff's said property an extensive system of filters. drains, pipes &c., into which more then twice each day it, the defendant corporation, wrongfully, and in utter disregard of the rights of these plaintiff's to the reasonable, comfortable, and profitable enjoyment of their said property, discharges and have been accustomed to discharge since the 28th of April 1897, all the accumulations of the preceding 12 hours from the kitchens, bath-rooms, and water closets of over one hundred cottages in Roland Park, which said matter is spread out in a diluted condition through a system of pipes and drains &c, over a small area of low land lying near to and almost adjoining the property of the plaintiff's, "from which there arises a horrible, sickening, loathsome and disease breeding stench, which with every breath of wind is carried over and upon the property of these plaintiffs, thereby interfering with their reasonable comfortable, and profitable enjoyment of their said property to which they are entitled, and making it impossible to sell their said land &c"

The Second Count alleges, that the defendant without the permission of the Plaintiffs. "broke and entered the said close of the Plaintiffs."

On the 6th day of February 1900. the Roland Park Company filed its Bill of Complaint in this cause for an injunction to restrain the prosecution of said suit at law. On March 5th 1900. the defendants filed a demurrer to said Bill. The questions to be decided arise upon said demurrer. The sole ground upon which the complainant can seek to restrain prosecution of the suit at law is that the plaintiff in said suit is equitably estopped from maintaining the same, for I think it reasonably clear, upon the principles stated in I. Pom eq. juris pgs 254 to 300, especially

those stated in secs. 250, 251, 271, 272, 273, 274, that the Bill does not present a case where the Court of Equity can grant an injunction upon the ground of preventing a multiplicity of suits. It must be conceded, that the complainant is not entitled to the relief prayed for, unless the facts stated in the bill furnish a complete defense to the case at law. Now the bill alleges nothing in answer to the Second Count of the declaration, and no reason anywhere appears why the plaintiff's in the suit at law should be restrained from having the cause of action stated in said Court tried in a Court of law

Secondly: the equitable estoppel which constitutes the foundation of the Bill, is directed and intended to apply to the first Count only of the declaration. A careful examination of the Bill has satisfied me that its allegations do not furnish a sufficient answer to the first count of the declaration. The thing complained of by the plaintiff in the first Count of the *Nar* is the nuisance resulting from the disposal field. It is not alleged in the Bill that it was supposed that any nuisance would result to the Plaintiffs by reason of the maintenance of said disposal field, or that he was informed that any was likely to result, or that he had any reason to suppose that such would be the case. On the contrary, in the light of the facts disclosed in the Third paragraph of the Bill, it must be assumed that the drainage system, the injurious effect of which upon the Plaintiff's property and comfort constitutes the ground of the suit at law, was understood by both the complainant and the defendants to be, as stated in the Bill, "practically inodorous and wholly inoffensive." The estoppel relied upon in restraint of the suit at law, is that the plaintiffs in the suit at law sold to the complainant "a piece of low lying land for use as a disposal field in connection with its said sewerage system," and this system and its sanitary construction is fully described in the Bill, and is further alleged that in making the purchase of said lot of ground from the plaintiff's in the law suit "Your orator explained to said defendants, in the fullest and most particular maner the exact purpose for which said land was sought to be purchased, and the exact use which would be made of it." This full and particular explaination of the purpose and of the use to be made of said disposal field, I must understand to be that stated in the Third paragraph of the Bill. If therefore the defendants were to deceive, or mislead as to the effect of this system upon their rights, or if, as alleged in the first count of the *Nar* its maintenance has resulted in a nuisance as complained of, it would seem to be clear that they would not be estopped from bringing their action at law because of the fact that they sold a piece of ground to the complainant, under the circumstances stated in the Bill, to be use- as a disposal field. That the use of the disposal field would result in a condition of things complained of by the plaintiffs seems not to have been in the contemplation of any one. The plaintiffs were not told that a nuisance might result in its use, nor is it alleged, nor does it anywhere appear that they had any reason to believe that its location would result in annoyance, or injury to themselves, or their property. Nor is it alleged that the plaintiffs made any representations, either by word or act, to mislead the complainant, or to induce it to be-

lieve that it was at liberty to commit the nuisance complained of. In my judgment there is no estoppel alleged in the Bill. It contains no answer to the case of the Plaintiff in the law suit, and does not pretend to offer any defence in the Second count in *Nar*. The authorities cited by the Complainant upon the question of Equitable estoppel, when examined in the light of the allegations of the Bill, abundantly support the views I have expressed. It is alleged, it is true, that the defendants compelled the complainant to buy more land then it needed, for its disposal field, and to pay a price out of all proportion to the commercial value of the land sold, but this they did, as alleged, not because of an apprehended nuisance resulting from the use of the land as a disposal field, but because it "was the only land suitable for that purpose." If I am wrong in this position, and if the matter set out in the Bill be a complete answer to the case at law, it is certainly a defense which is open to the complainant in the law court. He can obtain the full benefit of it there. Such being the case, I see no reason why, the Court of Equity should interfere with the suit at law. But jurisdiction of a Court of Equity to restrain actions at law is discussed with some fullness. I. Pom Eq. Juris pg. 393 &c, and is there stated that the jurisdiction to restrain actions at law originated in cases "where the defendants sought the aid of Chancery which alone could take cognizance of the Equities that would defeat the recovery at law against them," and in sec. 1361, and subsequent sections, the principal is maintained.

"That where a Court of Law can do as full justice to the parties, and to the matters in dispute as can be done in Equity, a court of equity will not stay proceedings at law."

This doctrine has been fully recognized in Maryland in the case of the Park Association *vs* Shartzel 83, Maryland page 12, which was a suit to restrain an action at law, the Court said. "It is well settled that proceedings in ejectment will not be enjoined where the questions of title involved may be properly determined at law, or where the grounds relied upon, for an injunction would be equally available if urged as a defense to the action of ejectment." This was said in a case where, like this, the Bill was based upon an equitable estoppel. Counsel for the complainants has displayed great industry and research in the collection of cases to sustain his position, and he has produced some authorities outside of Maryland which seem to support his contention. But no Maryland case has been produced which supports his position on the contrary, the Maryland cases, as well as the weight of authority outside of Maryland, seem to be against it. For the reason stated, it is ordered by the Court this 2nd day of May 1900, that the demurrer filed March 5th 1900, be and the same is hereby sustained, and the Bill of Complaint is hereby dismissed with costs to the defendant.

N Charles Burke

Order for appeal from order of Court sustaining demurrer and dismissing bill of complaint.

Mr. Clerk: Please enter an appeal for the Roland Park Company, etc. to the Court of Appeals of Maryland from the

order of Court sustaining the defendants' demurrer and dismissing the Bill of Complaint passed on the 2nd day of May 1900.

FRANCIS K. CAREY,
OSBORNE I. YELLOTT,
*Solicitors for Plaintiff.*

Whereupon it is ordered by the Court here, that a transcript of the record and proceedings, with all things thereunto relating, be transmitted to the next Court of Appeals of Maryland: and the same is transmitted accordingly.

Test: N. BOSLEY MERRYMAN,
*Clerk.*

STATE OF MARYLAND,
*Baltimore County, to wit:*

I, N. Bosley Merryman, Clerk of the Circuit Court for Baltimore County, hereby certify that the aforegoing is a true transcript of the record and proceeding in the therein entitled cause, in accordance with the rules of the Court of Appeal- relating thereto.

(Seal's Place.) In testimony whereof, I hereunto subscribe my name and affix the seal of said Circuit Court this 7th day of June, A. D. 1900.

N. BOSLEY MERRYMAN,
*Clerk.*

| | |
|---|---|
| Plaintiff's Costs | 18 80 |
| Defendant's Costs | 10 70 |
| Transcript | 15 00 |

**Filed October 3, 1900.**

---

| | |
|---|---|
| ROLAND PARK COMPANY OF BALTIMORE CITY<br>*vs.*<br>CHARLES W. HULL and MARY A. HULL, *His Wife.* | IN THE<br>**Court of Appeals**<br>OF MARYLAND.<br>OCTOBER TERM, 1900.<br>GENERAL DOCKET, NO. 10 |

*Appeal from the Circuit Court for Baltimore Co., in Equity.*

## APPELLEES' BRIEF.

### STATEMENT.

The bill in this case was filed to restrain the prosecution of an action at law.

The action sought to be restrained is in tort. The declaration contains two counts. The first is for a nuisance, and charges the defendant with discharging the accumulations and contents of the kitchens, bathrooms and water closets from a large number of cottages belonging to defendant in Roland Park over a small area of low land adjacent to the property of the plaintiffs, from which arises horrible and sickening

stenches, and which are borne over and upon the plaintiff's property, interfering with the comfortable and profitable enjoyment of the same, and preventing them from selling it off in lots and parcels, as designed by them.

The second count is for breaking and entering the close of plaintiffs.

It will be seen that the bill is not to restrain the commission of a nuisance; it is not brought by one who is himself aggrieved, but its purpose is to prevent some one else, who says he is aggrieved, from recourse to the usual method of redress. It is believed such an effort is a new departure in the law.

The first ground upon which the inteference of a Court of Equity is invoked is that the plaintiffs in the action at law are equitably estopped from asserting any claim for damages, and that a Court of Equity is the only forum in which that defense can be properly raised.

The alleged estoppel rests on the fact that the appellee, plaintiff in the action at law, sold the appellant a certain parcel of land, which is called "the disposal field," which forms the subject-matter of the complaint, knowing the purpose for which it was purchased.

The bill, after describing complainant's system of sewerage, with its tanks and pipes, and how the latter are flushed, all of which are designed to take the place of cesspools, etc., states that the contents are thereby made "practically inodorous and wholly inoffensive," and that the disposal field to which the matter is carried is divided into a number of parts, and the system so operated, that the divisions of the field are used on successive days; as a result of all which the system of sewerage removes absolutely all danger to health, and persons are accustomed to reside permanently on similar disposal fields without suffering therefrom; that

the plaintiff in this action, in view of constructing such a system, applied to defendants for the purchase of a lot of ground owned by them, and in making such application explained to them in the fullest and most particular manner the exact purpose for which the said land was sought to be purchased, and the exact use which would be made of it, and that they, with full knowledge of the purpose to which the land was proposed to be put, entered into an agreement by which it was sold and conveyed to the Roland Park Company. The deed itself simply conveys the land, with the right to construct a sewer in certain streets therein named. It is further alleged that at the time of the purchase the Hulls knew that the land designed for the disposal field was the only place suitable for that purpose, and that in consequence they compelled the company to buy more land than was necessary, and to pay a higher price for the same; that afterwards they stood by and allowed the company to prepare the land so purchased as a "disposal field," and to spend large sums of money in constructing and maintaining said disposal field and said sewerage system. This is a condensed but fair statement of the ground upon which the plaintiff at law is claimed to be equitably estopped from bringing his action.

## I.

We reply:

*First.* That the grounds alleged constitute no estoppel; and

*Second.* That if the facts alleged do constitute an estoppel, they are equally available by way of defence in the action at law as they would be in a suit in equity.

Estoppel *in pais* is where one party, by word or act, has induced another to do something which public policy and good faith will not allow to be repudiated and turned to his advantage by the one through whose influence the deed was committed.

Lord Campbell, in Cairncross vs. Lorimer, 3 McQueen, H. L. C. 829, says: "In the jurisprudence of all civilized nations, the doctrine is found 'that if a man either by word or by conduct has intimated that he consents to an act, which has been done, and that he will offer no opposition to it, although it could not have been lawfully done without his consent, and that he thereby induces others to do that from which they might otherwise have abstained, he cannot question the legality of the act he has so santioned, to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.'"

The Maryland Court has stated the same principle in other words.

Alexander vs. Walter, 8 Gill, 239.
Hardy Bros. vs. Chesapeake Bank, 51 Md. 562.
Horner vs. Grosholz, 38 Md. 520.
Bramble vs. State, 41 Md. 435.
Brown vs. Rowles, 21 Md. 11.

Applying this principle to the case at bar, it is impossible to see how the allegations contained in the bill of complaint constitute an estoppel against the plaintiffs in their original action at law. The Court below in its opinion has admirably stated the case in the following language, which we incorporate in our brief:

"The thing complained of by the plaintiff in the first count of the nar. is the nuisance resulting from the disposal field. It is not alleged in the bill that it was supposed that any nuisance would result to the plaintiffs by reason of the maintenance of said disposal field, or that he was informed that any was likely to result, or that he had any reason to suppose that such would be the case; on the contrary, in the light of the facts disclosed in the third paragraph of the bill, it must be assumed that the drainage system, the injurious effect of which

upon the plaintiffs' property and comfort constitute the ground of the suit at law, was understood by both the complainant and the defendants to be as stated in his bill, 'practically inodorous and wholly inoffensive.' The estoppel relied upon in restraint of the suit at law is that the plaintiff in the suit at law sold to the complainant 'a piece of low land for use as a disposal field in connection with its said sewerage system,' and this system and its sanitary construction is fully described in the bill; and it is further alleged, that in making the purchase of said lot of ground from the plaintiffs in the law suit, 'your orator explained to said defendants in the fullest and most particular manner the exact purpose for which said land was sought to be purchased and the exact use which would be made of it.' This full and particular explanation of the purpose and of the use to be made of said disposal field, I must understand to be that stated in the third paragraph of the bill. If, therefore, the defendants were deceived or misled as to the effect of this system upon their rights, or if, as alleged in the first count of the nar., its maintenance has resulted in a nuisance as complained of, it would seem to be clear that they would not be estopped from bringing their action at law, because of the fact that they sold a piece of ground to the complainant under the circumstances stated in the bill, to be used as a disposal field. That the use of the disposal field would result in the condition of things complained of by the plaintiffs seems not to have been in the contemplation of any one.

"The plaintiffs were not told that a nuisance might result form its use, nor is it alleged, nor does it anywhere appear that they had any reason to believe that its location would result in annoyance or injury to themselves or their property, nor is it alleged that the plaintiffs made any representations either by word or act to mislead the complainants, or to induce it to believe that it was at liberty to commit the nuisance complained of."

## SECONDLY.

It is too plain for argument, that if the complainant can obtain full and adequate relief at law, it has no ground for going into a Court of Equity. Many of the cases cited at the hearing below by the appellant's counsel to sustain his contention were cases of equitable estoppel; but they were cases *at law*, in which the equitable estoppel or estoppel *in pais* was recognized and sustained. They may be invoked to show what constitutes an estoppel, but they furnish no argument for the appellant to leave a Conrt of Law and transfer its case to a Court of Equity.

The Maryland Reports are full of cases where estoppels *in pais* are introduced as evidence and relied on as defences.

In Atlantic Coal Co. vs. Maryland Coal Co., 62 Md., page 143, the Court, in speaking of certain acts of one of the parties, says: "License and estoppel are legal defences in an action of trespass, and could be set up in a suit of law, and to the extent of their legitimate protection could be made available in that suit. As to their constituting a reason for equitable relief and injunction on the ground that the appellant should be restrained from proceeding at law, because of the rule of damages which must prevail, and that the Court of Equity should take jurisdiction of the question of damages, giving only such as are measured by the value of the coal in its native bed, we know of no principle for such jurisdiction in the facts of this case. A Court of Equity has no inherent power to ascertain the amount of damages sustained by reason of tortious acts unattended with profits to the wrongdoer."

**See also—34 Fed. Rep. 357, Pullman Palace Car Co. vs. C. Trans. Co.**
**48 Maine, 275, Slanwood vs. McClellan.**
**10 Ir. Eq. 403, Johnston vs. Young.**
**5 Ir. Eq. 339, Lambert vs. Lambert.**
**85 Penn. St. 412, Bedwell vs. Pittsburg.**

A Court of Equity has no monopoly of equitable estoppel.

Bigelow in his work on Estoppels, page 712, says: "Generally speaking estoppels *in pais* are available as well at law as in equity. This is true even of the so-called equitable estoppel.

"Indeed, it has been laid down that estoppel is not available as such in equity, but that there must be some equity apart from the estoppel to give a Court of Equity the right to entertain it."

In support of this proposition, the author cites Drexel vs. Burney, 122 U. S., 241, which fully sustains the position.

Discussing the apparent exceptions to the sale where the title to land is involved and the Statute of Frauds is relied on, the same author adds, page 715: "There is, however, the strongest authority in favor of the position that an equitable estoppel concerning land is available at law, at least where it is not made the ground for a common law ejectment."

Referring to—

Dickerson vs. Colgrove, 100 U. S. (618), 578,
and Kirk vs. Hamilton, 102 U. S. 68.

The Maryland law on this subject is stated in the recent case of Park Association vs. Swartzer, 83 Md. page 11, which was a suit to restrain an action at law and in which the Court said: "It is well settled that proceedings in ejectment will not be enjoined where the question of title involved may be properly determined at law, or where the grounds relied upon for an injunction would be equally available, if urged as a defence to the action of ejectment."

Herman in his work on Estoppels, section 1298, says:

"There is nothing in the nature of real estate which should deprive it of the benefit of those wise and salutary principles which are applied in both jurisdictions

in cases of personalty. The doctrine of equitable estoppel has become too firmly established to question at this day the wisdom of the change which released it from the exclusive equity jurisdiction of former times, enlarging its operation to this whole field of jurisprudence. * * * The doctrine of equitable estoppels is one which at the present time can be applied at law to real and personal property without forcing the party to such relief in equity, and as between co-ordinate powers, neither can lessen the power of the other by arrogating them to itself. The appropriation of the doctrines of equity will not estop the right to such redress by an application in due form to chancery."

In support of the last proposition the author refers to—

10 Pa. St. 273, Church vs. Moore.
27 N. H. 503, Wells vs. Pearce.
35 N. H. 99, Corbett vs. Norcross.

An examination of these cases will show that they affirm the right of a person seeking relief to go into chancery where there was concurrent jurisdiction in both chancery and law, but in no one of the cases did it appear that the bill was filed for the purpose of ousting the jurisdiction of a Court of Law. The author adds: "Whether declarations were made or a course adopted of a nature to mislead others, and how far the latter were actually deceived are questions of fact which must be submitted to a jury where the suit is brought in a Court of Law."

Mr. Pomeroy in his work on Jurisprudence, section 69, volume 1, says: "Since the doctrines of equity re-act upon the law, and especially since the impulse given by the brilliant career of Lord Mansfield, the common law courts have consciously adopted and applied, as far as possible, purely equitable notions, not so much the technical equity of the Court of Chancery, but the

principle of natural justice in the decision of new cases and in their development of the law until a large part of its rules are as truly equitable and righteous in their nature as those administered by the Chancellor."

In this case the complainant, by its bill in equity, is not seeking the assertion of what may be called a primary right. It is the plaintiff in his action at law, who seeks relief for the invasion of his primary right.

On this subject the same author, sec. 139, says: "The concurrent jurisdiction embraces all those civil cases in which the primary right, estate or interest of the complaining party sought to be maintained, enforced or redressed, is one which is cognizable by the law and in which the remedy conferred is of the same kind as that administered under like circumstances by the Courts of Law, being, ordinarily, a recovery of money in some form. The primary right, the estate or interest, which is the foundation of the suit, must be legal, or else the case would belong to the exclusive jurisdiction of equity, and the law must, through its judicial procedure, give some remedy of the same general nature as that given by equity; but the legal remedy is not, under the circumstances, full, adequate and complete. The fact that the legal remedy is not full, adequate and complete is, therefore, the real foundation of the concurrent branch of the equity jurisdiction. This principle is well illustrated by the case of contribution among sureties." * * * (Section 179.) "In further limitation upon the power of equity to interfere when the primary rights, interest or estate are legal, the doctrine is well settled that where the jurisdiction of law and equity are concurrent, the one which first takes cognizance of any particular controversy ordinarily becomes thereby exclusive. If, therefore, the subject-matter or primary right or interest, although legal, is one of a class, which may come within the concurrent jurisdiction of equity, and an action at law

has already been commenced, a Court of Equity will not, unless some definite and sufficient ground of equitable interference exists, entertain a suit over the same subject-matter, even for the purpose of granting relief peculiar to itself, such as cancellation, injunction, and much less to grant the same kind of relief which can be obtained by the judgment at law. The grounds which will ordinarily prevent the application of this doctrine, and will permit the exercise of the equitable jurisdiction in such cases, are the existence of some distinctively equitable feature of the controversy, which cannot be determined by a Court of Law, or some fraudulent or otherwise irregular incidents of the legal proceedings sufficient to warrant them being enjoined, or the necessity of a discovery, either of which grounds would render the legal remedy inadequate."

Our Maryland authorities are to the same effect—

In 1 Md. Ch., page 354, Brooks vs. Delaplane, it is said: "There is no instance, as remarked by the late Chancellor in Brown vs. Wallace, 4 G. & J., 497, in which either one of the English Courts has attempted to hinder or stay any part of the proceedings in a suit which had been rightly instituted and was then progressing in another. Nor has it ever been intimated that either of these Courts could call before it the parties to a suit depending in the other to give an account of the acts done under the authority of the other.

"The rule established by that case, both by reason and judgment of the Chancellor and by the Court of Appeals, is this: That when two Courts have concurrent jurisdiction over the same subject-matter, the Court in which the suit is first commenced is entitled to retain it."

It is submitted that these authorities dispose of the contentions of complainants: (1) That equitable estoppel being a defence original in equity, and acquired by law, equity must perforce retain its original

jurisdiction; and (2) that complainant relying upon a defence original in equity and acquired by law, to wit: equitable estoppel, it cannot be deprived of its right to try that defence in a Court of Equity, unless it elects to try it in a Court of Law.

The complainant, to sustain his contention below, cited, among other authorities, Refining Co. vs. Campbell & Zell Co., 83 Md. 36. In that case the plaintiff had bought a number of boilers, relying on the representations of its own engineers that the boilers were good and adequate to the work. It turned out that the engineers were bribed to certify the boilers to be satisfactory, in consequence of which the plaintiff accepted and paid in part, and then brought suit in equity to cancel the contract of sale, have the money paid by it refunded, and asked for an injunction to restrain any action at law to recover balance of purchase money in a suit then pending. Defendants demurred to the bill, but the bill was sustained. It will be noted the special object of the bill was to prevent the defendant in equity from using fraudulent contracts in the Court of Law, and to have them cancelled. This was a character of relief which a Court of Law could not supply, and falls under the class of cases referred to by Mr. Pomeroy.

In the case of Connor vs. Dowell, recently decided by this Court, (Daily Record, March 19th, 1900), the bill was filed to cancel and reform a written contract for the purchase of a hardware store and the good will of the business, and to restrain Connor from further prosecution of an action at law instituted upon the same contract.

The main ground of the Court's decision seems to have been that it could not even as a Court of Equity undertake to undo what the parties themselves, who were competent to act, had undertaken in the most solemn matter by contract under their hands and seals to do. The Court in that case also declares that while

Courts of Law have concurrent jurisdiction with Courts of Equity over questions of fraud and misrepresentation, they have no power to reform contracts alleged to have been secured by fraud, but it passed no opinion upon the question as to whether the Court of Law or the Court of Equity first assumed jurisdiction, nor whether the bill was affected by that question. It simply remarked upon the fact that it appeared from the Record that before this bill was filed the appellee had pleaded to the suit at law.

The remaining cases cited by appellant below outside of Maryland are either cases where the bill was filed for discovery as well as relief, or where some principle of suretyship was involved, or else in gaming cases, where it was provided by statute that agreements, bonds, notes and judgments founded on gaming should be utterly void.

In the Vermont case, Viele vs. Hoag, 24 Vt. 46, the ground upon which relief was sought was an extension of time for the payment of the note for one year granted by the payee to the principal without the knowledge or consent of the surety, and that within that period the payee became insolvent. In sustaining the jurisdiction the Court says: "The subject of equitable relief on behalf of sureties is one of original jurisdiction in a Court of Chancery. The peculiar rights of a surety originated in and are exclusively the growth of equity."

II.

The second ground upon which the bill is filed and injunction asked for is to prevent multiplicity of suits.

It is submitted this ground can not avail the complainant.

A plaintiff who feels aggrieved and who has a legal cause or causes of action may under certain circumstances bring his suit in equity to prevent the necessity of a multiplicity of suits on his part.

But it is a novel doctrine that a defendant when sued for an ordinary trespass or nuisance can anticipate that the plaintiff may sue him again for a continuance of the nuisance, and that this gives him ground to transfer his defence to a Court of Equity.

Mr. Pomeroy in the work already referred to, section 249, in discussing the rationale of the doctrine of multiplicity of suits, asks:

What multiplicity of suits is it which a Court of Equity will prevent? What party must be harrassed or incommoded, or threatened with numerous litigations, and from whom must such litigation actually and necessarily proceed in order that a Court of Equity may take jurisdiction, and prevent it by deciding all the matter in one decree? Finally, how far is the prevention of a multiplicity of suits an *independent* source of the equitable jurisdiction? Can a Court of Equity even interfere in behalf of the plaintiff, upon the ground of preventing a multiplicity of suits, where such plaintiff would not otherwise have had any recognized claim for equitable relief or any legal cause of action? Or was it essential that a plaintiff should have some existing cause of action, equitable or legal, some existing right to either equitable or legal relief in order that a Court may interfere and exercise in his behalf its jurisdiction founded upon the prevention of a multiplicity of suits? The learned author says the answer to these questions has not always been consistent by the different Courts. But he proceeds to show as a fundamental proposition, section 250, "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 existed before. 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."

Now in this case the complainant had prior to the damage suit against it no cause of action, either legal or equitable. Its only standing in Court is based on that suit, and without some prior or independent cause of action the alleged multiplicity of suits by defendant, according to the distinguished authority we have quoted, furnished no occasion of jurisdiction to a Court of Equity.

See also—Pomeroy Jurisprudence, Second Edition, secs. 252, 253, 254 and 271, 272, 273, 274.

R. A. DOBBIN,
JNO. H. GRILL,
D. G. McINTOSH,
*Attorneys.*

**Filed, October 2nd, 1900.**

---

| ROLAND PARK COMPANY OF BALTIMORE CITY *vs.* CHARLES W. HULL AND MARY A. HULL, HIS WIFE. | IN THE **COURT OF APPEALS** OF MARYLAND. October Term, 1900. Docket, No. 10. |
|---|---|

---

# APPELLANT'S BRIEF.

---

## I.

### Statement of Facts.

The allegations of the Bill of Complaint, which are admitted by the demurrer to be true, are in substance as follows:

Shortly after the plaintiff began the development of Roland Park it became necessary for it to obtain a piece of low lying land for use as a disposal field in connection with its sewerage system, and with that end in view the plaintiff applied to the defendants for the purchase of a certain lot of ground owned by the defendants, and in making such application the plaintiff

explained to the defendants in the fullest and most particular manner the exact purpose for which the said land was sought to be purchased and the exact use which would be made of it. The defendants with the full knowledge of the purpose to which the plaintiff proposed to put said land sold it to the plaintiff.

At the time of said sale the defendants, because they knew that the land designed for the disposal field of the plaintiff was the only land suitably located for the purpose, not only compelled the plaintiff to buy much more land than it had any use for, because of its proximity to the proposed disposal field, but also charged the plaintiff a price out of all proportion to the commercial value of the land sold. Early in the year 1892 (the land in question being purchased and conveyed on December 24th, 1891,) the plaintiff began to prepare said disposal field for the uses for which it was designed, and to connect said disposal field by proper pipes with the sewerage system of Roland Park. The entire sewerage system was completed by July 1st, 1892, or about seven and a half years ago, at a cost of about twenty thousand dollars ($20,000.).

The defendants not only sold the said land to the plaintiff for use as a disposal field, but stood by and permitted said disposal field to be prepared for use until said disposal field was fully prepared and the sewerage system fully completed and has for a long period stood by and permitted the plaintiff to spend great sums of money in building, extending and maintaining said system without challenging the plaintiff's full and complete right to maintain said disposal field and said sewerage system.

In December, 1899, the defendants brought suit in the Circuit Court for Baltimore County, at law, for forty thousand dollars ($40,000.) damages for injuries alleged to be done to the defendants by the plaintiff arising out of the maintenance of said disposal field.

The plaintiff thereupon immediately filed its bill of complaint in the Circuit Court for Baltimore County, in equity, claiming that the facts above set out constituted an equitable estoppel against the defendants from claiming damages against the plaintiff because of the construction and maintenance of said disposal field, praying for an injunction to restrain the suit at law and to restrain the defendants from bringing other suits of a like character for subsequent alleged injuries by reason of the maintenance of said disposal field.

The plaintiff has never submitted itself to the jurisdiction of the law court and has filed no pleas. An order has been passed postponing the time for the filing of pleas in the law case until the bill in equity has been disposed of.

The bill of complaint gives the following description of the sewerage system at Roland Park and the disposal field connected therewith :

"That the drainage system adopted was what is known as 'The Filtration System,' which is the system now recommended by the best sanitary experts for the healthful and inoffensive disposition of sewerage, and which was constructed by your orator at a cost exceeding twenty thousand dollars ($20,000), apart from the house connections, and apart from the cost of the land used for the disposal field, as hereinafter mentioned, that under this system all the house drainage is carried through highly glazed, vitrified terra cotta pipes laid in the streets of Roland Park; that at the head of each line of pipe is a large cemented tank, which tanks are constantly fed with pure water from the water mains of the Company in said streets, which periodically and automatically empty themselves through said pipes, flushing them thoroughly, and so both cleaning the pipes and at the same time diluting and dissolving the sewerage, so that it becomes practically inodorous and wholly inoffensive; that on each line of pipe, while still within the outlines of Roland Park and on the Com-

pany's land and long before it reaches the neighborhood of the disposal field, a cemented intercepting tank is placed containing screens of less than one-quarter inch mesh, which hold all except small particles of solids and prevent their being carried to the disposal field; that all of the main pipes also empty into large cemented tanks, from which the diluted matter is automatically discharged at intervals through cast iron pipes over the disposal field, which field is divided into five parts; and that the system is so operated that one of said divisions of the disposal field is used on one day in the week and the others on successive days, and in this manner by a simple process of nature, now fully recognized by the best scientific authorities as available for this purpose, the sewerage becomes purified and passes in a liquid state into the ground and through underground pipes placed throughout the disposal field; and that it is now fully recognized beyond all possible question, that this system of drainage removes absolutely all dangers to health, and that this fact is so fully recognized that persons are now residing permanently on sewerage farms where this system is in use, without any impairment of their health. And your orator further says, that the disposal field now in use by your orator has been carefully prepared for the use intended, being thoroughly under-drained with terra cotta tiles, and the surface of the ground evenly graded and sodded; that it is constantly maintained by the plaintiff in good condition, both as to its effective use and attractive appearance, the grass being regularly cut with lawn mowers and the sod taken up and relaid whenever it is necessary to do so, either for the purpose of maintaining its most effective use or preserving its appearance."

The bill also alleges that "all parts of said sewerage system, including said disposal field, are operated and maintained so as to be free from any offense or danger, and so as to wholly refrain from causing the defendants or any other persons owning land or residing in the vicinity of it, or any part thereof any injury whatever."

## II.

### Argument.

As the appellees, with full knowledge and understanding, sold the land now used by the appellant for its disposal field to the appellant to be used as a disposal field in the exact manner in which it has been and is being used, the appellees are equitably estopped from claiming damages from the appellant for using said disposal field in said manner. Equitable estoppel is one of the ancient and original subjects of jurisdiction of a court of equity. The defense of equitable estoppel originated with equity and subsequently was extended to courts of law. The distinctions between courts of law and equity are fully preserved in the State of Maryland. Any equitable defense original with courts of equity and acquired by courts of law, either by usage or by statute, in the absence of an express statutory provision withdrawing it from equitable jurisdiction, remains an original equitable defense of which suitors cannot be deprived. Courts of equity will not allow themselves to be ousted of any part of their original jurisdiction because a court of law happens "to have fallen in love with the same or similar jurisdiction." A plaintiff cannot deprive a defendant of his right to have an original equitable defense, which has been acquired by law, tried in a court of equity, by beginning a suit at law, and the plaintiff is not deprived of his election by the docketing of a suit against him in a court of law. While, therefore, a court of equity will not rehear an original equitable defense which has been presented and passed upon in the law court, and while some authorities hold that if a defendant submits himself to the jurisdiction of a law court by appearing or filing pleas, he will be held to his election of a law court for the trial of his equitable defense, it is believed that

the authorities are unanimous in holding, that if a defendant has a defense original in equity and acquired by law, and declines to appear or file pleas, he may apply to a court of equity for a trial of his equitable defense, and pending the trial of such defense stay the proceedings at law. This doctrine is entirely independent of any question as to whether the equitable defense, if pleaded at law, will furnish the defendant with the same full, adequate and complete relief as if pleaded in equity, because a party is entitled not merely to principles of equity, but he may claim the advantages of the modes of proceeding and the course of practice in those courts. Apart from the above considerations and even assuming that courts of law and courts of equity had both original and concurrent jurisdiction of the defense sought to be set up in this case and even assuming that it could be claimed that by reason of the mere docketing of the suit the plaintiff in the law court could force a defendant to elect the law court for the trial of the defense, it is no where disputed that application may be made to a court of equity for relief, and a restraint of legal proceedings be had where it is manifest that the successful assertion of the defense at law would not afford the defendant as full, adequate and complete a remedy as the assertion of the same defense in equity, or where the remedy at law is not clear and plain. The only foundation for any claim by the defendants against the plaintiff would be that the maintenance of the disposal field, in the manner agreed upon when the property was sold by the defendants to the plaintiff constitutes a continuing nuisance. It has long been conceded that a plaintiff may apply to a court of equity for an injunction to restrain the maintenance of a nuisance on the ground that because of its continuing character the plaintiff's relief at law is confined to a succession of damage suits on separate causes of action in each of which recovery can only be had up to the time of bringing the suit, and

the jurisdiction of equity is maintained to prevent a multiplicity of actions and because the necessity for such a multiplicity of actions deprives the relief at law of its full and adequate character. The same principle can be invoked by a defendant because the presentation of his equitable defense in a court of law can only be an answer to the single suit on the special cause of action for injuries done up to the time of bringing the suit and would be no assurance if successfully maintained that subsequent suits on causes of action subsequently accruing would not be brought against it. The court of equity on the other hand can dispose of the entire matter in a single suit and can, by injunction, restrain the bringing of subsequent suits.

## III.

## The Appellees are Equitably Estopped From Claiming Damages Against the Appellant.

It will hardly be seriously argued that the facts set out in the bill and admitted by the demurrer do not constitute a complete and unanswerable defense on the ground of equitable estoppel, and although the demurrer denies the equity of the bill it seems to have been practically conceded by the appellees counsel in argument that the facts alleged in the bill, if proved, would constitute an equitable estoppel against the appellees.

The appellees sold the land to the Company for the express purpose of its use as a disposal field. They understood exactly how it was to be used. They charged the Company an excessive price because it was to be so used. They compelled the Company to buy adjoining land because it was to be so used. The Company has used it exactly as it undertook to use it, without negligence and without introducing any feature not fully contemplated by the appellees. The appellees stood by and permitted the Company

to expend over twenty thousand dollars ($20,000.) in preparing the field for use and building its sewerage system in dependance upon it. The appellees have allowed over seven years to have elapsed before making any claim, during which time the entire development of Roland Park has taken place and a tremendous sum of money has been invested on the faith of the maintenance of the sewerage system and the disposal field.

It certainly requires no citation of authority to support the contention that under such circumstances the appellees cannot in equity and good conscience be permitted to make money out of a situation which they have themselves created, in which they have fully co-operated and in which they have acquiesced for over seven years.

*Hulme vs. Shreve*, 4 N. J. Eq., 116, 124;
*Dickson et al. vs. Green*, 24 Miss., 612, 618;
*Mitchell vs. Leavitt*, 30 Conn., 587, 590;
*Alexander vs. Walter*, 8 Gill, 239;
*Hardy Bros. vs. Chesapeake Bk.*, 51 Md., 562;
*Horner vs. Grosholz*, 38 Md., 520;
*Brown vs. Trustees M. E. Ch.*, 37 Md., 108;
*Presstman vs. Mason*, 68 Md., 78, 89;
*Boyce vs. Kalbaugh*, 47 Md., 334, 336;
*Wood on Nuisances* (1875), Secs. 796, 797;
*Am. & Eng. Dec. in Eq.*, 1st Ser., Vol. 4, p. 262;
*Funk vs. Newcomer*, 10 Md., 301;
*Addison vs. Hack*, 2 C., 221, 226–7;
*Dickerson vs. Colgrove*, 100 U. S., 578–84.

The real contention of the appellees and the only one to which serious consideration need be given is in substance as follows:

Equitable estoppel is a defense which may be set up at law by proof although it cannot be pleaded. It follows, the appellees claim, that the appellant can obtain at law the relief which it is asking for in equity and it is further claimed by the appellees that this relief can be accorded to the appellant in a court of law in the same full, adequate and complete manner as in a court of equity.

The answer of the appellant to this ground of demurrer is as above indicated:

*First.* That the defense of equitable estoppel originated with equity and had been acquired by law, from which fact it follows that the plaintiff cannot be deprived of the form of equity for the trial of its defense by the simple institution against it in a court of law of a suit for damages, inasmuch as the appellant, without pleading at law or submitting itself to the jurisdiction of the law court, has without delay entered a court of equity and declared its election to have its original equitable defense tried in equity.

*Second.* That it is not a fact that the presentation of the defense at law, under the circumstances set out in the bill, will afford the appellant the same full, adequate and complete remedy as the proceeding instituted in equity, because the injury complained of is of a continuing character, and a successful presentation of the defense in the pending law case will not end the litigation between the parties and quiet the possession of the appellant, because the appellant may be subjected to a succession of suits which it must separately defend, while if the defense is maintained in equity an injunction will prevent not only the pending litigation but subsequent suits, either at the hands of the present owners of the property or at the hands of their heirs or assigns.

## IV.

## Equitable Estoppel is a Defense Original in Equity and Acquired by Law.

Equitable estoppel was not originally recognized as a defense which could be pleaded in a court of law. Thus in 11 *Amer. & Eng. Enc. of Law* (2nd ed.), title " Estoppel," sub-title " Estoppel in Pais," page 420, it is said :

" At the common law estoppels are confined, except in a few special cases, to those arising from deeds and records of courts. Mere acts, statements or admissions of a party, when not performed or made under seal or of record, or in some of those ways to which peculiar authority is attached by law, were not at common law considered as estoppels, and had no other weight than that of evidence more or less important, but which might be explained or rebutted. But the common law rule was found to be inadequate for the obtainment of equity, and hence the equitable estoppel or estoppel in pais of the present day. While this doctrine of estoppel in pais originated in courts of equity, it is now very generally applied in cases arising in courts of law. . . ."

See *Bigelow on Estoppel*, p. 476.

## V.

## When a Defendant Claims a Defense Original in Equity and Acquired by Law like that of Equitable Estoppel he cannot be Deprived of his Right to try that Defense in a Court of Equity, unless he elects to try it in a Court of Law.

In order to discuss this question intelligently it is necessary to distinguish :

*First.* Purely Legal Defenses.

Equity will not interfere with a defense of this character unless

some fact is shown "which clearly proves it to be against conscience to execute the judgment, and of which the party asking relief could not have availed himself in a court of law, or of which he might have availed himself but was prevented from so doing by fraud or accident unmixed with any negligence or fault of his own."

*Webster vs. Hardisty*, 28 Md., 592;
*Gott vs. Carr*, 6 G. & J., 309;
*Sisk vs. Garey*, 27 Md., 401;
*Star vs. Heckart*, 32 Md., 267.

*Second.* PURELY EQUITABLE DEFENSES.

As it is not possible to set up a purely equitable defense in a court of law it, of course, follows that the proceedings at law cannot prejudice the right of appeal in equity.

*Third.* CONCURRENT LEGAL AND EQUITABLE DEFENSES.

(*a*) *Defenses Originally Concurrent.*

Where a defense is originally concurrent both at law and in equity it seems to be settled that the court which first assumes jurisdiction must hold it to the end, unless it can be shown that the defense, if asserted at law, would not result in as full, adequate and complete relief as if asserted in equity.

*Jenkins vs. Simms*, 45 Md., 532;
*Winn vs. Albert*, 2 Md. Ch., 43;
*McKaig vs. Piatt*, 34 Md., 249;
*Withers vs. Denmead*, 22 Md., 135.

(*b*) *Defenses Original in Equity Acquired by Law.*

It is under this class of defenses that equitable estoppel falls and the appellant offers to maintain in regard to it the following proposition:

WHEN A DEFENDANT CLAIMS A DEFENSE ORIGINAL IN EQUITY AND ACQUIRED BY LAW LIKE THAT OF EQUITABLE ESTOPPEL, HE CANNOT BE DEPRIVED OF HIS RIGHT TO TRY THAT DEFENSE IN A COURT OF EQUITY UNLESS HE ELECTS TO TRY IT IN A COURT OF LAW, AND A PLAINTIFF CANNOT DEPRIVE HIM OF THAT ELECTION BY DOCKETING A SUIT AGAINST HIM IN A COURT OF LAW. THIS PROPOSITION IS CONSISTENT WITH THE ASSUMPTION THAT THE TRIAL OF THE DEFENSE AT LAW WILL FURNISH FULL AND ADEQUATE RELIEF AND THAT THE COURT OF LAW HAS ACQUIRED THE SAME JURISDICTION OVER IT AS WAS ORIGINALLY VESTED IN THE COURT OF EQUITY ALONE.

There can be no doubt of the position taken by the Court of Appeals of this State that where the jurisdiction of chancery is original and established it is not ousted even by statute, giving to courts of law jurisdiction over the same subject matter, unless the equitable jurisdiction is removed by express prohibition.

*Shryock vs. Morris*, 75 Md., 72;
*Schroeder vs. Loeber*, 75 Md., 195;
*Union, &c., Co. vs. M. & C. C. of Balto.*, 71 Md., 238;
*Barnes vs. Crain*, 8 Gill, 391.

The common law distinction between courts of law and equity in this State has been always rigidly maintained by the Court of Appeals.

In *Taylor and Bradford vs. Miller*, 73 Md., 222, where Section 83 of Article 75 of the Code of Public General Laws was under consideration, the present Chief Justice, in speaking for the Court, said:

"That statute was designed to prevent circuity of actions in many instances, and to allow numerous defenses at law, which

before its passage could only have been availed of in equity, but was never intended to destroy the distinctions which exist between the jurisdiction of a court of law and a court of equity."

In a recent decision of the Court of Appeals of Maryland, filed February 15th, 1900 (Daily Record, Monday, March 19, 1900), the Court of Appeals refused even to decide the question as to whether in a case of fraud, a subject of defense originally concurrent at both law and in equity, where the fraud had been pleaded by the defendant in a court of law, the defense could afterwards be tried in a court of equity. In that case the equitable jurisdiction was maintained on the ground that the defense at law would not have furnished adequate relief. This case goes further than many cases in other courts by refusing to hold that the filing of a plea in the law court bound the defendant to his election of a court of law for a trial of the defense.

The following authorities sustain the proposition contended for on behalf of the appellant:

*Viele vs. Hoag*, 24 Vt., 46.

"Neither is it in the power of a creditor by first commencing proceedings in law to deprive the surety from seeking his relief in chancery."

To the same effects is *Hestonville R. R. vs. Shields*, 3 Brewster, 257.

Kerr on *Injunctions in Equity* (2nd Amer. from 2nd Eng. Ed.), 591 (marg.).

It is stated as the conclusion of the cases cited, which relate to defenses originally equitable and acquired by law that

"A party to an action at law who may have an equitable defense is not bound to plead it at law but may come into equity for relief, or may resist the action on other grounds and also institute a suit for relief. He is not precluded from coming into this court (equity) unless he has already set up his equitable defense

at law. If he has not pleaded his equitable defense at law he may after judgment come into equity for relief."

*King vs. Baldwin*, 17 Johnson, 384.

"I consider it an established principle that where a court of equity once had jurisdiction it will insist on retaining it, though the original ground of jurisdiction, the inability of a party to recover at law no longer exists." (388.)

See also *Atkinson vs. Leonard*, 3 Bro. Ch. Rep., 218. (Lord Thurlow.)

*Eyre vs. Everett*, 2 Russell, 381.

"There are some cases in which the court (equity) entertains jurisdiction though there would be a good defense at law, but that is because in those cases the matter was of such a kind that there was an original jurisdiction belonging to this court, and this court will not allow itself to be ousted of any part of its original jurisdiction, because a court of law happens to have fallen in love with the same or a similar jurisdiction, and has attempted (the attempt for the most part is not very successful) to administer such relief as originally was to be had here and here only."

*Wells vs. Pierce*, 7 Foster (N. H.), 503.

"If courts of equity had jurisdiction in certain cases for which the ordinary proceedings at common law did not then afford an adequate remedy that jurisdiction will not be lost because authority to decide in such cases has been conferred on courts of law by statute, unless they are negative words excluding the jurisdiction of courts of equity. . . . Neither will the jurisdiction in equity be impaired by the fact that equitable principles have been adopted in the courts of law, either from necessity, in the absense of equitable tribunals, as in Pennsylvania and heretofore in this State, or otherwise. . . . If it were to be held that the same rules of decision exist in these cases at law as in equity, it would by no means follow that a party has that plain and adequate remedy at law which would prevent a resort to a bill in equity. A party is

entitled not merely to the principles of equity but he may claim the advantages of the mode of proceeding and the course of practice adopted in those courts."

*Clay vs. Fry*, 3 Bibb., 248.

"Where matter of defense is purely legal and exclusively cognizable in a court of law, it is clear if a party fails or neglects to avail himself of it at law he cannot be permitted to resort to a court of equity. But if the defense be (as it is apparent it is in this instance) of such a nature that the party may avail himself of it either at law or in chancery, although he should fail to take advantage of it at law, he may nevertheless according to the repeated decisions of this court resort to a court of equity for relief in the same manner and for the same reason that a party having a claim, of which a court of law and a court of equity have concurrent jurisdiction, may elect to which tribunal he will apply to enforce his claim."

See also *Dorsey vs. Reese*, 14 B. Monroe, 157.

*Gompertz vs. Pooley*, 4 Drew, 448.

The decision in this case, as stated in the head-note, is as follows:

"Although where a defendant at law has pleaded an equitable plea this court (equity) will not allow him by injunction to remove the case into equity, yet if a defendant without pleading his equitable plea at law, comes into equity in the first instance and asserts his equitable defense, the court will interfere by injunction."

The Court in the course of its opinion held:

"Where a man has a good equitable defense to say to him that he must proceed at law and plead the equitable defense is in effect to make imperative that which the Legislature has made optional."

See also *Davies vs. Stainbank*, 6 D. M. & G., 679.

## VI.

THE ASSERTION OF THE DEFENSE OF EQUITABLE ESTOPPEL IN THE LAW CASE WOULD NOT AFFORD AS FULL, ADEQUATE AND COMPLETE A RELIEF AS THE ASSERTION OF THE SAME DEFENSE IN A COURT OF EQUITY.

Apart from all other considerations the appellant is entitled to equitable relief to restrain the prosecution of the present suit at law and other suits which will necessarily follow because the present suit at law can only be based upon the theory that the plaintiff is maintaining a nuisance in its disposal field, as this injury, if it exists, and the appellees have the legal right to complain of it, is a continuing injury, and as recovery can only be had in the present suit at law up to the time of bringing the suit, the appellant is threatened with a succession of suits for the recovery of alleged damages arising out of the maintenance of the field hereafter. Unless, therefore, the appellant is protected by a settlement of the whole controversy and an injunction restraining this and subsequent suits, the appellant will be subjected to a multiplicity of suits. The attitude of courts of equity towards continuing nuisances is almost too well settled to reqire citation of authorities.

1 *Beach on Injunction*, Sec. 542.

"The modern rule is that equity has concurrent jurisdiction in courts of law in cases of private nuisance on the grounds of restraining irreparable mischief and suppressing interminable litigation. . . ."

Citing:

*Mowday vs. Moore*, 133 Pa., St., 598-611;
*Carlisle vs. Cooper*, 21 N. J. Eq., 576;
*Newcastle vs. Raney*, 130 Pa. St., 546;

*Rhea vs. Forsythe*, 137 Pa. St., 503;
*Rome vs. Meutin*, 75 Ala., 510;
*Corning vs. Troy Factory*, 40 N. Y., 191;
*Beach, Mod. Eq. Jur.*, Sec. 737.

*Phelps' Juridical Equity*, Sec. 230.

"Besides these well defined classes there is a large and miscellaneous category of torts, trespasses and nuisances, cases in a single instance of which equity would have no cognizance, but where the injury is one of a repetition or continuance and its redress at law could only be obtained by multiplicity of litigation, the inadequacy of such remedy to afford complete relief furnishes an independent ground of jurisdiction."

Citing:

*Lembeck vs. Nye*, 47 Ohio St., 336;
*Canfield vs. Andrew*, 54 Vt., 1, 12;
*Adams vs. Manning*, 48 Conn., 477;
*Audrienens Appeal*, 123 Pa. St., 303, 328;
*Lippencott vs. Barton.*, 42 N. J. Eq., 272;
*Beck vs. Beck*, 43 N. J. Eq., 39, 44;
*Belcher vs. Lewis*, 84 Va., 630, 633;
*Cavanagh vs. Railroad*, 78 Ga., 271, 273;
*Mayer vs. Coley*, 80 Ga., 207;
*Thompson vs. Sheppard*, 35 Ala., 611, 618;
*Mills vs. Seed Co.*, 65 Miss., 391.

1 *High on Injunction*, Sec. 739.

"The foundation for the interference in equity in restraint of nuisances rests in the necessity of preventing irreparable mischief and multiplicity of suits. . . . and the injury must be such as is not susceptible of adequate pecuniary compensation in damages or one the continuance of which would cause a constantly recurring grievance."

Citing:

*New York vs. Mapes*, 6 Johnson Ch., 46;
*Mohawk & H. R. Co. vs. Artcher*, 6 Paige, 83;
*Dena vs. Valentine*, 5 Met., 8.

"It is not enough that there is a remedy at law; it must be plain and adequate, or in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity.

"In the case before us, although the defense of fraud might have been resorted to . . . yet it was obviously not an adequate remedy, because it was a partial one. The complainant would still have been left to renew the contest upon a series of suits; and that probably, after the death of witnesses."

*Boyce's Exrs. vs. Grundy*, 28 U. S., 210.

"The principle is as applicable in cases where a complainant resorts to a court of equity to enforce a defense to an action at law, as where he seeks by a bill in equity other relief.

"Where the judgment at law would be as conclusive on the point involved and as effectually prevent all future vexatious litigation as a decree in the equity suit, then there is no reason to resort to a court of equity."

*Grand Chute vs. Winegar*, 82 U. S., 373.

The appellant, therefore, respectfully contends that even if this Court should decline to consider the authorities cited by the plaintiff which distinguish between concurrent defenses like equitable estoppel, which originated in a court of equity, and those like fraud, which have always been available in both jurisdictions, and should thereupon hold the mere fact of the filing of the suit in the court of law gave the court of law sole jurisdiction over the defense, the circumstances of this case still maintain the jurisdiction of equity, because, as is apparently conceded by the appellees a court of law first taking jurisdiction cannot hold it for the trial

of an equitable defense if the defense can be settled in a court of equity so as to give a relief of a fuller, more adequate and more complete character.

The proposition of the appellant, under this head of the discussion, is in substance as follows:

If the appellant is left to its relief at law and successfully submits its defense to the pending suit at law, the result can only be to bring a verdict for the appellant on a claim for alleged injury arising from the maintenance of the alleged nuisance up to the time of the bringing of the suit. The injury being of a continuing character the appellees are left untrammeled in the institution of any number of successive suits, each of which must be separately defended by the appellant. As the matter of the equitable estoppel rests on oral statements made by the officers of the appellant to the appellees it follows that if either of the appellees died, or if the officers of the appellant who maintained the conversations died, or left the service of the Company and became for any reason inaccessible, the appellant would be wholly unable to prove the estoppel. If, for instance, the second suit were not instituted for, say a period of ten years after the judgment in the first, the Court can easily apprehend a state of affairs which would leave the appellant in an entirely helpless condition.

On the other hand, a court of equity can hear and determine the matter of the estoppel, once for all, with absolute justice to all parties, and if the appellant maintains the allegations of its bill by proof the court of equity can, by injunction, settle the entire controversy, once for all, and quiet the possession of the appellant in the use of its disposal field.

With great respect to the distinguished counsel for the appellees it is respectfully claimed that they have failed to apprehend the position taken by the appellant when they urged that the appellant is endeavoring to escape the submission to a jury

of a question of damage arising out of a tort. The foundation of the appellant's bill is, that assuming a damage the appellees cannot in equity and good conscience claim compensation for it, because that damage has already been liquidated and paid for in advance by the appellant. If this Court shall hold that the equitable estoppel is not made out by proof and the bill is for that reason dismissed on its merits, the appellees will then be free to proceed with their actions at law for the recovery of damages, if they are able to prove them.

The appellant might well retort to this suggestion that the appellant is endeavoring to escape a jury trial, by claiming that if the appellees were in fact injured and were able to show that the appellant was in fact maintaining the nuisance, they would hardly refrain from seeking the natural forum, to wit, a court of equity, for the restraint of that nuisance.

The plain fact is that the appellees cannot be in any way prejudiced by the orderly trial of the appellant's defense in a court of equity, while it is believed to be too plain for argument that if the appellant is left to the court of law it will be possible for the appellees to subject the appellant to harassing suits and possibly to obtain an unfair advantage, whereas it can hardly be seriously argued that, if the allegations of the appellant's bill are true, good conscience and fair play ought not to drive them out of any forum and forbid them ever to enter it again for a further prosecution of such a claim.

## VII.

### Opinion of Judge Burke.

Judge Burke's opinion accompanying the order dismissing the Bill of Complaint, from which this appeal is taken, pursues the following line of argument:

*First.* That the bill does not present a case where a Court of Equity can grant an injunction upon the ground of preventing a multiplicity of suits.

*Second.* That the bill alleges nothing in answer to the Second Count of the Declaration, which alleges that the defendant "broke and entered the said close of the plaintiffs."

*Third.* That the allegations of the bill do not furnish a sufficient answer to the First Count of the Declaration.

*Fourth.* Because in the case of the *Park Association vs. Shartzer*, 83rd Maryland, page 10, it has been decided by this Court that in a case similar to the one at bar, a Court of Equity ought not to interfere.

We will consider these objections separately.

A.

*Multiplicity of Suits.*

It seems to us, with great respect, that the Court has misconceived the claim of the appellant in laying stress upon the fact that the bill is not brought under equitable jurisdiction within the doctrine which permits equitable interference to restrain a multiplicity of suits. The claim of the appellant is based, so far as this particular branch of its case is concerned, upon the doctrine that where courts of law and courts of equity have concurrent jurisdiction, a court of equity will always be permitted to hold its jurisdiction, and restrain proceedings already begun in a court of law, if it is advised that the defense at law will not result in full and adequate relief, and as an illustration of the application of this doctrine the appellant calls attention to the fact, that a successful defense of one suit would not protect the appellant from

being harassed in a number of subsequent suits, in each of which it will be necessary for it to produce parole testimony. As a matter of fact, one of the principal witnesses for the appellant, Colonel Waring, has recently died. Another of the appellant's witnesses is now the Vice-President and General Manager of the Company, and his testimony is at present, of course, accessible to the Company, but his death or his removal from the jurisdiction of this Court would make the defense of the appellant a matter of grave difficulty, and yet the appellees, unless perpetually enjoined, may bring a succession of suits extending over an indefinite period of time, following one suit with another, until the appellant is either harassed into paying a sum of money to escape further persecution, or else has no longer the ability to offer the testimony upon which its defense rests.

The reference made by the learned Judge to Pomeroy's *Equity Jurisprudence*, has no bearing upon the appellees' claim, as the appellant intended to present it to the Court for consideration.

## B.

### *The Second Count of the Declaration.*

The contention of Judge Burke, that, "the bill alleges nothing in answer to the Second Count of the Declaration, and no reason anywhere appears why the Plaintiffs in the suit at law should be restrained from having the cause of action stated in said Count tried in a Court of Law," must have taken the appellees as much by surprise as it did the appellant, because it was conceded by the appellees that the two Counts of the Declaration referred to the same injury, and that the Second Count only endeavored to put in a different legal form the injury complained of in the First Count.

The Seventh Paragraph of the Bill of Complaint refers to the Declaration in the following language:

"That during the month of December, eighteen hundred and ninety-nine, the said Charles W. Hull brought a suit by titling against your orator in the Circuit Court for Baltimore County on the law side thereof, claiming damages against your orator to the extent of forty thousand dollars ($40,000.), but without alleging in docketing said suit for what such damages were asked; but subsequently, after amending said suit by making the said Mary A. Hull a party plaintiff, the defendant filed a declaration in said Circuit Court for Baltimore County in which they claim damages for injuries alleged to be done by your orator to land near said disposal field by the maintenance of said disposal field, and your orator files herewith as part of this Bill of Complaint a copy of the aforesaid declaration, marked "Plaintiff's Exhibit A."

It is entirely an inference of Judge Burke's, for which, it is respectfully contended, there is no foundation, that the allegations of this paragraph were intended to apply only to the First Count. The paragraph refers to the declaration as a whole, and states what is a fact and what is conceded by the appellees to be a fact, that the sole cause of action is based upon the maintenance of the disposal field.

C.

*The Equitable Estoppel.*

The Court goes so far, however, as to claim that the defense set up by the Bill of Complaint would not be a good defense even in a court of law, and while the appellant's counsel does not entirely understand the reasoning upon which the Court's opinion on this point is based, it seems to be contended by Judge Burke, that, because the use of the disposal field has resulted in a nuisance, it follows, therefore, that the appellees must have been taken by surprise and that they are, therefore, entitled to recover.

The Bill assumes, for the purpose of argument, that, if the appellees had not sold the land for the purpose to which it is now

used, they might be permitted to go before a jury on the question of fact as to whether the appellant was or was not maintaining a nuisance; but the claim of the appellant is, that even granting that the maintenance of the disposal field is the maintenance of a nuisance, then in the absence of negligence on the part of the appellant, the appellees have no standing in a Court of Equity to complain. It is respectfully contended that the Bill of Complaint is not open to misconstruction on this point.

The Fifth Paragraph of the Bill of Complaint declares, that the entire sewerage system was completed by July 1st, 1892, or about seven and a half years ago.

The Sixth Paragraph of the Bill of Complaint makes the following statement:

"That the defendants not only sold the said land to your orator for use as a disposal field, but stood by and permitted said disposal field to be prepared for use until the said disposal field was fully prepared and said sewerage system fully completed at a great cost, as above stated; and for a long period stood by and permitted your orator to spend great sums of money in building, extending and maintaining said system without challenging your orator's full and complete rights to maintain said disposal field and said sewerage system."

The Ninth Paragraph claims:

"That even if the presence, or the use of said disposal field did result in the injuries complained of by the defendants, the defendants cannot in equity and good conscience assert any claim for damages against your orator by reason of any such alleged injury, because as above stated the defendants sold to your orator the land now used by them for a disposal field, for the express purpose of being so used and with the fullest understanding of the exact use which would be made of said disposal field; and inasmuch as the defendants, after selling said land for use as a disposal field, stood by and permitted your orator to expend great

sums of money in connection therewith, your orator charges that the said defendants are now equitably estopped from claiming any injuries or damages against your orator by reason of the maintenance of said disposal field."

It is made plain in the Bill that the disposal field is managed in an orderly fashion without any negligence on the part of the appellant, so that it is beyond question that whatever objections there are to this disposal field are the natural and inevitable result of its maintenance.

The intimation in the Court's opinion, that the appellees might have been deceived or misled as to the effect of this system upon their rights, and could not, therefore, be estopped, is the assertion of a well established principle of law, but one for which the allegations of the Bill admitted by the demurrer furnish absolutely no foundation. It will surely be time enough to lay the foundation for any such assumption when the appellees have thought fit to deny the allegations of the Bill.

The demurrer admits the facts as alleged and there can be no possible ground for the intimation on the part of the Court that the appellees might have been deceived, and with the greatest respect to the learned Judge, such an intimation at this stage of the proceedings seems to the appellant to be unnecessary.

## D.

### *Mountain Lake Park Association vs. Shartzer.*

The ruling of the Court of Appeals in the case of the *Mountain Lake Park Association vs. Shartzer*, 83rd Maryland, page 10, was brought to the attention of the Court by the appellant's counsel. It is respectfully contended, however, by the appellant that the ruling in this case is not conclusive of the case at bar.

An examination of the record in the case will show that before the Bill of Complaint was filed by the Mountain Lake Park Association, it had appeared and pleaded in the case at law.

On page 12 the Court uses the following language:

"Now, it is well settled that proceedings in ejectment will not be enjoined where the question of title involved may be properly determined at law, or where the ground relied upon for an injunction would be equally available if urged as a defense to the action of ejectment."

Again on page 13 the Court says:

"It is apparent, then, from an examination of the whole record, that the question here is a legal one, involving the title to land and the proper tribunal for the determination of this controversy is a court of law. The aid of equity cannot be invoked where the remedy at law is plain, adequate and complete."

The Court then proceeds to hold that the matter relied upon as an equitable estoppel, lacked essential elements to make it effective as a defense. The case at bar is not an action of ejectment, nor is it an attempt to try the title to land in a court of equity. The estoppel relied upon in the Park Association case, if it could have been successfully pleaded at law, would have furnished a complete and final defense to the ejectment suit.

The case at bar is based upon a claim that the appellant is maintaining a continuing nuisance, and for the reasons fully set out in this brief, it must be plain to the Court, that while a perpetual injunction to prevent further interference on the part of the appellees with the appellants will fully and adequately protect the appellant, a mere presentation of the defense of equitable estoppel in the pending suit, can only temporarily insure the appellant against unjust and inequitable conduct on the part of the appellees.

It is true that the Shartzer case overlooked the doctrine contended for by the appellant in the case at bar in relation to defenses originally equitable; but an examination of the briefs and records will show, that this view of the situation was not presented to the Court at all, and indeed it is believed that it goes before this Court for serious discussion for the first time in its history.

## VIII.

### Conclusion.

The appellant, therefore, claims that under the established principles of equity, it is entitled to the remedy by injunction to restrain all further interference by the appellees with the appellant in the use of its disposal field, and as a suit is now pending in which the appellees seek to recover damages against the appellant because of the maintenance of this disposal field, that suit as well as all similar suits ought to be perpetually enjoined.

Inasmuch as the successful defense of the pending suit will in no wise protect the appellant from other suits or from other acts of interference on the part of the appellees, the appellant ought not to be denied its equitable remedy, simply because the appellees have seen fit to file a declaration in a court of law rather than to pursue the natural and usual remedy for an alleged nuisance, by asking for relief in a Court of Equity.

FRANCIS K. CAREY,
OSBORNE I. YELLOTT,
*Solicitors for Appellant.*