Legal Aspects of Air Pollution Control

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SOME MEMBERS of the public, including newspapermen and public officials, think of air pollution control only in terms of legal regulation. However, there are other less direct but equally effective ways to reduce emissions. For example, an efficient, mass rapid transit system can reduce emissions from automobiles. Also, the use of alternative fuels, such as natural gas in place of fuel oil or coal for the generation of electricity, will similarly reduce air contamination. In governmental control of air pollution, therefore, regulation by law enforcement is not the only area of concern.

Legal Foundation for Regulation

Common law nuisance. The first attempts to regulate air pollution dealt with air contamination as a part of the field of tort law commonly referred to as "nuisance." Smoke was considered a nuisance at common law but not a nuisance per se (in each individual case, it had to be proved that the smoke was in fact injurious or offensive to the senses).

In the case of public nuisance, it had to be proved that a large number of persons were affected by the emission of contaminants into the atmosphere. (For a complete study of smoke abatement at early common law, see *1*.)

Need for legislation. It became increasingly obvious that, with man's limited scientific knowledge, it would be difficult, if not impossible, to demonstrate that air contaminants were in fact injurious to the human organism. Since injury could not be adequately demonstrated in many cases, a nuisance could not be established. Therefore, the statutes based on common law nuisance were soon found ineffective.

The earliest attempts to obviate the necessity of demonstrating injury are found in statutes that declared the issuance of thick black smoke into the atmosphere a nuisance per se (the issuance of smoke into the atmosphere of and by itself constituted a nuisance, and it was therefore unnecessary to demonstrate that said smoke caused injury). Most jurisdictions held that this was a proper exercise of the State's police power (see *2*).

More recent statutes have totally ignored the concept of common law nuisance and have declared simply that the issuance of contaminants into the atmosphere is a public offense. The validity of regulating statutes or ordinances does not depend on whether or not the act prohibited is a nuisance but depends instead on whether or not the law comes within constitutional limitations and, in the case of a city or county, whether or not it has power under its charter or under its constitutional or statutory provisions to pass such a law (see *3*).

Validity as to due process. Subsequent to 1894 and the decision handed down in *Lawton* v. *Steele* (*4*), it became well settled that any provision of a statute or ordinance regulating a nuisance is valid insofar as the due process clause is concerned, if it is reasonably necessary for the accomplishment of the purpose and for the public welfare generally, if it is not unduly oppressive, and if it does not arbitrarily interfere with private business or impose unusual or unnecessary restrictions on a lawful occupation.

It seems that no certain and satisfactory limitation on the legislative discretion, in the ex-

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ercise of police power, can safely be declared in advance for application to many cases that may subsequently arise (*5*).

Availability of control equipment. One of the major early court decisions having significance for the use of scientific appliances or controls was the case of *People* v. *Detroit White Lead Works* (*6*). As a result of the decision in this case, the rule became well established that whenever a business becomes a nuisance, it must give way to the rights of the public, and the owners thereof must either devise some means to avoid the nuisance or must remove or cease the business. This rule applies even though the business is carried on in a careful manner and nothing is done which is not a reasonable and necessary incident to the business and even though there may be no smoke-consuming appliance that will under all circumstances prevent the nuisance. However, some later cases show a tendency away from the ruling of the *Detroit White Lead* case. A treatment of these decisions is discussed later.

Northwestern Laundry case. Although the early cases rather clearly established that the State could, under its police power, prohibit or regulate the emission of smoke or fumes, it was not until 1916 that the substantive law of air pollution control was enriched with the opinion in *Northwestern Laundry* v. *Des Moines* (*7*). This case held:

1. An ordinance which regulated the emission of contaminants only in densely populated areas was reasonable in its classification.

2. A definite scientific standard for the density of smoke, such as the Ringelmann Scale, does not offend the Constitution.

3. Smoke may be forbidden without reference to the time or quantity of emission or the immediate surroundings.

4. ". . . nor is there any valid federal constitutional objection in the fact that the regulation may require the discontinuance of the use of property, or subject the occupant to large expense in complying with the terms of the law or ordinance. . . ."

Recent cases consider the problem settled (see *8*).

Liberal construction of regulations. The liberal attitude of some courts toward air pollution control regulations is illustrated by the following quotation from *Penn-Dixie Cement Corp.* (*9*):

> Ordinances to preserve the public health have been liberally construed, and the authorities have gone to a great length in enumerating the implied powers of municipalities to enact laws to protect the community from infectious and contagious diseases, from bad water, against nuisances injurious to health, and noxious odors and gases. Inasmuch as the preservation of the public health, and the safety of the inhabitants is one of the chief purposes of local government, all reasonable ordinances in this direction have been sustained. [For additional supporting authority, see *10*.]

Requisite of reasonableness. Any ordinance or statute under the police power must be reasonable, and for that reason must regulate or forbid something which is or could be considered detrimental to the public peace, health, safety, morals, or general welfare. If any set of facts may be supposed which will make a regulation reasonable, or if reasonable minds may differ on the question, the enactment will be sustained (*11*). The courts are not limited to the face of the law itself. They may look behind the law and determine from competent, extrinsic evidence whether or not the law is reasonable (*2*, *5*, *12*).

Although actual damage need not be demonstrated in a particular case, the inconvenience caused by the violation must be more than fanciful (see *8a*). The common law, however, judges by no Spartan standards. The loss of even one night's sleep is not deemed a trivial matter (*13*). And, the complexities of modern society, due in large part to congestion of population and concentration of industry and business, impose an ever-increasing demand for individual concessions to the common good (*8*).

Cases holding regulations valid. In the case of *City of Brooklyn* v. *Nassau Electric R. Co.* (*14*), an action was brought to recover from defendant a penalty of $100 for using soft coal as fuel within a radius of 4 miles of the city hall. The court held that it was within the police power of the legislature to declare that the burning of soft coal within certain prescribed limits of the city was detrimental to the public welfare and that the same should be forbidden as a benefit to the general public. (To the same effect, see *2*, *4*, and *Bradley 12*; for similar cases, see *Cincinnati 12* and *15*.)

Some jurisdictions (including California)

have adopted the Ringelmann Scale as the standard for determining the density of smoke to be prohibited. The use of the Ringelmann Chart has been universally upheld (see *16*). At least one jurisdiction has held that the density of smoke by use of a color scale is a reasonable standard (see *Cincinnati 12*).

In the case of *Glucose Refining Company* v. *City of Chicago* (*17*), the court was considering a Chicago ordinance, which declared that the emission of dense smoke was a public nuisance and prohibited the emission of dense smoke for more than 3 minutes in any hour of day or night. The complainant attempted to enjoin enforcement of the ordinance, asserting that it violated the Federal Constitution. The court denied the injunction on the ground that the bill admitted the issuance of dense smoke, and the court took judicial notice of the fact that such smoke was a nuisance and spread over a large territory.

In the case of *People* v. *International Steel Corp.* (*18*), the court held that the standard adopted by section 24242, Health and Safety Code, State of California, which set up the Ringelmann Chart as a standard to determine whether or not a particular emission was a violation of the Health and Safety Code, was sufficiently definite and certain so that there was no violation of the due process clause of the 14th amendment of the Federal Constitution.

Cases of reasonable classifications. In *Moses* v. *United States* (*5*), the statute exempted chimneys of buildings used exclusively for private residences, while declaring the emission of dense or thick black or gray smoke or cinders from smokestacks or chimneys a public nuisance. The statute was upheld.

In the cases of *State* v. *Dower* and *Atlantic City* v. *France* (*19*), the court upheld ordinances which regulated only the emissions within city limits.

Cases holding regulations invalid. In the case of *Department of Health of the City of New York* v. *Philip and William Ebling Brewing Company* (*10*), the court refused to convict the defendant for allowing gas to escape from its furnace where it was not shown that the gas was detrimental or annoying to any person, although the ordinance involved literally prohibited the emission of all smoke or gas from furnaces. The court stated:

> . . . The defendant's proof establishes that whether the flue of its chimney carries off imperceptible gas or visible smoke, in neither case is any feature of nuisance to any resident of the city possible, . . .
>
> If the provision adopted by the Board of Health, however, is to be literally applied, these considerations are immaterial, because the section prohibits the escape of smoke under any circumstances.
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> . . . When . . . the legislature enacted as a part of the Sanitary Code that no gas or smoke should be allowed to escape from a furnace, I think it must be understood with the implied qualification, 'to the detriment or annoyance of any person.' [See *People* v. *Long Island R.R. 10.*]

In the case of *City of Kankakee* v. *New York Central Railroad Co.* (*20*), the Supreme Court of Illinois declared an ordinance unreasonable and arbitrary when said ordinance was not sufficiently definite and certain with respect to the guidelines provided the inspector seeking to abate the nuisance caused by the emission of smoke into the atmosphere.

A number of cases that hold ordinances invalid have been decided on the ground that the local body did not have the power, under the particular State constitutional and statutory provisions or the charter of the local body, to declare dense smoke a nuisance. In such cases, however, the courts have usually admitted that the legislative body of the State had such power. (For illustrative cases in this category, see *State* v. *Tower 2* and *21*.)

Statutes and ordinances not based on nuisance. The police power of the State or of the municipality or other local agency, when properly authorized by the State, extends to the regulation of air pollution, visible or invisible, without regard to whether the condition constitutes a common law or statutory nuisance. (For illustrative cases in this category, see *18*, *22*.)

Validity not based on nuisance. The validity of an ordinance or statute regulating the emission of smoke or fumes does not depend on whether or not it is a nuisance. Validity depends entirely on whether or not the law comes within the constitutional limitations, and, in the case of a city, whether or not it has power under its charter or constitutional or statutory provisions to pass such a law. The police power permits the State to enact laws to forbid and regulate various practices to provide for the

general welfare and comfort of the people, regardless of whether or not they constitute a nuisance. The leading case on this subject is *In re Junqua* (*15*).

Many courts, however, have not been so cooperative toward attempts to reduce air contamination. These courts have determined it necessary to demonstrate that emission of the contaminants constitutes a public nuisance (see *State* v. *Chicago* 2 and *17*).

State action to abate interstate nuisance. In an equity action brought to enjoin a foreign corporation from discharging noxious gases that spread from its works in Tennessee over large tracts of the State of Georgia, the Supreme Court of the United States, in the case of *State of Georgia* v. *Tennessee Copper Company* (*23*), upheld the injunction. Mr. Justice Holmes, writing for the Court, said:

> This is a suit by a state in its capacity of quasi-sovereign. In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. . . . If the state has a case at all it is somewhat more certainly entitled to specific relief than a private party might be.

Impairment to health not necessary. In the case of *Moses* v. *United States* (*5a*), the court said:

> Without reference to statutory regulation or declaration in a particular case, any use of one's property, ordinarily lawful, may become a nuisance not only when it produces injury to public health, safety and morals, but also when it occasions public inconvenience, or materially impairs the public comfort—'the physical comfort of human existence.' [To the same effect, see *24*.]

In the California case of *Dauberman* v. *Grant* (*24*), the court held that the defendant could be enjoined from maintaining a nuisance where he maintained a smokestack at such a low height that heavy black smoke and soot were carried into plaintiff's adjacent dwelling. (To the same effect, see *State* v. *Mundet Cork Corp.*, *22*.)

In a proper case, however, the court will take judicial notice of the fact that air pollution is injurious to health. In the case of *Penn-Dixie Cement Corp.* v. *City of Kingsport* (*25*), the court stated:

> But this Court can and does take judicial cognizance of the fact that when the air is laden with a heavy cloud of smoke and dust that such a condition constitutes a nuisance and is detrimental to the health and safety of the public. . . . [I]t is wholly unnecessary that the charter or general law should go further and declare that smoke and dust are detrimental to health. Everybody knows that it is . . . [To the same effect, see *8*.]

Intent not necessary to violate statute or ordinance. "The criminal intent or *mens rea* essential to a conviction in the case of true crimes need neither be alleged nor proven with respect to violations of municipal ordinances which forbid the commission of certain acts as contrary to the general welfare and make them *malum prohibitum*. Proof or admissions of the doing of the forbidden thing, regardless of intent, good faith, or willfulness, must bring conviction" (*26*).

Damage necessary to sustain an action to enjoin a common law nuisance. In *Hofstetter* v. *Myers* (*27*), the trial court enjoined as a nuisance the operation of an asphalt plant *at such times and manner that the dust and dirt coming therefrom will injure, molest, or interfere with the plaintiffs in the peaceable, quiet enjoyment of their property.* [Emphasis added.] The evidence showed that the dust reached plaintiffs only when the wind was from the southwest; was not accompanied by soot, smoke, odors, or fumes; and was the same as the dust from unpaved roads in the vicinity and merely inconvenienced plaintiffs, who had built homes in the area notwithstanding the presence of two railroads and the municipal garbage dump.

In the case of *McIvor* v. *Mercer-Fraser Co.* (*28*), the court said (in part quoting *Judson* v. *Los Angeles Suburban Gas Co.*, *24*):

> . . . It is surely no justification to a wrongdoer that he takes away only one twenty-eighth of his neighbor's property, comfort or life.
>
> . . . mere apprehension of injury from a dangerous condition may constitute a nuisance where it interferes with the comfortable enjoyment of property (46 C.J. Sec. 50, p. 680), and that the injured party need not seek an abatement of the nuisance but may sue for damages.

For further cases analogous to those cited above, see *29*.

The Ringelmann Chart. Although the Ringelmann Chart has been commonly used in

ordinances and elsewhere as a measure of smoke emission for half a century, few cases referred to it and none actually approved its use prior to 1947. Since that time, an ever-increasing number of courts have taken judicial notice of it as a standard. The Appellate Department of the Los Angeles County Superior Court (California) approved the use of the chart in *People* v. *International Steel Corp.* (*30*).

The court further discussed the use of the Ringelmann Chart in detail, and held that inspectors could testify as to the Ringelmann number of a particular smoke emission without using a chart (just as a police officer could testify to the length of a skid mark without actually measuring it with a tape measure or ruler).

Other recent cases approving the use of the Ringelmann Chart are *Board of Health of Weehawken Township* v. *New York Central Railroad* (*8*, *22*) and *Penn-Dixie Cement Corp.* v. *City of Kingsport* (*25*).

Multiple sources of pollution. With the growth of cities and multiplication of industrial plants, more and more cases arose where several contributing sources of pollution made it difficult to prove a defendant guilty of a nuisance. In some cases no one factory was responsible for enough pollution to constitute a nuisance, but the total contribution of two or more sources of pollution was a nuisance. Recent cases have found those responsible for the various contributions to be joint tort feasors, or at least not in a position to object if the court divides the damages between them as best it can (see *31*).

Reasonable use of property and substantial compliance. As mentioned previously, the decision in the case of *People* v. *Detroit White Lead Works* (*6*) held that whenever a business becomes a nuisance it has to give way to the rights of the public even though nothing is done which is not a reasonable and necessary incident to the business. In support of the rule laid down in the *Detroit White Lead* case, the court, in *Moses* v. *United States* (*5*), said:

> That there may be no smoke consuming appliances that will, under all circumstances, prevent the nuisance is not a matter of relevancy. The facts concerning them were presumably within the knowledge of Congress also when it took action; and no provision has been made for their use. The use of smokeless fuel instead may have been expressly contemplated.

Several cases involving private nuisances, however, held that the businesses involved were not guilty of violations because they were using the best known modern appliances to prevent smoke and fumes (*32*).

In the case of *DeBlois* v. *Bowers* (*33*), a bill was brought by property owners to enjoin defendants from maintaining a nuisance by causing the emission of obnoxious fumes and odors from the defendant's facility. The court therein stated:

> The question whether the defendants have done everything reasonably practicable to avoid the cause of offense is important. Reasonable care must be used to prevent annoyance and injury to other persons beyond what the fair necessities of the business require. [To the same effect, see *34*.]

Perhaps the differing views on whether use of the best device is a defense can be rationalized. They probably are determined by the gravity of the problem in a given location. Assuming a situation in which air pollution has become so severe as to cause great annoyance and damage or perhaps personal injury or death, there can be little doubt that by adopting the best control devices known a defendant could not shield himself from liability, civil or criminal.

Control of vehicles in interstate commerce. Many instrumentalities in interstate commerce are sources of air pollution. A jet aircraft on takeoff produces more air contaminants than a thousand automobiles. Oceangoing ships and railroads are also potential sources of air pollution. What, if anything, can local agencies do to control these sources of air pollution?

The problem was considered by the Senate of the 84th Congress. Hearings were conducted, and subsequent to the hearings, the Federal Government expressed its intention not to preempt the field (not to occupy the field to the exclusion of local regulatory agencies): "The committee recognizes that it is the primary responsibility of state and local governments to prevent air pollution" (*35*).

State control of interstate commerce for the purpose of preventing air pollution has been the subject of litigation. In the case of *Huron Portland Cement Co.* v. *Detroit* (*36*), the Court stated:

. . . The basic limitations upon local legislative power in this area are clear enough. The controlling principles have been reiterated over the years in a host of this court's decisions. Evenhanded local regulation to effectuate a legitimate local public interest is valid unless pre-empted by federal action. . . .

At least in one case (a 4-to-3 decision), however, it appears that the regulation of interstate commerce will be subjected to severe scrutiny by the Federal courts (*37*):

If the prohibition against the discharge of dense smoke is so applied that a steamship company may be found guilty of a violation because, in the operation of great liners with up-to-date equipment, dense smoke is discharged for a few minutes while a vessel is being prepared for departure, though it is shown that even in the exercise of the greatest care, it would be impossible or impractical to avoid such smoke, then it seems to me beyond question that the ordinance is unreasonable, obstructs foreign commerce and exceeds the power of the state.

It appears from the language in the case cited above that local agencies must be prepared to demonstrate that any air pollution caused by a vehicle in interstate commerce can be controlled by reasonable measures, before the local agency can circumscribe the activities of the interstate vehicle.

Conclusion

The rising interest in the legal aspects of air pollution control among public health officials must inevitably change the emphasis in the case law. This means that in the future more cases will be decided in relation to statutes rather than to principles of common law nuisance. A greater percentage of the cases will involve contamination of the air mass rather than emissions that can be traced to specific damage to nearby residents or to neighboring property.

The public health official must be familiar with these legal principles in order to act effectively against air pollution. With the help of his attorney he will have to prepare and support regulations that are effective and that will withstand the test of litigation.

An important function which public health officials can perform currently is the development of information about the effects of air pollution on health.

As noted previously, legal control of air contamination has been seldom based on a demonstrated cause-and-effect relationship between the contaminant and injury to health. Some research has been performed recently to attempt to provide this link. To my knowledge, however, no court or regulatory agency has ever been convinced that a direct relationship exists. No legislative body has acted to control air pollution with little more than a strong suspicion that the regulation it was adopting would actually protect health.

Part of our job is to do what we can with the knowledge and legal precedents at hand. Another part is to exert our efforts to fill in the gaps in our scientific knowledge, by individual study and encouraging research and appropriations of funds for research.

When a court decides from scientific evidence before it that a particular emission of air contaminants should be controlled because it causes a particular damage to the human body, and when rapid transit systems are developed, and power resources are allocated on the basis of proved benefits to the public health, we will have entered a new era in air pollution control.

REFERENCES

(*1*) 9 Co. Rep. 576, 77 English Reprint 816; see also *Pennsylvania Lead Company*, 96 Pa. 116, 46 Am. Rep. 534 (1881).

(*2*) *State* v. *Tower*, 185 Mo. 79, 84 S.W. 10 (1904); *State* v. *Chicago, M. & St. P. Ry. Co.*, 114 Minn. 122, 130 N.W. 545 (1911).

(*3*) 7 McQuillan, Municipal Corporations, 3d ed., pp. 469–470.

(*4*) *Lawton* v. *Steele*, 152 U.S. 133 (1894).

(*5*) *Moses* v. *United States*, 16 App. D.C. 428 (1900); (*a*) 436–437.

(*6*) *People* v. *Detroit White Lead Works*, 82 Mich. 471, 46 N.W. 735 (1890).

(*7*) *Northwestern Laundry* v. *Des Moines*, 239 U.S. 486 (1915).

(*8*) *Board of Health of Weehawken Township* v. *New York Cent. R.R.*, 4 N.J. 293, 300, 72 A. 2d 511, 514 (1950); (*a*) 4 N.J. 293, 299–300, 72 A. 2d 511, 514–515 (1950).

(*9*) *Penn-Dixie Cement Corp.* v. *City of Kingsport*, 189 Tenn. 450, 461, 225 S.W. 2d 270, 275 (1949).

(*10*) *People* v. *Consolidated Co. of New York*, 116 N.Y.S. 2d 555 (1952); *Department of Health of City of N.Y.* v. *Philip & William Ebling Brewing Co.*, 38 Misc. 537, 78 N.Y.S. 13 (Munic. Ct. N.Y., Borough of the Bronx, 1902); *People* v. *Long Island R.R.*, 31 N.Y.S. 2d 537 (Ct. Spec. Sess. N.Y., Queens Co., 1941).

(11) *Matter of Miller*, 162 Cal. 687, 124 Pac. 427 (1912); *Clemons* v. *City of Los Angeles*, 36 Cal. 2d 95, 222 P. 2d 439 (1950); *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 Pac. 381 (1925).

(12) *Bradley* v. *District of Columbia*, 20 App. D.C. 169 (1902); *Cincinnati* v. *Burkhardt*, 10 Ohio C.C.R. (n.s.) 495 (1908).

(13) *Andreae* v. *Selfridge*, 3 A.E.R. 255, 261 (1937); Salmond: Law of torts. Ed. 10, 1945, p. 244.

(14) *City of Brooklyn* v. *Nassau Electric R. Co.*, 44 App. Div. 462, 61 N.Y.S. 33 (1899).

(15) *Bowers* v. *City of Indianapolis*, 169 Ind. 105, 81 N.E. 1097 (1907); *In re Junqua*, 10 Cal. App. 602, 103 Pac. 159 (1909).

(16) *City of Rochester* v. *Macaulay-Fien Milling Company*, 199 N.Y. 207, 92 N.E. 641 (1910).

(17) *Glucose Refining Company* v. *City of Chicago*, 138 Fed. 209 (1905).

(18) *People* v. *International Steel Corp.*, 102 Cal. App. 2d Supp. 935, 226 P. 2d 587 (1951).

(19) *State* v. *Dower*, 134 Mo. App. 352, 114 S.W. 1104 (1908); *Atlantic City* v. *France*, 75 N.J.L. 910, 70 Atl. 163 (1908).

(20) *City of Kankakee* v. *New York Central Railroad Co.*, 387 Ill. 109, 55 N.E. 2d 87 (1944).

(21) *City of St. Louis* v. *Heitzeberg Packing and Provision Co.*, 141 Mo. 375, 42 S.W. 954 (1897); *Cleveland* v. *Malm*, 7 Ohio Dec. 124 (1898); *Sigler* v. *Cleveland*, 4 Ohio Dec. 166 (1896); *City of St. Paul* v. *Gilfillan*, 36 Minn. 298, 31 N.W. 49 (1886).

(22) *Board of Health of Weehawken Township* v. *New York Central Railroad*, 10 N.J. 294, 90 A. 2d 729 (1952); *State* v. *Mundet Cork Corp.*, 8 N.J. 359, 86 A. 2d 1 (1952).

(23) *State of Georgia* v. *Tennessee Copper Company*, 206 U.S. 230, 237 (1907).

(24) 39 Am. Jur. 336, sec. 54, n. 19; *Judson* v. *Los Angeles Suburban Gas Co.*, 157 Cal. 168, 106 Pac. 581 (1910); *Dauberman* v. *Grant*, 198 Cal. 586, 246 Pac. 319 (1926); *State ex rel. Krittenbrink* v. *Withnell*, 91 Nebr. 101, 135 N.W. 376 (1912).

(25) *Penn-Dixie Cement Corp.* v. *City of Kingsport*, 189 Tenn. 450, 459–460, 225 S.W. 2d 270, 275 (1959).

(26) *People* v. *Consolidated Edison Co. of New York*, 116 N.Y.S. 2d 555 (Munic. Term, City Ct., N.Y. (1952). To the same effect, *People* v. *Alexander*, unreported, Appellate Department, Superior Court, Los Angeles County, California, CR A 2708 (1951).

(27) *Hofstetter* v. *Myers*, 170 Kans. 564, 228 P. 2d 522 (1951).

(28) *McIvor* v. *Mercer-Fraser Co.*, 76 Cal. App. 2d 247, 253–254, 172 P. 2d 758 (1946).

(29) *Alonso* v. *Hills*, 95 Cal. App. 2d 778, 214 P. 2d 50 (1950); *Tuebner* v. *California Street Railroad Company*, 66 Cal. 171, 4 Pac. 1162 (1884).

(30) *People* v. *International Steel Corp.*, 102 Cal. App. 2d Supp. 935, 938–939, 226 P. 2d 587, 590–591 (1951).

(31) *Ingram* v. *City of Gridley*, 100 Cal. App. 2d 815 823–824, 224 P. 2d 798 (1950); *Permanent Metals Corp.* v. *Pista*, 154 F. 2d 568, 570 (9th Cir. 1946); *California Orange Co.* v. *Riverside Portland Cement Co.*, 50 Cal. App. 522, 195 Pac. 694 (1920); *International Agr. Corp.* v. *Abercrombie*, 184 Ala. 244, 63 So. 549 (1913); *Learned* v. *Castle*, 78 Cal. 454, 21 P. 11 (1899); *Hanlon Drydock etc. Co.* v. *Southern Pacific Co.*, 92 Cal. App. 230, 268 P. 385 (1928).

(32) *Elliot Nursery* v. *Duquesne Light*, 281 Pa. 166, 126 Atl. 345 (1924); *Price* v. *Carey Manufacturing Co.*, 310 Pa. 557, 165 Atl. 849 (1933). *Downs* v. *Greer Beatty Clay Co.*, 9 Ohio C.C.R. (n.s.) 345 (1906).

(33) *DeBlois* v. *Bowers*, 44 F. 2d 621 (D. Mass. 1930).

(34) *People* v. *Oswald*, 116 N.Y.S. 2d 50 (Magis. Ct., N.Y.C. 1952); *Walden* v. *City of Jamestown*, 178 N.Y. 213, 217, 70 N.E. 466 (1904); *McCluskey* v. *Cromwell*, 11 N.Y. 593 (1854).

(35) Senate Rept. No. 389, 84th Cong. 1st Sess., 3; see also 69 Stat. 322; 42 U.S.C. Sec. 1857 (1958 ed.).

(36) *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440 (1960).

(37) *People* v. *Cunard White Star*, 280 N.Y. 413, 419, 21 N.E. 2d 489, 490 (1939).