Bronchos, Warren in Title Game Friday

Locals Need Win to Assure Share in Championship

...and Palatine Can Obtain Top Honors

...players who flock ... Friday evening ... title game of the ... Barrington Bronchos ... Desplaines in a con... whether or not ... place in the North-... basketball champion-... Coalition now ex-... Barrington ... Palatine are all tied ... heavyweight di-... and 2 defeats, ... schedule ends ... games any of the ... this week-end ... championship. The ... are watching the ... Antioch till ... Libertyville-Ar-... Libertyville for if the ... and both Palatine ... the local cagers ... champions, pro-... Warren. ... winners in the ... worthy foes, ... quintet which ... a game in its ... The maroon ... and Warren at ... scoring 23 ... basket by Conn, ... be just as ... Warren has ... Bowling and ... fine ball

...will open ... with the ... 9:00.

Bensenville Is 51 to 28 Victim of Prep Cagers

...Points as BHS Team Sets New Scoring Record

...cage men ... record in ... conference ... swamped ... Bensen-... Thursday ... the 51 ... local high ... previous re-... up by 14 ... Bensenville ... especially ... hill to play ... measure for ... Bensenville hand-... season be-... to keep ... Libertyville ... in the ... the Bronchos ... trouble in ... games pour-... from the ... whistle ... scoring at ... white five ... and 11 ... of play ... got into ... as well as ... pleasing per-... was the in-...

Conference State

...This Friday

...most modest country ...er careful research, ...aper is read, on an ... country newspaper ...pt 'round the house ...n going through its ...

...attractive copy—

...ON REVIEW ...THAT IS READ

dividual star garnering 18 points on seven baskets and four free throws.

The Barrington Pony team could not pull out of its losing slump and dropped a close 29 to 27 game to the Bensenville lightweights. Missed free throws rest the Barrington lights the game as they counted less than half of their chances from the charity line.

Lineups:

Bronchos, 51—	FG	FT	PF
Conn, f	2	2	3
Ulbrich, f	1	0	0
Rowland, f	3	1	1
Capulli, f	1	1	1
Latts, c	7	4	3
Eiters, f, c	2	2	1
Brandt, g	0	0	3
Workman, g	2	0	3
Meiners, g	0	0	0
Mollenkamp, g	2	1	1
Totals	20	11	13

Bensenville, 28—			
Koske, f	5	5	2
Jennings, f	1	2	0
Franzen, f	0	0	1
Shriver, c	3	0	2
Davis, g	1	1	3
Freeman, g	0	0	4
Hartman, g	0	0	0
Totals	10	8	12

Score by quarters:

Bronchos	16	7	16	12	—51
Bensenville	3	11	3	11	—28

Barrington Ponies, 27—

Klopfenstein, f	1	0	0
Overhue, f	2	0	1
Castle, f	0	2	1
Osborne, f	1	1	0
Grabenkort, c	3	1	4
Kershaw, g	2	0	3
Wichman, g	0	1	4
Totals	10	7	10

Bronchos to Play in Opening Game of District Meet

Tilt With Hampshire to Start at 3 p. m. Wed.; Full Schedule Listed

Barrington will play Hampshire at 3 p. m. Wednesday afternoon in the opening game of the district high school basketball tournament to be held at Crystal Lake, March 7 to 10. If the Bronchos defeat Hampshire they will meet the Elgin-Plato Center winner in the quarter-finals at 8 p. m., Friday evening. Both the winner and loser of the final game in the district tournament will enter a sectional tournament, but each will go to a different place. Following is the complete time schedule for the tournament.

Wednesday, March 7—Game 1, Barrington vs. Hampshire, 3 p. m.; game 2, Harvard vs. McHenry, 7 p. m.; Games 3, Elgin vs. Plato Center, 8 p. m.; game 4, Crystal Lake vs. Woodstock, 9 p. m.

Thursday, March 8—Game 5, Richmond vs. Arlington, 7 p. m.; game 6, Hebron vs. Palatine, 8 p. m.; Game 7, Winners of Games 2 and 4, 9 p. m.

Friday, March 9—Game 8, Winner of Game 5 vs. Dundee, 7 p. m.; Game 9, Winners of Games 1 and 3, 8 p. m.; Game 10, Winner of Game 6 vs. Huntley, 9 p. m.

Saturday, March 10—Winners of Games 7 and 8, 2 p. m. Winners of Games 9 and 10, 3 p. m.

Game between losers of afternoon games, 7:30 p. m. Championship game between winners of afternoon games, 8:30 p. m.

Barrington Junior High Firsts End Season With Win Over Des Plaines

The Barrington junior high basketball teams broke even in their final games of the season with Des Plaines Tuesday afternoon. Kennie Clinge's basket near the end of the game enabled the Barrington first team to score a 16 to 14 upset over the strong Des Plaines firsts, while the B.J.H. seconds lost to the Des Plaines reserves 16 to 6 after leading 4 to 3 at the half.

All five of Coach Watson's first team regulars Castle, Clinge, Workman, Rice and Canby graduate this spring, leaving next season's prospects up to how well the sixth and seventh grade youngsters develop by the time the next campaign rolls around.

Salem Beats M.E. Quintet 26 to 23 in Extra Period

Salem and St. Paul captured the opening tilts of the church league basketball tournament Monday night, St. Paul defeating the Baptists 38 to 24 and Salem checking the Methodists 26 to 23 in an overtime tussle. The Baptists only trailed St. Paul 24 to 28 with three minutes to play but a sharp rally carried the Main street squad 10 points and the victory. Wolf, St. Paul forward featured with 13 points.

The Methodist-Salem battle was close and hotly contested, Salem triumphing by the slim margin of three charity throws as each team sank 10 field goals. The Methodists led Salem 11 to 3 at the half, but at the end of the regulation playing period the score was knotted at 20 all. Salem counted two baskets and two free throws in the extra session to win. Harder was high point man with 10 points.

The tourney will be resumed next Monday night when St. Paul and St.

Continued on page 8

Alley News

DISTRICT LEAGUE
February 23

Bill Wierich and Bill Stone topped Friday night's bowling, each turning in a fine 644 series. The first place Malone Sinclairs continued to hold its five game lead over the Sass Hardwares.

Sass Hardware—

Brown	196	140	154	499
Kellam	190	167	173	530
Sass	148	196	168	512
McCoy	123	210	168	501
Stone	256	215	173	644
Totals	913	937	836	2686

McLeisters—

Daeschler	186	169	163	518
McGowan	145	159	203	507
Yeoman	154	194	181	529
Olcott	173	138	158	469
Wierich	241	203	200	644
Totals	899	863	905	2667

Pontiac-Buick—

A. Schaulle	151	181	154	469
Church	157	171	199	527
Reichele	187	170	182	539
Prehm	181	182	186	549
Homuth	175	163	169	507
Totals	894	867	*900	2591

Malone & Sinclair—

Cuyp	149	180	181	510
Wessel	224	151	175	550
F. Schaulle	154	206	151	511
Purcell	194	166	181	541
Schroeder	188	170	202	560
Totals	909	873	890	2672

*Won roll-off.

Standing:

Teams	Won	Lost	Pct.
Malone Sinclair	40	20	.666
Sass Hardware	35	25	.583
Pontiac-Buick	25	35	.415
McLeisters	20	40	.333

BARRINGTON LEAGUE
February 27

Jefferson Ice, paced by Naggatz' 608 series, captured two games from the second place Miller Bros., Tuesday. Jake Goldman started out with two fine games of 213 and 200 but dropped to a mere 117 in his third game to ruin chances for high series.

Jefferson Ice—

Naggatz	194	211	203	608
Bates	144	160	123	427
Mitchell	158	158	175	491
P. Landwer	135	156	176	467
Cadwallader	173	173	159	505
Totals	824	858	856	2538

Miller Bros.—

Miller	170	196	133	499
Malone	151	110	149	410
Goldman	213	200	117	530
Daeschler	191	159	157	507
Beerman	176	157	178	511
Totals	901	822	734	2457

Pohlman Drugs—

Lines	153	182	168	503
Hager	169	163	171	503
I. Landwer	109	145	195	449
Prehm	173	192	156	621
Conn	178	173	173	519
Totals	777	855	803	2495

Lipofsky Clothiers—

Norman	165	194	180	539
Hawley	140	125	140	405
Gieske	171	119	146	436
Brown	204	181	189	574
Gerdan	186	147	160	493
Totals	866	766	815	2447

Standing:

	Won	Lost	Pct.
Pohlman Drugs	36	24	.600
Miller Bros.	32	28	.533
Jefferson Ice	29	31	.483
Lipofsky Clothiers	23	37	.383

LIONS CLUB LEAGUE
February 26

Schwemm's team took a firmer hold on first place by increasing its lead over the Langdale bowlers to 148 pins Monday night. Hager, Schwemm, and Langdale are all tied for first place in the individual standing with 168 average.

Scores:

Hager Team—

Pohlman	164	153	144	461
Hager	147	176	222	545
Nelson	120	120	120	360
Sass	122	154	111	387
W. Catlow	159	144	157	451
Totals	703	747	754	2204

Langdale Team—

Greengard	132	178	130	440
J. Catlow	153	135	143	431
F. Plagge	150	151	155	456
Langdale	141	195	183	519
Lipofsky	129	130	154	404
Totals	696	789	765	2250

Schwemm Team—

L. Miller	141	167	155	463
H. Wente	151	99	146	396
Cloar	166	128	172	466
E. Miller	139	184	128	451
Schwemm	172	158	176	506
Totals	769	736	777	2282

Church team—

Church	156	144	141	441
Lindberg	131	172	155	458
N. Plagge	120	120	120	360
Kohnert	142	158	134	434
Paulson	152	152	152	456
Totals	701	746	700	2147

Standing:

Schwemm Team	29,048
Langdale Team	28,900
Hager Team	28,539
Church Team	28,314

WOMAN'S LEAGUE
February 22

The Schroeder Hardwares took three straight games from Arnold's Foods to feature the league session Thursday night. The Hardwares are now four games back of the top-ranking Shurtleff quintet which won two out of three from McLeister's.

Scores:

Schroeder Hardwares—

Zwiesler	158	133	142	433
Jurs	143	142	158	443
Carr	114	116	133	363
Yeoman	155	136	152	443
Totals	570	527	585	1682

Arnolds Foods—

Rieke	134	144	143	421
Sibley	114	114	114	342
Miller	123	134	108	365
Wierich	130	112	115	357
Totals	501	504	480	1485

Shurtleffs—

O'Neil	136	136	136	408
Daeschler	156	119	137	412
Mitchell	120	151	135	406
Sanders	146	126	153	425
Totals	558	532	561	1651

McLeister's—

Rowan	175	128	104	407
Hoffman	134	116	130	380
Jahnke	131	112	126	369
Muth	128	150	173	431
Totals	568	486	533	1587

Standing:

	Won	Lost	Pct.
Shurtleffs	35	19	.648
Schroeder Hardware	31	23	.574
Arnolds Foods	26	28	.481
McLeister's	10	38	.296

LEGAL

UNITED STATES OF AMERICA
STATE OF ILLINOIS, ss.

AT A SUPREME COURT, Begun and held at Springfield, on Tuesday, the Sixth day of February, in the year of our Lord One Thousand Nine Hundred and Thirty-four, within and for the State of Illinois.

Present:
Chief Justice WARREN H. ORR.
Justice CLYDE E. STONE.
Justice NORMAN L. JONES.
Justice PAUL PARTHING.
Justice FREDERIC R. DeYOUNG.
Justice LOTT R. HERRICK.
Justice ELWYN R. SHAW.
Attorney General OTTO KERNER.
Marshal WARREN C. MURRAY.
ATTEST: Clerk ADAM E. BLOCH

BE IT REMEMBERED, that afterward, to-wit, on the 23rd day of February, 1934, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Village of Barrington, a Municipal Corporation, Plaintiff in Error.	Error to Circuit Court Lake.
No. 22018	
vs.	
Barrington Hills Country Club, a Corporation, et al., Defendants in Error.	Appeal from

Docket No. 22018—Agenda 25—December, 1933

The Barrington Hills Country Club, et al. Defendants in Error, vs. The Village of Barrington, Plaintiff in Error.

Mr. Justice Farthing delivered the opinion of the court:

A writ of error was sued out of this court to review the record in this case in the circuit court of Lake county, to which the cause was transferred by change of venue from the circuit court of Cook county. The defendants in error filed their bill of complaint in the latter court on February 3, 1926. They are riparian owners of lands on Flynn (or Flynn's) creek and sought a permanent injunction against the Village of Barrington, plaintiff in error, to prevent it from discharging sewage and the efflux from its sewage treatment plant into the creek above their premises. The bill of complaint was filed on February 3, 1926. The lands, sewage treatment plant and the creek are situated in Lake county. The village lies in Lake and Cook counties. The creek flows into the village from the northeast and out of the village to the northwest and empties finally into Fox river. Its source is about three and one-half miles from the village. It is dry during the summer, except for water-holes and small ponds or lakes along its course. It is fed by springs and receives the surface water of the territory it drains. Except for the country club, complainants are the owners of farms on which they maintain country homes. The value of the land is variously estimated and is placed as high as $3,000 per acre. Drains were constructed, and water from wells supplying the village, surface water mixed with sewage, industrial waste and the effluent water from a sewage treatment plant were discharged into the creek above the lands of the defendants in error. Surface waters from barnyards and pastures drained into the creek above the village. On June 9, 1925, plaintiff in error passed an ordinance providing for a new sewer system.

One of the defendants in error, Hart, had brought a similar action in 1911, which was dismissed in 1914 after the village had improved conditions by the erection of a sewage treatment plant. After the present suit was at issue in the circuit court of Cook county it was referred to a master in chancery on September 27, 1926. After testimony had been taken from time to time for two and a half years he filed his report on March 20, 1929. Objections to the master's report were filed on March 29, 1929, by the plaintiff in error, and on May 21, 1929, it filed a motion for a change of venue, setting out that the suit had been filed in the wrong county. On that day it amended its answer and alleged that all the real estate of the defendants in error was located in Lake county, and that, therefore, the circuit court of Cook county was without jurisdiction to hear and determine the cause. On June 4, 1929, defendants in error amended their bill of complaint and alleged that the Village of Barrington was situated in both Cook and Lake counties, that its sewer system was located in both of these counties, and that the village water system obtained water from deep wells located in Cook county. It further alleged that the sewage from residences, business houses, etc., in that part of the village in Cook county as well as that in Lake county was emptied into the creek, and that a new system of underground pipes and a new sewage treatment plant had been completed by the plaintiff in error in 1927, which system extend into both counties. The plaintiff in error denied substantially the allegations of the amended bill of complaint, that the sewage treatment plant impaired the purity of the stream, and denied that the sewers could constitute or create a nuisance, because, it said, that sewers were not only permitted but are required by law; October 15, 1929, an order was entered changing the venue to the circuit court of Lake county, wherein and thereafter the proceedings had in the circuit court of Cook county, including the master's report, testimony and exhibits, was made up and filed in the circuit court of Lake county on November 7, 1929.

On November 10, 1929, plaintiff in error filed a cross-bill alleging that an act had gone into effect entitled, "An act to establish a sanitary water board and to control, prevent and abate pollution of the streams, lakes, ponds and other surface and underground waters in the State." (Laws of 1929, p. 390). It further alleged that a complete remedy was afforded to the grievances complained of by the act and exclusive jurisdiction over the matters in controversy was given to the sanitary waterboard, wherefore the circuit court had no jurisdiction and should dismiss the original bill of complaint. Successive cross-bills were filed. On April 11, 1930, by leave of court, plaintiff in error filed an engrossed amended new cross-bill. This alleged that pursuant to notice to defendants in error a hearing was had before the sanitary water board under the act, and that as a result, on March 8, 1930, a permit was issued by the board to the Village of Barrington to construct a new sewer system and treatment plant and to discharge the efflux from the combined storm-water and sewage treatment plant into the creek. This cross-bill prayed that the court take cognizance of the act of the legislature and decree that it was without jurisdiction to proceed further upon the original bill of complaint.

Defendants in error filed an answer by which they challenged the constitutionality of the act in a number of particulars. A motion to strike the last cross-bill was made, which was taken with the case. This motion also asked that the cause be submitted to the court upon the original bill as amended and the answer, together with the master's report and the evidence taken before him. When the cause came on for a hearing on this motion on June 24, 1930, counsel for both plaintiff in error and defendants in error stated, in response to an inquiry by the court, that whatever additional testimony they had was cumulative and corroborative of testimony subsequent to the taking of testimony before the master of the circuit court of Cook county. They stated that they did not desire to introduce further testimony. Thereupon the court announced that it would read the testimony and make a decision. The court filed a written opinion on November 17, 1930, in which it suggested that a decree should be arranged between counsel to frame the decree. Notice was given that a decree would be presented, and on May 18, 1931 the court allowed plaintiff in error's motion that the objections filed to the report of the master stand as accepted and overruled its motion to strike the master's report and the evidence taken by him made on the ground that the circuit court of Cook county was without jurisdiction to make an order of reference. The exceptions were overruled and a decree was rendered in accordance with the prayer of the bill of complaint as amended and supplemented. The Sanitary Water Board act was held to be unconstitutional and the engrossed new amended cross-bill was ordered stricken. The decree provided that it should go into effect immediately but that it should not go into effect as to the present sewage treatment plant for one year, and that upon notice to defendants in error and a showing of diligence and necessity for additional time to put in effect plans to comply with its terms by plaintiff in error, additional time might be granted.

On July 9, 1931, the record shows an order presented asking that the court direct that the objections to the master's report stand as exceptions, and that on that day plaintiff in error introduced the testimony of its additional witnesses. This testimony was introduced to show the efficiency of the disposal plant and the complaint of defendants in error in the use of the creek to receive the efflux from the treatment plant over a long period of years.

A large number of witnesses were examined and the testimony in the record is very voluminous and is in very considerable degree conflicting. While some of these witnesses were of the opinion, from observation of the creek and the conditions on the premises in question, that no nuisance existed, others testified to the effect that the water was polluted as to render it unfit for domestic use or for the drinking of domestic animals. The evidence also shows that an abnormal flow of water was caused by the effluent in error's waterworks, supplied by wells. These conclusions are strongly reinforced by the inherent probabilities of the case.

Without going into the great mass of testimony and exhibits in detail, it is shown, without contradiction, that witnesses saw such objects in and along the creek below the sewer outlet of plaintiff in error as human excreta, sewer moss (called algae) on the creek bed, sludge, (which is decomposed sewage), scum, cotbrix, condoms and sewage worms at various times. Bacteriological examinations made from time to time by other witnesses showed bacilli coli, which comes from the human alimentary canal, present in such large numbers that the water could not be purified by filtration and chlorination. While there is evidence that one could read a newspaper through the clear effluent which escaped from the treatment plant and that it was odorless, and that gold-fish were kept alive in a sample of it, yet there is other evidence that the water of the creek was so polluted as to give off the odor of sewage and to create a noxious stench, especially during the dry season and immediately following a downpour of rain. Raw sewage flowed from the by-passes directly into the creek when any considerable precipitation of rain occurred. While the treatment plant was shown to be modern and to be equipped with an Imhoff tank, yet it took out of the sewage only sixty to seventy per cent of the solids and no part of the liquids. This threw into the small creek the solid waste from the equivalent of thirty to forty per cent of the population of 2850 inhabitants of the Village of Barrington and the liquid waste from the entire population and its industrial plants, such as creameries, cheese factories, etc.

We are urged to hold that the chancellor erred in considering the evidence taken and reported by the master in chancery of the circuit court of Cook county; that the act creating the sanitary water board and defining its powers is constitutional; that the Village of Barrington has an inherent right to use the creek, which is the only available watercourse, as an outlet for the efflux from its sewage treatment plant, where the sewage was treated according to the best known methods; that the evidence does not show a nuisance existed; that the defendants in error can be adequately compensated in damages and are limited to their action at law; that the conveniences should be balanced—that is, weight should be given to the fact that the village spent a large sum of money building its sewer system and sewage treatment plant, whereas the value to defendants in error of the right to have the creek in its natural state is said to be small, or that the damage done to their property, if any, is much smaller than the damage which would be occasioned to plaintiff in error if it were permanently enjoined.

Plaintiff in error relies upon MUNGER v. CROWE, 219 Ill. 12, and SWIGART v. HIGHWAY COMMRS. 277 id. 281, in support of its contention that the chancellor erred when he denied its motion to strike from the files and to refuse to consider the evidence taken under the order of reference made by the circuit court of Cook County. These two cases were suits for injunction and the bills were instituted in the wrong counties. These cases are not in point because of the difference in the facts involved. In the present case the counsel for both sides agreed in open court on June 24, 1930, that the chancellor should take the cause upon the pleadings and the evidence taken by the master in chancery. Counsel stated that whatever additional witnesses they had, if called, would give cumulative testimony. In spite of this, the record shows leave granted plaintiff in error to examine, later, three additional witnesses, which was done and the chancellor had announced his decision. If this testimony had been taken by way of deposition it would probably be in substantially the same form as it now is.

In our view of these facts no question as to the jurisdiction of the circuit court of Cook county to make the order of reference is raised for our consideration.

We are of the opinion that the Sanitary Water Board act is open to several constitutional objections. The title of the act is, "An act to establish a sanitary water board and to control, prevent and abate pollution of the streams, lakes, ponds and other surfaces and underground waters in the State." Section 15 provides: "Cities, villages and incorporated towns shall have power to install and maintain outlets, discharging into the aforesaid waters, for sewage systems constructed prior or subsequent to the taking effect of this act and subject to the provisions of this act." Defendants in error rightly contend that the title of the act does not indicate in any way that the subject matter of this section is included within and covered by the act, in compliance with section 13 of article 4 of our constitution. This is, in effect, an attempt to amend the Cities and Villages act, and we think the title of the act should so state. (CAMPE v. CORMAK, 330 Ill. 463.) In addition to the defect we have pointed out, section 15 is unconstitutional in other respects. By attempting to validate prior invasions of private property rights it becomes ex post FACTO legislation, which is prohibited by both Federal and State constitutions. (U. S. const. art. 1. Sec. 10; Ill. const. art. 2, sec. 14). This section also contravenes section 13 of article 2 of the Illinois constitution, which provides that private property shall not be taken for public use without just compensation. A permit authorizing the flowing of sewage or effluent from a sewage treatment plant into Flint Creek would clearly impose a servitude upon the lower riparian owners and would be a taking of property without just compensation. (ELSER v. VILLAGE OF GROSS POINT, 223 Ill. 230; CITY OF BELLEVILLE v. TURNPIKE CO. 234 id. 428; BOARD OF TRADE TELEGRAPH CO. v. BARNETT, 107 id. 507). It is argued that this is an attempted exercise of the police power, we are of the opinion that section 15 violates the due process clause of the State and Federal constitutions. (Ill. const. art. 2, sec. 2; U. S. const. 14th amendment, sec. 1.) No notice is required to be given to the owner of riparian lands on the stream affected and no process or procedure is provided for such owners' protection. Section 2 of the act purports to define "pollution" without setting down adequate standards by which to determine when it exists, and also to vest in the board exclusive jurisdiction "to decide and define where such pollution exists." Section 4 authorizes the granting of a permit to discharge sewage or any other liquid into the "aforesaid waters." But, as has been pointed out, no notice is required to riparian owners whose lands and water rights may be or are affected by the flowage of "sewage or any other liquid or solid substance of a decomposable or putrescible, acid or other character" mentioned in section 4. Furthermore, no procedure is provided for such owners to follow in obtaining their rights or in protecting their property. These sections, therefore, violate the "Due process" and "taking of private property for public purposes with out compensation" clauses of the constitution. Without the three sections 2, 4 and 15 the legislature would not have passed this act, as but little, if anything, remains that is valid which has any effect, and the act is therefore void IN TOTO.

The claim cannot be sustained that the village of Barrington had an inherent right to use the creek to carry off its sewage and waste water as the only available natural watercourse. The right to the placing of an additional burden upon the servitude of defendants in error, as lower riparian owners, through the drainage of water coming from the water system and deep wells supplying water to the village, another property right is invaded, viz., by pollution of the stream. It makes no difference whether some pollution was found in the stream prior thereto which the plaintiff in error seeks to create. We decided this point expressly in the case of BARRETT v. MT. GREENWOOD CEMETERY ASS'N., 159 Ill. 385, and it is not necessary to repeat what was there said on this subject.

The law in Illinois is, and has long been, settled upon the controlling questions involved in this case. A private nuisance may be enjoined by a suit in equity or the party suffering damage and injury may proceed at law, and the remedies are concurrent and not exclusive. (SPRINGER v. CITY OF CHICAGO, 208 Ill. 356; VILLAGE OF DWIGHT v. HAYES, 150 id. 272; CITY OF KEWANEE v. OTLEY, 204 id. 402.) While it is contended here that these cases must have involved raw sewage as distinguished from the efflux from a sewage treatment plant of modern design involved here, sewage, in our opinion, containing human feces, debris, condoms and other filth, remains sewage, and the defendants in error, or any other owners of land on a stream thus polluted, whether it be polluted once, twice, three times or more a season or for three or four per cent of the days of each year, have a right to have such invasion of their rights as riparian owners protected. And if the effluent is considered to be as pure as contended by plaintiff in error, the defendants in error still have the other property right which must be protected, to have the stream carry only such a volume of water as would be collected by the drainage of the basin in which it flows. This court has repeatedly held that the taking of property by a municipality or other body vested with the power of eminent domain will not be tolerated except in the manner prescribed by statute. BOARD OF TRADE TELEGRAPH CO. v. BARNETT, supra; ELSER v. VILLAGE OF GROSS POINT, supra; MOORE v. GAR CREEK DRAINAGE DISTRICT, 248 Ill. 399; SPRINGER v. CITY OF CHICAGO, supra.

Conveniences have never been balanced in this State and equities have never been weighed where a private right or private property was sought to be taken by other than due process of law and the party injured sought to enjoin such taking. It is not necessary to repeat the cases cited above, but they, and many others in this and other jurisdictions whose decisions we sincerely respect, express this same view. We are aware of the decisions in WINCHELL v. CITY OF WAUKESHA, 110 Wis. 161, 85 N. W. 663, ATTORNEY GENERAL v. CITY OF GRAND RAPIDS, 175 Mich. 503, 141 N. W. 890, SMITH v. SEDALIAS, 244 Mo. 107, 149 S. W. 597, HORINE v. PEOPLE'S SEWER CO. 200 Mo. App. 204, 204 S. W. 735, CITY OF VALPARAISO v. HAGEN, 153 Ind. 337, 54 N. E. 1062, and CITY OF HARRISONVILLE v. DICKEY CLAY MANF. CO. 53 U. S. 602). 77 L. ed. 501. The rules announced in those decisions have not been adopted by the courts of this State, and in spite of the argument made that there is a necessity caused by changing conditions, we are not disposed to brush aside the decisions contained in an unbroken line of authorities found in well considered cases over a long period of years. No LACHES was pleaded, nor was it attempted to set up a right by prescription in answer to the bill of complaint. The proofs do not show either to exist in this case.

For the reasons indicated, the decree of the trial court is affirmed.

DECREE AFFIRMED.

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