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# Nuisance - Unsightly Premises Do Not Afford a Basis for Injunction Relief - Mathewson v. Primeau

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**NUISANCE—Unsightly Premises Do Not Afford A Basis For Injunctive Relief. Mathewson v. Primeau, 64 Wash.2d 929, 395 P.2d 183 (1964).**

Aesthetic values, as a general rule, do not afford a basis for injunctive relief. They have long been regarded in the law of nuisance as a matter of luxury and indulgence.[1] Also, the courts have been reluctant to grant injunctive relief solely on the grounds of unsightliness because of the lack of any objective standard. What offends the sight of any one person may vary greatly, and, of course, the aesthetic values held in different areas will also vary. The following case of *Mathewson v. Primeau*[2] illustrates the general rule.

The defendants in this case lived on a 13-acre tract of land in a semi-rural area. They raised pigs and had accumulated on their land old automobiles, crates, lumber, old boxes, and discarded household appliances. Their property was very unsightly. The plaintiff lived next to the defendants and his property had been damaged by the trespassing swine and the comfort and use of his land had been diminished because of the odor caused by the pigs and the unsightliness of defendant's property. The plaintiff brought an action for damages and to have limitations placed on the defendants' use of their land.

The trial court awarded the plaintiff damages for the physical invasion of his property by the swine and granted a permanent injunction restraining the defendants from keeping swine in excess of one boar, two brood sows, and their litters not over six months old. The defendants were also directed to take certain actions with reference to the unsightly materials they had accumulated on their land.

Shortly thereafter the plaintiff brought another action claiming violations of the decree and asked that defendants be found in contempt and the decree be further modified to enjoin the defendants from keeping any swine. The trial court found the defendants in contempt but held that they could escape paying the fine and attorney's fee by disposing of all the swine kept on their property in excess of one, removing

1. Perry Mount Park Cemetery Ass'n v. Netzal, 274 Mich. 97, 99, 264 N.W. 303 (1936).
2. 264 Wash.2d 929, 395 P.2d 183 (1964).

all automobiles not currently licensed, and by cleaning up the piles of wood, crates, etc. Appeal was taken from this order finding the defendants in contempt together with the requirements for purgation from the contempt finding.

The Supreme Court of the State of Washington dissolved the injunction insofar as it required the defendants to remove the old automobiles not currently licensed and clean up the piles of wood, crates, etc. "That a thing is unsightly or offends the aesthetic sense of a neighbor, does not ordinarily make it a nuisance or afford ground for injunctive relief."[3] The Supreme Court went along with the philosophy expressed by Judge Kenna in his concurring opinion in the case of *Parkersburg Builders Material Co. v. Barrack,*[4] that if aesthetic senses were to be protected, it was not the job of the courts but a job for the legislative branch through its exercise of police power. This will be considered in the discussion of zoning regulation. The main thing to be noted in *Mathewson v. Primeau* is that unsightly premises will not afford grounds for injunctive relief.

Other cases have held essentially the same thing for the same reasons. Injunctive relief was denied in cases of heavy equipment parked next to plaintiff's land,[5] a rough, jagged, and weed-infested embankment resulting from an excavation,[6] deposits of debris, rubbish, and other unsightly material,[7] smoke from a plant,[8] the erection, maintenance, and operation of a standpipe and pumphouse next to a cemetery,[9] and many others.[10] Although it must be said that these cases certainly represent the majority view, it cannot be said that the denial of injunctive relief was based solely upon the courts' refusal to protect aesthetic senses. Many of the cases involved economic factors. In other words, most courts would

3. *Id.* at 189.
4. 118 W. Va. 608, 191 S.E. 368, (1937).
5. Cahill v. Heckel, 189 N.Y. 40, 208 A.2d 651 (1965).
6. Paul v. Bailey, 87 N.J. Super 201, 137 S.E.2d 337 (1964).
7. State Road Commission of West Virginia v. Willard L. Oakes, 150 W.Va. 709, 149 S.E.2d 293 (1966).
8. McCarty v. National Carbonic Gas Co., 189 N.Y. 40, 81 N.E. 549 (1907).
9. Odd Fellows Oakridge Cemetery Ass'n v. Oakridge Cemetery Corp., 14 Ill. App.2d 378, 144 N.E.2d 853 (1957).
10. Trulock v. Merte, 72 Ia. 510, 34 N.W. 307 (1887); Woodstock v. Hager, 68 Vt. 488, 35 A. 431 (1896); Flood v. Consumers Co., 105 Ill. App. 559 (1903); Whitmore v. Brown, 102 Me. 47, 65 A. 516 (1906); Crossman v. City of Galveston, 112 Tex. 303, 247 S.W. 810 (1923); Houston Gas and Fuel Co. v. Hailow, 297 S.W. 570 (Tex. Civ. App. 1927).

be reluctant, to say the least, to shut down a big manufacturing plant merely because the smoke emitted from its operations was unsightly. One could hardly disagree with that philosophy, especially in its application during the period prior to 1950. Other cases denying injunctive relief on the basis of aesthetic senses can be less easily justified. Most people would agree that excavations are unsightly; they become even more so when the dirt removed is not replaced by something. And most people would feel even more strongly about it if such a condition existed next to their property. But as long as the support of the plaintiff's land was not removed, the court, in the case of *Paul v. Bailey,*[11] refused to do anything about it. There were no damages until the excavation caused plaintiff's land to "crack, slide, or fall" and the court would not grant injunctive relief based on the fact that the embankment was very unsightly.

This seems to be the same logic applied by the court in *Mathewson v. Primeau.* There was no doubt that all the old autos, crates, household appliances, etc., created unsightly premises. But, injunctive relief was refused on the grounds that the premises were unsightly. It seems very difficult to justify refusing injunctive relief when one realizes that clean, sightly premises are an asset to the neighbors, and the owner's land will suffer no loss thereby. Yet, it is still the majority rule that a man's use of his property should be interfered with as little as possible and the fact that he keeps unsightly grounds is not reason enough to interfere with that use.

That a condition is offensive to the olfactory senses alone[12] or offensive to hearing alone[13] has been held a valid reason for granting injunctive relief. However, when asked why things offensive to sight alone are not enjoinable, the courts would probably answer that it is more properly within the domain of the legislative branch, or because we have no objective standard, or because what is unsightly varies so much between men. But it seems that if reasonable men will not seriously differ about what is offensive to the olfactory

11. Paul v. Bailey, *supra* note 6, at 340.
12. Houghton v. Kenrick, 285 Pa. 223, 132 A. 166 (1926), enjoining a livery stable.
13. Meadowbrook Swimming Club, Inc. v. Albert, 173 Md. 641, 197 A. 146 (1938), enjoining loud jazz music.

senses or to hearing, they would not disagree about what is unsightly. Most people feel that old, junked cars are unsightly, as well as old crates and old household appliances strewn about on one's property. Fortunately, some courts have considered this problem and have come up with the conclusion that what is unsightly under the proper circumstances may be enjoinable.

The case of *Parkersburg Builders Material Co. v. Barrack*[14] may well be the leading case in this area. This case held that an automobile wrecking yard could not be enjoined on the ground of unsightliness in an area that was not clearly established to be residential in nature. But the foundation was laid for the recognition of aesthetic senses in the law of nuisance. Judge Maxwell, in that opinion, said:

> Of course equity should not be aroused to action merely on the basis of the fastidiousness of taste of complainants. Equity should act only where there is presented a situation which is offensive to the view of average persons of the community. And, even where there is a situation which the average person would deem offensive to the sight, such fact alone will not justify interference by a court of equity. The surroundings must be considered. Unsightly things are not to be banned solely on that account. Many of them are necessary in carrying out the proper activities of organized society. But such things should be properly placed, and not so located as to be unduly offensive to neighbors or to the public.[15]

In that statement, Judge Maxwell was not trying to justify the existence of unsightly conditions; rather, he was pointing out that they should be so located as to cause the least interference with the use of other people's land. Further, those unsightly conditions which are necessary to the activities of society referred to by Judge Maxwell were commercial in nature. The unsightly premises of the defandents in Mathew*son v. Primeau,* could not be considered in that category.

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14. Parkersburg Builders Material Co. v. Barrack, 118 W.Va. 608, 191 S.E. 368 (1937).
15. *Id.* at 371.

Two other cases which have considered aesthetics in their opinions are *Yaeger v. Traylor*[16] and *Martin v. Williams.*[17] In the first case the court required that a proposed garage to be used for parking by hotel patrons be entirely enclosed and conform in architectural design to the hotel. Further, ramps were to be avoided and all means of raising and lowering cars were to be within the walls of the building. In *Martin v. Williams,* an injunction was granted on the basis of noise produced, the light, and unsightliness of the objects and the structures used in connection with the operation of a used car business. A later law review comment[18] interpreted this case as holding aesthetic grounds a valid reason for injunctive relief.

The foregoing cases indicate that the law of nuisance is not completely devoid of the consideration of aesthetics but in order to advocate more comprehensive recognition of aesthetics in nuisance law the question should be asked if there is an alternative method or better way to recognize aesthetics. The answer is yes in most cases; but answering that question affirmatively does not defeat an advocation that nuisance law be expanded to recognize aesthetics more fully. Perhaps one of the most effective methods would be by zoning ordinances or regulations, except for the fact that in most cases aesthetic grounds alone will not justify use of the police power. It can quickly be seen that aesthetics do not manage anywhere near full protection here either. The case of *Fruth v. Board of Affairs of City of Charleston*[19] is representative of those cases holding that zoning regulations cannot be based solely on aesthetic considerations. Prohibition of erecting fences across the front yards of residential premises was held to be an aesthetic consideration alone and thus was an invalid exercise of police power.[20] It has further been held that, although aesthetics are a valid consideration in enacting a zoning ordinance, they cannot be the moving factor.[21] So we have moved to the point where aesthetics will not in itself justify a zoning

16. 306 Pa. 530, 160 A. 108 (1932).
17. 141 W.Va. 595, 93 S.E.2d 835 (1956).
18. Comment, *Nuisance—Aesthetic Grounds Held Valid For Injunctive Relief Against Lawful Business,* 59 W.VA. L. REV. 92 (1957).
19. 75 W.Va. 456, 84 S.E. 105 (1915).
20. City of Norris v. Bradford, 204 Tenn. A. 338, 321 S.W.2d 543 (1959).
21. Hitchman v. Oakland Transport, 329 Mich. 331, 45 N.W.2d 306 (1951).

regulation but may be considered in combination with other factors in enacting a zoning regulation.

The above concept has also been expanded in recent years, however, as can be seen by *Opinion of the Justices to the Senate*[22] dealing with an act establishing historic districts in the town of Nantucket. Perhaps a more persuasive argument can be made on the basis of the U.S. Supreme Court opinion of *Berman v. Parker,*[23] upholding condemnation of certain property under the District of Columbia Redevelopment Act of 1945. That case was interpreted as holding that aesthetics were a justification for the exercise of police power in a later case note.[24] Other cases more directly holding aesthetics as valid grounds for exercise of police power are *Cromwell v. Ferrier,*[25] *Kenyon Peck, Inc. v. Kennedy,* [26] and *Naegele Outdoor Adv. Co. v. Village of Minnetonka.*[27] However, these cases all applied to prohibitions of commercial signs in certain areas. The fact remains that aesthetics is being justified as a valid reason for zoning regulations in an enlarged area. While this enlargement is still in its infancy, it points to a recognition on the part of the courts that that which is unsightly, where appropriate, should be restrained. This recognition argues even more strongly that aesthetics should gain the same respect in nuisance law. This is so because many areas are still unzoned; and even where an area is zoned, the regulation is often ineffective to require property owners to keep their premises clean.

Another method which could be used to prevent unsightly conditions is the covenant; it is very effective and is being used more and more to keep a certain area harmonious. It is limited to the extent that it is usually applied only in areas of new housing construction. Its limited application keeps it from being the tool needed to clean up the countryside and cities.

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22. 333 Mass. 773, 128 N.E.2d 557 (1955).
23. 348 U.S. 26, (1954).
24. Bergs, *Aesthetics as a Justification for the Exercise of the Police Power or Eminent Domain,* 23 GEO. WASH. L. REV. 730 (1955).
25. 19 N.Y.2d 263, 225 N.E.2d 749 (1967).
26. 168 S.E.2d 117 (Va. 1969).
27. 281 Minn. 492, 162 N.W.2d 206 (1968).

## CONCLUSION

The case of *Mathewson v. Primeau* was incorrectly decided in that it refused to grant injunctive relief to make the defendants clean up their premises. It is submitted that where an action is brought to prevent the keeping of unsightly property it should not be dismissed on the grounds that injunctive relief cannot be granted to protect aesthetic values. It is not advocated that everything which is unsightly should be enjonied. What is advocated is that where there are no great economic factors to hurdle, the law should recognize that things can be just as offensive to the sight as they can be to the senses of smell and hearing. The fact that objective standards would be difficult to define does not present an obstacle so great as to prevent consideration of the problem. It it not plausible to say that reasonable men would differ as to whether the conditions were unsightly when there are old automobiles, crates, lumber, and discarded household appliances strewn about the property. *Mathewson v. Primeau* represents one of many cases where the courts have refused to apply the nuisance doctrine to unsightly conditions without any justifiable basis. It has already been shown that zoning ordinances and the police power have not yet been expanded enough to deal with the problem. If we are ever to regain the beauty of our country, everyone must participate. This includes the courts. The nuisance doctrine could be effectively applied to alleviate many unsightly conditions without encountering any overwhelming problems. The courts should consider all relevant factors and where conditions exist, as in *Mathewson v. Primeau,* injunctive relief should be granted to make defendants such as the Primeaus clean up their property. Where zoning regulations and covenants have not done or cannot do the job, the courts should lend a helping hand to make the countryside and cities more pleasant to look at.

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