

On the other hand, the mere circumstance that the facts of a case are complex or would be difficult, as distinguished from impossible, to prove, or that the evidence in the case would be voluminous, is not ordinarily regarded as sufficient to give equity jurisdiction.<sup>3</sup> It has likewise been held that a resort to the equity court is not sustainable on the ground that there is no rule by which damages can be estimated with precision.<sup>4</sup> And the inability to prove special damage has been held insufficient to give equity jurisdiction.<sup>5</sup>

### § 99. Relative effectiveness and merits of available legal and equitable remedies.

Generally, the standard of comparison between legal and equitable relief is the relief which may be accorded in equity. The simple fact that a remedy at law is available does not oust the equity court of jurisdiction;<sup>6</sup> the question to be determined is whether the remedy at law compares favorably with the remedy afforded by the equity court.<sup>7</sup> Generally, an adequate remedy at law which will deprive a court of equity of jurisdiction is a remedy as certain, practical, complete, and efficient to attain the ends of justice and its prompt administration as the remedy in equity.<sup>8</sup> If the equitable remedy is superior, the equity court will grant relief.<sup>9</sup> Jurisdiction attaches unless the remedy

ant to purchase, certain articles over a period of years, but before the expiration of the period the defendant discontinues purchasing the articles and obtains them elsewhere, the complainant is not entitled to equitable relief upon the ground that his remedy in damages is inadequate because of the possibility of a multiplicity of suits, where the complainant is not threatened with a multiplicity of suits and the number of suits that he might bring would be of his own choosing. *Atty. Gen. ex rel. Marr v Board of Education*, 133 Mich 681, 95 NW 746.

3. § 27, *supra*.

4. *Texas & P. R. Co. v Marshall*, 136 US 393, 34 L ed 385, 10 S Ct 846.

5. *Marlin Fire Arms Co. v Shields*, 171 NY 384, 64 NE 163, holding that the publication of an unjust and malicious criticism of a manufactured article does not establish a case of equitable cognizance although the manufacturer has no remedy at law because of inability to prove special damage.

6. *Grant v Kenduskeag Valley Creamery*, 148 Me 209, 91 A2d 403; *Chisolm v Pryor*, 207 SC 54, 35 SE2d 21.

A statutory remedy does not necessarily oust the equity court of jurisdiction. *United States v Howland (US)* 4 Wheat 108, 4 L ed 526.

7. *Bonnell v B. & T. Metals Co. (App)* 52 Ohio L Abs 1, 81 NE2d 730; *Peoples-Pittsburgh Trust Co. v Saupp*, 320 Pa 138, 182 A 376, 103 ALR 844; *Chisolm v Pryor*, 207 SC 54, 35 SE2d 21.

Even though a remedy at law is available, an equitable remedy may still be proper, particularly where the legislature gives such rem-

edy as being more flexible and better adapted to the circumstances than the legal remedy. *Grant v Kenduskeag Valley Creamery*, 148 Me 209, 91 A2d 403.

8. *Tyler v Savage*, 143 US 79, 36 L ed 82, 12 S Ct 340 (statutory remedy); *Boyce v Grundy (US)* 3 Pet 210, 7 L ed 655; *Karcher v Burbank*, 303 Mass 303, 21 NE2d 542, 124 ALR 1292; *Adams v Adams*, 156 Neb 778, 58 NW2d 172; *Golden v Bartholomew*, 140 Neb 65, 299 NW 356; *Boston & M. R. Co. v Delaware & Hudson Co.* 238 App Div 191, 264 NYS 470; *Chisolm v Pryor*, 207 SC 54, 35 SE2d 21.

33 Minn L Rev 77.

The test of equitable jurisdiction is not whether there is an alternative remedy at law, but whether the remedy at law is as adequate, complete, and certain as the relief in equity. *Steggles v National Discount Corp.* 326 Mich 44, 39 NW2d 237, 15 ALR2d 208.

To exclude equity jurisdiction, the legal remedy must be as efficient as the remedy equity affords under the same circumstances. *Mantell v International Plastic Harmonica Corp.* 141 NJ Eq 379, 55 A2d 250, 173 ALR 1185.

Unless a remedy at law is speedy, as compared with the remedy in equity, it may be neither adequate nor efficacious to the end in view, and on that ground equity may entertain the plea of a suitor. *Ex parte Young*, 209 US 123, 52 L ed 714, 28 S Ct 441; *Oelrichs v Spain (Oelrichs v Williams) (US)* 15 Wall 211, 21 L ed 43; *Swan v Talbot*, 152 Cal 142, 94 P 238.

9. *Terrace v Thompson*, 263 US 197, 68 L ed 255, 44 S Ct 15; *Cable v United States L. Ins. Co.* 191 US 288, 48 L ed 188, 24 S Ct 74; *Walla Walla v Walla Walla Water*

at law is equal to that afforded in equity with respect to final relief<sup>10</sup> and also the mode of obtaining it.<sup>11</sup>

While it has been held that a suit in equity may be sustained solely on the ground that it affords the more convenient remedy,<sup>12</sup> some courts have distinctly stated that the mere fact that it may be more convenient for parties to maintain suit or make a defense in equity than at law will not justify a resort to the former jurisdiction if the remedy is complete and adequate in the latter.<sup>13</sup>

### § 100. Administrative remedy.

The view has been taken that in the absence of any statutory provision to the contrary, a remedy at law, in order to be adequate and thus preclude equitable jurisdiction, must be judicial and not administrative.<sup>14</sup> Accordingly, it has been held that the existence of an administrative remedy does not bar the aid of equity.<sup>15</sup> Certainly, where the continuance of a proceeding before an administrative commission and the plaintiff's right to participate therein are matters of grace, it cannot be said that the remedy so afforded him is adequate.<sup>16</sup> But the United States Supreme Court has said that the principle that equity may intervene because of the inadequacy of legal remedies does not necessarily or even readily override an explicit legislative command that a prescribed administrative procedure be followed. The very fact that the legislature has made the direction must be cast into the scales as against the factors which without that fact would or might be of sufficient weight to turn the balance in favor of allowing utilization of equity's resources.<sup>17</sup>

Co. 172 US 1, 43 L ed 341, 19 S Ct 77; Southwest Pipe Line Co. v Empire Natural Gas Co (CA8 Okla) 33 F2d 248, 64 ALR 1229; Fesler v Bosson, 189 Ind 484, 128 NE 145; Newcomer v Kline (Md) 11 Gill & J 457, Sherman v Clark, 4 Nev 138; Jones v Stearns, 97 Vt 37, 122 A 116, 31 ALR 653; White v Jones 8 Va (4 Call) 253; Gardner v Buckeye Sav. etc. Co. 108 W Va 673, 152 SE 530, 78 ALR 1.

**Annotation:** 22 ALR2d 86, § 17 (remedy for refusal to transfer corporate stock).

A court of equity can exercise jurisdiction over a case if a more adequate remedy can be thus obtained than at law. Wylie v Cox (US) 15 How 415, 14 L ed 753.

10. Kilbourn v Sunderland, 130 US 505, 32 L ed 1005, 9 S Ct 594; Hodges v Kowing, 58 Conn 12, 18 A 979; Coleman v Jagers, 12 Idaho 125, 85 P 894; Walker v Walker, 330 Mich 332, 47 NW2d 633, 31 ALR2d 1250; Prudential Ins. Co. v Ptohides, 122 Pa Super 469, 186 A 386.

An existing remedy at law will not bar equitable relief unless it is equally effectual with the equitable remedy as to all the rights of the complainant. Lewis v Cocks (US) 23 Wall 466, 23 L ed 70.

Equity can enforce a legal right only where it can give more complete and effectual relief in kind or in degree than can be given at law.

Buzard v Houston, 119 US 347, 30 L ed 451, 7 S Ct 249.

11. Gormley v Clark, 134 US 338, 33 L ed 909, 10 S Ct 554.

12. Conemaugh Gas Co. v Jackson Farm Gas Co. 186 Pa 443, 40 A 1000.

13. Vannatta v Lindley, 198 Ill 40, 64 NE 735.

14. Whiting v Tyler, 121 Ohio St 125, 167 NE 365 (holding that an application to township authorities is not an adequate remedy); Fisher v Bower, 79 Ohio St 248, 87 NE 256 (holding that an application to county authorities is not an adequate remedy).

The remedy of law, the existence of which will bar resort to equity, is a remedy in a court of law, and not an administrative remedy. Michaels v Macan Estates, 197 Misc 485, 99 NYS2d 103, revd on other grounds 278 App Div 47, 103 NYS2d 142.

15. La Basin v President Realty Holding Corp. 27 Misc 2d 559, 209 NYS2d 496, affd 14 App Div 2d 551, 218 NYS2d 234, citing Graceland Corp. v Consolidated Laundries Corp. 7 App Div 2d 89, 180 NYS2d 644, affd 6 NY2d 900, 190 NYS2d 708, 160 NE2d 926.

16. Dederick v North American Co. (DC NY) 48 F Supp 410.

17. Aircraft & D. Equipment Corp. v

The rule has been stated that one is not entitled to maintain a suit in equity for a supposed or threatened injury until a prescribed administrative remedy has been exhausted. This rule is of special force when resort is had to the federal courts to restrain the action of state officers.<sup>18</sup>

### § 101. Remedy in foreign court.

A legal remedy, to be adequate, must be one which the domestic courts can apply and which does not compel the party to go into the courts of a foreign jurisdiction to avail himself of it.<sup>19</sup> Accordingly, the fact that a plaintiff may have an adequate remedy at law in the courts of another jurisdiction is no defense to an action in equity, for equity is not concerned with what the plaintiff may be able to obtain by way of legal relief in another jurisdiction. By the same token, where a court of equity is asked to become involved in foreign matters, the exercise of jurisdiction rests in the sound discretion of the court, and jurisdiction should be declined where the action is wholly unsuited to entertainment by the court and for which no reason appears except the unconvincing statement of the plaintiff that he cannot get a fair trial in the foreign court.<sup>20</sup>

## VI. AVAILABILITY, SCOPE, AND EXTENT OF RELIEF

### A. IN GENERAL

### § 102. Generally; discretion of court.

A measure of discretion is exercised by a court of equity in determining whether it will take jurisdiction of a case.<sup>1</sup> Likewise, a court of equity is generally permitted to exercise discretion in determining whether or not, on the facts presented at the trial, relief should be granted, and if so, the extent of the relief.<sup>2</sup> Ordinarily, the propriety of affording equitable relief in a particular case rests in the sound discretion of the court, to be exercised according to the circumstances and exigencies of the case. This discretion is not an arbitrary one, however, but one that must be exercised in accordance with the fixed principles and precedents of equity jurisprudence. Judicial discretion to grant relief becomes a judicial duty to grant it under some circumstances, and the grace which equity should bestow then becomes a matter of right.<sup>3</sup>

Hirsch, 331 US 752, 91 L ed 1796, 67 S Ct 1493.

18. *Natural Gas Pipeline Co. v Slattery*, 302 US 300, 82 L ed 276, 58 S Ct 199, holding that the extent to which a federal court may, where the order of an administrative body is assailed in its entirety, rightly relax the rule requiring a party to exhaust his administrative remedies before seeking the extraordinary relief of a court of equity, rests in the sound discretion which guides the exercise of equity jurisdiction.

19. *Cummings ex rel. Elliott v Lake Torpedo Boat Co.* 90 Conn 638, 98 A 580; *Usen v Usen*, 136 Me 480, 13 A2d 738, 128 ALR 1449.

20. See §§ 9, supra; 102, 106, infra.

1. § 9, supra.

2. *Hightower v Bigoney* (Fla App) 145 So 2d 505, revd on other grounds (Fla) 156 So 2d 501; *Standard Fashion Co. v Siegel-Cooper Co.* 157 NY 60, 51 NE 408.

The extent to which equity will go to give relief where there is no adequate remedy at law is not a matter of fixed rule, but rests rather in the sound discretion of the court. *Virginian R. Co. v System Federation, R. E. D.* 300 US 515, 81 L ed 789, 57 S Ct 592.

It has been said that in purely equitable claims, equity will grant or deny relief at its discretion, but where the claim is a legal claim or demand fixed by statute, equity will as a rule apply the statute. *Miller Oil Co. v Abrahamson*, 252 Iowa 1058, 109 NW2d 610; *Swartz v Atkins*, 204 Tenn 23, 315 SW2d 393.

3. *Morris v Morris*, 138 Misc 682, 247 NYS

The relief awarded a plaintiff in equity must be in accordance with equitable principles,<sup>4</sup> and there is never any compulsion on an equity court to render an inequitable decree.<sup>5</sup> Equity looks at the whole situation and grants or withholds relief as good conscience dictates,<sup>6</sup> and a court of equity is bound to look into all the facts and circumstances and determine what is fair, just, and equitable.<sup>7</sup> While a court of equity may refuse to give any relief when it is apparent that the relief which it can give will not be effective or of benefit to the plaintiff, whether a decree will prove so useless as to lead a court to refuse to give it is a matter of judgment to be exercised with reference to the special circumstances of each case rather than to general rules.<sup>8</sup> In the exercise of a sound discretion, equity may refuse relief because of the difficulty of enforcing its decree.<sup>9</sup>

While an equity court may in the exercise of a sound discretion deny equitable relief, that does not necessarily mean that equity loses jurisdiction of the action.<sup>10</sup> Indeed, it is generally held that where an equity court has jurisdiction of an action, but denies equitable relief because it is impracticable or beyond the limits of equity to grant and supervise, such court may retain the case for purposes of granting legal relief.<sup>11</sup>

### § 103. Relief available, generally; adaptation to facts and circumstances.

The power of equity is said to be coextensive with the right to relief; it is as broad as equity and justice require.<sup>12</sup> In the administration of remedies, an equity court is not bound by the strict or rigid rules of the common law;<sup>13</sup> on the contrary, the court adapts its relief and molds its decrees to satisfy

28, affd 234 App Div 187, 254 NYS 429, affd 260 NY 650, 184 NE 131.

Sound discretion is the controlling guide of judicial action in every phase of a suit in equity. *Pennsylvania v Williams*, 294 US 176, 79 L ed 841, 55 S Ct 380, 96 ALR 1166.

Courts of equity are not bound by formulae or restrained by any limitation that tends to trammel the free and just exercise of discretion. *Federal Land Bank v Gaines*, 290 US 247, 78 L ed 298, 54 S Ct 168.

The general rule is well established that a person coming into equity for the purpose of obtaining cancellation of an instrument cannot demand it as a matter of right; relief by way of cancellation is within the sound discretion of the court and is granted or withheld according to what is reasonable and proper under the circumstances of each particular case. See 13 Am Jur 2d, CANCELLATION OF INSTRUMENTS § 4.

The exercise of the equity power to order a bond or other instrument delivered up to be canceled rests in the sound discretion of the court. *St. Stephen's Protestant E. Church v Church of Transfiguration*, 201 NY 1, 94 NE 191.

4. *Rollin v Grand Store Fixture Co.* 231 App Div 47, 246 NYS 371.

5. § 118, *infra*.

6. *Reickhoff v Consolidated Gas Co.* 123 Mont 555, 217 P2d 1076.

Although equity has inherent jurisdiction of a cause, the prayer of the bill thereon is addressed to the discretion of the chancellor and he may exercise it or not as the prayer appeals to his conscience. *Fidelity Union Trust Co. v Multiple Realty & Constr. Co.* 131 NJ Eq 527, 26 A2d 155.

7. *Jochum Bros. v Ridgewood Pie Baking Co.* 210 App Div 428, 206 NYS 252.

8. *Virginian R. Co. v System Federation*, R. E. D. 300 US 515, 81 L ed 789, 57 S Ct 592.

9. § 106, *infra*.

10. *Queens Plaza Amusements v Queens Bridge Realty Corp.* 265 App Div 1057, 39 NYS2d 463.

11. § 115, *infra*.

12. *London v Joslovitz*, 279 App Div 280, 110 NYS2d 58.

13. *Bowen v Hockley (CA4)* 71 F2d 781, 94 ALR 856; *Nichols v Bodenwein*, 107 Fla 25, 146 So 86, 659; *First Nat. Exchange Bank of Roanoke v Hughson*, 194 Va 736, 74 SE 2d 797.

the requirements of the case<sup>14</sup> and to protect and conserve the equities of the parties litigant.<sup>15</sup> The court has such plenary power,<sup>16</sup> since its purpose is the accomplishment of justice<sup>17</sup> amid all of the vicissitudes and intricacies of life.<sup>18</sup> It is said that equity has always preserved the elements of flexibility and expansiveness so that new remedies may be invented or old ones modified in order to meet the requirements of every case and to satisfy the needs of a progressive social condition.<sup>19</sup> In other words, the plastic remedies of equity are molded to the needs of justice and are employed to protect the equities of all parties,<sup>20</sup> and the flexibility of equitable jurisdiction permits innovation in remedies to meet all varieties of circumstances which may arise in any case.<sup>1</sup> Moreover, the fact that there is no precedent for the precise relief sought is of no consequence.<sup>2</sup> Where grounds calling for the exercise of equitable power to furnish a remedy exist, the court will not hesitate to act, even though the question presented is a novel one.<sup>3</sup> But while it is generally the province of

14. *Alexander v Hillman*, 296 US 222, 80 L ed 192, 56 S Ct 204; *Textile Workers Union v Cone Mills Corp.* (CA4 NC) 268 F2d 920, cert den 361 US 886, 4 L ed 2d 121, 80 S Ct 157, on remand (DC) 188 F Supp 728, affd (CA4) 290 F2d 921 (stating that the court, having jurisdiction over the suit, was not powerless to fashion an appropriate federal remedy); *Mason v Ellison*, 63 Ariz 196, 160 P2d 326; *Wilmington Homes, Inc. v Weiler* (Del Sup) 202 A2d 576; *Wright v Scotton*, 13 Del Ch 402, 121 A 69, 31 ALR 1162; *Ellenwood v Woodland Beach*, 366 Mich 367, 115 NW 2d 115 (successor association appointed to take charge of parks, beaches, streets, etc., in a subdivision after the original association's corporate life expired); *Brown v Buck*, 75 Mich 274, 42 NW 827; *Cannon v Bingman* (Mo App) 383 SW2d 169; *Zeiser v Cohn*, 207 NY 407, 101 NE 184; *First Nat. Exchange Bank v Hughson*, 194 Va 736, 74 SE2d 797.

Remedies and relief are adapted to the exigencies of the case. *Phillips v West Rockaway Land Co.* 226 NY 507, 124 NE 87; *Zeiser v Cohn*, 207 NY 407, 101 NE 184.

Courts of equity have power to adapt their proceedings to the exigency of each particular case so as to accomplish the object for which such courts were created. *Neale v Neale*, 9 Wall (US) 1, 19 L ed 590.

15. *Alexander v Hillman*, 296 US 222, 80 L ed 192, 56 S Ct 204; *Baker Sand & Gravel Co. v Rogers Plumbing & Heating Co.* 228 Ala 612, 154 So 591, 102 ALR 346; *Wilmington Homes, Inc. v Weiler* (Del Sup) 202 A2d 576.

16. *Baker Sand & Gravel Co. v Rogers Plumbing & Heating Co.* 228 Ala 612, 154 So 591, 102 ALR 346; *Mason v Ellison*, 63 Ariz 196, 160 P2d 326.

17. *Green v Creighton* (*Kendall v Creighton*) 23 How (US) 90, 16 L ed 419; *First Nat. Exchange Bank v Hughson*, 194 Va 736, 74 SE2d 797.

Looking beyond the mere form of things to

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their substance, equity has power to decree such relief to the parties as appears just and right and as best calculated to protect their rights under the situation presented. *Foster v Hoff*, 37 Okla 144, 131 P 531.

18. *Bowen v Hockley* (CA4) 71 F2d 781, 94 ALR 856; *Mason v Ellison*, 63 Ariz 196, 160 P2d 326.

19. *Union P. R. Co. v Chicago, R. I. & P. R. Co.* 163 US 564, 41 L ed 265, 16 S Ct 1173; *Cannon v Bingman* (Mo App) 383 SW 2d 169.

It is a distinguishing feature of equity that it applies settled rules to unusual conditions and molds its decrees so as to do equity between the parties. *Dickinson v Springer*, 246 NY 203, 158 NE 74.

Courts of equity may amplify remedies or avail themselves of new remedies and unprecedented orders to meet an emergency, the action taken being based on sound principles and calculated to afford necessary relief without imposing illegal burdens. *Toledo, A. A. & N. M. R. Co. v Pennsylvania Co.* (CC) 54 F 746; *Florida East Coast R. Co. v State*, 77 Fla 581, 82 So 139; *State ex rel. Funke v Lancaster County*, 110 Neb 635, 194 NW 807.

20. *Duggan v Platz*, 263 NY 505, 189 NE 566; *Foreman v Foreman*, 251 NY 237, 167 NE 428.

1. *Ripley v International R. of Cent. America*, 8 App Div 2d 310, 188 NYS2d 62, affd 8 NY2d 430, 209 NYS2d 289, 171 NE2d 443.

The most striking and distinctive feature of courts of equity is that they can adapt their decrees to all the varieties of circumstances which may arise and so adjust them to all the peculiar rights, mutual and adverse, of all the parties in interest. *Higginbottom v Short*, 25 Miss 160.

2. § 121, *infra*.

3. § 12, *supra*.

equity to administer a remedy where none exists at law,<sup>4</sup> a court of equity may not, by avowing that there is a right but no remedy known to the law, create a remedy in violation of law or without authority of law.<sup>5</sup> Ordinarily, also, if an action is such that it might also be brought in a state court, a complainant who brings the action in a federal court can ask no greater relief than he could obtain were he to resort to the state court, and if in the state court equity would afford no relief, it will afford none in the federal court.<sup>6</sup>

While a court of equity may not be able to give the plaintiff all he asks, there is no doctrine which prevents the court from giving him as much as it can. Thus, it has been held that in an action to establish a fee interest in land, the fact that the court might not be able to decree a title in fee would not render it powerless to decree a life estate or a tenancy for years.<sup>7</sup>

**§ 104. — Where public interest is involved.**

Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.<sup>8</sup> Accordingly, the granting or withholding of relief may properly be dependent upon considerations of public interest.<sup>9</sup> If an exercise of jurisdiction will be prejudicial to public interest, the court may refuse to protect a private right; and if a private right will not suffer by a withholding of relief, the court is bound to stay its hand.<sup>10</sup>

**§ 105. — Kinds of relief and remedies, generally.**

It is impossible to enumerate all the special kinds of relief which may be granted by equity, or to place any bounds on the power of equity courts in shaping relief in accordance with the circumstances of the case. Since the nature and incidence of proprietary rights and interests, and of the circumstances attending them, and of the relations arising from them, are practically unlimited, the kinds and forms of specific relief applicable to these circumstances and relations are likewise practically unlimited.<sup>11</sup>

Generally speaking, equity jurisprudence has developed a considerable number of remedies which are administered only by equity courts. These are available to suitors unless they have been abolished by statute.<sup>12</sup> The equi-

4. § 86, *supra*.

5. *Rees v Watertown*, 19 Wall (US) 107, 22 L ed 72.

6. *Ewing v St. Louis*, 5 Wall (US) 413, 18 L ed 657.

7. *Gucker v Huntington*, 268 NY 43, 196 NE 737.

8. *United States v First Nat. Bank*, 379 US 378, 13 Led 2d 365, 85 S Ct 528; *Federal Power Com. v Panhandle Eastern Pipe Line Co.* 337 US 498, 93 L ed 1499, 69 S Ct 1251; *Virginian R. Co. v System Federation*, R. E. D. 300 US 515, 81 L ed 789, 57 S Ct 592.

Where the public interest is invoked, a court of equity has greater latitude in granting or withholding relief. *Caputo v Board of Appeals*, 330 Mass 107, 111 NE2d 674.

9. *Federal Power Com. v Panhandle East-*  
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*ern Pipe Line Co.* 337 US 498, 93 L ed 1499, 69 S Ct 1251; *United States v Morgan*, 307 US 183, 83 L ed 1211, 59 S Ct 795; *Di Giovanni v Camden F. Ins. Asso.* 296 US 64, 80 L ed 47, 56 S Ct 1; *Hightower v Bogoney (Fla App)* 145 So 2d 505, *revd on other grounds (Fla)* 156 So 2d 501; *Dorr v Chesapeake & O. R. Co.* 78 W Va 150, 88 SE 666.

10. *Securities & Exch. Commission v United States Realty & Improv. Co.* 310 US 434, 84 L ed 1293, 60 S Ct 1044; *Pennsylvania v Williams*, 294 US 176, 79 L ed 841, 55 S Ct 380, 96 ALR 1166; *Rosenbarger v Marion Circuit Court*, 239 Ind 132, 155 NE2d 125; *Tucker v Simmons*, 199 Tenn 359, 287 SW 2d 19.

11. *St. Stephen's Protestant E. Church v Church of Transfiguration*, 201 NY 1, 94 NE 191.

12. Statutory abrogation of a remedy which  
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