GRIFFING *vs.* GIBB.

1. If a bill in equity, brought by the proprietor of a City lot, avers that the rights of the plaintiff are illegally, wrongfully and injuriously affected by the acts of the defendants, the bill on its face entitles the plaintiff to relief.
2. The defendant cannot sustain a demurrer to such a bill on the ground that he was justified by an act of State Legislature.
3. The Court is bound to notice judicially the laws of the State defining the limits of a City, in cases where the pleadings make it proper to do so; but not on a demurrer, where the facts, as stated in the bill, make it the duty of the Court to rule in favor of the plaintiff.
4. A demurrer is a denial in form and substance of the plaintiff's right to have his case considered in a Court of equity, and an admission of all its allegations that are properly pleaded.

Appeal from the decree of the District Court of the United States for the Northern District of California.

Frederick Griffing filed his bill in the District Court against Daniel Gibb and Donald Fraser, averring that he was the owner of two lots in San Francisco which originally fronted on the natural shore of the bay with bold deep water in front; that he bought this property with a view to its water front; that he built ware-houses and a wharf on it to which ships of the largest size could come; that when he commenced his improvements there was no sign of any streets near him which interfered with his access to the water, the lines of Filbert and Battery streets being defined only on the City maps; that the defendants are engaged in filling up a certain part of the bay in a way which will prevent ships from coming to his ware-house—the part to be thus filled up being a lot of one hundred varas square, covered by navigable tide-water, and situate between, and forming, the northeast corner of Filbert and Battery streets as defined on the City map. The plaintiff asserts that these acts of the defendants are in violation of his rights, injurious to the public, and contrary to the Constitution and Laws of the United States

and of the State of California, and therefore prays for a perpetual injunction.

To this bill the defendants demur; the Court sustained the demurrer, and the plaintiff having failed to amend the bill within the time limited by the rule of Court, a final decree was passed, dismissing the bill. Thereupon the plaintiff took an appeal to this Court.

Mr. Hepburn and *Mr. Wilkins*, of California, for the appellant, insisted that the bill was erroneously dismissed. The plaintiff, on the facts averred in the bill and admitted in the demurrer, was entitled to relief. He could only be defeated by proof, that Battery and Filbert streets were legally extended by the proper authorities. The bill avers that they were *not* legally or officially laid out. The right of the defendants to do the thing complained of, so far from being admitted in the bill, is expressly averred to be wrongful.

Mr. Latham, of California, and *Mr. Black*, of Pennsylvania, for the appellee, maintained the correctness of the decree on the grounds: that,

1. The bill indicates distinctly the *locus in quo* of the acts complained of as being on a lot between certain streets defined on the City map.

2. This Court, as well as the District Court, is bound to notice, judicially, the public laws of a State and the acts of public corporations done in pursuance of them.

3. The laws of California and the acts of the City Government are here produced, and show that the place, which the defendants are filling up, is a part of the City covered by lots and streets, and not public waters of the bay.

4. The laws of California which relate to this subject are not unconstitutional.

5. The averment that the act of the defendants was wrongful is not to be taken as admitted by the demurrer. The demurrer admits the facts set forth in the bill, but not the legal conclusions

Griffing vs. *Gibb.*

Mr. Justice WAYNE. This is an appeal from a decree of the Circuit Court of the United States for the Northern District of California.

The complainant seeks to obtain a perpetual injunction to restrain the defendants from piling and improving a lot of land claimed by them, which is said in the bill to be within the inside of the water front line of the city of San Francisco, and always covered by the tidewaters of the bay. He states that he is the owner in fee simple, and is in possession of two parcels of land; the first beginning at a point where the east line of Sanson street intersects the south line of Filbert street, running thence southwardly along the east line of Sanson street 137 feet; thence east, at right angles to Sanson street, 275 feet; thence north, parallel with Sanson street, 137½ feet, to a point in range with the south line of Filbert street; thence west 275 feet to the point of beginning. The second, "A lot beginning at a point where the east line of Sanson street intersects the northern line of Filbert street; thence north along the east line of Sanson street 137½ feet; thence at right angles to Sanson street 275 feet; thence south, parallel with Sanson street, 137½ feet, to a point in range with the north line of Filbert street; thence 275 feet to the place of beginning."

The complainant asserts that he is in the exclusive occupation and possession of both lots of land under a title in fee; that he has buildings and improvements upon them of the value of $200,000. He further avers that his lots originally fronted on and were a part of the natural shore of the bay of San Francisco; that they had a deep and high bank in the rear, with a bold and deep water in front, where the tide ebbed and flowed, where ships of the largest class navigated in safety to receive and discharge cargo. Passing over other allegations in the bill not necessary to be mentioned in this connection, the complainant asserts that he commenced to make his improvements in the year 1851, and that he had used and enjoyed them for the purposes for which they had been constructed, until interfered with by the defendants, having piles driven in front of his premises, under the navigable waters of the bay, extending over

a space of 275 feet square. That the defendants assert, notwithstanding his remonstrances against such piling, that they have a right to drive them, and declare it to be their intention to build a wharf upon a lot which they claim, situate as follows: Beginning at the northeast corner formed by the extended lines of Filbert and Battery streets, being a lot of land covered by the navigable tide of the bay of San Francisco, &c., &c., where ships of the largest class habitually pass and repass in their approaches to the complainant's warehouses. It is then averred that if the piling shall be done at that point that it will interfere with the public use of the harbor and the bay, obstruct the navigation, divert the tide from its usual flow and ebb, change its current, and shallow the water by deposits of sediment, as it has already done, there being shallower water at the point designated than there had been before the defendants wrongfully began to pile there, and particularly so in front of the complainant's premises, than there had been when he began to improve his premises in the year 1851; that the depth of the water there is being constantly lessened by said piling, greatly to the complainant's pecuniary loss, and will be to his irreparable injury unless the defendants shall be restrained from continuing their unlawful acts by an injunction, and by a decree of the Court for the abatement of the defendants' piling as a nuisance. That the piling which has been done by the defendants is contiguous to his premises; that it is on a lot covered by the ebb and flow of the tide of the bay of San Francisco, and that the defendants claim the lot to be within the City of San Francisco.

The defendants filed a general demurrer to the bill. We think that the Court erred in sustaining it, and in dismissing the bill of the complainant for want of an amendment, which the Court directed to be made by the next rule day. On the demurrer the ruling of the Court should have been for the complainant, instead of which the Court dismissed his bill. The only point, in our view of the case, when it was on its hearing in the Court below, was, whether the complainant had not shown, by the facts stated on the face of his bill, artificial as it may be in point of form, a case for relief within the jurisdiction

of a Court of Equity. We think it to be so, and shall remand it to the Court below for amendment and further procedure, as in the judgment of that Court, the case may require.

We further observe that the filing of a general demurrer was not in the pleadings, and facts of the case a proper defence. The defendants might have resorted to a plea alleging matter, which, if appearing on the face of the bill, would have been a good cause of demurrer, or the bill should have been answered. The demurrer filed was a denial in form and substance of the right of complainant to have his case considered in a Court of Equity, but an admission that all the allegations of it which were properly pleaded were true. In respect to what was said in the argument that this Court would, on the general demurrer of the defendants, judicially notice the Acts of California relating to the harbor of San Francisco, and particularly of the Water Lot Act of the 26th March, 1851, we will only remark that we should do so if the pleading in the case was such as permitted it to be done, and if we did not think, as we have already said, that upon that plea that the cause should not have been dismissed, and that the Courts should have ruled in favor of the complainant; and it is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby reversed, each party paying his own costs on this appeal in this Court, and that this cause be, and the same is hereby remanded to the said Circuit Court for further proceedings to be had therein, in conformity to the opinion of this Court.