

- 4 depends and, pursuant to Sections 546-548 of the Civil Practice Act, do hereby submit the same to the above named Court and pray the decision and judgment of this Honorable Court upon the question in difference and the controversy between them herein stated.

Statement of Facts.

- 5 FIRST: The Association for the Protection of the Adirondacks is a domestic corporation duly organized and existing under and by virtue of the Membership Corporations Law of the State of New York and John G. Agar, President thereof, is a citizen of this State residing at No. 944 Fifth Avenue in the Borough of Manhattan, City, County and State of New York. Alexander MacDonald is the Conservation Commissioner of the State of New York and as such is the head of the Conservation Department of the State Government. The said Conservation Department has the care, custody and control of all state lands at any time herein mentioned, and has the power generally to manage the same. William G. Howard is the Superintendent of Lands and Forests and as such is the head of the Division of Lands and Forests of the Conservation Department. As such Superintendent, subject to the supervision, direction and control of the Conservation Commissioner, he is charged with the care, custody and control of all State lands at any time herein mentioned and has the power generally to manage the same.

6 SECOND: Chapter 417 of the Laws of 1929 became a law on April 9, 1929 with the approval of the Governor, and reads as follows:

Chapter 417: "An Act to provide for the construction and maintenance of a bobsleigh run or slide on State lands and other lands in the town of North Elba, Essex County, and making an appropriation for preparing the way therefor. 7

Became a law April 9, 1929, with the approval of the Governor, Passed, three-fifths being present.

"The People of the State of New York, represented in Senate and Assembly, do enact as follows:

"Section 1. To induce the people to visit and enjoy the wild forest lands of the State, to stimulate public interest in preserving them for the scenic and recreational purposes for which they were set apart as wild forest lands, and thereby to foster a determination on the part of the people that the mandates of the constitution relating to the forest preserve be continued, and as an active measure to aid in carrying out those mandates, the conservation commissioner is hereby authorized to construct and maintain, for the use and pleasure of the public, a bobsleigh run or slide, including a way for returning such sleighs to the top, on State lands in the forest preserve, and on any additional lands in which the necessary easement may be provided without cost to the State, in the town of North Elba, Essex County, on the western slope of Sentinel range. The commissioner shall determine the course of such run or slide and proceed promptly to make a survey thereof and to clear the land necessary therefor. No wider nor longer clearing shall be made than is actually needed for such run or slide; and such work shall be carried on in a manner, so far as practicable, that also will remedy any conditions which tend to hamper the growth of the adjacent wild forest trees. The work of such clearing shall be done by direct employment of labor and direct purchase or rental of machinery and implements by the commissioner. When such clearing is com- 8 9

10. pleted, the commissioner may prepare plans for and construct and equip such run or slide at a cost of not exceeding seventy-five thousand dollars, and may let the necessary contract or contracts therefor. When completed, such run or slide shall be maintained, during the winter season, for the use and pleasure of the public under the direction of the conservation department and subject to its rules. The sum of two thousand dollars (\$2,000.00) or so much thereof as may be needed, is hereby appropriated for clearing the land for such run or slide and return way, payable from the State Treasury on the audit and warrant of the comptroller and the certificate of the conservation commissioner. In the discretion of the comptroller, such moneys may be advanced to such commissioner in lump sums from time to time on his requisition, and upon his voucher audited as provided in section four-a of the State Finance Law. The vouchers for expenditures therefrom by the commissioner also shall be filed with the comptroller and be subject to his audit as provided in such law.
- 11.

"Section 2. This act shall take effect immediately.

12. "STATE OF NEW YORK, }
DEPARTMENT OF STATE, } SS.

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said original law.

EDWARD J. FLYNN,
Secretary of State."

Under date of June 4, 1929, the Attorney General of the State of New York rendered to the defendant Alexander MacDonald as Conservation Commissioner, an opinion regarding the constitu-

tionality of Chapter 417 of the Laws of 1929, which 13
opinion reads as follows:

“June 4, 1929.

Hon. Alexander MacDonald
Conservation Commissioner
Albany, New York.

IN THE MATTER OF

The Constitutionality of Chapter 417
of the Laws of 1929.

Dear Sir:

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While Chapter 417 of the Laws of 1929 provides for a certain amount of clearing for the route of the proposed bobsleigh run or slide, nevertheless this is only incidental to the main purpose of the act, which is to provide further opportunities for the recreational uses of the forest preserve by the people of the State.

Many of my predecessors have rendered opinions construing Section 7 of Article VII of the State Constitution, being the section in relation to the forest preserve, and I observe in these opinions a growing tendency to recognize the recreational uses of the forest preserve and to so construe the constitutional section as not to prevent access to those areas which the State seeks to preserve for the benefit of its people.

15

Unfortunately there has been little or no judicial discussion of the questions involved and I regard your inquiry as affording an excellent opportunity for the obtaining of a judicial interpretation of this section of the constitution.

I have recently attended a conference with you at which were present the proponents of the construction of the proposed bobsleigh slide and also Mr. John G. Agar, President of the Association for the Protection of the

16 Adirondacks. At this conference it was agreed by all present that the construction of Chapter 417 by the courts was desirable in the public interest, and I am favored under date of May 29th with a communication from Mr. Agar as President, enclosing a resolution adopted by the Board of Trustees of the Association for the Protection of the Adirondacks, at a meeting held on Tuesday, May 29th, 1929, reading in part as follows:

17 'Resolved, that the President be instructed to write to the Attorney General that the Association for the Protection of the Adirondacks, believing that Chapter 417 of the Laws of 1929 is unconstitutional insofar as it applies to State lands in the Forest Preserve, respectfully asks him to render an opinion on the request of the Conservation Commissioner as to the constitutionality of said act. If the Attorney General is of the opinion that the Act is constitutional, the President is directed to test the question in the Courts.'

The Constitution itself presents a clear method of bringing this matter into court. Section 7 of Article VII reads in part as follows:

18 'A violation of any of the provisions of this section may be restrained at the suit of the people or with the consent of the Supreme Court in Appellate Division on notice to the Attorney General at the suit of any citizen.'

Therefore, for the purpose of bringing this matter before the Courts I advise you that in my opinion it is proper for you to proceed under Chapter 417 of the Laws of 1929 until restrained by appropriate action.

Very truly yours,

(Signed) HAMILTON WARD,
Attorney General."

THIRD: The plaintiffs herein duly applied for an order of this Court conferring its consent that they or either of them institute suit for the purpose of restraining the Conservation Commissioner from proceeding to construct and/or maintain a bobsleigh run or slide on state lands in the forest preserve in the Town of North Elba, Essex County, New York, on the ground that Chapter 417 of the Laws of 1929 purporting to confer authorization therefor on the said Conservation Commissioner is unconstitutional and void as in violation of Section 7 of Article VII of the Constitution of this State. The Attorney General duly appeared in such proceeding on behalf of the defendant, Alexander MacDonald.

An order of this Court was duly entered herein on the 21st day of June, 1929, and reads as follows:

“The Association for the Protection of the Adirondacks and John G. Agar having made application, pursuant to the provisions of Section 7 of Article VII of the Constitution of this State, on notice to the Attorney General, for an order of this Court conferring its consent that the Association for the Protection of the Adirondacks and John G. Agar, its President, or either of them, institute suit for the purpose of restraining the Conservation Commissioner from proceeding to construct and/or maintain a bobsleigh run or slide in the Town of North Elba, Essex County,

Now, on reading and filing the notice of motion, dated June 12, 1929, the affidavit of Bertram F. Willcox, sworn to June 12, 1929, with admission of due and timely service of both of said papers on the Attorney General, and the notice of appearance and consent to the entry of such order executed by the Attorney General of the State of New York; and on motion of Schurman, Wiley & Willcox,

22 attorneys for The Association for the Protection of the Adirondacks and John G. Agar,

23 IT IS ORDERED, that the consent of this Court be, and hereby is, conferred that the Association for the Protection of the Adirondacks and John G. Agar, its President, or either of them, institute suit for the purpose of restraining the Conservation Commissioner from proceeding to construct or maintain a bobsleigh run or slide, including a way for returning such sleighs to the top, in the Town of North Elba, Essex County, on the ground, among others, that Chapter 417 of the Laws of 1929 purporting to confer authority therefor is unconstitutional and void in that it violates the provisions of Article VII Section 7 of the Constitution of this State, or to invoke such other legal remedy or remedies in the premises as said Association and/or John G. Agar may be advised.

(Signed) JOHN S. HERRICK,
Clerk."

A copy of the said order was duly served on the said Attorney General of the State of New York.

24 FOURTH: On July 2, 1929 the defendant Alexander MacDonald, Conservation Commissioner, wrote to the defendant William G. Howard, Superintendent of the Division of Lands and Forests of the Conservation Department, a letter which reads as follows:

"July 2, 1929.

Wm. G. Howard, Superintendent,
Division of Lands and Forests,
Conservation Department,
Albany, N. Y.

Dear Sir:

You are aware that I have received from the Attorney-General an opinion relative to Chapter 417 of the Laws of 1929, which pro-

vides for clearing land for a bob-sled run on State land in the Forest Preserve on the westerly slope of the Sentinel Range in the Town of North Elba, Essex County. 25

You will, therefore, please arrange to have the land cleared for the bob-sled run as laid out by the recent survey in which Mr. Merrill participated, such clearing to consist of the cutting of whatever trees will have to be removed to provide for the construction of the bob-sled run.

Very truly yours,

(Signed) ALEXANDER MACDONALD
Commissioner." 26

FIFTH: Pursuant to such letter, the defendant, William G. Howard, has selected a site for the proposed bobsleigh run or slide and return way. The site so selected is a mountain on the westerly slope of Sentinel Range, as indicated on the map (upper right hand corner thereof) hereto annexed and made a part hereof as Exhibit "A". The said defendant has further surveyed a route on the said site for the proposed bobsleigh run or slide and also for the return way. The route for the proposed bobsleigh run or slide is indicated by a solid black line on the said Exhibit "A" and the return way is indicated thereon by a dotted black line. The said bobsleigh run or slide does not follow or lie on any existing road or trail, but the return way or go-back road, from its foot to approximately the point where it crosses the bobsleigh run or slide, follows a former road now used as a trail and thereafter, in large part, follows an abandoned lumber road. 27

If constructed, the proposed bobsleigh run or slide will be approximately one and one-quarter miles ($1\frac{1}{4}$) long and six and one-half feet ($6\frac{1}{2}$) in

- 28 width, and it will be necessary to clear additional land on either side of the said bobsleigh run or slide so that the width thereof where its course is straight will be approximately sixteen feet (16) and where such course curves the width will be approximately twenty feet (20). The return way will be either a roadway approximately one mile long and eight feet (8) wide up which the bobsleighs will be hauled to the top of the slide by tractor, or a line approximately five-eighths ($\frac{5}{8}$ ths) of a mile long and six feet (6) wide up which the bobsleighs will be hauled by a cable.
- 29 This latter plan would require the installation of an electric or gasoline motor at one end of the line. At the present time electricity is not available at the site chosen.

In due course the said defendants will, unless restrained, cause the land to be cleared for the proposed bobsleigh run or slide and also for the said return way, and will cut and remove certain trees as hereinafter set forth.

- 30 The Third Olympic Winter Games are to be held in January or February of 1932 and the bobsleigh run or slide and return way will, if constructed, be used in connection with such Third Olympic Winter Games. Such slide and return way will also be available for general use.

The art of bobsleighbing is highly technical. The sleigh itself is about six hundred pounds in weight and will accommodate from five to eight persons. The person in front, assisted by the person in rear, starts and guides the bobsleigh. Those sitting between these two do not participate in the operation of the sled but are passengers who follow the directions of the two leaders as to balance and the like. The speed obtained by a bobsleigh in its descent from the summit of the slide is often in excess of sixty (60) miles per