

PETER FLINT
ATTORNEY AND COUNSELLOR AT LAW

NEW YORK, April 10, /4. 191

Coff
My dear Lathy:-

Your letter of April 6th and enclosures came to hand and were duly considered.

As I have previously written you, the Law is that The Original Water Height at Eagle Lake has by long usage Become the Right of Every Property Owner on the lake, and he Can Successfully keep that Height, by simply bringing the matter to the New York Supreme Court on a Summons and Complaint, stating the facts.

You are in error on one point: The Association not being incorporated, has no standing whatever, as such, in Court, for the purpose of bringing an action to abate this Nuisance (Injury Caused by the Lowered Waters). As I have frequently instructed our Association, some one riparian property owner (or two or more) has simply to instruct me as his attorney to serve a summons on Messrs. Newton & Ferris in a civil action to abate the injury to our property, caused by their improper acts, in Voluntarily Lowering that water. The Complaint can be served also, showing what our Injury is. Many similar cases have been successfully brought in this State within the last 40 years.

In our case, after Complaint is served, we should at once apply to the Court for an order for Immediate Relief, Pending the trial of this suit. This application, based on the complaint and affidavits from various property owners acquainted with the facts and prepared by me, brings the Whole Matter in Writing to the Attention of the Judge, who can and generally will Grant Relief by an ORDER. In our Case, to restore former conditions by those who committed the injury by lowering the waters. At the Final Trial of the case, all questions as to height of water and other matters can be settled, if we do not arrange same among ourselves prior to that time.

I am not surprised that when you sent a representative into "the enemy's camp" they should "Abuse Plaintiff's Attorney" as is usually the case. I should certainly suspect an attorney who was praised by the other side. We could, naturally, not expect to force them to retract from their position of defending

Dr. Sherman's improper secret arrangement with Messrs Newton & Ferris. I took that up with Mr. Moore privately about Dec. 15/13. He refused to insist on his written direction to Newton to repair the damaged Crib. He said That the Commission Could Not Make ~~Newton~~ Newton repair the dam, if he did not want to, and such talk as that. Upon consultation with you, I then, as a member of the Association, made public our cause in "Waterways & Commerce." Read your copy of that paper and see if it is not fair and straight. A torrent of proper criticism at once fell upon Moore and his office. He asked to reply in print. The editor printed it. Read Moore's answer. People tell me that he hurt himself by it. Now, he had his chance at us. He now stands on the defensive, if anyone mentions the subject to him.

The paper reached the Governor. He wrote and thanked me for my interest in this important matter, as he expressed it. Then the Governor called for a re-hearing by the Conservation Commission and they affirmed their inability to enforce their former direction to restore Our Dam. They respectfully suggested that we bring this perplexing ^{question} to the Supreme Court. The Governor sent this information to me with a letter expressing the hope that we would be able to straighten matters out.

Let us, therefore, as I ^{have} suggested all along, lay our troubles before an Impartial Equity Tribunal, confident in the justice of our cause.

An immediate application for relief, based on the suit of Mr. Ward, Mr. Range, Mr. Fitzgerald, yourself, or any one owning land on the shore of Eagle Lake, will without doubt result in a restoration of dam to original condition. The permanent future condition can be finally adjusted when the case comes for trial.

The final judgment and settlement of the matter is entirely independent of the immediate motion application, although, if we get the dam repaired now by motion, it will put Newton and Ferris at our mercy. In such case, we merely ask the court to make permanent the temporary relief. Have no fear of the Commission. It is nothing but a body chosen by the Legislature to look after certain matters and, apparently, is not doing its work well. It is entirely subject to the Supreme Court, and has nothing to do with the case after we serve a summons at a request of any property owner there. The judgment will be against Newton and Ferris, ~~me~~ two of our fellow riparian owners, who have invaded their neighbor's rights. That is all there is to it. Should the Court order the crib to be re-built, it could equitably only assess the amount for erection and maintenance upon Every Riparian Owner and not upon our Association alone, as you seem to fear. That would include ~~them~~