

1993

Right to a Trial by Jury - The Controlled Substances Forfeitures Act

Christopher M. Rawson

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

Recommended Citation

Christopher M. Rawson, *Right to a Trial by Jury - The Controlled Substances Forfeitures Act*, 31 Duq. L. Rev. 661 (1993).

Available at: <https://dsc.duq.edu/dlr/vol31/iss3/13>

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

RIGHT TO A TRIAL BY JURY—THE CONTROLLED SUBSTANCES FORFEITURES ACT—The Supreme Court of Pennsylvania held that the owner of property seized pursuant to the Controlled Substances Forfeitures Act is entitled to a trial by jury.

Commonwealth v One (1) 1984 Camaro Coupe, Pa , 610 A2d 36 (1992).

In 1989, the Commonwealth of Pennsylvania filed a petition for forfeiture and condemnation in the Court of Common Pleas of Northumberland County seeking forfeiture of Cheryl and Kenneth Stucks' 1984 Camaro pursuant to the Controlled Substances Forfeitures Act.¹ The Stucks subsequently filed a claim to the vehicle and demanded a jury trial.²

The trial court granted the request for a jury trial, but also granted the Commonwealth's motion for certification of the case required for interlocutory appeal on the question of whether a jury trial is required for an action in forfeiture.³ The commonwealth

1. *Commonwealth v One (1) 1984 Camaro Coupe*, Pa , 610 A2d 36, 38 (1992). The Commonwealth of Pennsylvania alleged that the Stucks had purchased the Camaro with proceeds from the illegal sale of drugs and also had used the car to store illegal drugs. *Camaro*, 610 A2d at 38. The section of the Controlled Substances Forfeitures Act that concerns the forfeiture procedure provides:

(a) General procedure. The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this chapter, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

- (1) A description of the property seized.
- (2) A statement of the time and place seized.
- (3) The owner, if known.
- (4) The person or persons in possession, if known.
- (5) An allegation that the property is subject to forfeiture pursuant to section 6801(a) (relating to loss of property rights to Commonwealth) and an averment of material facts upon which the forfeiture action is based.

(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.

42 Pa Cons Stat Ann § 6802 (Purdon 1992).

2. *Camaro*, 610 A2d at 38.

3. *Id.* Interlocutory appeal is "an appeal of a matter which is not determinable of the controversy, but which is necessary for a suitable adjudication of the merits." *Black's Law Dictionary* 815 (West, 6th ed 1990). The Commonwealth is therefore allowed to appeal an issue before the case is fully adjudicated. *Camaro*, 610 A2d at 38.

court granted the petition for permission to appeal and reversed the trial court's order for a jury trial.⁴ The Stucks petitioned for allowance of appeal and the Supreme Court of Pennsylvania granted allocatur.⁵

The sole issue considered by the Pennsylvania Supreme Court was whether the owner of property subject to forfeiture under the Controlled Substances Forfeitures Act was entitled to a jury trial pursuant to the Pennsylvania Constitution.⁶ The Commonwealth argued that Article I, section 6 of the Pennsylvania Constitution only required a jury trial if the proceeding existed at common law in 1790.⁷ Since the instant proceeding was created by statute after 1790, the Commonwealth argued that the right could only exist if the legislature had expressly provided for it.⁸ The Stucks, on the other hand, contended there was a common law basis for the action even though the action arose from statutory law.⁹ Since in rem forfeiture proceedings before a jury existed at common law, the Stucks believed a property owner's right to a jury trial had a sufficient "common law basis."¹⁰ The court, agreeing with the Commonwealth's argument that there was no statutory requirement for a jury trial in a substance forfeiture case,¹¹ analyzed the question by separating it into two distinct components.¹² The first issue presented for resolution was whether jury trials were required in

4. *Id.* The commonwealth court held that the jury trial right in a forfeiture proceeding is not required by statute, suggested by legislative treatment or history, expressly guaranteed by the constitution, or based in common law. The court therefore concluded that there is no right to a jury trial in a controlled substance forfeiture proceeding. *Id.*

5. *Id.*

6. *Id.* at 37-38. Article I, section 6 of the Pennsylvania Constitution, which states "trial by jury shall be as heretofore, and the right thereof remain inviolate," was interpreted by the Pennsylvania Supreme Court to mean that all jury trial rights that existed at the adoption of the Pennsylvania Constitution were preserved. *Byers v Commonwealth*, 42 Pa 89 (1862).

7. *Camaro*, 610 A2d at 38. If a proceeding existed before a jury in 1790, the year of the adoption of the Pennsylvania Constitution, the Commonwealth argued that the proceeding would always be heard before a jury as that right was codified in Article I, section 6 of the Pennsylvania Constitution. The right became "preserved." *Id.*

8. *Id.*

9. *Id.* at 39.

10. The Stucks cited two cases, *Appeal of Watson*, 377 Pa 495, 105 A2d 576 (1954), and *United States v One 1976 Mercedes Benz 280S*, 618 F2d 453 (7th Cir 1980), which substantiated the judicial belief that forfeiture proceedings before a jury arose from common law. *Watson*, 105 A2d at 577-78; *Mercedes Benz*, 618 F2d at 466.

11. *Camaro*, 610 A2d at 39. The Commonwealth of Pennsylvania argued at trial that the Controlled Substances Forfeitures Act did not expressly state a right to a jury trial in forfeiture proceedings. *Id.* at 38.

12. *Id.* at 39.

forfeiture proceedings in 1790.¹³ The second issue, contingent upon a finding that there were jury trials in forfeiture actions in 1790, was to determine whether there existed a common law basis for the proceeding.¹⁴

In resolving the first question, the court resurrected a 1782 Pennsylvania Supreme Court case, *Wilcox v Henry*.¹⁵ Since the *Wilcox* case involved the issues of forfeiture and contraband and was tried before a jury, the court concluded that a property owner in a forfeiture action had been entitled to a jury trial in 1790.¹⁶ Nonetheless, the Pennsylvania Supreme Court held that in order to grant the Stucks a jury trial, it must also find a common law basis in an action in forfeiture.¹⁷

Rather than defining common law as law arising from the courts instead of statutory law, the court set forth a separate definition.¹⁸ "Common law basis," the court held, was law that had originated in common law courts such as the Court of Exchequer, as opposed to the Courts of Admiralty or Chancery.¹⁹ Accordingly, because forfeiture cases were established through in rem proceedings in the Court of Exchequer and were tried before a jury, the court concluded that the forfeiture action at issue had a common law basis.²⁰ It was therefore held by the Pennsylvania Supreme Court

13. *Id.* The court reasoned that if jury trials were required in forfeiture hearings on or before 1790 (the year the Pennsylvania Constitution was adopted), it would validate the common law constitutional right to trial by jury for forfeiture proceedings. *Id.*

14. *Id.* Even if there were jury trials for forfeiture proceedings in 1790, those proceedings must have been a part of the evolving American common law courts that originated in England. *Id.* at 39-41.

15. 1 US 41 (1782). The owner of salt, purchased from Britain before the American army recaptured Philadelphia, was tried before a jury with the salt being the subject of the forfeiture proceeding. *Wilcox*, 1 US at 41.

16. *Camaro*, 610 A2d at 39.

17. *Id.* The fact there was a jury trial for a forfeiture proceeding in 1782 did not mean the proceeding had a "common law basis." *Id.*

18. *Id.* at 39-40. The court stated that in the context of forfeiture cases, common law does not stand for actions originating at common law because even prior to 1790, forfeiture actions were based on statutory law. *Id.* at 39.

19. *Id.* The Court of Exchequer, a common law court originating in England, had jurisdiction over seizure cases on land, which were heard by the court sitting with a jury. *Id.* at 40.

20. *Id.* at 41. The court described the absorption of the Court of Exchequer into the common law of America in the form of in rem proceedings, which enforced forfeiture statutes, by adopting the reasoning of United States Supreme Court Justice Stone in *CJ Hendry Co. v Moore*, 318 US 133 (1943). "But to the generalization that a judgment in rem was not a common law remedy there is an important exception. Forfeiture to the Crown of the offending object, because it had been used in violation of law, by a procedure in rem was a practice familiar not only to the English admiralty courts but to the Court of Exchequer." *CJ Hendry*, 318 US at 137. In *CJ Hendry*, Justice Stone stated that other courts besides the

that the Stucks were entitled to a jury trial pursuant to the Pennsylvania Constitution.²¹

Justice McDermott's concurring opinion raised doubts about the majority's historical analysis on two points.²² First, Justice McDermott identified a twentieth century Pennsylvania Supreme Court case where the court held that not all forfeiture proceedings required a jury trial.²³ Justice McDermott expressed concern with regard to the majority's willingness to overrule longstanding precedent.²⁴ He reasoned that often the underlying facts, specifically the owner's guilt, were not in dispute.²⁵

Secondly, Justice McDermott criticized the majority's two hundred-year leap from the *Wilcox* holding with no historical continuity to support their conclusion.²⁶ He disagreed with the majority's assumption that since a jury trial had once been mandated in forfeiture proceedings, it follows that such mandate applies to present forfeiture proceedings.²⁷ While Justice McDermott agreed with the majority insofar as the ruling applied only to those cases where third parties claimed a lack of knowledge that their property was illegally used by another or where the confiscated property was instrumental in the commission of the crime,²⁸ he disagreed that

Courts of Admiralty had jurisdiction on proceedings concerning property seized on land under the common law of United States district courts. *Id.* at 140-47. "The Court has never held or said that the admiralty jurisdiction in a forfeiture case is exclusive, and it has repeatedly declared that, in cases of forfeiture of articles seized on land for violation of federal statutes, the district courts proceed as courts of common law according to the course of the Exchequer on informations in rem with trial by jury." *Id.* at 153.

Therefore, Justice Stone, and the Supreme Court of Pennsylvania as well, reasoned that American common law courts acquired the jurisdiction of the previous English Courts of Exchequer; in other words, forfeiture actions have a "common law basis." *Camaro*, 610 A2d at 41. The Supreme Court of Pennsylvania also referred to the United States Court of Appeals for the Seventh Circuit, which reiterated the right to a jury trial for in rem proceedings stemming from rich historical origins. *United States v One 1976 Mercedes Benz 280S*, 618 F2d 453, 466 (7th Cir 1980). "Both English and American practice prior to 1791 definitely recognized jury trial of in rem actions at common law as the established mode of determining the propriety of statutory forfeitures on land for breach of statutory prohibitions." *Mercedes Benz*, 618 F2d at 466.

21. *Camaro*, 610 A2d at 41.

22. *Id.* at 41-42 (McDermott concurring).

23. *Commonwealth v Bowers*, 304 Pa 253, 155 A 605 (1931). *Bowers*, analogous to the instant case, concerned the forfeiture of non-contraband items based on their alleged relationship to the contraband itself. No jury trial was afforded in the case. *Bowers*, 155 A at 608.

24. *Camaro*, 610 A2d at 42.

25. *Id.*

26. *Id.* See note 15 for details of the *Wilcox* case.

27. *Id.*

28. *Id.* Justice McDermott listed these factors as exceptions to the trial without a

there was a blanket right to a jury trial in all forfeiture cases.²⁹

The common law forfeiture proceeding originated in the English Courts of Admiralty and Exchequer.³⁰ The court action evolved into colonial American forfeiture proceedings as detailed in Chief Justice Stone's opinion in *CJ Hendry Co. v Moore*, a 1943 United States Supreme Court case.³¹ American courts, Chief Justice Stone reasoned, developed by necessity an in rem action based in English common law that allowed the state to recover property through a forfeiture proceeding before a jury.³² Stone admitted that the Court of Exchequer was never established in America, but argued it had been absorbed by the common law courts of America.³³ Moreover, the court of admiralty failed to subsequently obtain full jurisdiction.³⁴ In fact, section 9 of the Judiciary Act left states "free to provide such a remedy in forfeiture cases where the articles are seized upon navigable waters of the state for violation of state law."³⁵ Justice Stone stated that the common law nature of the procedure and judgment in rem in forfeiture cases emerged from the "common understanding of judges, lawyers, and text writers."³⁶ Though the forfeiture action was probably assumed to have a common law basis, Justice Stone's historical analysis was considered to be definitive in giving owners of seized property the right to a jury trial.³⁷

jury in forfeiture actions. Id.

29. Id at 42. Justice McDermott did agree that the Stucks were within his exceptions, as they had not been convicted before and the facts had not been adjudicated. Id.

30. *CJ Hendry Co. v Moore*, 318 US 133 (1943). "Forfeiture to the Crown of the offending object, because it had been used in violation of law, by a procedure in rem was a practice familiar not only to the English admiralty courts but to the Court of Exchequer." *CJ Hendry*, 318 US at 137.

31. Id at 133-35. *CJ Hendry* concerned the rights of an owner of property that was the subject of a forfeiture hearing who demanded a jury trial. Justice Stone focused his analysis on determining if indeed the forfeiture proceeding jury right had a common law basis. Id.

32. Id at 137. "The [English court of] Exchequer gave such a remedy for the forfeiture of articles seized on land for the violation of law." Id.

33. Id at 139.

34. Id at 153. "Long before the adoption of the Constitution the common law courts in the Colonies — and later in the states during the period of Confederation — were exercising jurisdiction in rem in the enforcement of forfeiture statutes." Id at 139.

35. The Judiciary Act of 1789, 1 Stat 73, § 9 (1789).

36. *CJ Hendry*, 318 US at 153.

37. Justice Stone's analysis has been often cited since its publication. An earlier Pennsylvania forfeiture case, *Commonwealth v One 1988 Ford Coupe VIN # 1FABP41A9JF143651*, analogous to the instant case, cited Justice Stone's analysis. *Ford Coupe*, 393 Pa Super 320, 329-30, 574 A2d 631, 636 (1990). In addition, Justice Stone's historical analysis was vital to cases involving government action, namely, the imposition of

Actions in forfeiture have existed in Pennsylvania since the American Revolution.³⁸ Property in the colonial era which had been seized on land or sea often had to be forfeited as possible contraband, subject to a determination by the proper court.³⁹ In *Wilcox v Henry*, the Supreme Court of Pennsylvania was faced with the issue of whether salt, forfeited to the United States after the American army recaptured Philadelphia, was contraband.⁴⁰ The case, which resulted in a jury trial, was crucial to the development of Pennsylvania's forfeiture law since it showed that the right to trial by jury existed before the adoption of the Pennsylvania Constitution.⁴¹ Eight years later, the Pennsylvania legislature embodied the right to a jury trial in Article I, section 6 of the Pennsylvania Constitution.⁴²

The Supreme Court of Pennsylvania determined the extent and application of the right to a trial by jury in the 1862 decision, *Byers v Commonwealth*.⁴³ In this decision, the court interpreted the United States and Pennsylvania Constitutions as preserving the right to a jury but not extending that right.⁴⁴ Later, in 1959 and 1961, the Pennsylvania Supreme Court refined this holding, indicating that Pennsylvania would preserve the right to a trial by jury where it existed at the time the Pennsylvania Constitution was

penalties and restrictions on commerce. *United States v JB Williams Co., Inc.*, 498 F2d 414, 423 (2d Cir 1974); *In re Ohio River Disaster Litigation*, 579 F Supp 1273, 1278 (SD Ohio 1984).

38. *Wilcox v Henry*, 1 US 41 (1782).

39. *CJ Hendry*, 318 US at 137. "The [English Court of] exchequer gave such a remedy for the forfeiture of articles seized on land for the violation of law. And, concurrently with the admiralty, it entertained true proceedings in rem for the forfeiture of vessels for violation on navigable waters." *Id.*

40. *Wilcox*, 1 US at 41.

41. Two twentieth century Pennsylvania cases, *WJ Dillner Co v Pennsylvania Public Utilities Commission*, 191 Pa Super 136, 155 A2d 429 (1959), and *William Goldman Theatres, Inc. v Dana*, 405 Pa 83, 173 A2d 59 (1961), held that all civil cases tried by a jury on or before 1790 (the adoption of the Pennsylvania Constitution) preserved the right to a jury trial in those proceedings. *WJ Dillner*, 155 A2d at 435; *Goldman*, 173 A2d at 64.

42. PA Const, Art I, § 6. "Trial by jury shall be as heretofore, and the right thereof remain inviolate." *Id.*

43. 42 Pa 89 (1862). The case concerned two men convicted as professional thieves and pickpockets who demanded a jury trial. The court determined the right to a jury trial "was a right the title to which is founded upon usage, and its measure is therefore to be sought in the usages which prevailed at the time when it was asserted." *Byers*, 42 Pa at 94.

44. US Const, Amends VI and XIV, § 1. PA Const, Art I, § 6. The accused were afforded a jury trial since the right to a jury existed in criminal proceedings in 1790. The right was therefore "preserved" when the Pennsylvania Constitution codified the jury right in 1790. *Byers*, 42 Pa at 96.

adopted.⁴⁵

If the right to a jury in a specific action did not exist at the time of the framing of the Pennsylvania Constitution, however, the right would not be afforded.⁴⁶

Several years later, the United States Court of Appeals for the Seventh Circuit in *United States v One 1976 Mercedes Benz 280S*⁴⁷ consolidated the history of the forfeiture trial in America and the subsequent right to a jury trial.⁴⁸ The court indicated that the Judiciary Act of 1789,⁴⁹ which officially established United States judicial courts as they exist today, specifically granted jury trials to all civil actions except those within admiralty or maritime jurisdiction.⁵⁰ The court also cited the dicta of two federal justices⁵¹ which confirmed the right to a jury in forfeiture proceedings concerning seizures on land. Both justices admitted that "seizure" trials, except in admiralty, are triable to a jury and have their basis in common law.⁵² The court in *Mercedes Benz* also noted the historical deference accorded to jury trials.⁵³ All of these sources led

45. It has long been recognized that the Pennsylvania Constitution "only preserves the right to trial by jury in those cases where it existed at the time the [C]onstitution was adopted." *WJ Dillner*, 155 A2d at 435. In *WJ Dillner*, defendant, charged with transportation of the commission's property without authority, demanded a jury trial. *Id.* The Pennsylvania Supreme Court denied the request since the "matters committed by the legislature to the Public Utility Commission were then nonexistent. Hence no right to jury trial existed which could be preserved." *Id.* In a case two years later, the Pennsylvania Supreme Court ruled that "the individual is entitled to a public trial by an impartial jury of the vicinage in every situation in which he would have been entitled to such a trial at the time of the adoption of our State Constitution of 1790 and ever since under our succeeding constitutions." *Goldman*, 173 A2d at 64. The Pennsylvania Supreme Court held in *Goldman* that since utterance of obscene matter (the crime at issue) was a crime at common law for which a defendant chargeable was entitled to a trial by jury, the defendant in the instant case had a right to a jury trial. *Id.* at 64-65.

46. *Appeal of Watson*, 377 Pa 495, 105 A2d 576 (1954). A teacher who was dismissed by a school board was not entitled to a jury trial in her legal action against the board since the right did not exist in those proceedings before 1790. *Watson*, 105 A2d at 578.

47. 618 F2d 453 (7th Cir 1980).

48. *Mercedes Benz*, 618 F2d at 458.

49. 1 Stat 73, § 9 (1789). The Act has been more correctly entitled "An Act to Establish the Judicial Courts of the United States." *Id.*

50. *Id.*

51. These justices were Justice Marshall in *The Sarah*, 21 US 644 (1823), who enunciated the idea that all cases of seizure on land logically evolved from English common law, *The Sarah*, 21 US 644-45; and Justice Stevens in *Rogers v Loether*, 467 F2d 1110 (7th Cir 1972), who afforded the defendant a jury trial even though the issue was limited to the specific amount of punitive damages awardable. *Rogers*, 467 F2d at 1122-23.

52. Justice Marshall stated that "in the trial of all cases of seizure, on land, the court sits as a court of common law." *The Sarah*, 21 US at 644. Justice Stevens stated that "except in admiralty, forfeiture cases are triable to a jury." *Rogers*, 467 F2d at 1123.

53. *Mercedes Benz*, 618 F2d at 468. The court noted the "time-honored tradition of

the court to conclude that the right to a jury trial originated from statutes and common law, and exists in all land forfeiture proceedings.⁵⁴

The *Camaro* decision raises some doubts with respect to the Pennsylvania Supreme Court's adherence to the doctrine of stare decisis.⁵⁵ Not only did the Supreme Court overrule relatively recent precedent,⁵⁶ but the court miraculously discovered the present right to a jury trial in a forfeiture proceeding in a case set forth over two hundred years ago in the colonial era.⁵⁷ Admittedly, the court is duty-bound to create deserved rights. But it is too far-reaching to create a jury right out of a forfeiture proceeding which is indirectly related to a personal right. In addition, the proceeding is often only peripheral to related criminal proceedings and is arguably outweighed by compelling state interests. Specifically, the subject of a forfeiture proceeding is the property itself and not the owner of the property. Nonetheless, the owner has often already been found guilty of the underlying crime. Accordingly, it seems inequitable and costly to allow a jury trial in every forfeiture proceeding.

On the other hand, one might argue that property rights today have emerged as vital, perhaps more vital than liberty rights. Yet the Pennsylvania Supreme Court has precariously reached past precedent for less than compelling reasons.⁵⁸ As noted by Justice McDermott, the majority failed to outline any exceptions where the right to a jury trial in a forfeiture proceeding would not be afforded.⁵⁹ In fact, had the majority granted an additional trial by jury for a forfeiture proceeding subsequent to the owner being convicted of the underlying criminal act, Justice McDermott would

American commitment to jury trial, extending back to the Continental Congress," and Blackstone's view that the English dedication to trial by jury was more pronounced in the new world. *Id.*

54. *Id.* at 466-67.

55. *Camaro*, 610 A2d at 41-42. These doubts are best articulated in the concurring opinion of Justice McDermott. *Id.*

56. *Id.* at 41 citing *Commonwealth v Bowers*, 304 Pa 253, 155 A 605 (1931). In *Bowers*, the Supreme Court of Pennsylvania held that a jury trial was not required in all forfeiture proceedings because the issue before the court often only concerned a disputed issue of law, not fact. *Bowers*, 155 A at 608.

57. *Wilcox v Henry*, 1 US 41 (1782).

58. *Camaro*, 610 A2d at 39-41. Because a jury trial in a forfeiture proceeding existed at the time of the adoption of the Pennsylvania Constitution and originated from "common law," the owner of seized property has the right to a trial by jury in a forfeiture proceeding. *Id.* Justice McDermott agrees with the majority's decision and concurs, but doubts the means by which the court reached its ruling. *Id.* at 41-42.

59. *Id.* at 42.

have dissented. The majority, however, through its historical "romantic leap," did not categorize its ruling for particular forfeiture cases.⁶⁰ As such, Justice McDermott agreed with the decision as it related to the Stucks' factual situation because there had been no prior adjudication of the facts. He was wary, however, of the unlimited scope of the majority's newly created jury right.

The Pennsylvania Supreme Court, relying on colonial case law and other circuits, while overruling analogous state precedent, has created a ruling supported with less than compelling rationale.⁶¹ Given such doubtful arguments, the majority's discussion of the issue of the ultimate right to a jury trial in all forfeiture proceedings remains incomplete. In fact, a case exhibiting a different fact pattern than the Stucks' may have altered (and still might effect) the course of Pennsylvania case law on the subject. Nevertheless, every owner of seized property, regardless of any related criminal adjudication, is now entitled to a jury trial.

It remains to be seen if later decisions might create factual exceptions to the newly created right. This author believes that the judicial system will become more costly and complex, forcing the Pennsylvania Supreme Court to renew its analysis and possibly forcing the legislature to fill in the gaps as mentioned by Justice McDermott.⁶² Clearly, the Stucks are entitled to a jury trial pursuant to Article I, section 6 of the Pennsylvania Constitution;⁶³ but must every owner be afforded a jury trial and can Pennsylvania legally and economically afford one as well? Who is to say that the Pennsylvania Supreme Court, judging from its fairly original reasoning in *Camaro*, might not approach other judicial issues with such sweeping rationale? Possibly, the legislature is better suited to making guidelines for when and if jury rights are afforded in forfeiture proceedings, than is the judiciary, which allowed the particular facts of the Stucks' case to be determinative of the ultimate issue.

Christopher M. Rawson

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 41.

