in *Allison* had been for the violation of a municipal ordinance which was punishable only by fine.

We must acknowledge, however, that the Illinois Supreme Court has, in other contexts, labeled the fines imposed by the Pollution Control Board pursuant to statutory authority as "civil" in nature. (*City of Monmouth v. Pollution Control Board,* 57 Ill.2d 482, 313 N.E.2d 161; *City of Waukegan v. Pollution Control Board,* 57 Ill.2d 170, 311 N.E.2d 146.) In *City of Waukegan,* the Illinois Supreme Court considered whether the Board could be empowered to assess monetary penalties at all, and held that the authority given the Board
985 to impose such penalties does not *985 violate the constitutional separation of powers or amount to an improper delegation. In *City of Monmouth,* the court deemed the fines authorized as noncriminal in holding that certain procedural safeguards applicable to criminal proceedings are not applicable in proceedings before the Board.

Notwithstanding those decisions, we do not feel constrained to discard the safeguard against double jeopardy in the present case, where the imposition of a second penalty, be it labeled "civil" or "criminal" for other purposes, is being threatened by the State for the same alleged wrong. We hold only this: considering the nature of the violation alleged here, a previous prosecution and fine imposed by the city of Chicago pursuant to its ordinance precludes the threat of a second fine by the Board based on the same conduct.

In *United States v. La Franca,* 282 U.S. 568, the defendant was first convicted and fined in a criminal prosecution under the National Prohibition Act for unlawful sales of intoxicating liquors. Subsequently he was sued by the United States in a civil action for nonpayment of taxes and penalties with respect to the same conduct — unlawful sales of intoxicating liquors. Pleas of former jeopardy and res judicata were overruled by the district court in the civil action and judgment was entered for the full amount sued for. The court of appeals reversed and was affirmed by the United States Supreme Court. Although the case was ultimately resolved by the court's construction of a statute involved barring double "prosecution," the problem of double jeopardy posed by the facts, and analogous to the instant case, was discussed. The court first considered whether the designation of the amount of money exacted in the civil proceeding as a "tax" was determinative, and stated:

> "A tax is an enforced contribution to provide for the support of government; a penalty, as the word is here used, is an exaction imposed by statute as punishment for an unlawful act. The two words are not interchangeable, one for the other. No mere exercise of the art of lexicography can alter the essential nature of an act or a thing; and if an exaction be clearly a penalty it cannot be converted into a tax by the simple expedient of calling it such. That the exaction here in question is not a true tax, but a penalty involving the idea of punishment for infraction of the law, is settled * * *." 282 U.S. at 572.

The court then posed the following question:

> "Respondent already had been convicted and punished in a criminal prosecution for the identical transactions set forth as a basis for recovery in the present action. He could not again, of course, have been prosecuted criminally for the same acts.
986 Does *986 the fact that the second case is a civil action, under the circumstances here disclosed, alter the rule?" 282 U.S. at 573.

The court, adopting the following language from an earlier case (*United States v. Chouteau,* 102 U.S. 603, 611), resolved the question with an analysis which we find quite relevant in the instant case:

"` *Admitting that the penalty may be recovered in a civil action, as well as by a criminal prosecution, it is still as a punishment for the infraction of the law. The term "penalty" involves the idea of punishment, and its character is not changed by the mode in which it is inflicted, whether by a civil action or a criminal prosecution.* * * * [The defendant] has been punished in the amount paid upon the settlement for the offense with which he was charged, and that should end the present action, according to the principle on which a former acquittal or conviction may be invoked to protect against a second punishment for the same offence. To hold otherwise would be to sacrifice a great principle to the mere form of procedure, and to render settlements with the government delusive and useless.'" 282 U.S. at 573-74. (Emphasis added.)

The court continued in its own language that "an action to recover a penalty for an act declared to be a crime is, in its nature, a punitive proceeding, although it take the form of a civil action; and the word `prosecution' is not inapt to describe such an action." 282 U.S. at 575.

• 5 We thus feel that the designation of the threatened fines in the case at bar as "civil" for other purposes, such as for determining whether certain criminal procedural safeguards are required in the proceeding culminating in the fine (*City of Monmouth v. Pollution Control Board,* 57 Ill.2d 482, 313 N.E.2d 161) is not determinative here; and we are likewise of the opinion that "to hold otherwise would be to sacrifice a great principle to the mere form of procedure. The city imposed a fine for the storage tank leak, and its proceedings were a matter of public record. The Board proceedings, like the city prosecution, may culminate in the imposition of a monetary penalty, after the fact, for substantially the same alleged violation. Such a practice smacks of fundamental unfairness. The source of the alleged air pollution has long since been eliminated, and no threat to the environment presently exists. The objective of penalization once accomplished should end the matter whether the actions are designated criminal or civil. Multiple actions for the same offense should be discouraged or consolidated in some manner by the State. The jurisdiction of a court of equity to restrain the maintenance of vexatious or harassing litigation is well established. 42 Am.Jur.2d *Injunctions* sec. 206 (1969); 43 C.J.S. *Injunctions* sec. 40(h) (1945).

• 6 In closing, we also find that the related concept
987 of res judicata may *987 well have applicability here. In order to rely upon a former adjudication as a bar under this doctrine, it must be determined that the cause of action is the same in both proceedings, the two actions are between the same parties or their privies, and the former adjudication was a final judgment or decree upon the merits by a court having jurisdiction. (*People v. Kidd,* 398 Ill. 405, 408-09, 75 N.E.2d 851, 854.) The doctrine acts as a bar to the consideration not only of questions actually litigated and decided, but to all grounds of recovery or defense which might have been presented in the first proceeding. (*People v. Kidd,* 398 Ill. at 408, 75 N.E.2d at 853-54.) There is no dispute that the judgment entered in the city action was final and that the court had jurisdiction to render it. Further, as we indicated, the violations alleged are substantially similar in both cases, *i.e.,* causing or allowing air or atmospheric pollution as a consequence of the silicon tetrachloride leak. The slight difference in the language of the statutes does not change the nature of the cause of action for our purposes here. Also, for reasons analogous to those discussed earlier, both the city and Board proceedings involve the same parties or their privies. (See *Healy v. Deering,* 231 Ill. 423, 83 N.E.2d 226.) We disagree with the defendants' strenuous contention that the difference in remedy or amount of the penalties authorized in the city ordinance and the State statute prohibits the application of

res judicata, or compels the conclusion that the legislative purpose behind the Environmental Protection Act will be frustrated by barring the Board proceeding here. It cannot be emphasized too strongly that all of the issues regarding the storage-tank-leak incident could and should have been resolved in one action by the People of the State of Illinois. The same ultimate purpose that was sought by the city — the protection of the environment — is being sought by the defendants here. As we have said, multiple actions for the same pollution violation should therefore be discouraged, or consolidated in some manner by the State. Fairness and justice so dictate.

For the reasons given, the judgment of the circuit court is reversed and the cause remanded with directions to enter an order consistent with the views expressed herein.

Reversed and remanded.

DIERINGER, P.J., and JOHNSON, J., concur.

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