

OPINION AND DECREE  
OVERRULING DEMURRER

William R. Crum and Susan M. Crum,	"	No. 13,505 Equity
vs.	"	In the Circuit Court
	"	for Frederick County.
The Burgess and Commis- sioners of Middletown, a body corporate.	"	In Equity.
	"	

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The bill of complaint in this cause seeks to enjoin the Burgess and Commissioners of Middletown, a Municipal Corporation, from diverting the water from a certain spring through a four-inch pipe for the use of the town, thus allegedly impairing the usual flow of water by which plaintiffs' mill is powered to such an extent as to utterly destroy their premises as customarily used by them.

An order nisi was passed on the bill and the defendant filed an answer in which was incorporated a demurrer to the bill. The demurrer coming on to be heard was argued and submitted to the Court.

The causes of demurrer assigned are as follows:

- "a. That the Plaintiffs have a full and adequate remedy at law,
- b. That the Plaintiffs have not stated in their bill such a case entitles them to any relief in equity against the Defendant,
- c. That the bill is vague, general and indefinite, and lacking in facts sufficient to entitle the Plaintiffs the relief prayed."

As to cause "a", it is scarcely necessary in this State to cite authority to the effect that where title to property is not involved that the complainant is entitled to enjoin a trespass that goes to the destruction of his property in the character in which it has been held and enjoyed.

Oberheim vs. Reeside, 116 Md. 265, 275.

In the case of Mayor and Council of Baltimore vs. Appold, 42 Md. 442, 458, the Court said: "The jurisdiction of Courts of Equity in cases affecting the rights of riparian owners, is well established both in this country and in England, and rests upon the necessity of granting relief to prevent permanent and lasting injury; or where full and adequate relief cannot be had at law, or where it is necessary to prevent a multiplicity of suits, and vexatious litigation."

In the first case cited in defendant's brief, namely, Blaine vs. Brady, 64 Md. 373, in which an injunction was refused, the Court stated: "Such a case seems to us to differ widely and substantially, not only in facts but in principle from the - - - - - diverting of a watercourse from a mill, - - - - -. We are therefore clearly of opinion the complainant has failed to bring his case within that class of cases in which the extraordinary remedy by injunction ought to be applied."

In my judgment, the answers to causes "b" and "c" of the demurrer are found and fully set out in two Maryland Cases, viz: Mayor and Council of Baltimore vs. Appold, supra, which is cited with approval in Kelly vs. Nagle, 150 Md. 125, 137. In the first of these cases (Mayor, etc. vs. Appold) the Court in discussing apparently the same objections to the sufficiency of the allegations of the bill in that case which were urged in this case by Counsel for defendant in support of the demurrer, at page 458 states:

"Here the complainant alleges that he is credibly informed and believes that the introduction of the proposed additional quantity of water will cause the stream to overflow its banks, render valuelss his land, and cause great, continued and irreparable damage, etc."

"The averment that he is credibly informed and believes, together with the statement