[WRIT OF SUMMONS.] Printed by Wiley & Co., Baltimore.

CITY OF BALTIMORE, to wit:

THE STATE OF MARYLAND,

TO THE SHERIFF OF BALTIMORE CITY, GREETING:

You are hereby commanded to summon The Mayor and City Council of Baltimore

late of Baltimore City, to appear before the Court of Common Pleas, to be held at the Court House, in the same city, on the second Monday in April ~~next~~ Mat, to answer an action at the suit of Eleanora B. Daniels Administratrix of John D. Daniels Dr

And have you then and there this writ:

WITNESS, the Honorable GEORGE WILLIAM BROWN, Chief Judge of the Supreme Bench of Baltimore City, the 11 day of January in the year eighteen hundred and seventy five

Issued 9 day of April 1875

J. Freeman Rasin
Clerk

No. 129

To April Term, 1875

Eleanora B. Danels
Administratrix of
John D. Danels

vs.

The Mayor & City
Council of Baltimore

Action, copy of nar and notice to plead to be served on defendant.

Summoned Copy left
Augustus Albert
Sheriff

W. P. & W. H. Whyte

(Webers)

Service or writing admission
[illegible]
[illegible]
[illegible]
Sec 10 75

Baltimore City, S.S.

The Mayor & City Council of Baltimore have summoned to answer unto Eleanora B. Daniels, Administratrix of all and singular the goods and chattels, rights & credits, which were of John B. Daniels, Junior, late of Baltimore City, deceased, in a Plea of Trespass on the Case &c

That whereas John B. Daniels Junior, in his life time, was possessed, ~~[illegible]~~ of certain property, situate on Lombard Street, in said City of Baltimore, and bounding on Jones' Falls, and being so possessed had, in compliance with law, built and put in good order and condition, a Stone wall protecting his own and the adjacent property from the waters of the said Jones' Falls, and being so possessed, the authorities of Baltimore

City were engaged, in the beginning
of the month of January A.D. 1870,
in cleaning out and dredging the said
Falls with machines, immediately
adjacent to the said property of the Plaintiff's intestate
and while so engaged, the agents of the
defendant aforesaid were duly notified &
warned by the Plaintiff's intestate, that
they were digging too near the wall
aforesaid, notwithstanding which, they
continued dredging and cleaning so near
to the said wall, that the same fell into
the bed of Jones Falls (carrying the with some three hundred cords of wood) - That subsequently
the defendant, through its agents,
removed the stones, which had been in
the wall aforesaid, from the bed of the
Falls aforesaid, (with large amounts of dirt) and placed them on the
lot of the plaintiff's intestate aforesaid,

and has left the said Stones and dirt upon the lot aforesaid, incumbering it so as to render it utterly useless and valueless to the plaintiff intestate for the last five years & though often requested to remove said Stone & dirt & to rebuild the said Stone wall, the defendant has wholly neglected and refused so to do, so that the plaintiff intestate (not only lost the wood aforesaid, but) during all that time, lost and was deprived of the use, benefit & advantage of the said lot of ground & was prevented from building upon or in any way improving the same, to wit at the city aforesaid, to the damage of the said plaintiff as administrative in the sum of Twelve thousand dollars, and therefore she brings suit &c.

Wm Pinkney Whyte
Wm Hollingsworth Whyte
Attys for Pl'ff

3/.15/21

(Retire) 129 1952
up S

Eleanora B Danels

Admx of J D Danels Jr

v

The Mayor & City
Council of Baltimore

Mr Rasin

File this to the

April Rule Day 75

W P W &
W H W } for Pff

retire
1878

fd April 9 1875

Eleanora B. Daniels
Adm'trx etc

The M & C of Balto -

In the Court of
Common Pleas -

And the
said defendant by Albert
Ritchie its Attorney says
1st That it did not commit
the wrong alleged -
2d That the alleged cause of
action did not accrue within
three years prior to the institution
of this suit -

Albert Ritchie
for M & C

129

Common Pleas

Daniels

Cadoff

v

Mr & C of Balto.

Pleas

Mr Rasin

Plea of

e R -

Copy served this

22nd day of April 1875

W H Whyte

fd April 22d 1875

Daniels

vs.

The Mayor & City Council of Baltimore

In the Court of Common Pleas.

January Term, 1878

(1952)

To Thos. W. Hall Esquire

~~City~~ Atty for Deft.

Take notice, that in accordance with the 29th rule of the Court of Common Pleas of Baltimore City, the Plaintiff *will call this case for trial on the first opportunity which shall occur after the expiration of five days from the date of this notice, which will be on the* 20th ~~19th~~ *day of* March 1878

Date Baltimore, March 14th 1878

Wm Pinkney White
Joseph Whyte
Plffs Atty

Service admitted the 14 *day of* March 1878

Thos. W. Hall Jr. for J. C. Rose
Deffs Atty

up 5 Oct 1952

Daniels

vs

Mayor &
C.C. of Baltimore

Mr Clerk

Please file &c

WPW

DW

Pltff's Atty

Eleanor B Wanels
Executrix &c
v
The Mayor & City Council
of Baltimore
In the County Common Pleas &c

And the said Plaintiff saith that
she by reason of any thing by the
said defendants in the second plea
above alleged, ought not to be
barred from having and maintaining
her action aforesaid against them,
because she saith that the nuisance
complained of in her declaration
is and has been a continuing
nuisance and injury to the property
of her testator down to the time
of the institution of this suit.
2ndly, Because there have been
continued negotiations for the
payment of the damages sustained
by her testator, between the plaintiff
and the defendants through its
agents down to the period of the
bringing of this suit.

Fourth Because the said cause of action did accrue within three years prior to the institution of this suit.

Wm Pinkney Whyte
W H Whyte } for Pltff

To Thos W Hall Esq Defendants Attorney
Sir. Please take notice that a rule has been entered in the Clerks Office of the County Common Pleas requiring you to reply to the above replication within fifteen days after service of a copy of the same & of this notice upon you.

Wm Pinkney Whyte } for
W. H. Whyte } Pltff

The Mayor & City Council of Baltimore
vs
Eleanora B. Daniel
Admx of John D. Daniel Jr.

} In the Court of Common Pleas.

And the said defendant as to the said first replication of the said plaintiff to the said second plea of the said defendant, saith that the said plaintiff ought not by reason of anything by her in the said replication alleged, to have or maintain her aforesaid action against the said defendant, because the said defendant saith that the said nuisance complained of in the said plaintiff's declaration hath not been a continuing nuisance and injury to the property of the plaintiff's intestate down to the institution of this suit, nor within three years prior to the institution of the same, as in said replication alleged.

And as to the second replication of the said plaintiff to the second plea of the said defendant, the said defendant saith that the said replication & the matter therein contained in manner & form as the same are therein

pleaded, or not sufficient in law for
her, the said plaintiff to have or maintain
her aforesaid action against the said
defendant, and the said defendant
is ready to verify
And as to the third replication of the
said plaintiff to the second plea of the
defendant, the defendant joins issue therein

J. W. Hall,
Atty Solicitor
for Defdt.

Ct. of Common Pleas

Mayor & C. C. of Balto

ats

Eleanor B. Daniels
Admx &

Rejoinder

Jno Rasin.
Please file &
G.W. Hall C.S.
for Dfdt

Service admitted this
8th day of April, AD 1878.
Wm Berkeley Whyte

fd April 7-1878

195 — Sw

DOCKET No.

Court of Common Pleas.

Eleanor B Daniels

Mo D Daniels admx of

vs

M & C C of B

Jury Sworn, April 8th — 1878.

		Foreman.
1	Chas H Reeves	X
2	Chas. C. Saffell,	X
3	Charles H. Teal,	X
4	Basil S Wellener,	X
	~~Mark O. Schriver,~~	
	~~Chas. H. Reeves,~~ F	
	~~Jos. W. Walker,~~	
	~~Adolphus C. Schaeffer~~	
5	Thos A Almyst ~~David J. Welsh,~~	X
	~~Wm H. Cunningham~~	
	~~Alexander Reaney,~~	
6	Walter Reese,	X
7	Jas. J. Ryan,	X
	~~Wm. H. Ward,~~	
8	John Russell,	X
9	Littleton S. Read,	X
10	Thos. A. Reid,	X
	~~Geo. W. Ward,~~	
	~~Jas. Reilley,~~	
	~~Wm P. Sharretts~~	
11	Lester H. Latham	X
	~~Wm H Weaver~~	
	~~O W Cooke~~	
12	Thos. Shryock	X
	~~Chas H Reeves~~	

Tuesday Juror Shryock excused by consent and grant to recall the verdict of the 11 — April 9 — 1878 Juror Russell excused in the same way

~~Ap 9/78~~ ~~Prayers filed~~ — P.

Juror withdrawn & case con with leave to amend.

DOCKET No. _____

Court of Common Pleas.

_____

_____

vs.

_____

_____

Jury Sworn, _____ *1878.*

_____ *Foreman.*

Chas. C. Saffell,
Charles H. Teal,
Basil S Wellener,
~~*Mark O. Schriver,*~~
Chas. H. Reeves,
~~*Jos. W. Walker,*~~
Adolphus C. Schaeffer
David J. Welsh,
~~*Wm H. Cunningham*~~
Alexander Reaney,
Walter Reese,
Jas. J. Ryan,
~~*Wm. H. Ward,*~~
John Russell,
Littleton S. Read,
Thos. A. Reid,
~~*Geo. W. Ward,*~~
Jas. Reilley,
~~*Wm. P. Sharretts*~~
Lester H. Latham
Wm H Weaver
~~O W Cooke~~
Thos. S Shryock
~~Chas H Weeves~~

Baltimore City fct.

The Mayor & City Council of Baltimore were summoned to answer unto Cleanora B. Daniels, Administratrix of all and singular the goods and chattels, rights & credits, which were of John W. Daniels, Jr. late of Baltimore City, deceased, in a plea of trespass on the case &c. &c.

That whereas John W. Daniels, Junior in his life time, was possessed of certain property situate on Lombard Street, in said City of Baltimore, and bounding on Jones' Falls, and being so possessed had in complained with law, built and put in good order and condition a stone wall, protecting his own and the adjacent property, from the waters of the said Falls and being so possessed, the authorities of Baltimore City were engaged in the beginning of the month of January A.D. 1870 in cleaning out and dredging the said Falls with mud machines immediately adjacent to the said property of the Plaintiff's intestate, and while so engaged, the agents of the Defendant were duly notified and warned by the Plaintiff's intestate. That they were digging too near the wall aforesaid in front of his landing which they continued dredging and cleaning so near to the

said wall, that the same fell into the bed of Jones Falls, carrying therewith large quantities of earth.

That, subsequently, the defendants through their agents, removed the stones which had been in the wall aforesaid, from the bed of the Falls and placed them on the large amount of dirt upon the said lot of the plaintiff's intestate and has left the stones and dirt aforesaid upon the lot aforesaid, for more than ~~[illegible]~~ five years, rendering it useless & valueless to the Plaintiff's intestate, and though often requested during the last five years to remove the said stone and dirt and rebuild the said stonewall, the defendants has wholly neglected and refused so to do, so that during all that time the Plaintiff's intestate lost and was deprived of the use benefit and advantage of the said lot of ground and was prevented from building upon or in any way improving the same, to wit, at the City aforesaid, to the great damage of the Plaintiff's intestate.

whatever for the injury occasioned to the said Plaintiff's intestate by reason of the unnecessary delay and procrastination on the part of the defendant in the abandonment of the improvement and repeal of the ordinance aforesaid, so by the Plaintiff's intestate suffered.

And the Plaintiff's intestate says, that by reason of the wrong and injury aforesaid to him done, & the unlawful actings and doings, delays and procrastinations of the defendant in the premises, she hath had damages and claims as administrative aforesaid, the sum of $12.000. and, therefore, she brings suit &c.

Wm P McKnee Whyte
Joseph Whyte } For Pltt

To the Defendants Attorney
Thos W Hall Esq Cty Solicitor

Sir: Take Notice That a rule has been laid upon you in the Court of Common Pleas, requiring you to plead to the above amended

declaration within fifteen days
after service of a copy thereof
& of this notice upon you.

Wm Pinkney Whyte
Joseph Whyte } Jn Pff

And also for that the defendant in January 1873, being lawfully authorised to make and engaged in making a certain public improvement of great importance, called the "Jones' Falls Improvement" within its corporate limits and having passed and promulgated a certain ordinance therefor, defining the course and extent of said improvement, embracing therein certain valuable real estate of the Plaintiff's intestate, on Lombard Street in said City, then and for a long time therefore by the intestate, John D Daniels Jr, used as a Brewery and Malt House, to his great gain and profit, the said defendant thereupon then and there condemn the said property of the Plaintiff's intestate under the said ordinance, and notify the Plaintiff's intestate, that it had condemned and would require the immediate surrender of the said property, for the purpose of said improvement & did request and direct him to wind up and cease the prosecution of his business, so as

Upd - 1952

Eleanora ~~B Hanel~~

Adm'r &c &c

Mayor & City Council

of Baltimore

Amended nast

Mr Clerk

File this by

W Pinkney Whyte

J Whyte Jr Pff

July 10th 1878

Service of Copy

admitted

J.W. Hall C.S.

Atty for Mayor

& C.C.

Jd July - 12. 1878

The Mayor & City Council of Baltimore
vs
Eleanora B. Daniels
Administratrix of
John V. Daniels Jr. deceased

In the Court of Common Pleas of Baltimore City.

The defendant by Thomas W. Hall its attorney for its first plea to the first count of the plaintiff's said amended declaration says

1 that the alleged cause of action did not accrue within three years before this suit.

And for a second plea to the said first count of the said amended declaration the

2 defendant says that it did not commit the wrong therein alleged.

And for plea to the second count of the said amended declaration the defendant says

3 that the cause of action alleged in said second count did not accrue within three years before this suit.

And for a second plea to the said second

4 count of the said amended declaration the defendant

1952 Stett

Daniels &c
vs
Mayor & Cle.

Common Pleas

It is agreed this case shall be set for trial November 1st 1878

Wm Pinkney Whyte
Joseph Whyte
Plffs Attys

T.W. Hall
Deft Atty

up — 1952. Stet Docket

The Mayor & City
Council of Baltimore
ats
Eleanora B. Daniels
Admx.

Pleas

Mr. Rasin
Clerk of Court of
Common Pleas of Balto
City.
Please file these pleas
J. W. Hall
atty for defendant
Service of copy admitted —
Wm Pinkney Whyte
Pl. 24 Feb 1878 [illegible]

says that it did not commit the
wrong therein alleged —
J. W. Hall C. S.
Atty for Deft.

1952

DOCKET No.

Court of Common Pleas.

Eleanor A Daniels
adm'x

vs.

M & C. C. of B

Jury Sworn, Nov 27 1878.

1 Sylvester Clifford Foreman.

Jos Tevis,
Pat'k Finnan,
2 Jno. N. Hanson,
~~J. Wesley Harper,~~
3 Fredk. Wartman,
~~W. R. Patterson,~~
Jas B. Mannar,
Dan'l McWilliams,
~~Wm. H. Leonard,~~
~~Geo. M. Davidson,~~
Sylvester Clifford,
4 John Guyton,
5 Columbus Riley,
6 Owen Burgess.
7 John Stevens,
8 Francis Balkman,
9 Sam'l M. Linzey,
10 A. J. Stout,
~~Andrew J. Flaherty~~
11 Marion Fosbenner.
12 Jas Dooley
~~Wm. H. Carter~~

Daniels &c

vs

Mayor & Cle

of Balto.

Agreement

for trial

Nov 1 1878

Mr Clerk

Please file &c

W Pinkney Whyte

Joseph Whyte

Pltff Atty^s

Nov 16. 1878

Eleanor B Hanely
~~[illegible]~~ &c
v
The Mayor & City Council
of Berkeley

In Court of Common Pleas &c

And the said Plaintiff saith that she, by reason of any thing by the said defendant in its first plea above alleged, ought not to be barred from having and maintaining her action aforesaid against it because she saith that the nuisance complained of in her declaration is and has been a continuing nuisance and injury to the property of her ~~[illegible]~~ intestate down to the time of the institution of this suit. And as to the ~~second~~ first plea to the second count of the plaintiff declaration the plaintiff says that the alleged cause of action did accrue within three years.

W P Mulberry Whyte
J Whyte
Sm P.ff

1952

DOCKET No. _____

Court of Common Pleas.

Elenora B Daniels
Adm't
Jno D Daniels 1/3 —

M & C C of B

Jury Sworn, Nov 27 1878.

1 Sylvester Clifford Foreman.

Jos Tevis,
~~Pat'k Finnan,~~
2 Jno. N. Hanson,
~~J. Wesley Harper,~~
3 Fredk. Wartman,
W. R. Patterson,
~~Jas B. Mannar,~~
~~Dan'l McWilliams,~~
~~Wm. H. Leonard,~~
Geo. M Davidson,
~~Sylvester Clifford,~~
4 John Guyton,
5 Columbus Riley,
6 Owen Burgess.
7 John Stevens,
8 Francis Balkman,
9 Sam'l M. Linzey,
10 A. J. Stout,
~~Andrew J. Flaherty~~
11 Marion Fosbenner.
12 Jas Dooley
~~Wm H Carter~~

Dec 2 — Pryor for P — ~~5~~
D — ~~3~~
Sandy [illegible] for Deptn

(1)

A B Danely
Exr &c
v
Mayor of City
Council &c
McClure
Eile Thrse
Repn to 1st plea
to 1st Count & 2nd
plea to 2d Count
of Amended Narr
W. P. W.

fd Nov 27. 1878

The Mayor & City Council of Baltimore
vs
Eleanor B. Daniels, Admx of John D. Daniels

} In the Court of Common Pleas.

And the said defendant in the plaintiff's replication to the first plea to the first count of the plaintiff's declaration, says that the said plaintiff ought not by reason of anything by her said replication alleged, to have or maintain her aforesaid action against this defendant, because it says that the nuisance complained of in said declaration has not been a continuing nuisance injuring to the property of the pltiffs intestate down to the initiation of this suit, nor within three years prior to the same.

G. W. Hall
Def'ts Atty.

2

Mayor & City Council
Balto
ats
Eleanor B. Daniels
Admx &c

Rejoinder

Mr Rasin
File Mintz
joinder to pltffs
replication to Dfdts
1st plea to Pltffs
1st count.
J. W. Hall
Dfdt atty

fd. Nov 27 1878

Defdts 1st Prayer

The Defendant by its Counsel prays the Court to instruct the Jury that there is no sufficient legal evidence in the Cause to remove the statutory bar of limitation pleaded by the Defendant; that their verdict must be for the Defendant.

Granted

2

Deft's 2nd Prayer -

The Defendant by its counsel prays the Court to instruct the Jury, as to the issue joined upon the first count in the plaintiff's declaration, that there is no such evidence in the cause of continuous trespass or nuisance committed by the Defendant, its Officers, servants or agents, upon the property of the plaintiff's intestate, as to remove the statutory bar of limitations pleaded by the Defendant, & that ~~those~~ for the wrong & injury complained of in said first count, the plaintiff is not entitled to recover -

granted

Defdt's 3rd Prayer

The Defendant, by its counsel, prays the Court to instruct the jury that if they shall find that the proceedings offered in evidence were taken in regard to the condemnation of a portion of the premises of the pltff's intestate, for the purpose of widening & improving Howard Street, in pursuance of authority conferred upon the Mayor & City Council of Baltimore, for that purpose, by act of the General Assembly, approved March 23d 1870, & of the ordinances of said Mayor & City Council passed in pursuance of said Acts which said ordinances were afterwards repealed May 27, 1874, & the plan of said proposed improvement abandoned, and said condemnation proceedings never carried out, that the Defendant acquired no title to or control over said premises by virtue of said proceedings or any of them, and the plaintiff's intestate had full right & liberty to use & enjoy said premises, as if said proceedings had never taken place, & that if said plaintiff or her intestate failed or neglected to use & enjoy the same, because of the pendency of said proceedings, and sustained loss or damage thereby, that the plaintiff is not entitled to recover for such loss or damage from the defendant in this action.

Granted

DPG

fr Dec 2. 1878

If the Jury shall find from the evidence in this case, that the plaintiff's intestate John W. Kanels, was in possession of the property fronting on Jones Falls & bounded on the North by Lombard Street & upon the South by Granby Street in Baltimore, as stated in the evidence, and that he and his partner had put in repair and rebuilt the wall on Jones' Falls prior to 1870, as referred to in the Evidence, in compliance with the ordinances of the City, and that in the month of January 1870, the City authorities were dredging the said Falls and deepening the same, and while so dredging, that the persons in charge of the machines doing said work, dug below the foundation of said wall and too near the same, and that said work was so carelessly and negligently done, that large portions of said wall fell in, and that, afterwards, within a few days, the authorities of the City

things their agents had the Stone,
of which the said Wall was built,
taken from the place where the same
had fallen and piled the said
Stone, with a large quantity of dirt,
upon the said lot adjacent to said
wall, preparatory to rebuilding the
same, and shall further show that
after long and unnecessary delays in regard to the
improvements of said Jones Falls,
and keeping the said lot so so
cumbered by the said Stone and
dirt, the said Mayor & City Council
of Baltimore rebuilt the said
Wall in the year 1875 and thereupon their agents and
contractors used the said Stone in
the rebuilding of said Wall, and
that during the three years prior to
institution of this suit, the plaintiff's
intestate and this plaintiff were
prevented from using or occupying,
selling or leasing the said property
by reason of the encumbering of the same
~~during the said period~~

and of the destruction of the wall upon the said Falls, then the plaintiff is entitled to recover such damages, as will compensate for the loss consequent upon covering with dirt & stone by the agents of the defendant the said lot in its unwalled and exposed condition, as mentioned in the evidence.

Refused

Sr. Pl H Prayer

If the Jury shall find the facts set forth in the first prayer of the plaintiffs in regard to the falling of the wall in said prayer mentioned and the piling of the stones & dirt upon the lot aforesaid and that the defendant allowed the wall to remain unrepaired & the stones & dirt upon said lot ~~the same~~ to remain ~~thereupon~~ down to the period of the institution of this suit, such obstruction to the use ~~and~~ of the said lot by the plaintiff and her intestate is a continuing nuisance for which the plaintiff may recover damages for a period not exceeding three years ~~[illegible]~~ prior to the institution of this suit —

Refused

2.d Pl[illegible] Prayer

If the Jury shall find from the Evidence in this case, that the plaintiff's intestate, John D. Daniels, was in the possession of the property fronting on Jones' Falls & extending from Lombard Street to Stanly Street, as referred to in the Evidence, and that he and his partner had put in repair and rebuilt the wall on Jones Falls prior to the year 1870, as referred to in the Evidence, in compliance with the ordinances of the City of Baltimore and that in the months of January 1870, the City authorities were dredging the said Falls and deepening the same, and that, while so dredging, the persons employed by the said Corporation of Baltimore, in charge of the dredging machines doing said work, dug below the foundations of said wall and too near the same, and that the said workmen so negligently and carelessly done that large portions of said wall fell in and exposed the said property to the danger of overflow from the said Falls; and shall further find, that, afterwards, within a few days the authorities of said City, by its agents, entered on

to in the Evidence, until the month of July in the year 1875, when they rebuilt and replaced the said wall so thrown down, and thus deprived the plaintiff's intestate of the use (& enjoyment) of the said lot, by way of leave or occupation thereof from the month of January 1870, down to the month day of April 1875 (the date of the institution of this suit) then the plaintiff is entitled to recover, upon the second count of the declaration, such damages as will compensate for the loss consequent upon the conduct of the City authorities in so entering upon, encumbering and occupying the said lot, as mentioned in the Evidence.

Regulated

3rd Pl. Proyer

PPR

N Dec 2d. 1878

BALTIMORE CITY COURT OF COMMON PLEAS (Court Papers) Danels v. Mayor & City Council, 1875 [MSA T508-68, 3/1/5/21].
Save as pdf called msa_sc5458_51_4675-2