

Thomas McCoy

vs

The President & Directors
of the Baltimore Water
Company & others

In Chancery

December Term 1823

The Baltimore Water Company desirous of improving certain lots of ground belonging to them, on the 22nd of Jan'y 1817, entered into articles of association with the other defendants or some of them, which were reduced to writing and signed and sealed by the respective parties; these articles recite, "That Whereas the Baltimore Water Company have laid out on the West side of Calvert Street, between Centre & Johns Streets, twelve lots for the purpose of improvements, and have agreed to lease the said lots at the rate of \$6 per foot front on Calvert Street per annum; after describing the extent of the lots, they agreed, "to join any Company of Gentlemen to build on the said Lots, erecting at their expense two houses out of the two lots, and giving the privilege of building their houses to the gentlemen composing said Company;" the articles then stipulate, that, each of the persons, who executed the instrument, associates themselves with the aforesaid Water Company, in the improvement of said lots, and to join each of us, in the erection of the number of Houses, attached to our respective names, according to the design of Robert Mills architect and president of said Company; Second

For the purpose of carrying their design into execution, certain articles are inserted by which they were to be governed, to wit - First - "All the Houses shall be covered in, without reference to individual property, but as the joint property of the Company, ~~but as the joint property of the Company;~~" Second, when the range of building is under roof, a division of them shall take place; and the manner of effecting the division is precisely pointed out. - Third, when the houses are divided, the holders of each shall be at liberty to finish the

"said bill of complaint, for such digging, filling in, and labour,
"is a just, and fair compensation therefor, these defendants cannot
"admit, and therefore, require that the complainant prove
"the same, to the satisfaction of the Court".

In the answer of the other defendants, to the claim of \$1500,
after admitting the articles of Association, and the appoint-
ing of Robert Mills "an Architect of the buildings with
power to form such contracts, as should be absolutely, and
essentially and necessarily connected with the erection of
the same, but, what contract might have been formed,
"or, whether any contract at all, they are totally ignorant.
They express their surprise, that the bill, is not more explicit
upon this material part of the case, in setting forth more
"particulars, the nature, and terms of the contract". And this
is said, because it is known to be a ~~contract~~ fact, that
"the stone, so alleged to have been furnished, was extracted
"from the quarry of Robert Mills, and was considered by
"them, as being that portion of materials which said Mills
"was to furnish"; they deny that the account exhibited with
the bill, is correct - After the buildings were under roof,
they state that a Committee was appointed to adjust the
accounts, who advertised that all accounts, against
what was termed the building Company, should be produced.
The complainant produced an account of diverse char-
=ges, "amongst which, was a charge of eighteen hundred doll-
=ars, for cutting down John Street, which they refused to
pay; and they aver, that this charge, so refused to be paid,
"is now by a subtle ruse, and evasion, attempted to be forced
"on them, under a different name (as if the complainant
"was sensible, that the charge, in its original shape, and
"which they allege was the correct one, could not be main-
"tained in a court of equity,) and now appears as a char-
=ge of eighteen hundred dollars for proportion of filling up
lots &c." - They ^{aver,} that they never delegated any power
to

the interior of them, as they may see proper. - The fourth article, is, that the houses shall be finished, with all despatch, and that each individual, shall use all exertion, to accomplish in proper time, as the nature of the work may require, the part allotted for him to perform; fifth, "for the ~~execution~~^{rection} of the twelve buildings, there shall be two carpenters engaged, between whom, the carpenters work, shall be equally divided;" - The sixth article is, that the Water Company shall provide funds for the two houses. - The seventh article, provides for the appropriation of the money, and is as follows, "The manner and proportion in which the monies are to be divided during the progress of the building, will be as follows. viz. To the two carpenters about \$7500 - To the lumber merchant about \$5000, to the Brick Maker about \$3000, to contingent fund \$500; making the entire sum of \$16,000. In the month of December, a provision is to be made, to pay the lumber merchant a further sum of two thousand dollars, the balance, in April Eighteen hundred and eighteen" - The eighth article, regulates, the manner of estimating the value of the material, furnished - The ninth, "a Director of the works, and Treasurer shall be appointed, whose business it shall be to examine and direct the progress of the buildings, obtain and pay all such monies as may be necessary, from contracts, and keep the accounts of the Company;" -

Robert Mills, the President of the Water Company for them, subscribes for two Houses; and he is by the articles themselves appointed; "Our Architect and Treasurer for the above mentioned Houses"

The distribution of the Houses between the persons composing the Company, follows - James C. Neilson, James Hinds, Moses Hinds, Thomas Towson, Robert Mills, Charles Bonstable, John Reddy, Peter Masow and John Rodgers, each, one; Charles Hammed, one half, Hugh Bomer one fourth
Dew

Dew & Grimes & Barnard & Williams one fourth, these, together with the two, on the part of the water company, make the twelve houses contemplated - The buildings appear, all to have been erected - The site on which they were to be placed, was low, miry ground, and required a large quantity of earth, to be brought from some other place, previous to the erection of the buildings: The complainant appears to have undertaken to dig the cellars, to furnish the stone necessary for the foundation and cellar walls, and also to raise the ground by bringing dirt from a different place: The whole of the evidence in the cause proves, that he did dig the cellars, furnish the stone, and raise the ground. To recover compensation for his work and labour, as well as, for the stone furnished, is the object of the present bill -

The original articles of association are not produced, a copy of them is exhibited, and forms a part of the bill, and are not contested by the answers - William Stewart, who is made a defendant, never signed the articles of association, nor, supposing the complainant entitled to relief, can resort be had to him - James Barnard, and Charles Williams, who are made defendants by an amended bill, deny that they ever were parties to the association, or in any way connected as partners with Dew & Grimes, nor is there the least evidence, to implicate them, in the transaction - The Baltimore water company as well as the other defendants, admit the articles of association. The water company, in their answer, admit, that, the complainant "did supply certain stone, and work, and labour, in, and upon said lots of ground and houses thereon; but, to what amount, these defendants do not, and cannot accurately state or set forth, nor do these defendants know the terms of the contract." They admit also, "that the said lots were filled in, and made level, and prepared to build upon, and improved by the complainant". But whether a charge of eighteen hundred dollars mentioned in the said complainant's

said

"said bill of complaint, for such digging, filling in, and labour,
"is a just, and fair compensation therefor, these defendants cannot
"admit, and therefore, require that the complainant prove
"the same, to the satisfaction of the Court".

In the answer of the other defendants, to the claims of \$1500,
after admitting the articles of Association, and the appoint-
ing of Robert Mills "an Architect of the buildings with
"power to form such contracts, as should be absolutely, and
"essentially and necessarily connected with the erection of
"the Dance, but, what contract might have been formed,
"or, whether any contract at all, they are totally ignorant.
They express their surprise, that the bill, is not more explicit
upon this material part of the case, in setting forth more
"particularly, the nature, and terms of the contract". And this
is said, because it is known to be a ~~contract~~ fact, that
"the stone, so alledged to have been furnished, was extracted
"from the quarry of Robert Mills, and was considered by
"them, as being that portion of materials which said Mills
"was to furnish". They deny that the account exhibits with
the bill, is correct - after the buildings were under roof,
they state that a Committee was appointed to adjust the
accounts, who advertised that all accounts, against
what was termed the building company, should be produced,
The complainant produced an account of diverse char-
=ges, "amongst which, was a charge of eighteen hundred doll-
=ars, for cutting down John Street, which they refused to
pay; and they aver, that this charge, so refused to be paid,
"is now by a subtle ruse, and evasion, attempted to be forced
"on them, under a different name (as if the complainant
"was sensible, that the charge, in its original shape, and
"which they allege was the correct one, could not be main-
"tained in a court of equity,) and now appears as a char-
=ge of eighteen hundred dollars for proportion of filling up
lots &c." - They ^{avow,} that they never delegated any power
to

"to any person, whatever, to form contracts for cutting down
"streets" - and without such authority, they are at a loss to ima-
gine, how, they, or their property, can be held liable -

On the 24th of April last, an interlocutory decree passed, direct-
ing an account to be stated by the Auditor: in virtue of that
decree, on the 7th of July following, an account is stated, inclu-
ding interest to that date, making seven thousand two hund-
red and eighty nine dollars and seventeen cents due to the
complainant - The defendants except to the report, because,
as they allege, it is contrary to the evidence in the cause, and
defective in point of Law and fact: - The cause has been
heard on the exceptions, and is now ready for final decree -
The first question arising in the case, is whether the account as
stated by the Auditor, is supported by the evidence -

Second, if it is, can the complainant obtain relief on the
present bill

Third, against whom is the decree to operate, and to what
extent -

It is incontrovertibly proved, that Robert Mills,
the Architect, and Manager, came to a settlement with the
complainant, and stated an account, including interest to the
1st of August 1818, making the sum due to be \$5650

The account is signed by Mills, and the whole is in his handwri-
ting. (See Exhibit B which is also distinguished by No. 8) The auditor's sta-
tement, is predicated on this account, which consists, of four items
to wit "Bill of Stone \$2023-74 - Balance of bill of digging \$1124
Bill of sand hauling and digging \$575 - Proportion of filling lots
&c: \$1800;" the interest on each of those items makes the five
thousand six hundred and fifty dollars -

Although the witnesses prove that the work was done, and
the materials furnished, yet, except as to the stone, and
filling up the ground, they present no data, by which, the
sum which ought to be paid for the services can be ascertained.
To me, it is matter of great surprise, that more precise
evidence, has not been produced, on the part of the defendants -
altho. it may have been impracticable, to ascertain the
number

number of Cart loads of dirt, which was carried from John Street, to fill up the lots, yet, as it ^{was, convenient} easy to come at the number of cubic yards, ^{which were paid for from the} & "dirt taken from the cellars," it is to be presumed, it was equally in their power, by measurement, to come at the number of cubic yards of filling up, with the dirt, brought from John Street - The only witness, who measured the cubic yards, is Frederick Johnson, the Stone Mason, who built the cellar walls; by his measurement, there were 1569 $\frac{1}{2}$ cubic yards, made by the dirt, taken from the cellars: and he "thinks" all that was filled up could not exceed 2000 - The same witness proves, that there was, according to Masons measurement, 982 $\frac{1}{2}$ perches, in the foundation and cellar walls, of stone, and about three perches of stone left at the building - In this, he is confirmed by the evidence of William Winchester, who measured the walls making the same number of perches: for that quantity of stone, at the price it was proved to be worth, the complainant was entitled to \$2338.95 - but in the account, as made out by Mills, the manager, only \$2023.74 is charged, which is \$315.21. less, than the number of perches of stone were worth, at \$2.37 $\frac{1}{2}$ per perch.

Altho, every exertion was made to come at the real number of perches by measuring, yet, as it was extremely difficult, if not impracticable, to arrive at the precise number of perches of stone, which was carried to the building, it is to be presumed, that the person who undertook the delivery, and the Superintendent of the works, had the most accurate knowledge; and as they fixed on the sum due for this part of the complainants undertaking, it ought ^{not} to be disturbed. - The evidence in the cause proves most clearly, that a large portion of the dirt, dug from John Street, was carried to fill up the lots of the Water Company; but the actual quantity, does not appear from the testimony - except the evidence of Johnson, (if evidence it can be termed) that he "thinks" they (that is the number of cubic yards,) could not exceed 2000, we have not the least data by which to arrive at the proper compensation; not so, it may be supposed, was the

Situation

situation of the workman, and, his employer, the person selected by the whole concern, to superintend the works, to contract for the work, and materials: he sets down at \$1800 the compensation for the "proportion of filling up lots &c"

I have remarked, that no data was given by the will ~~= refers to~~ to arrive at the number of cubic yards of dirt, brought from John Street; but, from the memo-
= randa, made by Mills, on the account stated by him, against the Calvert Street Houses' & Water Company "for John Street," it would appear, that the Complainant, for digging, and carrying the dirt from John Street, was entitled to \$4350. from the Building Company, and Water Company united; of which sum, the Water Company alone, was to pay \$2550 and the Companies united, were to pay the sum of \$1800, which, is the amount charged in the account.

It is alleged in the answer of the defendants, that they never gave power, to any one, to bind them, to pay for cutting down streets; but, that all the power given to the Superintendant was, "to form such contracts as should be absolutely indispensible, and essentially and necessarily connected with the erection of the Houses." From the evidence, it is most manifest, that it was indispensable to raise the ground, before the buildings could be erected, and of course, according to the defendants own exposition of the authority reposed in the Superintendant, he was authorized to contract for bringing dirt to the lots: and it was unimportant, whence it was brought, except as regarded the expense: and it is believed, that it was more to their interest, to have it brought from an adjoining street, than from any other place -

On the whole, I see no reason for rejecting the statement made by the Manager (who was himself one of the company) and must give to it, its full effect, the exceptions, therefore, taken to the Auditor's Report, are overruled, and the report is hereby ratified and confirmed. In regard to the
record

second subject. In ancient times, bodies corporate, could only act by and under their corporate seals: yet, for sake of convenience the technical rule was relaxed, and engagements made by them, within their legitimate powers, were binding, and might be enforced at Law, and in Equity - All contracts made by their authorized agent, within the pale of his authority, were binding, and all duties imposed on them, and all benefits conferred at their request, raised implied promises, which could be enforced by judicial proceedings.

These principles are clearly established in the case of *The Bank of Columbia vs Pattersons Admrs.* 7 Cranch 219. where the English authorities on the subject are referred to - In the present instance, there can be no question, but, that the work, and labour, and materials, were obtained under a contract, express or implied, with a duly authorized agent, and came within the scope of his authority: without them, the whole scheme must have failed, and, to use the language of the answer, they were, "absolutely indispensable, and essentially and necessarily connected with the erection of the houses!"

As the interest of the parties, in the houses and lots, are unequal, justice and equity demand, that the money due to the complainant, be paid by them, in proportion to their respective interests, if payment can be so obtained, if not, as the work labour, and materials, were applied to that part of the undertaking, in which, as partners, they had a joint interest, should any one, or more of them, fail to pay, the sum decreed to be paid, by him, or them, then the whole of the partnership property should be liable; and that, being inadequate, their individual property, except so far as relates to the individual property of the members of the corporation, known by the name of "The President and Directors of the Baltimore Water Company," which by the act of incorporation is exempted

exempted from their corporate contracts; and except also, those proportions of the Complainants demand, which ought to have been paid by the parties, whose deaths have been suggested, and whose representatives, the complainant has not brought before the court.

It is therefore this fourteenth day of February, eighteen hundred and Twenty four, by John Johnson Chancellor, and by the authority of this court, Adjudged, Ordered, and Decreed, that the Bill as against Robert Mills, be taken pro Confesso, and that unless the defendants, shall pay to the Complainant the sum of seven thousand, Two hundred and eighty nine Dollars and seventeen cents, with Interest on five Thousand five hundred and thirty seven Dollars and seventy four cents, a part thereof, from the 7th of July 1823. on or before the 14th of March next, or bring the same into this court, to be paid to him, together with the Costs of this suit, amounting as taxed by the Register to

that the property of the Corporation known by the appellation of "The President and Directors of the Baltimore Water Company" as well as, the property on which the twelve houses in those proceedings named are erected, that are now owned by the defendants, who joined in the articles of association, a copy whereof is filed in this case, be sold, or such part as may be necessary for the purpose, in the manner hereafter mentioned, that is to say, all the property now belonging to the said associates which was embraced, or came under the articles of association, or so much, as may be necessary be first sold, to raise the whole sum due by this Decree to the Complainants, and if deficient, then the

property of the Corporation, known by the appellation of "The President and Directors of the Baltimore Water Company" be sold, to raise two twelfth parts of the deficiency, that the individual, or private property of James Hinde, Moses Hand, Thomas Towson, Robert Mills, John Reddy, Peter Mason, respectively, be sold, the property of each to raise one twelfth part of the sum due by this Decree; and that, the private or individual property of Hugh Bonner be sold to raise one forty eighth part of the sum due by this Decree, and that the partnership property, of the firm of Dew and Grimes, be sold to raise a like sum to the firm, last mentioned, and if deficient, that the private, or individual property of Grimes be sold to make up the deficiency; and in case the amount due shall not be raised by the sales, which may take place, that then the corporate property of the Corporation of "The President & Directors of the Baltimore Water Company" be sold, as well as the rest of the private or individual property of those who by this Decree is made responsible be sold, or as much thereof as shall be necessary - and in order to carry this Decree into effect, John Scott of the City of Baltimore be and he is hereby appointed the Trustee, and the course of his proceedings shall be as follows - He shall first execute a Bond to the State of Maryland in the penalty of Twenty Thousand Dollars conditioned for his faithful performance of this Decree,

as well as, for his compliance with any future Order or Decree that may be made in the premises, with security to be approved - He shall then give notice of the time place manner and terms of sale by advertisement in the American and such other news papers as he shall think best, for at least three successive weeks before the sale, and shall describe the property to be sold and to whom it belongs; and shall proceed to sell agreeably thereto, and shall forthwith report to this Court his proceedings under this Decree with his affidavit that the sale or sales made were just and fair - The terms of sale one half of the purchase money to be paid in ninety days and the balance in five months from the day of sale, with Interest from the bond or notes with approved security to be given, and the Trustee shall bring into Court the purchase money; and on the payment of the purchase money, and not before, he shall convey the property sold - and for his trouble and expense the Trustee shall hereafter receive such sum of money as he shall appear entitled to in consideration of the fidelity wherewith he shall discharge his trust.

And it is further adjudged Ordered and Decreed that the bill as against William Stewart, James Bernard and Charles Williams be and the same is dismissed.

W. J. M. M.

copies

Thomas McCoy

@

The President and
Directors of the
Baltimore Water
Company & others

Decree 14 Feb'y 1824

Record

to the
private
to make