

**Appeal from the Superior Court of Baltimore
City.**

STATE OF MARYLAND EX RE-
LATIONE ROBERT H. CLARK,
JR., BY HIS FATHER AND
NEXT FRIEND, ROBERT H.
CLARK,

vs.

In the Superior Court of Bal-
timore City.

THE MARYLAND INSTITUTE
FOR THE PROMOTION OF THE
MECHANIC ARTS

Petition for Mandamus and Order of Court thereon.

(Filed October 16, 1897.)

To the Honorable, the Judge of said Court :

The petition of Robert H. Clark, Jr., by his father and next friend, Robert H. Clark, of the city of Baltimore, State of Maryland, respectfully represents :

I. That he is an infant of about sixteen years of age, a resident of the Eleventh ward of Baltimore city, and that his father, Robert H. Clark, is a resident of said ward and city, and a taxpayer therein.

II. That the defendant, the Maryland Institute for the Promotion of the Mechanic Arts (commonly known as the "Maryland Institute"), is a corporation duly incorporated by Acts of Assembly of Maryland of 1878, chapter 313, (renewing the old charter of Acts of 1849, chapter 114), and that among the objects of its incorporation are the encouragement and promotion of manufactures and the mechanic and useful arts by the establishment of school and popular lectures upon the sciences connected with them, the promotion of schools of art and design, etc., etc., and by such other means for the promotion of the mechanic arts as experience may suggest.

III. That it is further provided in said charter that the said defendant corporation shall make no by-laws which shall be repugnant to the Constitution and Laws of the United States or of the State of Maryland.

IV. That the said The Maryland Institute for the Promotion of the Mechanic Arts, is further authorized and empowered by its said charter to graduate students in its various schools and to grant diplomas to such as, after proper examination, may be found worthy of the distinction.

V. That the said defendant, the Maryland Institute for the Promotion of the Mechanic Arts, in the exercise of the powers vested in it by its said charter, has established and maintained, and does now maintain certain schools of art and design, situated on Baltimore street and Centre Market Space, in Baltimore city. The said schools of art and design being divided into a night school of art and design or industrial drawing; and a day school of art and design — art department.

VI. That the said night school meets on Monday, Wednesday and Friday evenings throughout the school year, and offers a complete graded course in the several departments of freehand, mechanical and architectural drawing in elementary and advanced classes, comprising instruction in final work and examinations requiring a high degree of perfection in all of the said departments, and entitling the student to a certificate upon graduation, under the authority of the State of Maryland, and also the opportunity to compete for certain honors and premiums known as the Peabody and Institute Premiums, said premiums consisting of money prizes of five hundred dollars (\$500) distributed in sums of from fifty (50) to one hundred (100) dollars. And in addition to the said benefits the said students, upon graduation, are entitled as well to certain other special honors and prizes as to a free post graduate course affording an opportunity to students to prolong their studies and further perfect themselves, with no charge for tuition or prerequisite, other than application and regular attendance.

VII. That the regular course in the said day school is divided into four classes one for each of the four years, and includes complete theoretical and practical daily instruction in all branches of drawing; perspective, shading, painting in water color and oil; drawing, painting and modeling heads and figures from casts and from life; landscape drawing and painting; and sculpture. And students who have completed said regular course and passed satisfactorily required examinations, are entitled to graduate under the authority of the State of Maryland, and more over, that certain honors and valuable prizes are awarded to students who achieve certain grades of proficiency in their studies in said day school, and a student who has graduated as aforesaid, is entitled to join a post graduate class without charge for tuition in which the student may further perfect himself in such studies as he may select. And in addition thereto, students of said day school who have graduated as aforesaid (since 1894), and have attained a certain prescribed grade of proficiency and apply within a certain specified time, are entitled to be admitted, without cost or charge for tuition, to a certain other school connected with and operated by the said Maryland Institute, known as the Rinehart School of Sculpture, a course independent of the regular course of the said school of Art and Design, and for students of sculpture only, affording a practical opportunity for the study of the art of sculpture and advanced instructions therein not obtainable in any other school or academy

outside of the private studies of sculpture and art schools in foreign countries.

All of which advantages are entirely outside of and beyond the scope of the ordinary public schools for white or colored pupils, and can only be obtained by attendance in the said schools of art and design.

VIII. That the defendant, the Maryland Institute for the Promotion of Mechanic Arts, is, and has been endowed, largely supported and sustained by the State of Maryland under the terms of its said charter to the extent of three thousand dollars (\$3,000) annually, which is devoted exclusively to the educational branches of the said institute, and particularly for the benefit and maintenance of the said schools of Art and Design, which said schools are further supported by the city of Baltimore by an annual appropriation of nine thousand dollars (\$9,000) as hereinafter set forth.

IX. That the president of said institution is by the said charter required, and as your orator is informed, does, annually, in the month of September, make a detailed report of the operation of the said Schools of Art and Design to the Governor of the State of Maryland.

X. And your petitioner furthur complaining says, that on on the seventh day of March, 1893, the Mayor and City Council of Baltimore city passed the following ordinance (No. 26):

An ordinance to empower the Mayor, City Comptroller and City Register to contract with the Maryland Institute for the Promotion of the Mechanic Arts for the education of pupils in its Schools of Art and Design.

Section 1. Be it enacted and ordained by the Mayor and City Council of Baltimore, that the Mayor, City Comptroller and City Register be, and they are hereby authorized and directed to contract with the Maryland Institute for the Promotion of the Mechanics Arts for the instruction of pupils in the said Institute of Art and Design for the period of eight years from the first day of September, 1893.

Section 2. And be it further enacted and ordained, that as soon as may be convenient after the passage of this ordinance, and annually thereafter, before the first of September, there shall be appointed one pupil by each member of the First and Second Branches of the City Council, who shall be entitled to instruction for the period of four years in said schools; and in case of a vacancy occurring from any cause among said pupils, the president of the institute shall forthwith notify the member of the Council representing the ward to which such pupil was credited, who shall thereupon appoint another pupil to fill such vacancy.

Section 3. And be it further enacted and ordained, that the President of the Institute, shall, annually, in the month of September, report to the Mayor and City Council the names of the pupils so appointed and in attendance upon its schools,

together with a list of vacancies, should any exist ; and should no appointments be made prior to the first of October by the members of the City Council entitled to fill such vacancies, then the Mayor shall appoint pupils to fill said vacancies.

Section 4. And be it further enacted and ordained, that the Mayor, City Comptroller and City Register, shall, annually, or as much oftener as they may deem it expedient, inspect said schools of said institute, and the condition and manner in which the terms of said contract are being fulfilled by the institute, and thereupon the City Comptroller, upon being satisfied that the said contract is being faithfully complied with, shall pay the president of the institute annually, in the month of September, the sum of nine thousand dollars in full for the education of said pupils, and the said amount so appropriated shall be used for no other purpose whatever.

Section 5. And be it further enacted and ordained, that this ordinance shall take effect from the date of its passage.

Signed, 11.40 A. M., March 7th, 1893, by Ferdinand C. Labrobe, Mayor.

Ordinance No. 26.

XI. That in pursuance of the power and authority vested in them by the said ordinance, the said Mayor, City Comptroller and City Register (then in office), did on the tenth day of March, 1893, enter into a written contract or agreement with the defendant, the said Maryland Institute, which said contract is as follows :

Whereas, by ordinance No. 26 of the Mayor and City Council of Baltimore, approved March 7th, 1893, the Mayor, City Comptroller and City Register are authorized and directed to contract with the Maryland Institute for the promotion of the Mechanic Arts for the instruction of pupils in the Institute's schools of Art and Design for the period of eight years from the first day of September, 1893,

Now, this agreement witnesseth, that in pursuance of said power and authority, the Mayor, City Comptroller and City Register, acting on behalf of the city of Baltimore, and the Maryland Institute for the promotion of the Mechanic Arts do hereby contract and agree, that for and in consideration of the payment of the sum of nine thousand dollars annually for the period of eight years from the first day of September, 1893, in the manner provided by said ordinance, the said Institute shall receive into its schools of Art and Design thirty-three pupils for the year beginning September 1st., 1893, and thirty-three pupils for each of the years beginning September 1st., 1894, 1895, 1896, 1897, 1898, 1899 and 1900, respectively, to be appointed in the manner provided in said ordinance, and shall cause the said pupils to be instructed in the various branches of art and design taught in the said schools, in accordance with the terms and provisions of the

aforesaid ordinance, a copy whereof is hereby annexed and made part of this contract.

FERINAND C. LATROBE,

Mayor.

JAMES R. HORNER,

Comptroller.

JOHN A. ROBB,

Register.

JOSEPH M. CUSHING,

President of the Maryland Institute for
the Promotion of the Mechanic Arts.

Executed in duplicate this 10th day of March, 1893.

The form and legal sufficiency of this contract is hereby approved. March 9th, 1893.

W. S. BRYAN, JR.,

City Solicitor.

XII. That subsequent to the execution of said contract, the defendant, the Maryland Institute, in violation of law, attempted to pass a by-law to the effect that no students would be received into its said schools of Art and Design unless said students were "white," intending thereby to exclude colored persons, or descendants of — African race, while admitting white persons, or descendants of the Caucasian race, said by-law being aimed more particularly at the admission of pupils appointed by city councilmen under provisions of the ordinance aforesaid.

Nevertheless, your petitioner alleges, what to him and the public is well known, that before the attempted passage of the said by-law and both after the said ordinance of March 7th, 1893, and contract of March 10th, 1893, and prior thereto under similar ordinances and contracts passed, executed and renewed from time to time, and in force continuously from April 14th, 1881, or before, until the said ordinance of March 7th, 1893, the defendant, the said Maryland Institute, had received into its said schools of Art and Design colored pupils appointed as aforesaid, by councilmen from the Eleventh ward in which the majority of voters are colored persons, and from other wards; some of which pupils have completed their course and some of whom are continuing in said schools, to wit: Harry T. Pratt (colored) was appointed in 1891 by Councilman Harry S. Cummings (colored), Eleventh ward, and has since graduated from the Institute with honorable mention; William Mills (colored) was appointed by Cummings, Eleventh ward in 1892; William H. Davis (colored) was appointed in 1895 by James Doyle, Councilman, Eleventh ward, and Howard Gross (colored) was appointed in 1895 by Councilman Samuel G. Davis, Eighteenth ward, the two latter pupils now completing their course at the said institute schools.

XIII. That on the 5th day of November, 1895, a certain J. Marcus Cargill was lawfully elected a member of the First

Branch of the City Council of Baltimore from the Eleventh ward, and was re-elected the 3d day of November, 1896, and has continued to occupy said office from said date up to the present time.

XIV. That during the month of September, 1896, the said City Councilman, J. Marcus Cargill, acting under the authority and power given by the said ordinance, did appoint your petitioner, Robert H. Clark, Jr., a youth of proper age, habits, morals and physical condition, and in all respects eligible as a pupil in said institute, entitled to free instruction in its said schools of art and design, in accordance with the terms of said ordinance and contract, and the defendant, the said Maryland Institute, was notified of the said appointment.

XV. But that when your petitioner, the said Robert H. Clark, Jr., presented himself at the said schools with proper credentials, and applied for admission therein, he was refused admission by the authorities of the said institute upon the ground that he was a colored boy, and it was against the rules of the said institute to admit colored boys into the said schools by reason of the attempted passage of said by-law. Whereupon, the said Cargill, though in no manner assenting to the unlawful and unauthorized action of the defendant, made no further appointment to fill the place of your petitioner in that year, and no appointment was made by the said Mayor to fill said scholarship for 1896, which was, and is still, vacant, though of right belonging to your petitioner, who is debarred therefrom by the unlawful act of the defendant as aforesaid.

XVI. That the Mayor, Comptroller and Register thereupon made an alleged inspection of said schools, as required by said ordinance, and reported that said contract was being faithfully carried out by said institute, although they well knew the contrary; and though they well knew that said institute had illegally and arbitrarily refused to admit your orator as by said ordinance and contract they were bound to do; and that the said Mayor, Comptroller and Register have combined and conspired with the said Maryland Institute against your petitioner to deprive him and other colored persons of their rights as citizens of the United States in violation of the Constitution of the United States.

XVII. That by a letter dated the 14th day of September, 1897, the said Cargill was informed by George L. McCahan, Esq., Actuary of the said institute, that the free scholarship for 1897 which said Cargill was entitled to fill was vacant, and notify him, that unless said vacancy was filled by September 30th, the Mayor would be called upon to make an appointment to fill said vacancy; also enclosing a circular letter of same date, signed by Joseph M. Cushing, President, George L. McCahan, Actuary and John M. Carter, Chairman Committee on Schools of Art and Design, requesting that the appointment be made and forwarded to the actuary, and among other suggestions, etc., as to selection of appointees, it was said that "according to the rules of the institution, only reputable white pupils who will conform to the regulations and discipline of the schools will be admitted."

Immediately upon receipt of said letter and circular letter, and before September 30th, 1897, the said Cargill notified the authorities of the institute that he had reappointed your petitioner, Robert H. Clark, Jr., for the said scholarship of 1897.

XVIII. That being desirous of entering the said schools of art and design, your petitioner presented himself on Monday evening, October 4th, 1897, at seven thirty o'clock, being the opening of the session for 1897, with proper credentials of his appointment, at the said institute on Baltimore street, and requested to be admitted as a pupil, but was refused admittance by the president of the institute, although he was of proper age, physical, mental and moral qualifications, willing to conform to the discipline of said school, and demean himself in all respects as a proper and exemplary pupil.

Your petitioner being refused and denied admission expressly and distinctly upon the sole ground of his "color," and upon no other ground or pretext whatsoever, notwithstanding that the said by-laws, in so far as it attempted to prevent the appointment of colored pupils by city councilmen under said ordinance, was absolutely void and without effect, being not only a violation of the contract and ordinance aforesaid, and contrary to the charter of the institute, but also in direct contravention with the letter and spirit of the Constitution of the United States.

XIX. That the said Schools of Art and Design of the Maryland Institute are unique and unapproached in the city of Baltimore as well in the scope, extent and variety of the studies pursued, as in the excellence of the instruction, and the great advantages open to the student for the most advanced studies in the practical and fine arts. Not only do the public schools of this city (and especially the colored schools) fall immeasurably below the said institute schools in these particular branches, but few or none of the private art schools of the city offer advantages that compare with the acknowledged superiority of the said schools of art and design; and your petitioner verily believes, and therefore confidently alleges, that the exclusion of colored citizens from the rights of free education in the said schools of art and design, and the privileges enumerated in paragraphs vi and vii of this petition provided for by the public funds, and the arbitrary admission of white pupils exclusively, by an institution largely supported out of the public treasury, amounts practically and in effect to a total exclusion of such citizens from the equal advantages and rights of citizens on account of their color, abridges their privileges and immunities as citizens of the United States, deprives them of their property without due process of law and denies to them the equal protection of the laws, in violation of the Constitution of the United States.

XX. Your petitioner further alleges, that according to said ordinance and contract, the defendant agreed, and, becoming bound by the said ordinance, was by law compelled to receive appointees of city councilmen under said ordinance

without distinction as to color; and further, that even should the said contract have been made to refer to the admission of white pupils only, to the exclusion of colored pupils, such contract would be unlawful, unconstitutional and utterly void.

XXI. Your petitioner therefore prays that a writ of mandamus may be issued directed to the said The Maryland Institute for the Promotion of the Mechanic Arts, commanding it to admit your petitioner, Robert H. Clark, Jr., into its said schools of art and design for instruction therein for the period of four years, as required by said ordinance and contract.

And your petitioner will ever pray, etc.,

JOHN PHELPS,
W. ASHBIE HAWKINS,
Attorneys for Petitioner.

STATE OF MARYLAND,

Baltimore City, to wit :

I hereby certify that on this fifteenth day of October, in the year eighteen hundred and ninety-seven, before me, the subscriber, a Notary Public of the State of Maryland, in and for the city of Baltimore aforesaid, personally appeared Robert H. Clark, the father and next friend of Robert H. Clark, Junior, the petitioner in the foregoing petition, and made oath that the matters and facts therein stated are true, to the best of his knowledge and belief.

Witness my hand and seal of office.

(Notarial Seal.)

GEO. W. HAULENBECK,
Notary Public.

Ordered this 16th day of October, 1897, on the foregoing petition, that a rule be, and it is hereby, laid on the said The Maryland Institute for the Promotion of the Mechanic Arts, requiring it to show cause why the writ of mandamus should not issue as prayed, on or before the 1st day of November, 1897; provided that a copy of this order be served on the said defendant or its attorney, on or before the 20th day of October, 1897.

ALBERT RITCHIE,

Judge of the Superior Court of Baltimore city.

Sheriff's Return.

"Copy of the within petition for the mandamus and order of Court served on John M. Carter, attorney for respondents on the 18th day of October, 1897, in presence of Geo. W. Mecaslin.

"STEPHEN R. MASON,
"Sheriff."

"Also copy of the within order of Court served on Joseph M. Cushing, President of the Maryland Institute for the Promotion of the Mechanics arts, on the 19th day of October, 1897, in presence of George W. Mecaslin.

"STEPHEN MASON,
"Sheriff."

Petition and Order of Court Thereon.

(Filed November 1st, 1897.)

To the Honorable Albert Ritchie, Judge of said Court :

The petition of the defendant respectfully prays that it be allowed a delay of three days for the filing of its answer in this case, as the same is as yet incomplete.

JNO. M. CARTER,
Atty. for Defendant.

It is ordered this first day of November, 1897, that leave be granted as prayed.

ALBERT RITCHIE.

Respondent's Answer to Petition.

(Filed November 3d, 1897.)

To the Honorable Albert Ritchie, Judge of said Court :

The answer of the Maryland Institute for the Promotion of the Mechanic Arts to the petition for mandamus respectfully represents :

Respondent admits the averments contained in the first, second, third, fourth fifth, sixth and seventh paragraphs of the petition, except as to the latter part of the seventh paragraph, and in answer to the averments therein contained this respondent avers and says :

That the said Rinehart School for Sculpture is conducted wholly and entirely by the Committee on the Rinehart Fund of the Board of Trustees of the Peabody Institute ; that the said school was established, and is maintained by the said committee entirely at the expense of said committee, save and except that this respondent provides a studio for the pupils with the necessary materials for work in its building : that while, by the present arrangement between said committee and this respondent, those who have been students in the day school of this respondent are admitted to the Rinehart School upon terms specified, yet it is within the power of said Committee on the Rinehart Fund of the Peabody Institute to change, alter, or entirely abrogate said arrangement, and abolish said school at its will and pleasure.

This respondent admit the averments contained in the eighth, ninth, tenth and eleventh paragraphs of said petition.

XII. Respondent admits that it adopted a regulation in November, 1895, against the admission of other than "white" pupils into its schools of art and design, but it denies that said regulation or by-law, as charged in said petition, was in violation of law. Respondent also admits the admission into its night school of the four pupils named in this paragraph of the petition, who are colored persons, under its contract with the Mayor and City Council of Baltimore, and that two of said pupils are now in said school.

And as to the admission of said four colored pupils and the reason and necessity for the adoption of said restriction against the admission of others, in the future, your respon-

dent avers and says: That upon the appointment of said Harry T. Pratt and William Mills as pupils, by city councilman Harry S. Cummings, your respondent in good faith instructed them in the various branches of study embraced in the curriculum of its night school, affording them all the facilities extended to white pupils, and in due course the said Harry T. Pratt was graduated with honorable mention as averred in said petition, but the said Mills at an early stage in his career of pupil withdrew from the school. That in October, 1895, your respondent admitted into its night school the said William H. Davis and Howard Gross, both colored, and has ever since and is still affording them the full benefit of a thorough course of training in said school as completely as is given to all other pupils therein.

But your respondent avers that in October, 1895, a State election was impending and a very exciting political campaign was in progress, and upon the announcement in the newspapers of the city that said two last named colored pupils had been appointed to the Maryland Institute night school, a very exciting and embittered discussion was precipitated both in the public newspapers and upon the rostrum upon the subject of mixed schools in Maryland—that is to say, the mingling of white and colored pupils in the same school—and the fact of these two colored pupils in the Maryland Institute was published in great and unenviable notoriety.

That owing to the well-known popular objection to mixed schools among the white people of the State of Maryland, your respondent found great difficulty in inducing the white pupils to continue to attend its night school. And notwithstanding the most earnest and zealous efforts on the part of the board of managers and the faculty of teachers to reconcile the objection of the white pupils and their parents and guardians to the presence of said colored pupils, the number of pupils in the night school decreased 643 in the Winter of 1894-'5, to 521 in the Winter of 1895-'6, and still further to 447 in the following Winter, and that the publication of the matter of the petitioner's application for mandamus is causing the number of pupils to decrease still more in the school year just begun, so that there are now but 403 pupils in said school.

That the effect of said agitation has been to greatly lessen the influence of said night school for the good work it has accomplished in the city of Baltimore and State of Maryland, in educating young men and boys for the various branches of mechanical industry, and for other pursuits in which a knowledge of drawing and designing is required, and it has become a serious question with your respondent whether the action of those colored people who are persisting in the demand for admission of pupils of their race into the school, would not, if yielded to by your respondent, result in its complete destruction.

Further answering, respondent avers that in November, 1895, after admitting the two colored pupils, Davis and Gross, then recently appointed into its night school, and after the State election was over your respondent's Committee on

Schools of Art and Design, upon a careful consideration of the subject, adopted, and the board of managers of the respondent approved, the following resolution :

“BALTIMORE, November 11th, 1895.

“The following action of the Committee on Schools of Art and Design was reported by its chairman, Mr. John M. Carter, and on motion, it was unanimously adopted :

“Whereas, the popular sentiment of all the citizens of Maryland is opposed to mixed schools ; and

“Whereas, the appointment of colored pupils to this school, it is believed, has caused a large decrease in the number of white pupils attending the institute, thus lessening its power for good to the community.

“Resolved, that hereafter only reputable white pupils will be admitted to the schools.

“Resolved, that the actuary be directed to issue a circular to the members of the newly elected City Council, and other appointing powers, informing them of this action.”

That thereupon, your respondent forwarded to each member of the City Council of Baltimore, and to the school boards of the said city and the various counties, a copy of the following circular and blank letter of appointment of pupil for the following year, 1896 :

Maryland Institute
for the
Promotion of the Mechanic Arts,
Schools of Art and Design.

BALTIMORE, ———, 189—.

—————, Esq.,

— Branch City Council, — Ward —

Dear Sir: In accordance with the contract between the Mayor and City Council and the Maryland Institute, each member of the City Council is entitled to appoint annually, one pupil to a four years' scholarship in the Institute Schools of Art and Design. These appointments should be made not later than the first of September next, so as to admit of the required report to the Mayor and City Council in that month; and also that pupils may be prepared to commence their studies on the opening of the schools. You are therefore requested to make an appointment within the time specified and forward the same to the actuary of the institute.

According to the rules of the institute, only reputable white pupils who will conform to the regulations and discipline of the school will be admitted.

In connection with the above, it is suggested on the part of the managers of the institute, that their strong desire is to have such students sent to them, as by age and talent will be able to comprehend the work to be performed, and by constant attendance and industry, secure to themselves all the benefits offered by these schools, to the end that they may not

only prove an honor to themselves, but also justify the efforts of the institute put forth in their behalf.

If appointed to the night school, the pupil must be fourteen years of age in the free-hand division, and fifteen years in the mechanical or architectural division.

Herewith please find appointment blank.

Very truly yours,

JOS. M. CUSHING,
President.

GEORGE L. McCAHAN,
Actuary.

JNO. M. CARTER,
Chairman Committee on Schools of Art and Design.

BALTIMORE, ———— 189 .

To the Board of Managers of the Maryland Institute for the promotion of the Mechanic Arts:

I hereby appoint, subject to the rules of the institute, _____ (residence _____) to the scholarship in your schools of art and design, under the contract between the Mayor and City Council of Baltimore and the Maryland Institute.

Member _____ Branch of the
City Council _____ Ward _____

And further answering the 12th paragraph of said petition, respondent avers that said ordinance and the contract made in pursuance thereof, were in view of the status of affairs then existing in our city and State. That no mixed schools then existed or were in contemplation. That on the contrary, separate schools, both public and private, for white and colored pupils were maintained in the city of Baltimore and throughout the State, and the sentiment of all citizens, both white and colored, was overwhelmingly in favor of maintaining said distinction.

That the said ordinance and contract must therefore be construed as applying to white pupils only, inasmuch as the schools of your respondent has been established and maintained only for white pupils.

That respondent never contemplated any other construction of said contract or ordinance and the experiment of receiving into the school the two colored pupils (one of whom remained such a brief period) appointed by Councilman Cummings was but tentative, with the hope that none others would be appointed, and in no wise an admission by this respondent of any contractual obligation.

And so with the admission of the two colored pupils now in the school, respondent received them before the hue and cry raised against their admission which has wrought such great damage to the school and promises to destroy its usefulness.

Further answering, respondent avers, that it was after the adoption of said rule of exclusion, and after and with full knowledge of the rejection of the petitioner that the Mayor,

Comptroller and register of the city reported that the said contract was being faithfully carried out by respondent, as will appear by their report to the City Council hereto appended.

And so with full knowledge of these facts the City Council, both in the years 1896 and 1897, approved and ratified the action of respondent by appropriating and directing to be paid to the respondent the annual appropriations of \$9,000 each, provided by said contract.

And in further confirmation of the construction placed upon said contract by the city authorities; respondent appends hereto the opinion of Thomas Ireland Elliott, Esq., City Solicitor, given in response to an enquiry of the Chairman of the Committee on Ways and Means of the City Council who made the appropriation for the year 1897.

FEBRUARY 10, 1897.

To the President and Members
of the First Branch City Council.

Gentlemen: In reply to your communication of February 3, 1897, requesting me to submit to you a report of our inspection of the Maryland Institute, "as to the condition and manner in which said Institute is fulfilling its contract with the Mayor, City Comptroller and Register in the matter of instruction of the pupils sent there," we beg to report that we have visited the institution and are much pleased with the thoroughness and care with which nearly one thousand pupils are being instructed.

Very truly yours,

ALCAEUS HOOPER,

Mayor.

CHAS. D. FENHAGEN,

Comptroller.

WM. F. STONE,

Register.

SEPTEMBER 20th, 1897.

Frederick P. Ross, Esq.,

Member Special Committee, City Council of Baltimore,

Dear sir: I am in receipt of your letter addressing me the following inquiry:

"If a contract has been entered into between the Mayor and City Council of Baltimore and the Maryland Institute by which, for a period of eight years, the institute agrees to receive into its schools, for a full course of instruction, thirty-three students annually, for a consideration of \$9,000 a year, one of said students to be named by each of the thirty-three members of the City Council. If subsequently during said period a rule is adopted by the Institute prohibiting colored students from entering its schools; and if, after the adoption of said rule, a member of the City Council appoints to a

scholarship under contract a colored youth who, because of his color, is denied admission, has the Institute violated the contract?"

In reply I would say: that I do not think there has been any violation of contract.

I have taken occasion to examine the contract now existing between the Mayor and City Council and the Maryland Institute, and while I do not find that it anywhere contains the word "white," I am of the opinion that it is to be construed as if it did.

The general theory of unmixed schools supported in whole or in part by the city would seem to apply as well to schools of art as to those of the public school system, an application which, I am sure, neither race cares to modify.

The construction which I have given is apparently the one which the city has itself applied, since the same issue was raised in the year 1895, and, notwithstanding the refusal of the Maryland Institute to admit or accept colored students, appropriation was made to meet the contract.

It is a good principle of law that a cause of invalidating a contract once waived can not be again availed of. I remain,

Very truly yours,

TWOS. IRELAND ELLIOTT

City Solicitor.

(Copy.)

XIII and XIV. Respondent admits the election of Dr. J. Marcus Cargill as a member of the City Council of Baltimore, on the 5th November, 1895, and again on the 3d November, 1896, as averred. Also, that on the 21st of February, and not during the month of September, 1896, as averred, the said Dr. Cargill, as such member of the City Council, did appoint the said Robert H. Clark, Jr., naming him in the letter of appointment as Robert H. Clark, to a scholarship in the school of your respondent; but your respondent avers that said appointment was written upon the printed blank form furnished said Cargill as aforesaid, and just above inserted in this answer, and was expressly made subject to the rules of this institute.

Respondent had then no knowledge of the qualifications of said Clark as alleged in said petition, but learning of his *disqualifications* as to *color*, your respondent, through its president, addressed the following communication to said Dr. J. Marcus Cargill, declining to receive said Clark as a pupil in the school, and inviting Dr. Cargill to make another appointment of a pupil who should not be obnoxious to the rules of the institution:

"MARCH 11, 1896.

"Dr. J. Marcus Cargill, Member First Branch City Council,
11th Ward, 430 Biddle st., City.

"Dear sir: Your appointment of Robert H. Clark, 1130 Druid Hill avenue, to a scholarship in the Maryland Institute School of Art and Design, dated February 21, 1896, and on the blank form of the institute, was presented to the board of

managers of the institute, at its stated meeting of March 9, 1896, being its first meeting after the reception of said appointment.

"The board having been informed that the proposed pupil is not a white person, felt obliged, unanimously, to reject his nomination, as the rule of the schools subject to which he was appointed, allows only reputable white persons to be received as pupils.

"The board will be pleased to receive from you the nomination of any reputable white person as a pupil in the school.

"Enclosed please find a copy of the original notice sent to you November 20, 1895, and also a blank for a new appointment.

"Yours very truly,

(Signed).

"Jos. M. CUSHING.

"President."

"JAMES JOUNG,

"Secretary."

Respondent admits, that Dr. Cargill made no other appointment of a pupil in the year 1896, but it denies that "no appointment was made by the Mayor to fill said scholarship for 1896, which was and is still vacant." On the contrary respondent avers, that on the first day of October, 1896, respondent certified to his Honor, Mayor Alcaeus Hooper, the vacancy thus appearing from the Eleventh ward, as also all other vacancies existing among the pupils of the school credited to the various wards of the city under the ordinance and contract recited in the plaintiff's petition; and thereupon, his Honor, the Mayor, appointed other pupils to fill all of said vacancies; and that in this particular instance, his Honor did, on the 10th day of October, 1896, appoint Miss Carrie E. Keyworth, a pupil conforming in all respects to the rules and regulations of the institute, as a pupil in the night school of the institute representing the said Eleventh ward, and that said Carrie E. Keyworth has ever since been, and still is, a pupil in the said school by the Mayor's appointment as aforesaid.

XVI. Respondent avers, that the Mayor, Comptroller and Register of the city of Baltimore did, more than once during the year 1896, and also in the year 1897, thoroughly inspect the schools of this respondent as required by said ordinance, and professed themselves satisfied that said contract was being faithfully carried out by this respondent, as in truth and fact it was then, is now and ever has been since the date of said contract.

And your respondent denies that the said Mayor, Comptroller and Register have combined or conspired with this respondent against the said petitioner to deprive him and other colored persons of their rights as citizens of the United States, in violation of the Constitution of the United States. And respondent denies that the plaintiff has any rights in the premises as a citizen of the United States.

XVII. Respondent admits, that on or about the fourteenth day of September, 1897, the said Dr. Cargill was informed by George L. McCahan, actuary of the institute, that the scholarship for 1897, which said Cargill was entitled to fill, was vacant, and was notified that unless the vacancy was filled by September 30th, the Mayor would be called upon to make an appointment to fill said vacancy, and enclosing the circular letter of the same form and tenor as that hereinbefore attached and made part of this answer, signed by Jos. M. Cushing, president, George L. McCahan, actuary, and John M. Carter, chairman, requesting that the appointment be made and forwarded to the actuary. Respondent also admits that the said Cargill did immediately thereafter again appoint the said Robert H. Clark, Jr., to a scholarship in the institute school, *subject to the rules of the institute*, the said appointment being upon the same blank form supplied by the institute, as is hereinbefore appended to this answer.

Respondent admits, that on the evening of Monday, October 4th, 1897, at half-past seven o'clock, the said petitioner, with his father and one of the counsel appearing for him in this petition, presented themselves in the actuary's office and delivered to the president, in the presence of Mr. Carter, the chairman of the committee on schools, and the actuary of the institute, Mr. McCahan, the following letter from said Dr. Cargill:

BALTIMORE, October 2d, 1897.

Mr. George L. McCahan,

Librarian Maryland Institute for the Promotion
of the Mechanic Arts, Baltio., Md.

Dear sir: This will introduce to you the bearer, Robert H. Clark, Esq., and his son, Robert H. Clark, Jr. The latter is the youth who has been appointed by me to the city scholarship in the Maryland Institute from the Eleventh ward, by virtue of Ordinance No. 26, of March 7, 1893. Robert is a resident of the Eleventh ward, and his father is a citizen and taxpayer in the same ward. I know the young man to be in all respects eligible; of proper age for admission, of good character, moral habits, respectful, diligent and anxious to study and take advantage of his opportunities. He is of a tractable and kind disposition and will cheerfully and willingly submit to the discipline and authority of the institute.

He will present himself for admission at the institute on the opening night of the Fall session, Monday, October 4th, at 7.30 p. m. I therefore request that he be admitted as my appointee under the terms of the ordinance referred to.

Very respectfully,

(Signed), J. MARCUS CARGILL, M. D.,

430 W. Biddle St.

11th Ward City Councilman.

XVIII. Respondent admits that the said petitioner did so present himself on the evening of Monday, October 4th, 1897, and that he was refused admission to the schools by the pres-

ident of the institute. Further answering, respondent avers, that not having received any notice whatsoever from the said Dr. J. Marcus Cargill on or before the thirtieth day of September, 1897, of an appointment by him of a pupil conforming to the rules and regulations of the school, this respondent did, on the evening of the same day, certify to his Honor, Mayor Alcaens Hooper, the fact of said vacancy, as also of other vacancies existing under the ordinance and contract aforesaid. Thereupon, on the following day, the first of October, his Honor, the Mayor, did appoint Samuel C. Martin a pupil in the night school of the institute to fill the vacancy from the Eleventh ward caused by the failure of the said Dr. Cargill to appoint a pupil in the schools in accordance with the notification to him of the fourteenth of September, 1897, as aforesaid.

And your respondent avers that said rule or by-law was valid and not in violation of said contract or in contravention of the Constitution of the United States.

XIX. Respondent admits the excellence of its said schools and the extent and variety of their curriculum, but it avers that this was not due to the expenditures of public monies, which have been used only under the contracts with both city and State in the education of the pupils appointed under said contracts and the expenses of administration necessarily incident thereto. On the contrary, respondent avers that its schools were established many years ago solely and entirely by private subscription and by the tuition fees of a large number of pay pupils, of which class the number now in the schools greatly exceeds the number under the contracts with both city and State. That the equipment and endowment of said schools represent an outlay of nearly or quite \$200,000, no part of which was contributed by city or State, or by taxation, or by contribution, so far as known, from any but white persons.

That as such private corporation, and especially as an institution of learning, it is competent for respondent to prescribe such reasonable rules and regulations, fix the qualifications and eligibility of pupils, enforce discipline, and do all things necessary and proper for the proper maintenance and management of its schools; and most of all, to prescribe restrictions and exclude such pupils, however meritorious otherwise, whose presence threatens to destroy the very existence of the school, as also the value and usefulness of its large and expensive equipment.

Respondent denies that the exclusion of colored citizens from its schools is an exclusion of such citizens from the equal advantages and rights of citizens on account of their color, or that it abridges the privileges and immunities as citizens of the United States, or that it deprives them of their property without the process of law, or that it denies to them the equal protection of the laws, or that it is in anywise in violation of the Constitution of the United States.

On the contrary, Respondent avers that it is a private corporation and in no sense a State agency, and that such exclu-

sion cannot amount to a breach of the provisions and restrictions of the Constitution or laws United States, made and enacted for the benefit and protection of colored citizens, and directed to State action and not to the action of private corporations.

XX. Respondent denies that by said ordinance and contract, it agrees to receive pupils appointed by the members of the City Council without distinction as to color. And it denies that said contract is void, although it does refer to the admission of white pupils only. And respondent avers that if said contract be unlawful, unconstitutional and void, then the plaintiff is without remedy and can have no relief or claim under a void contract.

XXI. And further answering, respondent submits that the writ of mandamus is not the proper remedy for the plaintiff under any circumstances, as his application is simply an attempt to enforce an ordinary contract against a private corporation. Nor is the petitioner a party to said contract. On the contrary, that said contract is admittedly between this respondent and the Mayor and City Council of Baltimore, and that both of said parties have agreed that the same has been faithfully carried out and performed.

Respondents therefore prays that said petition be dismissed with costs to this respondent.

And as in duty,

JNO. M. CARTER,
EDGAR GANS.

STATE OF MARYLAND,

City of Baltimore, to wit:

I hereby certify that on this third day of November, 1897, before the subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore city, personally appeared Joseph M. Cushing, President of the Maryland Institute for the Promotion of the Mechanic Arts, and made oath in due form of law, that the matters and facts stated in the foregoing answer are true to the best of his knowledge and belief.

WM. B. HAMMOND, J. P.

Agreement of Counsel as to Facts

(Filed November 29, 1897.)

It is hereby agreed this twenty-ninth day of November, in the year eighteen hundred and ninety-seven, between counsel, that the following shall be taken as matters of fact for the purposes of the demurrer to the answer:

That the said J. Marcus Cargill appointed the said Robert H. Clark, Jr., to the scholarship to the said Maryland Institute from the Eleventh ward, on the 21st day of February, eighteen hundred and ninety-six, as averred in the answer.

That Alcaeus Hooper, Mayor of Baltimore, appointed on the 10th day of October, 1896, Carrie E. Keyworth in the place of Robert H. Clark, Jr., refused; and that the said Alcaeus Hooper, Mayor, did appoint Samuel C. Martin on October 1st, 1897, in the place of the said Robert H. Clark, Jr., refused as aforesaid, as averred in the answer.

That Mr. Peabody's donation of the fund for prizes to pupils of the Maryland Institute was made in the year 1857.

It is also agreed that the catalogue of the said Maryland Institute for 1897-98, and the statements therein contained, shall be taken as part of said petition, and as matters of fact for the purposes of the said demurrer.

JOHN PHELPS,
W. ASHBIE HAWKINS,
Attorneys for Petitioner.

EDGAR H. GANS,
JNO. M. CARTER,
Attorneys for Respondent.

Petitioner's Demurrer to Answer.

(Filed November 29, 1897.)

To the Honorable, the Judge of said Court :

The petitioner, by way of reply to the answer of the Maryland Institute for the Promotion of the Mechanic Arts, heretofore exhibited and filed in this case, saith thereto, that the whole of said answer, and each and every paragraph thereof, is and are insufficient in law, and that respondent has shown no cause in law why the writ of mandamus should not be issued as prayed in said petition, and the petitioner demurs thereto.

JOHN PHELPS,
W. ASHBIE HAWKINS,
Attorneys for Petitioner.

Issue joined short on demurrer.

Order of Court.

(Filed December 10, 1897.)

Upon consideration of the petition for mandamus and answer thereto, under the demurrer filed by the petitioner to the answer.

It is this 10th day of December, 1897, adjudged and ordered, that the demurrer to the answer be over-ruled, and that the petition, showing no cause for mandamus, be and the same is hereby dismissed.

ALBERT RITCHIE.

Opinion of Court.

(Filed December 10th, 1897.)

(Inserted by Order of Petitioner's Attorney.)

The petitioner, Robert H. Clarke, Jr., a colored youth sixteen years of age, prays that a writ of mandamus may issue commanding the Maryland Institute for the Promotion of the Mechanic Arts, to admit him as a pupil into its schools of art and design. The petitioner rests his claim to be so admitted on an ordinance of the Mayor and City Council, of Baltimore, and the contract entered into between the city and said institute in pursuance thereof.

The case comes up for hearing on a demurrer to the answer.

The defendant was incorporated under the Act of 1849, ch. 114, and re-incorporated under 1878, ch. 313. The object of its incorporation is the encouragement and promotion of manufactures and the mechanic and useful arts, by the establishment of schools, by popular lectures, mechanical exhibitions and other means indicated in its charter.

In pursuance of its object, the respondent established schools of art and design, and while the city, under the authority of the State, has established for both races a most liberal and advanced system of public schools, it has no school in which the special studies of art and design are prosecuted as they are in the schools of respondent. From time to time since 1881, the city has passed ordinances and made contracts similar to the ordinance and contract now in question for the education of pupils in said schools.

The ordinance in question, No. 26, of 1893, authorizes the Mayor, Comptroller and Register to enter into a contract with the respondent "for the instruction of pupils" in its said schools of art and design for the period of eight years, and provides that "after the passage of this ordinance and annually thereafter * * * * there shall be appointed one pupil by each member of the First and Second Branches of the City Council, who shall be entitled to instruction for the period of four years in said schools." The ordinance further provides that in case of vacancies arising from the failure of members to make appointments, the same shall be filled by the Mayor; also that the Mayor, Comptroller and Register shall annually, or as often as they may deem it expedient, "inspect said schools, and the condition and manner in which the terms of said contract are being fulfilled," and, if said contract is being faithfully complied with, the Comptroller is to pay the said institute annually the sum of nine thousand dollars.

A contract was duly entered into by the respondent in pursuance of this ordinance, whereby it agreed, in consideration of the annual payment of nine thousand dollars, to receive into its said schools of Art and Design thirty-three "pupils," for each of the eight years covered by the contract, to be appointed as provided in the ordinance, and the ordinance was in terms made part of the contract.

From their establishment up to the year 1891 these schools had been exclusively for white pupils, male and female. In that year one colored pupil was appointed and admitted, and he completed the course. In 1892 another colored pupil was appointed and admitted, but he left the Institute soon after. In 1895, since the date of the present contract, two more were appointed and admitted, and are now pursuing their studies.

The answer, however, avers, and the demurrer admits, that the overwhelming public sentiment, both white and colored, at the time these pupils were admitted, was against mixed schools; that their admission was but tentative, with the

hope that none others would be appointed, and in no wise as an acknowledgment of any contractual obligation: that notwithstanding the most earnest and zealous efforts of the managers and teachers to overcome the objections of the white pupils and their parents, the presence of these colored pupils was disastrous to the interests of the institute, largely reduced the number of its pupils, and threatened to destroy the usefulness of these schools.

The respondent, therefore, in November, 1895, adopted this by-law, viz: "Resolved, that hereafter only reputable white pupils will be admitted to the schools," and notice thereof was thereupon sent to each member of the City Council. In February, 1896, Dr. J. Marcus Cargill, a member of the City Council, appointed the petitioner as a pupil. The respondent declined to admit him on account of color, notified Dr. Cargill of the fact, and asked him to make another appointment. He having failed to do so, the vacancy was subsequently filled by the Mayor in October, 1896. In September last Dr. Cargill again appointed the petitioner as a pupil for 1897; the respondent again refused to admit him for the reason stated, and Dr. Cargill failing to make any other appointment, this vacancy was also filled by the Mayor.

The petitioner claims that by virtue of his recent appointment he has a clear legal right enforceable by mandamus to be admitted to the schools of respondent. He raises no question as to the validity of the contract. He insists that the word "pupils" embraced both white and colored, and alleges that his rejection under this discriminating by-law was a breach of contract, and also that the said by-law is void as being in violation of the Fourteenth Amendment of the Constitution of the United States, in that it abridges one of his privileges, or immunities as a citizen of the United States, and denies him the equal protection of the laws.

It is clear that the "immunity" clause of the amendment does not apply to this case. Under that amendment no State can abridge the privileges or immunities of citizens of the United States, but the right to free education is not a privilege or immunity incident to citizenship of the United States. Whenever it exists, it exists by virtue of the law of the State, and owes its existence altogether to the authority of the State. *People vs. Gallagher*, 93 N. Y., 435; *Ward vs. Flood*, 48 Cal., 36; *State vs. McCam*, 21 Ohio St., 210; *Lehew vs. Brummell*, 103 Mo., 550. This clause, therefore, does not require further consideration.

When, however, a uniform system of public schools has been adopted by the Constitution or laws of the State, no local board or any other State agency can discriminate on account of race, or impair the equal enjoyment of its privileges. Authorities *supra*, and cases cited by High, section 332. And a mandamus will be issued, under the "equal protection" clause of the 14th amendment, to enforce the right of any one who may be denied admission to the public schools on account of color.

The respondent, however, claims that under its charter it is a private corporation. If this claim be good, then this discriminating by-law is not within the 14th amendment, unless the operation of the contract in question is to make the respondent a part of the public school system of the city, and thereby a municipal agency, and thus, under the statute relating to public schools, also a State agency.

The prohibition of the amendment in this connection is, viz: "nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws." This amendment has been repeatedly construed by the Supreme Court, and it is well settled that its prohibitions refer exclusively to State laws and State action. This State action may be manifested by any one of the departments of its government, or by any of its officers or agents, or by a municipal corporation acting under legislative authority; but, unless the act in question be done in some way under the authority of the State, it is not within the prohibitions of the amendment. The amendment has no application whatever to the acts of private individuals or private corporations. Civil rights cases, 109 U. S., 11-17; Virginia vs. Rives, 100 U. S., 318; United States vs. Cruikshank, 92 U. S., 554; United States vs. Harris, 106 U. S., 638.

The Maryland Institute is neither a public nor *quasi* public corporation. There is not a single power exercised by its members in their corporate capacity which they are not competent to exercise as individuals, and it is a strictly private corporation. The Regents vs. Williams, 8 G. & J., 307; Perry vs. House of Refuge, 63 Md., 22.

The Fourteenth amendment, therefore, has nothing to do with this case, unless the status of the Maryland Institute as a corporation has been changed by the contract in question. The petitioner claims that this contract makes the respondent *pro hoc vice* a municipal agency, and operates to make it part of the public school system.

The status of this corporation was defined by the Court of Appeals in St. Mary's School vs. Brown, 45 Md., 310, in which case was considered the validity of certain appropriations made to respondent and other institutions. It was there held that the Maryland Institute was not a municipal agent, was subject to no municipal control, occupied no municipal relation, was not subject to any of the ordinances or regulations adopted by the city under its authority from the State to establish a system of public schools, and that it was no part of the system established.

There has been no change since then in the conditions mentioned, unless it has been wrought by this contract, and this contract has wrought no change. The management of the institute is altogether in the hands of officers elected by its members; it is under no municipal control, is subject to none of the ordinances relating to public schools, and is no more a part of the public school system now than it was in 1876. The Mayor, Comptroller and Register are authorized to inspect these schools, and the manner in which the con-

tract is being complied with, but nothing more. The relation of the respondent to the city is simply that of a contracting party, and the contract is just such a one as the institute might make with any citizen who wished to have instructed thirty-three pupils to be designated in a given manner. The fact that this contract was made with the city, instead of with an individual, cannot change the corporate status of respondent, or make this any other than a private contract. It creates no possible official, governmental or political relation between the city and the institute, without which the respondent cannot be considered a municipal or State agency.

The city has ample power to contract with reference to municipal matters. It may contract for the erection of buildings, the construction of bridges, for paving the streets, and so forth, but the contractor does not become a part of the municipal government, or a municipal agency in any civil or political sense, by virtue of his contract.

Mechem on Public Officers, sec. 2-5.

There having been no change in the status of the respondent by reason of this contract, it being still simply a private corporation and no part of the public school system, it follows that the 14th Amendment has no application to the case, and the relation between the respondent and the city is a contractual one and nothing more. Whatever rights the petitioner has, therefore, must depend on the terms of the contract.

I cannot agree with the petitioner in the contention that he has rights under the ordinance, as separate and distinct from the contract. The ordinance did nothing but empower the officers named to make the contract, and had the institute declined to execute it, the ordinance of course would have amounted to nothing.

The position of the petitioner thus comes down to this: he claims to be a beneficiary under this contract, and as such, alleges that there has been a breach of it as against his rights, and asks the Court to enforce its performance by a writ of mandamus.

The respondent denies the alleged breach and avers, that in the light of the conditions existing at the time of the execution of the contract, the word "pupils" means white pupils. It further avers, that with full knowledge of all facts, the Mayor filled the vacancies created by the two rejections of the petitioner; that since his first rejection the city has twice made the annual appropriation under the contract; that in September last Mr. Elliott, the City Solicitor, gave an official opinion to the effect that there had not been any violation of the contract, and finally, that the city has always construed this contract in the same manner as has the respondent.

It is, however, altogether unnecessary in this proceeding, if not beyond the province of the Court, to construe the contract, because, whatever its true construction may be, the

petition must be dismissed. If it be construed to mean white pupils only, the respondent, being a private corporation and no part of the public school system, had a right to make a discriminatory contract, and the petitioner would have no rights thereunder. If it be construed as embracing both white and colored pupils, then the action of respondent resolves itself simply into a refusal to perform its contract, and mandamus does not lie. Whenever it appears that the object of the petition is to enforce contract rights of a private character, the inquiry of the Court into the terms of the contract is at an end, and the construction of it, if in dispute, is for determination in some other proceeding.

It having been shown that the purpose of the suit is to enforce the performance of a private contract, the writ of mandamus cannot be issued. The remedy by mandamus "relates only to the enforcement of duties incumbent by law" on the respondent; it will not lie "for the enforcement of contract rights of a private or personal nature," and the Courts have "steadily refused to extend the jurisdiction into the domain of contract rights." High, sec. 25, and cases cited.

This restriction upon the remedy by mandamus applies, of course, to corporations as fully as to individuals. "It is well settled that private rights against corporations dependent wholly upon contract will not be enforced by mandamus. To warrant this writ against private companies, or their officers or agents, there must be some specific duty to the relator, expressly imposed by the terms of their charters, or necessarily arising from the nature of the privileges or obligations which the charters create." *Rosenfeld vs. Einstein*, 46 N. J., L. 481.

Such being the law, the city itself, even if there were a breach by the respondent, could not enforce the performance of this contract by mandamus, and so neither can the petitioner, even though he might be entitled to admission under the contract.

In accordance with the views expressed, I must over-rule the demurrer, and as the sufficiency of the petition also is brought under review by the mounting of the demurrer, and it shows no sufficient ground for granting the writ, I will also sign an order that it be dismissed.

ALBERT RICHIE.

Petitioner's Order for Appeal.

(Filed December 10th, 1897.)

MR. CLERK:—Please enter an appeal from the order of Court of December 10th, 1897, over-ruling the demurrer to the answer and dismissing the petition for mandamus.

JOHN PHELPS,

W. ASHBIE HAWKINS,

Attorneys for Petitioners.

Appellant's costs.....	\$34 75
Appellee's costs.....	8 90

STATE OF MARYLAND,

City of Baltimore, Set :

I, ROBERT OGLE, Clerk of the Superior Court of Baltimore city, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the Superior Court of Baltimore city aforesaid, on the 6th day of January, eighteen hundred and ninety-eight.

(Seal's Place.)

ROBERT OGLE,
Clerk Superior Court of Baltimore city.