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WILLIAM F. BROENING, MAYOR, ET AL., v. EDWARD D. HALEY.

No. 112

COURT OF APPEALS OF MARYLAND

156 Md. 605; 144 A. 836; 1929 Md. LEXIS 48

February 27, 1929, Decided

**PRIOR HISTORY:** [\*\*\*1] Appeal from the Circuit Court No. 2 of Baltimore City (ULMAN, J.).

Bill by Edward D. Haley against William F. Broening, Mayor of Baltimore City, and the members of the City Council of said city. From an order overruling a demurrer to the bill, defendants appeal. Reversed.

**DISPOSITION:** Order reversed and bill dismissed, with costs to the appellants.

**LexisNexis(R) Headnotes**

**HEADNOTES:** *Injunction — Against Passage of Ordinance.*

A court will interfere with the exercise of the power of legislation, as by enjoining the passage of a city ordinance, only in exceptional cases, and only when the mere placing of the law on the statute books causes by itself an injustice.

**COUNSEL:** Simon E. Sobeloff, Deputy City Solicitor, and Lindsay C. Spencer, Assistant City Solicitor, with whom was A. Walter Kraus, City Solicitor, on the brief, for the appellants.

John Henry Skeen and Reuben Oppenheimer, with whom were Emory, Beeuwkes, Skeen & Oppenheimer on the brief, for the appellee.

**JUDGES:** The cause was argued before BOND, C. J., PATTISON, URNER, ADKINS, OFFUTT, DIGGES, PARKE, and SLOAN, JJ.

**OPINION:**

[\*605] [\*\*836] The following opinion was delivered *per Curiam*:

The appeal is from an order overruling a demurrer to a bill of complaint for an injunction to restrain the passage by the city officials of an ordinance changing the nature of an area under the zoning plan, so that the complainant, a landowner in that area, could not proceed with plans for building in accordance with previous zoning of the area, and refusing [\*\*\*2] to dissolve an injunction previously issued. The proposed ordinance is attacked on the grounds that it would constitute an attempt to exercise arbitrary, unreasonable powers not possessed by the city, that it would be invalid because of its actual operation upon a single individual landowner, that it would be a usurpation of a judicial function by the city legislative body, and that its passage would irreparably damage the landowner. In short, the ordinance is attacked, and the injunction against its passage is sought, on the ground of its invalidity if passed.

Only in a few rare and exceptional cases could a court interfere in advance in this way with the exercise of the power of legislation. The regular method of resisting an invalid exercise of that power is by enjoining enforcement after passage. 4 *Pomeroy, Equity* (4th Ed.), sec. 1764; *New Orleans Water Works v. New Orleans*, 164 U.S. 471, 41 L. Ed. 518, 17 S. Ct. 161. At least, it would seem, the case should be one in which the mere placing of the law on the statute books causes by itself an injustice which the courts are required to prevent; and that does not appear to be the case here. In the opinion of [\*\*\*3] this court no exceptional situation, such as has sometimes been held to support anticipatory judicial interference, is presented here; and the demurrer should have been sustained and the bill dismissed.

*Order reversed and bill dismissed, with costs to the appellants.*