104 Md. 351, 65 A. 35, 10 Am.Ann.Cas. 35

Court of Appeals of Maryland.
**MAYOR**, ETC., OF **CITY** OF **BALTIMORE**
v.
MEREDITH'S FORD & JARRETTSVILLE TURNPIKE CO. IN **BALTIMORE** & HARFORD COUNTIES.
Nov. 15, 1906.

Appeal from Circuit Court, Baltimore County; Frank I. Duncan, Judge.

Action by the Meredith's Ford & Jarrettsville Turnpike Company in Baltimore & Harford Counties against the mayor and city council of Baltimore. From a judgment for plaintiff, defendant appeals. Affirmed.

West Headnotes

**Courts 106 ⚿23**
106k23 Most Cited Cases
Unless a court has jurisdiction of the person and subject-matter, no consent can confer it.

**Municipal Corporations 268 ⚿1016**
268k1016 Most Cited Cases

**Municipal Corporations 268 ⚿1024**
268k1024 Most Cited Cases
A municipal corporation may be sued for trespass to real estate in a court other than its own.

**Venue 401 ⚿5.5**
401k5.5 Most Cited Cases
(Formerly 401k5(5))
Trespass to real property is a local action, and the suit must be brought in the county or place where the cause of action arose.

Argued before McSHERRY, C. J., and BRISCOE, BOYD, SCHMUCKER, and JONES, JJ.

S. H. Lauchheimer, for appellant.
Col. David G. McIntosh, for appellee.

BRISCOE, J.
This is an appeal from an order of the circuit court of Baltimore county, passed on the 17th of February, 1906, overruling a motion by the defendant for a judgment of non pros. a motion to quash the writ of summons and the return of the sheriff thereto, and from the judgment entered thereon.

The plaintiff is a turnpike company doing business in Baltimore and Harford counties, under the corporate name of the Meredith's Ford & Jarrettsville Turnpike Company of Baltimore & Harford Counties. The defendant is the mayor and city council of Baltimore, a municipal corporation, and the owner of the bed of the Gunpowder river, and certain lands contiguous thereto, in Baltimore county, adjacent to the plaintiff's turnpike. The substantial cause of the action, and the grievance complained of by the plaintiff below, is the alleged wrongful acts of the defendant in erecting large banks of earth near the bed of the river, forcing the water and dirt to flow over and upon the turnpike, thereby causing injury and damage to the road. The defendant appeared specially to the suit, and based its motion for a judgment of non pros. upon certain assigned reasons, which may be stated, for the purposes of this appeal, to be: (1) Because the mayor and city council of Baltimore is a municipal corporation, and can be sued only in its own courts, and because the attempt to subject it to the jurisdiction of the circuit court for Baltimore county cannot avail, in the absence of its consent. (2) Because the mayor and city council of Baltimore claims it is exempt from suit in any court except the courts of Baltimore City.

It is admitted that the turnpike road alleged to have been obstructed and injured lies in Baltimore county, and that the injury occurred in the county where the suit was brought. It must also be

conceded, at the outset, that the action is in its nature local, because the declaration states that the turnpike road, which ran along the banks of the Gunpowder river, the obstruction which caused the injury to the plaintiff's property, and the river itself, where the alleged damage was done, are all situate in Baltimore county. The counsel for the city, in their very able and elaborate brief contend: (1) A municipal corporation can be sued in its own courts only. (2) The statute law of Maryland makes no provision for suits against a municipal corporation in any court other than its own. (3) There is nothing in the common law, as interpreted by the courts of Maryland, that is to be taken as a qualification of the rule that municipal corporations cannot be sued in courts other than their own. The sole question thus presented is whether a municipal corporation can be sued, in this form of action, in a court other than its own.

While the question is an important one, and may be regarded as unsettled, in so far as any direct decision of this court may be found, we are not, however, without what may be considered analogous adjudications upon the question here raised. The distinction between local and transitory actions has been carefully differentiated and sustained by a number of cases. In Crook v. Pitcher, 61 Md. 510, it is said: "If the cause of action could only have arisen in a particular place, the action is local, and the suit must be brought in the county or place in which it arose. Actions for damages to real property, actions on the case for nuisances, or for the obstruction of one's right of way, are according to all the authorities local." In Ireton v. Mayor and City Council of Baltimore, 61 Md. 432, the plaintiff sued the city in the circuit court of Baltimore county for damages to his real estate and a mill thereon by the construction of a lake near the plaintiff's property. The contention in that case was that a municipal corporation could not be sued outside its territorial limits. This court, however, reversed the judgment of the court below in quashing the writ of summons, upon the ground that the motion was too late, for the reason the city had appeared by attorney to the suit; but it distinctly held: "The injury sued for in this case was done to real estate, and the action ***36** was local, and not transitory. This is the common-law rule, and by the decision in Patterson v. Wilson, 6 Gill & J. 499, has been held to be the law in this state. The circuit court for Baltimore county, being a court of general jurisdiction, had undoubted cognizance of the subject-matter." In the case of Gunther v. Dranbauer, 86 Md. 1, 38 Atl. 33, it was said: "If the pending action involved the right of the plaintiff to use the alleged highway, if he claimed a right to use it and the defendant obstructed the way, and by that or other means denied the existence or interfered with the exercise of the asserted right, the cause of action would indisputably be local, for the reason that the injury to that particular real estate or easement could not possibly have arisen anywhere else than where the thing injured was actually situated." The rule seems to be well established, both upon authority and reason, that trespass to real property is a local action, and the suit must be brought in the county or place where the cause of action arose.

But it is earnestly urged upon the part of the appellant that the authorities cited and the reason for the rule stated have no application to the case at bar, because the statute law of the state makes no provision for such suits, and there is nothing in the rule of the common law, as interpreted by the courts, that can be taken as a qualification of the rule that municipal corporations cannot be sued in courts other than their own. We have been referred to no decision in this state that holds that a municipal corporation should not be bound by the rules of law which are applicable to other litigants, and no sound reason can be given why they should be excepted. The contention of the appellant, if carried to its logical conclusion, would result in depriving municipalities in the state which have no courts from suing or being

sued at all in this class of cases, and would require all actions, even of ejectment, dower, trespass to real property, and the like, to be instituted in Baltimore City, notwithstanding the fact that the land was situated in the counties of the state. The authorities relied upon by the appellant cannot be regarded as controlling, or establishing a rule that would lead to such results. The case of City of Baltimore v. Merryman, 86 Md. 585, 39 Atl. 98, was a suit by a resident of Baltimore county against the city, a municipal corporation, and the action was brought in Baltimore county, and subsequently removed to Harford county, where the trial was had, and judgment rendered for the plaintiff. The suit was for damages to the plaintiff's farm, resulting from the erection of a dam across the Gunpowder river, whereby the stream became obstructed, so as to cause the water to overflow the farm, and injure the fencing, crops, etc., thereon. The plaintiff recovered a verdict for $2,500, and the judgment was affirmed on appeal to this court. While the question here presented does not appear to have been raised or passed on in the case, it can hardly be contended that so vital a point as one affecting the jurisdiction of the court would have escaped such eminent counselors as Judge Elliott and Hon. Thomas G. Hayes, who appeared on the part of the city, if the practice had not been thus established. In Crook v. Pitcher, supra, Judge Robinson, in delivering the opinion of the court, cites with approval two cases in which municipal corporations were parties and where the rule was sustained. In Mayor, etc., of London v. Cole, 7 D. E. Reports, 583, Lord Kenyon, C. J., said: "An action, the fruit of which is the delivery of the land itself, is necessarily local, because the possession of land situate in one county, cannot be delivered by the sheriff of another." And to the same effect is Mayor of Berwick v. Ewart, 2 W. Black. 1070. So in Mercer Co. v. Cowles, 7 Wall. (U. S.) 118, 19 L. Ed. 87, and in Vincent v. Lincoln County (C. C.) 30 Fed. 749, it was held that a public corporation could be sued in a federal court by a citizen of another state. It has always been the settled law in England that actions for injuries to real property should be brought in the county where the injuries occurred. In Mostyn v. Fabrigas, Cowper, 176, Lord Mansfield said: "There is a formal and substantial distinction as to the locality of trials. The substantial distinction is, where the proceeding is in rem, and where the effect of the judgment cannot be had, if it is laid in a wrong place. That is the case of ejectment, where possession is to be delivered by the sheriff of the county, and, as trials in England are in particular counties, the officers are county officers; therefore the judgment could not have effect if the action was not laid in the proper county."

Coming then, to the statutes in this state, bearing upon the question, we find, that by section 145 of article 75 of the Code of Public General Laws it is provided that if any trespass shall be committed on any real property, and the person committing the same shall remove from the county where such property may lie, or cannot be found in such county, such trespasser may be sued in any county where he may be found, etc. Manifestly, under this section, the suit must be brought in the country where the land lies and where the injury to the property was committed, unless the person removes therefrom or cannot be found therein. Balto. & Y. T. Co. v. Crowthers, 63 Md. 571, 1 Atl. 279; Patterson v. Wilson, 6 Gill. & J. 499. So in actions of ejectment the suit must be brought in the court having jurisdiction where the property in dispute is located or found, except in cases provided for in section 74 of article 75 of the Code of Public General Laws. The authorities cited and relied upon to sustain the appellant's contention in this case will be found, upon an examination,***37** to be either actions of debt or resting upon statutes not applicable to this form of action. But, whatever may be the decisions elsewhere, we think it is clear, both on reason and authority, that a municipal corporation can in this

state be sued, as in this case, in a court other than its own.

We do not deem it necessary to discuss the question of consent to confer jurisdiction on the court. It is well established that, unless the court had jurisdiction of the person and subject-matter, no consent would confer it. Price v. Hobbs, 47 Md. 359; Meyer v. Henderson, 88 Md. 585, 41 Atl. 1073, 42 Atl. 241. For the reasons given, the judgment will be affirmed.

Judgment affirmed, with costs.

Md. 1906.
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