C
96 Md. 509, 53 A. 1121

Court of Appeals of Maryland.
DAVIDSON et al.
v.
MAYOR, ETC., OF **CITY** OF **BALTIMORE**.
Jan. 23, 1903.

Appeal from circuit court of Baltimore city; Pere L. Wickes, Judge.

Bill by Robert C. Davidson and others against the mayor and city council of Baltimore. From an order sustaining a demurrer to the bill, plaintiffs appeal. Affirmed.

West Headnotes

Injunction 212 ⚿114(2)
212k114(2) Most Cited Cases
A bill for an injunction to restrain the mayor and city council from changing the use of a building from that of an English-German school to that of a colored high school was filed by complainants, suing as taxpayers, and alleged that all the property in the city would be injured by the proposed change, but not that complainants' property was situated in the immediate vicinity of the school, or would be otherwise specially injured by the change. Held, that as it did not appear that complainants had a special interest in the subject-matter, distinct from that of the general public, they had no standing to maintain a suit.

Municipal Corporations 268 ⚿722
268k722 Most Cited Cases
Under a city charter providing that all the property of the city is vested in the mayor and city council, with full power of disposition of it, etc., an ordinance directing the mayor and other proper officers to lease a lot for the purpose of erecting thereon a building for the use of an English-German school does not deprive the mayor and city council of power to afterwards use the lot and building erected thereon for some other purpose than the one originally designated.

Argued before McSHERRY, C.J., and FOWLER, BOYD, PAGE, PEARCE, SCHMUCKER, and JONES, JJ.

G. Lloyd Rogers, Isidor Goldstrom, John V.L. Findlay, Thomas Mackenzie, and Armstrong Thomas, for appellants.
Wm. Pinkney Whyte and Olin Bryan, for appellee.

PAGE, J.
The bill in this case was filed by certain residents and taxpayers of the city of Baltimore. They allege that, by virtue of an ordinance and resolution of the mayor and city council of Baltimore, a lot was acquired in the city, and a building erected thereon, for the use of English-German school No. 1, and that the said building has been used for that purpose since its completion. Both the ordinance and resolution are set out in the bill; being Ordinance No. 120 and resolution No. 51. Section 1 of the ordinance authorizes and directs the mayor, comptroller, and president of the board of commissioners of public schools “to lease a lot,” etc., “for the purpose of erecting thereon a building for the use of English-German school No. 1.” Section 2 provides that the inspector of buildings is authorized and directed “to have erected” on the lot “a suitable building for the use of English-German school No. 1,” and that the sum of $2,500 be appropriated to defray the cost of erection. The resolution also directs the inspector of buildings “to proceed with the erection of English-German school No. 1,” and appropriates, in addition to the amount already appropriated by the ordinance, the further sum of $1,000. It is further charged in the bill that the complainants are informed that the board of school commissioners of Baltimore city “have determined to change the use of the said premises

from the English-German school No. 1 as provided for by said ordinance, and to use said premises for other and different purposes"; also that the board have determined "to use the premises for the purpose of a colored high school, in violation of the law under which the said premises were acquired, contrary to the provisions of said ordinances." The prayer of the bill is that the mayor and city council and the board of school commissioners of Baltimore city, defendants above named, may be restrained and enjoined from using or permitting the use of the premises for any other purpose than that of the English-German school No. 1, as provided for and authorized by the ordinances above set out, and such other relief as the nature of the case may require. Upon demurrer interposed by the defendants, the court dismissed the bill, and the complainants appealed.

It is insisted on the part of the complainants that the provisions of the ordinance as to the uses to which the lot and building thereon may be put are mandatory, and therefore the only legal use to which they can be applied is for the purposes of the English-German school No. 1. The charge in the bill is that the school board "have determined to change the use of the said premises," etc., from that of the English-German school No. 1 to that of a colored high school. But there is no averment that this contemplated change is to be effected without the concurrence and authority of the mayor and city council. The attitude of that body is, in fact, that of resistance to the claim of the appellants that the proposed action of the school board is in violation of law and "unwarranted." The claim of the appellants therefore carries with it the necessary implication that by the passage of the ordinance the corporation has deprived itself of all power to employ the premises for any other purpose than that for which they were purchased,***1122** although the public necessities may at some other period absolutely demand that their use should be altered. This view would be in violation of the terms of the charter, for by the first and second sections of that instrument all the property of the city is vested in them, with full power of disposition of it in the manner and terms therein provided. Under the lease the mayor and city council became the owner of the premises, and by reason thereof had full power to designate, from time to time, the uses to which they could be put. The designation in the ordinance of such use as the mayor and city council deemed was then appropriate and needed could not operate as a limitation upon their power to designate other uses whenever, in the discharge of their duties, they chose to do so. Their power with reference to the premises could not be limited by their own ordinance. The terms of the charter and the acts of assembly, if there were any, determined what should be the measure of their power and duty, and these could not be amended or altered by their own act. Nor do we think that the framers of the ordinance ever intended that such should be its effect. At the time it was passed a need was felt for the establishment of an English-German school at the particular location. The object of the measure was to procure a lot and erect a building for that purpose. The essence of the ordinance was that the lot should be secured, and a building erected, to be devoted to the uses of that school, until the mayor and city council should make a further designation of its uses. It could not have been intended that for all time the premises could be used only for the uses of that school. Such a construction of an ordinance like this would be fraught with serious consequences. If it could be made available for no other use than those specifically mentioned, it could well happen that after the location had ceased to be available for the specified use, and there were no power in the corporation to designate any other employment of the premises, the property would remain idle and utterly worthless, and become a mere incumbrance on the city. For these reasons, we are of the opinion that the contention of the appellants cannot be supported.

But apart from all that has been said, it seems to be clear that the complainants, "suing as taxpayers," have no standing in court to maintain this bill. The charge is that the board of school commissioners are about to change the use of the building from that of the English-German school No. 1 to that of a colored high school. It, perhaps, may not be difficult to perceive how the establishment and maintenance of a colored school in the building might result injuriously to the property in the immediate vicinity. But the complainants do not charge that their property will be specially injured by the proposed change of use. The scope of the averments of the bill in this respect is that all of the property in the city will be injured,-a conclusion very difficult to reach. If the proposed change of use will in fact specially affect the complainants, either as to themselves or to their property, it should have been so stated in the bill. That was necessary, to complete the jurisdiction of the court. To warrant a court in issuing an injunction in such a case, it "must be informed by the bill itself, and its accompanying exhibits, of every material fact constituting the case of the plaintiff, in order that it may be seen whether there is a just and proper ground for the application of so summary a remedy." Lamm v. Burrell, 69 Md. 274, 14 Atl. 682. The taxpayer cannot invoke the restraining power of a court of equity unless it be shown by proper averments in the bill that the municipal corporation or its officers are acting ultra vires, or assuming or exercising a power over the corporate property or funds which the law does not confer upon them, and that "such unauthorized acts may affect injuriously the rights and property of the parties complaining." St. Mary's Industrial School v. Brown, 45 Md. 327. Public wrongs are not to be redressed at the suit of individuals who have no other interest in the matter than the rest of the public. To give them a standing in a court of equity, they must allege and show that by the wrong committed they suffer some special damage, or that they have "a special interest in the subject-matter distinct from that of the general public." Mayor, etc., v. Keyser, 72 Md. 108, 19 Atl. 706; Mayor, etc., v. Gill, 31 Md. 395. The bill lacks every verment showing special injury to the complainants, or that they have any special interest in the subject-matter distinct from the general public. It is not shown how the establishment of a colored school will affect them or their property specially. In fact, the court cannot perceive, from the allegations that are made, that the property or rights of the complainant will be injuriously affected at all. Certainly it cannot be said that the mere establishment of a colored school would work any injury to all the property of the city.

For these reasons, we are of opinion that there is no error in the ruling of the lower court, and therefore the decree will be affirmed. Decree affirmed.

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