

59 of 125 DOCUMENTS

**GEORGE WEEMS WILLIAMS ET AL. vs. MAYOR AND CITY COUNCIL OF
BALTIMORE CITY.**

[NO NUMBER IN ORIGINAL]

COURT OF APPEALS OF MARYLAND

128 Md. 140; 97 A. 140; 1916 Md. LEXIS 55

February 10, 1916, Decided

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

The facts are stated in the opinion of the Court.

DISPOSITION: Order affirmed, the costs to be paid by the appellants.

LexisNexis(R) Headnotes

HEADNOTES: *Baltimore City: Park Board and Board of Estimates; control of parks; injunctions; municipal corporations.*

The right to an injunction is not *ex debito justitiae*; the application can be only to the sound discretion of the court, acting upon all the circumstances of the particular case.

pp. 157, 158

An injunction to restrain *ultra vires* or illegal acts of a municipal corporation will not be granted at the instance of a taxpayer, unless it appears that he would be injured by the acts complained of.

p. 158

The Board of Estimates of Baltimore City has no powers or duties in respect of the public parks.

p. 159

Under Ordinance No. 60, approved July 21st, 1860, and confirmed by sub-section 16 and section 91 of the City Charter, the charge and control of the parks is vested in the Park Board.

p. 159

The National Government ceded Fort McHenry to

Baltimore City for park purposes; it sold to the City one of the buildings the site of which had been reserved for an immigrant station; a dispute arose between the Park Board (which has jurisdiction over the city parks) and the city as to the place to which the said building should be moved; upon application for an injunction to restrain the city and its Board of Estimates from moving the building it was: *Held*, that the writ should not issue: the building had already been removed, and it was: *Held*, that, unless the building had been removed the Government would have torn it down; and it was further: *Held*, that the preservation of the public property by removing it had not been made to appear to be such an injury to the taxpayers as would justify the granting of the injunction.

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COUNSEL: George Weems Williams, for the appellants.

S. S. Field, the City Solicitor of Baltimore City, and Ed. J. Colgan, Jr., the Assistant City Solicitor, for the appellee.

JUDGES: The cause was argued before BOYD, C. J., BRISCOE, BURKE, THOMAS, PATTISON, URNER, STOCKBRIDGE and CONSTABLE, JJ.

OPINIONBY: BURKE

OPINION:

[*141] [**141] BURKE, J., delivered the opinion of the Court.

This case grows out of a controversy between the Board of Park Commissioners and the Board of Estimates of Baltimore City,—two of the boards of the municipal corporation,—respecting the control and management of one of the public parks of the city. The plaintiffs constitute a majority of the Board of Park Commissioners,—four of the five members of that Board,—and were authorized to file the bill in this case by resolution of the Board.

They also sue individually as residents and taxpayers of Baltimore City. The bill is filed against the Mayor and City Council of Baltimore and the Board of Estimates. In so far as it [*142] [***2] seeks any relief against the municipal corporation for the acts complained of, it is obvious that the bill can not be maintained for the simple reason that the corporation as such has done nothing to cause or bring about the situation complained of in the bill. The acts complained of were done by the Board of Estimates, and there is nothing to show that the corporation itself contributed to create the condition which gave rise to the suit.

The bill and answer are quite full, but it is unnecessary to set out the respective contentions of the parties by quoting at any length from the pleadings, which suggest a number of interesting legal questions. For the real questions which must control the case lie within a narrow limit and are, we think, free of difficulty. The controlling facts disclosed by the record may be briefly stated. Pursuant to an Act of Congress, approved by the President on May 26th, 1914, and an ordinance of the Mayor and City Council of Baltimore (No. 471), passed on June 17, 1914, the use of a tract of land, comprising about thirty-eight acres, situated on Locust Point in Baltimore City and known as Fort McHenry, was granted by the government of the United States to [***3] the Mayor and City Council of Baltimore and accepted by the City as a public park. After its acceptance, the property was placed in the charge and custody of the Board of Park Commissioners. A portion of the land of the Military reservation at Fort McHenry was reserved by the United States Government by the Act of Congress referred to for an immigration station which the government was about to construct at large expense. On the land reserved by the government as a site for the new immigration station there was located a substantial frame building, worth approximately five thousand dollars, which had been used as a "Canteen Building" when Fort McHenry was used for military purposes. To make room for the building of the immigration station it was necessary to tear down or remove this building. The building was purchased by the Park Board from the National Government for the sum of fifty dollars in September, [*143] 1914, to be used in connection with the park and paid for out of the park funds, but the title to and ownership of the building after its purchase were vested in the City.

After the building had been acquired by the City the question arose as to the specific purpose [***4] for which it should be used. At the time of the acquisition of the building by the City, and for many years prior thereto, there were a number of boat clubs located at Ferry Bar. The ground upon which these clubs was located had been acquired by the Western Maryland Railroad for use as ter-

minal facilities, and the clubs were desirous of securing better and more permanent locations. The ground on the south side of Fort McHenry is admirably adapted for the location of boat clubs. It rises rapidly from the water, and the sloping hillsides afford opportunity for a large number of people to witness boating, rowing, and other water sports. It was accordingly proposed that the boat clubs be located at Fort McHenry. It was thought regattas and other aquatic sports would popularize the park and furnish entertainment to great numbers of the people of Baltimore, and by attracting people from other States would advertise the City. This proposal was favorably received by the boat clubs and by the Board of Estimates, and was taken under consideration by the Board of Park Commissioners. A committee was appointed, of which Mr. Williams, the president of the Park Board, was a member, to arrange the [***5] details of an agreement to be entered into between the boat clubs and the City under which they might remove and locate at Fort McHenry. After numerous meetings of the committee the final draft of the agreement was prepared fixing the terms and conditions,—a number of which being suggested by Mr. Williams,—upon which the boat clubs might remove and locate at Fort McHenry. Mr. Williams was personally favorable to the removal and approved the terms of the proposed agreement, embodied in the final draft; but he was at all times careful to have it understood what he did was not intended to bind the Board of Park Commissioners. He testified: [*144] "My object in getting on that committee was, that my mind was not made up as to whether the boat club proposition was good or bad. * * * I went on the committee, and I was very careful until, I think, I got to be a perfect bore on the subject, that any suggestion I made was not intended to bind the Board."

(Mr. Colgan): What Board are you referring to?
(Witness): The Park Board. (Witness—continuing): My idea was, and I think the idea of the committee was to get the best proposition from the boat clubs that could be gotten, so that [***6] when the discussion took place it would be on something that was substantial and concrete, rather than have just a mass-meeting of ten or fifteen gentlemen and nothing ready before us. Now, on the third of December—I think by December second, Mr. McCay who was on the committee—the committee was as I remember, Mr. McCay, myself and four representatives [***142] from the four boat clubs—sent me a report and I sent it back with suggestions and I told them that I concurred in it, but that I could not bind the Board. Then around the last of January, 1915, the draft of the agreement was sent me, I distributed copies of it to the members of the Board and we had a number of meetings."

It was contemplated that the agreement should be signed by the boat clubs, the Mayor and City Council

of Baltimore, by the hand of Mr. Preston, Mayor, and approved by the Board of Park Commissioners and the Board of Estimates. It was executed by the boat clubs, but not by the Mayor, nor was it approved by the Board of Park Commissioners or Board of Estimates. The final draft of the agreement, which it was proposed should be signed by each of the above named parties, is here inserted:

"This Agreement, [***7] Made this day of January, in the year nineteen hundred and fifteen, between the Mayor and City Council of Baltimore and the following Boat Clubs, all of which are incorporated, namely: Arundel Boat Club, Corinthian Yacht Club, Maryland Motor Boat Club, and Ariel Rowing Club:

[*145] "Witnesseth, That whereas the said four Clubs have for a number of years past had their respective Club Houses located at Ferry Bar, in the City of Baltimore, and were occupying the ground under leases for short terms; and

"Whereas the Mayor and City Council of Baltimore has recently secured from the United States of America the authority to use and improve Fort McHenry as a Public Park, with the riparian rights attached thereto, and the said Mayor and City Council, through its Ordinance of Estimates for the year 1915, has made appropriations for the improvement of Fort McHenry and the Water Front on the South side thereof, known as the 'Approach to Spring Gardens,' and it is contemplated that the City shall build a Breakwater extending from the point of Fort McHenry into the Middle Branch of the Patapsco River, and thus furnish, on the south side of Fort McHenry and west of said Breakwater, [***8] a very desirable and suitable place for the location of Boat Club Houses, and the anchorage of pleasure boats of various kinds, and for the purpose of adding to the attraction of said Park and making said Park a popular Water Front Park, and to encourage the use of said Park for aquatic sports, the said Mayor and City Council of Baltimore has invited the said four Clubs to rent the portion of the space thus to be provided by the improvements above mentioned, shown on attached drawing, and the said four Clubs, desiring to do all in their power to make said Public Park a success, and to show their appreciation of

the efforts of said Mayor and City Council to give them a desirable location therein, have agreed to rent the spaces thus to be provided, and which have been allotted to each of them, and by reason of the large cost in removing their buildings and making the necessary repairs thereto occasioned by said removal, said Clubs, and each of them, have requested the Mayor and City Council of Baltimore to assist them financially, and [*146] the Mayor and City Council of Baltimore has agreed to do so, upon the following terms and stipulations hereinafter set forth:

"1. That the [***9] Arundel Boat Club's building be moved to the location shown on the accompanying blue print, and fixed up, at an expense estimated not to exceed five thousand dollars (\$ 5,000.00).

"2. That the old Canteen Building, now on Fort McHenry, be moved to the location shown on the accompanying blue print, and remodelled for the use of the Corinthian Yacht Club, at a cost estimated not to exceed seven thousand dollars (\$ 7,000.00).

"3. That the Maryland Motor Boat Club's building be moved to the location shown on the accompanying blue print, and be put in proper order, at a cost estimated not to exceed five thousand dollars (\$ 5,000.00).

"4. That the Ariel Rowing Club's building be moved to the location shown on the accompanying blue print, and fixed up, at an expense estimated not to exceed four thousand dollars (\$ 4,000.00).

"All of the above work—that is, moving the Canteen Building for the Corinthian Yacht Club, and moving the buildings of the Arundel Boat Club, Maryland Motor Boat Club and the Ariel Rowing Club, building proper foundations for all of said buildings, and fixing them up in good order for the use of the Clubs, and to provide suitable landings—to be done by contracts [***10] awarded by the Board of Awards, in the usual way of City contracts, after public advertisement, upon specifications prepared by the City Engineer and approved by the Board of Park Commissioners, said specifications to be so prepared as to call for bids separately:

"1. Upon moving and placing on suitable foundations and wharves, provided by

contractors, each of the buildings specified above.

"2. Upon making the proper alterations and repairs to each of said buildings.

[*147] "3. Also upon all of said work, as a whole, with the proviso in the specifications giving to the Board of Awards the power to award the whole work or any portion or portions thereof, to any bidder, and also the right to reject any and all bids; the plans and specifications for said buildings, repairs and improvements to be prepared by C. R. Leland, Architect, heretofore selected by the Board of Awards, with the approval of the said Boat Clubs.

"It is Further Understood and Agreed, that if, after said bids are all in, it should appear from said bids and other incidental expenses, including the architect's commissions, that the total expenditure in connection with the moving and relocating of said Boat Club **[***11]** Houses would exceed twenty-five thousand dollars (\$ 25,000.00) then the Mayor and City Council of Baltimore shall have the right to terminate this contract, and thereafter be under no obligation whatsoever in the matter.

"In the event, however, that the City awards the contracts for said work, then the payment for all of said work will be made in the first instance by the Mayor and City Council of Baltimore out of the appropriation of fifty thousand dollars (\$ 50,000.00) made to the Board of Park Commissioners for improvements at Fort McHenry in the Ordinance of Estimates for 1915.

"Each of said Clubs, except the Corinthian Yacht Club, will pay to the Mayor and City Council of Baltimore the following annual amounts, payable in quarterly installments in each year, accounting, as to each Club, from the date when the building to be occupied by each Club, and the improvements thereof hereby contemplated, shall be completed, the same being calculated to cover rental for the spaces occupied, interest on the amounts advanced by the City and a sinking fund to pay for the advances thus made—that is to say: Each of said Clubs shall pay to the Mayor and City Council of Baltimore 5% annually **[***12]** as interest

[*148] and to cover the use of the space occupied, and 7% annually as a sinking fund to reimburse the City for its outlay, or a total of 12% annually, to be paid for twelve years by each Club, in quarterly installments, accounting from the respective dates when the respective Club buildings and improvements are completed, said 12% to be calculated upon the actual amount which may be expended by the Mayor and City Council of Baltimore, as above provided, **[**143]** in moving and improving the buildings and providing landings, etc., for the use of said Clubs respectively, as hereinabove provided.

"These provisions as to payment are also to apply to the Corinthian Yacht Club, with the exception that the Corinthian Yacht Club will pay 5% annually to cover interest and rental for the space occupied and 3% annually for the sinking fund to reimburse the City for its advances, or a total of 8% annually, and will pay said 8% for a period of eighteen years, in quarterly installments.

"And it is Further Herein Provided and Agreed, That upon the removal of the buildings of the Arundel Boat Club, Maryland Motor Boat Club, and the Ariel Rowing Club to their respective locations **[***13]** at Fort McHenry, as designated upon the drawing hereunto annexed, the absolute title in and to said buildings (but not their contents) shall vest in the Mayor and City Council of Baltimore and be and become the property of said Mayor and City Council of Baltimore, with the right of each of said Clubs to use and occupy same, in strict accordance with the terms hereof, as the tenants of the said Mayor and City Council of Baltimore, it being agreed that so long as said Clubs shall occupy the said buildings as tenants, in pursuance hereof, the said Clubs will keep their respective buildings in good order and repair, but when, and as often as, the said Club Houses may need painting on the outside, the Mayor and City Council of **[*149]** Baltimore will furnish the material and the Clubs will furnish the labor for doing said painting.

"It is Further Hereby Agreed, That, in addition to the payments hereinabove specified, each of said Clubs will pay the Mayor and City Council of Baltimore, in the event of an increase in their respective memberships,

the sum of one dollar (\$ 1.00) per annum per member, for such increase, the increase to be ascertained as follows:

"On the first days of January [***14] and July, in every year, beginning with the year 1915, the Clubs will report their membership and will pay the said sum of one dollar (\$ 1.00) per annum for such increase in membership as may be represented by the difference between the present membership and the average which will be shown by adding the membership on January 1st and July 1st in each year and dividing it by 2; it being hereby agreed that the present membership of each of said Clubs is as follows:

Arundel Boat Club	250
Corinthian Yacht Club	100
Maryland Motor Boat Club	150
Ariel Rowing Club	250

"It being, however, understood and agreed that before this payment of one dollars (\$ 1.00) per annum per member attaches to the Corinthian Yacht Club it shall be permitted to have fifty (50) additional members—that is to say: That it will pay annually on the excess above 150 members; and, in like manner, before this provision attaches to the Maryland Motor Boat Club it shall be permitted to get fifty (50) additional members, and the payment hereinabove specified to apply, as to that Club, only to the excess above 200 members.

"It is Further Hereby Understood and Agreed, That each of said Clubs will [***15] indemnify and save the Mayor and City Council of Baltimore and the Board of Park Commissioners harmless from any and all claims for damages which may be caused by any act, negligence [*150] or default of any of said Clubs, or any of the members of said Clubs, in or about the Club Houses and landings herein referred to.

"It is Further Hereby Understood and Agreed, That this entire contract is subject to the possibility of United States Government retaking possession of Fort McHenry and the grounds on which the Club Houses are hereby contemplated to be placed; in which event this contract will be terminated, and neither party will be liable to the other except to the date of such termination.

"In the event that either or any of said Clubs shall fail to make the payments herein required to be made by each of them to the Mayor and City Council of Baltimore, the said Mayor and City Council of Baltimore, shall have the right to distrain upon any of the property of said Club so in default, and sell the same, or pursue any ordinary remedy

for the recovery of the amount so due, or terminate the agreement and take possession of the Club building, and have the right to use either or all [***16] of said remedies at the option of the said Mayor and City Council of Baltimore.

"It is Further Understood and Agreed, That the Mayor and City Council of Baltimore shall have the right, either through regulations of the Park Board, approved by the Board of Estimates, or by Ordinance, to make all reasonable and proper regulations in reference to the use of said Club Buildings and the conduct of the members of said Clubs, respectively, and to impose appropriate liquidated damages or penalties for the violations of such rules and regulations, and also with the right, for repeated violations of said rules and regulations, to cancel the contract and take possession of the Club House of the Club to which the member so offending belongs.

"It is Further Understood and Agreed, That the members of each of said Clubs shall have the right to the use of said protected water for the mooring of boats of said Clubs or their members under such reasonable [*151] rules and regulations as may be prescribed by Ordinance, or by the Harbor Board, with the approval of the Board of Estimates, without any charge.

"And it is Further Understood and Agreed, That at the expiration of the twelve years provided [***17] for in this contract, as to three of said Clubs, and of the eighteen years as to the fourth, the said Clubs and each of them shall pay to the Mayor and City Council of Baltimore the annual rental, as tenants from year to year, of five hundred dollars (\$ 500.00) per year, in quarterly installments, for the use and privilege of the buildings and spaces occupied by the respective Clubs, said tenancy from year to year to continue during the pleasure of the City, the City having the right to terminate same upon giving ninety days' notice before the expiration of any current year."

This agreement was disapproved by the Board of Park Commissioners, and a dispute arose between it and the Board of Estimates as to the removal of the building, its location in the Park and the use to which it should be devoted. The Board of Estimates wanted it fitted up and used by the Corinthian Yacht Club under the terms and conditions stated in the final draft of the agreement above set out; the Board of Park Commissioners wanted it located at a different site in the Park and used for a different purpose. Pending this dispute the United States Government was insisting that the building be removed from the [***18] site of the immigration station in order that it might proceed with its work there. The Board of Park Commissioners proposed to surrender the building to the Government in which event it would be destroyed. It was the property of the City and was of considerable

value, and the Board of Estimates wanted to preserve it.

On June 11, 1915, it addressed a letter to Mr. William [*144] S. Manning, General Superintendent of Public Parks, notifying him "to arrange with the lowest bidder to move the Old Canteen Building from its present location, where it interferes [*152] with the proposed plans of the Immigration Commission, over to any point that may be selected by the Board of Park Commissioners south of the row of houses which fronts on the main entrance of the fort, and allow this Canteen Building to remain standing at this location until its final location is determined. Two locations have been marked in red, 'A' and 'B,' on the enclosed blueprint, which would not interfere with any of the present improvements at Fort McHenry or be unsightly, and from either of these two points it would not be difficult to transport the building to its final location." In its reply to this [***19] letter, the Board of Park Commissioners in a letter dated June 19, 1915, stated that after full discussion it was the sense of the Board that it would be inadvisable to move the building to a temporary location. It stated that "the cost of removal to a temporary location would be substantially the same as moving the building to a final location and in addition there would probably be an additional cost for shoring up the building in the temporary location. Our judgment is that the Canteen Building should be used for public recreational activities—including dancing and swimming—and if so used it should be located at the location mentioned in Mr. Manning's letter to you of May 25th. This location would be the most convenient one if the building is to be devoted to the purpose above mentioned because of its nearness to the entrance of Fort McHenry, and also because of its proximity to what would be the natural place to be selected for a bathing beach.

"Under these circumstances we do not think that it would be expedient to remove the building to either of the points 'A' and 'B' mentioned in your letter. If this suggestion of ours as to location does not meet with your approval, upon [***20] re-consideration of the topic we would suggest that in view of the desire of the Federal Government to obtain immediate possession of the site for the Immigration Station that we give up our contract for the purchase of this building so that the Government may demolish or remove this building [*153] as it sees fit in order to make room for the new improvements."

The Board of Estimates disapproved of the location of the building selected by the Board of Park Commissioners, and approved the location selected by the City Engineer. It opposed the surrender of the building to the Government, and took up directly with the Federal authorities the question of its removal. The differences between the two boards being irreconcilable, the Board

of Estimates determined, against the wishes of the Board of Park Commissioners, to move the building to the place of its own selection at the expense of the Contingent Fund. The following extracts from the Minutes of the Board of Estimates are hereby transcribed: "June 30, 1915—The Clerk was directed to notify the City Engineer to have the Old Canteen Building at Fort McHenry moved to its final location heretofore determined by the Board of Estimates, [***21] and to notify the Secretary of War that the City has contracted for the removal of the buildings. The work is to be done by Thos. F. Spicknall and the expense is to be charged to the Contingent Fund. July 6, 1915—The City Engineer's recommendation of July 6th, was approved that he award contract to Thos. S. Spicknall & Son for \$2,135.00 for removing the Old Canteen Building at Fort McHenry, and also contract for approximately \$1800 for installing the necessary foundation and brick wall to receive the building and bring same up to proper elevation, as required by the Boat House scheme, making a total of \$3,935.00, which is to be charged to the Contingent Fund. The City Engineer was authorized to proceed with this work at once without the formality of advertising and awarding of contract by the Board of Awards, because of the emergency of the case, the U.S. Government requiring immediate action."

Foundations were prepared for the reception of the building, and the contractor began its removal under the supervision of the City Engineer. In removing the building it became necessary to change two arc light wires in the Park. [*154] Before changing these wires the City Engineer [***22] requested the Superintendent of Parks to raise the wires or give him permission to do so, but this request was refused. Mr. Field testified that in order to prevent the building from being torn down by the National Government or else if that was not done to run the risk possibly of losing the Immigration Station, "the Board of Estimates decided that they would take the necessary money out of their Contingent Fund and move the building over to the south side of Fort McHenry where it could be used for the boat clubs, and then we expected in some way provision would be made next year in the Ordinance of Estimates for putting these boat club buildings all down there and putting them in shape and moving those boat clubs to this beautiful Riverside Park. I do not say it is very beautiful now, but it can be made very beautiful on a very high bluff overlooking the river for miles. It is the only riverside park in Baltimore, and it is a great thing for the city, in my judgment, to get that valuable land from the Government without costing us anything, and every member of the Board thought that it would be a great addition to the park, greatly popularizing the park, and making it very much more [***23] enjoyable for the public who would go to the park if they could have these

boat clubs down there." Mayor Preston, in his testimony, said: "The situation about the Canteen Building was this: we had agreed with the Government, we had purchased the building for something like fifty dollars. I had had a good deal of correspondence with the Secretary of War and the Quartermaster General, and they were hurrying it and they wanted to award the contract, and they intimated to me that the presence of the Canteen Building there was interfering with the awarding of the contract, and they pinned me down to the question of when we could get it away, and I said in thirty days, and I notified them again it could not be done in that time, and the contract for this big structure there was largely dependent on the removal of that building. We felt that the Park Board would not go along with us. I felt that I was under [*155] written obligation with the Government to get that building out of the way—and the correspondence will show that—show that we had to do something; show we did award a contract for the removal of the building to the waterfront, and it was our understanding that it had been [***24] agreed upon, and when it was gotten off the site of the Immigration Pier, this application was filed by the Park Board for an injunction, and there it is now held up; a most unseemly position, a controversy between the City and one of its boards as to how an old abandoned building, where it shall be put, it seems to me a most unseemly controversy over [**145] a very small thing. We had to move to keep faith with the Government to get that building off the site. They wanted to use the site for the building they were constructing, and every week or two I would get a letter to get rid of the building, to clear the site. Q. And that was the immediate reason why, I presume, the Board of Estimates passed its order directing the City Engineer to remove the building and charge the cost of the removal to the Contingent Fund? A. Yes. Q. You considered that suggestion in the nature of an emergency, I suppose? A. We had to do it in order to keep faith with the Government, and we got a very advantageous price and we are going to lose a good deal of money by failure to carry it out."

There has been no agreement to rent any part of the property to the boat clubs; no contract made for the removal [***25] or remodelling of the boat clubs, or the fitting up of this building for the use of the Corinthian Yacht Club. What was intended was to put the building upon the foundations prepared for it, and to do nothing more until this controversy was settled. They did, however, expect that in the future provision would be made in an Ordinance of Estimates for bringing all the boat clubs to the Park upon the terms provided for in the proposed agreement.

After the building had been removed for some distance upon and across the park the bill in this case was filed. The relief prayed for was:

[*156] 1. That the court "may establish and declare that neither the defendant corporation nor the Board of Estimates or any member thereof, or any City official or officials, acting in pursuance of instructions from said Board of Estimates or otherwise, have or had the right or power, without the consent of the Board of Park Commissioners, to move any building purchased out of park funds, or under the control of the Board of Park Commissioners, or to use or permit the use of such building for private purposes or uses, or to use public funds or property for the removal, relocation and repair of a [***26] public building for the use of any private club, association, corporation, individual or individuals."

2. That the court "may establish and declare that neither the defendant corporation, nor the Board of Estimates, nor any City official other than the Board of Park Commissioners, have or had the right or power to move buildings across parks, or locate buildings in parks, or interfere in any wise, with the care and control of public parks vested by the law in the Board of Park Commissioners."

3. "That the defendants and each of them, their officers, agents and employees may be enjoined and restrained by an injunction issuing out of this honorable court, from moving or permitting to be moved, the Canteen Building hereinbefore mentioned, across that portion of the said Fort McHenry tract dedicated by law to use as a public park, or from locating said building in any location in said public park area, or from using or permitting the use of said buildings or of any portion of said park area for or by any club, corporation, association or individual or individuals for private purposes, and from using, or permitting the use of public moneys for the removal of said Canteen Building, and [***27] the repair of the same for the use of any private club, association or corporation. That the defendants and each of them, their officers, agents and employees, be required by said injunction either [*157] to remove said Canteen Building from said portion of said Fort McHenry tract dedicated by law to use as a public park, or else to remove it to a site to be selected by the Board of Park Commissioners, said building, if removed to

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said site so selected, to be used only for public recreational purposes."

On the 28th of September, 1915, the Circuit Court No. 2 of Baltimore City ordered "that a preliminary injunction be issued enjoining and restraining the defendants and each of them, their officers, agents and employees, and also any other persons or corporations employed by the defendants or any of them under contract, or otherwise, from moving or permitting to be moved, the said Canteen Building, across Fort McHenry Park, or from locating said building in any location in said park area, or from doing any work on any foundations or structures intended for the use of said building." An answer was filed by the defendants and testimony was taken in open Court, and on December 11, 1915, the [***28] Court passed an order dissolving the injunction and dismissing the bill, and ordered that the costs be paid by the defendants. From this order the plaintiffs have appealed. The brief of the appellees contains the terms of an agreement entered into between the parties by which it was provided that pending this appeal the defendants might move the Canteen Building from its present location and place it on the foundations prepared for it. But that agreement does not appear in the record. Its omission, however, does not change the legal or equitable rights of the parties.

The discussion in the brief and in the oral arguments relate to some questions which the record does not present and which it is not now necessary to decide. Keeping in mind the well established principles that the right to an injunction is not *ex debito justitiae*, and that the application for injunction is addressed to the sound conscience of the chancellor, acting upon all the circumstances of each particular [*158] case, we think the order of the Court below should be affirmed.

Considering the bill as a taxpayer's bill to restrain the unauthorized acts of the defendants we fail to see, under the circumstances [***29] of the case and under the well settled principles applicable to such suits, how the bill can be sustained. It is true that the law is firmly settled, as was said in *Baltimore v. Gill*, 31 Md. 375, that "in this State the Courts have always maintained with jealous vigilance the restraints and limitations imposed by law upon the exercise of power by municipal and other corporations; and have not hesitated to exercise their rightful jurisdiction for the purpose of restraining them within the limits of their lawful authority, and of protecting the citizen from the consequence of their unauthorized acts," and that taxpayers "may invoke the restraining powers of a

Court of Equity, and that Court will entertain jurisdiction of their suit against municipal corporations and their officers whenever the latter are shown to be acting *ultra vires*, or are assuming or exercising a power over the property of the citizen, or over corporate property or funds, which the law does not confer upon them, and where such unauthorized acts may affect injuriously the rights and property of the parties complaining"; *St. Mary's Industrial School v. Brown*, 45 Md. 310. [***30]

These principles have been announced in many cases in this Court and elsewhere, and they establish the proposition that an injunction [**146] to restrain the *ultra vires* or illegal acts of municipal corporations or official officers will not be granted unless it appears that the taxpayer would be injured by the acts complained of. The facts disclosed by the record do not bring the plaintiffs' case within this principle. It is difficult to say how they could possibly be injured by the expenditure of public money for the protection and conservation of public property. Unless the building had been removed it would have been destroyed by the National Government, and the act complained of was in fact to the benefit of the taxpayers of the City.

[*159] We have no doubt that under Ordinance No. 60, approved July 21, 1860, and confirmed by sub-section 16 of the City Charter (1915 Edition), and under section 91 of that charter, that the charge and control of this Park is vested in the Board of Park Commissioners. The Charter imposes no obligation upon the Board of Estimates with respect to the public parks of the City, nor does it confer any power upon it to interfere with the [***31] control and management of such parks committed by law to the Board of Park Commissioners. The assertion of such power by the Board of Estimates must be held to be wholly unauthorized. But when the Court below came to deal with the case it was informed by the evidence that the building had been moved upon the park property and propped upon blocks, and presented an unsightly appearance. In this situation the Court permitted its removal to the foundations prepared for it, and it is now probably located upon those foundations. Certainly no real injury was done to any one. The building, under the City Charter, is now in the charge and control of the Board of Park Commissioners, and it will have ample opportunity to avail itself of all lawful means and remedies to protect its rights in respect to the building against any further invasions.

Order affirmed, the costs to be paid by the appellants.