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135 Md. 56, 107 A. 557, 5 A.L.R. 915

Court of Appeals of Maryland.
MAYOR AND **CITY COUNCIL** OF **BALTIMORE** et al.
v.
SACKETT et al.
No. 37.

June 25, 1919.

Appeal from Circuit Court, Anne Arundel County; Robert Moss, Judge.

"To be officially reported."

Suit by Augustus J. Sackett and others against the Mayor and City Council of Baltimore and others. From an order overruling defendants' demurrers to the bill, defendants appeal. Order reversed, and bill dismissed, without prejudice.

West Headnotes

Injunction 212 ⚿77(1)
212k77(1) Most Cited Cases
While as a general rule a city will not be enjoined from doing an authorized act, it must perform such act with regard to the private rights of others, and, if it thereby commits a nuisance injurious to another, it may be restrained.

Injunction 212 ⚿77(1)
212k77(1) Most Cited Cases
An injunction will not issue to restrain the proposed disposal of garbage by a city in an authorized manner, unless under very extraordinary circumstances; but parties injured thereby will ordinarily be left to their remedy at law.

Injunction 212 ⚿118(4)
212k118(4) Most Cited Cases
An allegation in a bill for injunction that irreparable damage will ensue is insufficient, unless the facts stated satisfy the court that the apprehension of irreparable damage is well founded.

Injunction 212 ⚿118(5)
212k118(5) Most Cited Cases
In a suit to restrain the proposed disposal of garbage by the establishment of a pig farm adjacent to the farms of plaintiffs, a prayer for relief, asking that defendants be restrained from hauling the garbage to the farm, reducing it thereon, establishing the piggery, and from erecting a temporary reduction plant, is too broad and general.

Injunction 212 ⚿129(1)
212k129(1) Most Cited Cases
In a suit to restrain the proposed disposal of garbage by the establishment of a pig farm adjacent to the farms of plaintiffs, a prayer for relief, asking that defendants be restrained from hauling the garbage to the farm, reducing it thereon, establishing the piggery, and from erecting a temporary reduction plant, is too broad and general, and the bill should be dismissed without prejudice to a future application if the proposed use of the property results in damage.

Municipal Corporations 268 ⚿736
268k736 Most Cited Cases
A city which disposes of its garbage or operates its garbage reducing plant so as to injure property of adjoining owners is liable in damages for the injury sustained.

Nuisance 279 ⚿37
279k37 Most Cited Cases
In a suit to restrain the conduct of a lawful business as a nuisance, the courts will go no further than absolutely necessary to protect the rights of the parties injured thereby, and will permit the business to be continued if possible, in a manner which will avoid the injury.

Venue 401 ⚿5.5

401k5.5 Most Cited Cases
(Formerly 401k5(5))
In view of Code, art. 16, §§ 86 , 189, authorizing circuit judges to grant injunctions at any place within their circuit and providing for issuing process to other counties, a suit to restrain a nuisance causing irreparable injury to plaintiff's land may be brought in the county where the land is situated and the nuisance committed, though none of the defendants reside there.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, URNER, STOCKBRIDGE, and ADKINS, JJ.

S. S. Field, of Baltimore, for appellants.
Ridgely P. Melvin, of Annapolis, and Osborne I. Yellott, of Baltimore (Bruner R. Anderson, Lester L. Stevens, Emory L. Stinchcomb, and Piper, Yellott, Hall & Carey, all of Baltimore, on the brief), for appellees.

BRISCOE, J.
This case is presented, on an appeal from an order of the circuit court for Anne Arundel county, overruling the defendants' demurrers to a bill in equity, for an injunction to restrain a prospective or probable nuisance.

The original bill was filed by a number of property owners and residents of Anne Arundel county against the mayor and city council of Baltimore, D. A. Gaumitz, and Lewis Towing & Lighterage Company.

Subsequently, by an amended or supplemental bill, other persons and corporations were made parties defendants.

The object and purpose of the proceedings, it will be seen from the allegations of the bill, is to restrain the defendants by injunction from disposing of the garbage from the city of Baltimore, on a farm, known as the Jubb farm and owned by the city, on Bodkin creek, in Anne Arundel county.

The prayers for relief are substantially the same in both bills, and appear to be as follows:

(1) That the defendants may be permanently enjoined against hauling to, dumping upon, or reducing the garbage of Baltimore City on the Jubb farm or establishing a piggery on the farm for the consumption of the garbage.

(2) That the mayor and city council of Baltimore may be enjoined from further consummating or carrying out or doing anything in the furtherance of the actual or proposed contract between it and the defendant D. A. Gaumitz, looking to the establishment of a piggery on the Jubb farm and conveying the garbage of Baltimore City to the Jubb farm for that purpose.

(3) That the mayor and city council of Baltimore and the Lewis Towing & Lighterage Company may be enjoined by the peremptory enjoining order of this court issued on such notice as the court may prescribe, unless cause to the contrary be shown, from conveying to or dumping upon the Jubb farm the garbage from Baltimore City or any portion thereof.

(4) That the mayor and city council of Baltimore may be enjoined from proceeding with the erection of a temporary reduction plant on the Jubb farm for the purpose of reducing the garbage of Baltimore City thereon, and from conveying to the Jubb farm all or any portion of such garbage from Baltimore City for the purpose of there being so reduced.

The facts upon which the relief is asked as set forth in the bill is thus stated:

First. That the plaintiffs are severally seized and possessed of land near Bodkin creek in the Third election district of Anne Arundel county, most of them residing upon their holdings.

Second. That the mayor and city council of Baltimore have recently purchased a tract of land from Charles H. Jubb, containing 125 acres on the south side of Bodkin creek, and have taken possession of this farm.

Third. That the mayor and city council of Baltimore have awarded to the defendant D. A. Gaumitz a contract for the disposal of the garbage of Baltimore City for a term of five years beginning January 1, 1919, with the understanding that the garbage would be transported from Baltimore City to the Jubb farm, and there fed to some 15,000 pigs to be kept thereon, and the board of awards of the city estimating that by this manner of disposing of the garbage of Baltimore City the city would receive a net revenue of $16,500 for the garbage, and save the annual cost of $75,000 heretofore paid for the disposition of the same, making a net saving to the city of $91,500 a year.

Fourth. That until the piggery is permanently established the garbage of Baltimore City is to be transported in scows to the Jubb farm, there to accumulate until the piggery is established, and the mayor and city council have made plans for the location of a temporary plant for the reduction of all or a portion of the garbage between January 1 and March 1, 1919, and that the feeding contract has been assigned to the American Feeding Company and others.

It is thus averred in substance that the removal and transporting by the city to the Jubb farm of the garbage from Baltimore City, and there causing it to be reduced in a temporary reduction plant or fed to pigs in the manner proposed, will result in a nuisance and destroy the value of property holdings in that section and render the property unmarketable, and, for certain reasons stated, will deprive the owners of the reasonable use and enjoyment of their property rights, and will cause irreparable loss, damage, and injury to each of the plaintiffs.

The defendants, the appellants here, demurred to the bill, and, as the demurrers of all the defendants are similar, the cause and grounds of the demurrer of the mayor and city council of Baltimore will be here set out:

(1) That this court is without jurisdiction, because upon the face of the bill it appears that none of the defendants are residents of Anne Arundel county, and the bill contains no averment of any fact or facts giving this court jurisdiction over this defendant.

***559** (2) That this court is without jurisdiction, because there is no sufficient allegation of any wrong actually committed or threatened, remediable in a court of equity, and because there is no sufficient allegation of any fact or facts showing irreparable damages to the plaintiffs or any of them.

(3) That the bill does not aver facts showing any wrong committed or threatened which is remediable in a court of equity.

(4) That the bill contains no sufficient statement of facts showing any irreparable damages to the plaintiffs or either of them, either suffered or impending.

[1] The first objection presented by the defendants' demurrer, that the circuit court of Anne Arundel county was without jurisdiction to maintain the suit because the defendants are nonresidents of Anne Arundel county, cannot, under the authorities, be sustained.

It is averred in the bill that the situs of the subject-matter of the proceedings is within Anne Arundel county, and the property to be affected by the threatened nuisance is situate in that county.

In Gunther v. Dranbauer, 86 Md. 1, 38 Atl. 33, it is said if the subject of the injury be real estate or an easement such as a right of way, whether private or public, obviously the action must 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.

In Crook v. Pitcher, 61 Md. 510, the court held, 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. Mayor and City Council of Baltimore v. Meredith's Ford Turnpike Co., 104 Md. 351, 65 Atl. 35; Nettie Taylor v. Mayor and City Council of Baltimore, 130 Md. 133, 99 Atl. 900, L. R. A. 1917C, 1046.

The cases in this court are reviewed and considered in Phillips v. Baltimore City, 110 Md. 436, 72 Atl. 902, 25 L. R. A. (N. S.) 711, and it is there held that, in this state, the rule requiring local actions to be brought in the jurisdiction where the cause of action arose is well settled, and it applies as well to municipal corporations as to all other corporations.

The general rule is thus stated, in 29 Cyc. 1237, to be that a suit to abate or restrain a nuisance can be brought in the county or district where the nuisance is situated, and should be tried there unless a change of venue is granted by the court. 40 Cyc. 73-75; 26 Ency. of Pl. and Pr. 829; 1 Chitty, Pleading, 16; Miss. & Mo. Railroad Co. v. Ward, 2 Black, 485, 17 L. Ed. 311.

Whatever, then, may be the decisions elsewhere, we think it is clear that, under the decisions and the statutes of this state, the circuit court for Anne Arundel county had jurisdiction to entertain a bill for an injunction to restrain a nuisance, or a threatened nuisance, directly affecting property in that county, although the defendants are nonresidents of the county. Article 16, §§ 86 and 189, Code of Public General Laws; Fowler v. Pendleton, 121 Md. 297, 88 Atl. 124; Graham v. Board of Com'rs of Harford County, 87 Md. 321, 39 Atl. 804.

The second and third grounds of the demurrer are in effect that the bill does not aver facts showing any wrong committed or threatened which is remediable in a court of equity.

[2] It appears by chapter 205 of the Acts of 1908 that the city of Baltimore is prohibited from disposing of its garbage within the city, and the act prohibits the erection of any garbage reduction plant within nine miles from the Lazaretto Light House, on the Patapsco river. It was, as stated, because of this act, the Jubb farm in Anne Arundel county was selected as the point for the disposal of the city garbage, and where it is now proposed to operate a reduction plant for this purpose.

While the general principle may be conceded that a municipality will not be stopped by injunction from doing an act, which it is authorized by law to do, but as was said by this court in Baltimore v. Fairfield, 87 Md. 352, 39 Atl. 1081, 40 L. R. A. 494, 67 Am. St. Rep. 344, the delegation of a power to do an act, whilst conferring full authority to perform the act itself, does not, therefore, without more essentially and without exception, carry the right to so do it, as to inflict loss or injury upon an innocent individual. It was further said in that case, but, however free from interference by the public, acts of this character may be when authorized to be done by a municipality under competent and sufficient legislative grant, the right of an individual to complain of the special injury sustained by him as a consequence of this being done is, ordinarily, in no way impaired or affected.

[3] In Taylor v. Mayor and City Council of Baltimore, 130 Md. 145, 99 Atl. 900, L. R. A. 1917C, 1046, the authorities upon this subject are collected and reviewed, and it is there said, in a case such as the one now before us, where the plant is essential to the health and comfort of the people at large, an injunction should not issue unless under very extraordinary circumstances,

but the party should be left to his or her remedy at law.

[4] The law controlling the rights of parties to an injunction to restrain a prospective or threatened nuisance is well established by numerous decisions of this court, and it is settled, where the application is to restrain the carrying on of a legitimate and lawful business, the courts will go no further ***560** than is absolutely necessary to protect the rights of the parties seeking such injunction.

In Chamberlain v. Douglas, 24 App. Div. 582, 48 N. Y. Supp. 710, the court said, when a person is engaged in carrying on a lawful business, he should not be absolutely prohibited from doing so, unless it appears that the carrying on of such business will necessarily produce the injury complained of. If it can be conducted in such a way as not to constitute a nuisance, then it should be permitted to be continued in that manner. Adams v. Michael, 38 Md. 123, 17 Am. Rep. 516; Hamilton v. Julian, 130 Md. 602, 101 Atl. 558.

[5] Upon the allegations of the bill in this case, we are unable to hold that the conditions complained of are of such a character or so injurious in their present effect upon the property and other interests of the appellees as to invoke the restraining power of a court of equity.

The prayer for relief, not only asks that the mayor and city council of Baltimore shall be enjoined from hauling to, dumping upon, or reducing the garbage on the Jubb farm or establishing a piggery on this farm, but from proceeding with the erection of a temporary reduction plant on the farm for the purpose of reducing the garbage of Baltimore City thereon and from conveying to this farm all or any portion of the garbage from Baltimore City for the purpose of there being so reduced.

This court has frequently held that a prayer for relief as here set out is too broad and general to grant an injunction and the application should be at once refused. Haines v. Taylor, 2 Philip Chancery, 209; West Arlington Co. v. Flannery, 115 Md. 274, 80 Atl. 965; Warren Mfg. Co. v. Balto., 119 Md. 222, 86 Atl. 502; Pope v. Clark, 122 Md. 1, 89 Atl. 387.

[6] It is conceded that if in the disposal of the garbage or in the operation of the reduction plant a nuisance is created, whereby the property of the plaintiffs is injured or seriously affected, the defendant could be made to respond in damages for the injuries thus sustained. Baltimore v. Merryman, 86 Md. 584, 39 Atl. 98; Taylor v. Mayor and City Council of Baltimore, 130 Md. 133, 99 Atl. 900, L. R. A. 1917C, 1046.

We cannot hold, however, as this case is now presented, the appellees have brought themselves within the rules of law, to justify an injunction to restrain a prospective or threatening nuisance, and unless such a case is presented a court of equity will not interfere. Dittman v. Ropp, 50 Md. 516, 33 Am. Rep. 325; Lohmuller v. S. Kirk & Son, 133 Md. 86, 104 Atl. 270.

[7] The mere allegation in a bill that irreparable damages will ensue is not sufficient, unless facts be stated which will satisfy the court that the apprehension is well founded, and they do not sufficiently appear in this case to justify a court of equity to interfere. Lamm and Hughes v. Burrell, 69 Md. 272, 14 Atl. 682; Johnston v. Glenn, 40 Md. 200; West Arlington Land Co. v. Flannery, 115 Md. 280, 80 Atl. 965; Warren Mfg. Co. v. Baltimore, 119 Md. 221, 86 Atl. 502.

For the reason stated, we think the court below committed an error in overruling the demurrers to the plaintiffs' bill of complaint, except the demurrer as to the jurisdiction of the court.

These demurrers should have been sustained, and the bill dismissed, but without prejudice to any

future application, for proper redress, if the use of the city's property as proposed results in injury or material damage to the plaintiffs' property rights, sufficient to justify an injunction or an action at law for damages.

It follows that the order of the circuit court for Anne Arundel county, dated the 22d day of April, 1919, will be reversed, and the bill dismissed, without prejudice.

Order reversed, with costs, and bill dismissed, without prejudice.

Md. 1919.
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