RECORD - - No. 62

THE MAYOR AND CITY COUNCIL OF BALTIMORE, a Municipal Corporation, and WILLIAM F. HUSE, Appellants,

VS.

WILLIAM F. COGHLAN, WILLIAM P. BOSLEY, ROBERT C. CLARKE, HARRISON RIDER and JOHN W. HARRISON, Being and Constituting the Board of Health for Baltimore County, Appellees.

ROLAND R. MARCHANT,
For Appellants.

EDWARD H. BURKE,
For Appellees.

IN THE

Court of Appeals

OF MARYLAND

APPEAL FROM
THE CIRCUIT COURT
FOR
BALTIMORE COUNTY.

APPEALED TO
THE APRIL TERM, 1921,
OF THE
COURT OF APPEALS OF
MARYLAND.

FILED MARCH 23RD, 1921.

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BALTIMORE, MD.

THE MAYOR AND CITY COUNCIL OF BALTIMORE ET AL., Appellants,

vs.

WILLIAM F. COGHLAN ET AL., Appellees.

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Court of Appeals

OF MARYLAND

APRIL TERM, 1921.

GENERAL DOCKET No. 62.

APPELLANTS' BRIEF.

ABSTRACT OF CASE.

This is an appeal from an order of the Circuit Court for Baltimore County overruling the defendants' demurrers to a bill in equity and ordering an injunction to issue to restrain an expected or prospective nuisance (Record, pages 17 and 18).

The more important allegations of the bill are substantially as follows (the paragraph numbers being used for convenience):

1. That the plaintiffs constitute the Board of County Commissioners of Baltimore County, and ex officio the Board of Health for Baltimore County, in which last-named capacity the suit is brought.

2. That the defendant have entered into a contract whereby for a period of ninety (90) days, from January

15th, 1921, all garbage collected in the City of Baltimore will be loaded on scows and towed to defendant Huse's wharves on Bear Creek in Baltimore County and there unloaded.

3. That the garbage of Baltimore City is the refuse from the kitchens of the City and consists of animal and vegetable matters in various stages of decay and putrification, and that the average daily amount of this garbage is one hundred and twenty-eight (128) tons.

4. That defendant Huse has no means or machinery for the scientific reduction of said garbage, but proposes to sell or use said garbage for fertilizer purposes by spreading it over and plowing it under the land adjacent to his wharves.

5. That said wharves are within nine (9) miles of Lazaretto Lighthouse on the Patapsco River and about two (2) miles from the eastern limits of Baltimore City, and about two and one-half (2½) miles from the unincorporated villages of Dundalk and Sparrows Point; that more immediately round about said wharves are large and small truck farms, shore-houses and bungalows, and that running near said wharves are highways frequented by the public,, that especially in the summer-time many persons, men, women and children, visit the shores and private pleasure resorts along Bear Creek in the vicinity of said wharves.

6. That the spreading of said garbage over the soil as aforesaid will prove a menace to the health of

(a) the people living in the neighborhood;

(b) those whose business or pleasure calls them to Dundalk, Sparrows Point and the shores and other properties nearby;

(c) persons travelling the public highways of the county in the vicinity.

That it is inconceivable that such a large quantity of garbage can be plowed under or covered with earth by the said Huse, or by the farmers in the neighborhood, and that said garbage will, therefore, even though spread over the land, continue to ferment and decay, and become a breeding place for flies and other noxious insects that are carriers of disease and will result in the spreading of disease and the contamination of springs and water supplies.

7. That until recently the City disposed of its garbage on a farm located in Anne Arundel County; that this farm is more isolated than the wharves of said Huse; that said garbage could be disposed of without detriment to health on said farm in Anne Arundel County; that although the contract is temporary, the Board of Health for Baltimore County has determined that its execution should be enjoined; that the action of the defendants in the premises is predicated on the advice of the Health Commissioner of Baltimore City to the effect that the disposition of the garbage as contemplated by said contract will not be injurious to health, but that the said advice is erroneous.

8. That the said contract is illegal because it is in violation of Chapter 205 of the Acts of 1908, and because

it has not been approved by the State Board of Health of Maryland.

9. That plaintiffs pray that the statements and opinions of Dr. Bowen, as shown by Plaintiffs' Exhibit B, be taken as part of the bill (Record, pages 4 and 9).

The prayers for relief are:

1. That the City be enjoined from sending its garbage to property in Baltimore County bordering on Bear Creek, said garbage there to be accumulated or spread over land for fertilizer purposes, and that the City be enjoined from the completion of said temporary contract.

2. That defendant Huse be enjoined from receiving in Baltimore County the garbage of the City and from accumulating or spreading it over land in Baltimore County for fertilizer purposes (Record, page 9).

DEMURRERS.

The defendants filed separate demurrers, which are substantially the same. That of the City, is as follows:

> "The defendant, the Mayor and City Council of Baltimore, appearing specially for the purpose of this demurrer, demurs to the whole bill of complaint in the above entitled cause, and for grounds of demurrers says:
>
> First. That this Court is without jurisdiction because upon the face of the bill it appears that neither of the defendants are residents of Baltimore County, and the bill contains no averment of any fact or facts giving this Court jurisdiction over this defendant.

Second. That the bill does not show any right in the plaintiffs to bring this suit.

And this defendant reserving at all times the right to object to the jurisdiction of this Court, for the reasons above stated, and without in any way waiving its right to make said objection, for additional grounds of demurrer says:

Third. 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.

Fourth. That the bill contains no sufficient statement of facts showing any wrong committed or threatened, which is remediable in a Court of Equity.

Fifth. That the bill contains no sufficient statement of facts showing any irreparable damage to the plaintiffs, or any of them, either suffered or impending" (Record, page 14).

POINTS RELIED ON.

1. THIS IS A TRANSITORY SUIT. "THE SUBJECT OF THE INJURY" IS THE HEALTH OF

(a) Persons living in the neighborhood of Bear Creek, Baltimore County;

(b) Persons whose business or pleasure calls them to Dundalk, Sparrows Point or the shores near said Bear Creek.

(c) Persons travelling the public highways of Baltimore County in the vicinity of Bear Creek.

Gunther vs. Dranbauer, 86 Md. 6.
Poe on Pleading and Practice, Volume 1, Section 53.
Crook vs. Pitcher, 61 Md. 510.
Phillips vs. Baltimore City, 110 Md. 431.

2. **INJUNCTIONS OPERATE IN PERSONAM.**

Longley vs. McGeoch, 115 Md. 187.
22 Cyc. 906-909.
Columbia National Sand Dredging Co. vs. Morton, 8 Amer. & Eng. Annotated Cases, 512 and note thereto.

3. **THIS SUIT BEING TRANSITORY, THE CIRCUIT COURT FOR BALTIMORE COUNTY HAS NO JURISDICTION OF THE MATTER, BECAUSE**

(a) Neither of the defendants resides in Baltimore County.

Section 147, Article 75 of Bagby's Code.
Omo vs. Dorsey, 93 Md. 74.
Longley vs. McGeoch, 115 Md. 182.

(b) The Mayor and City Council of Baltimore cannot be sued in a transitory action in a court not within its own territorial limits.

Phillips vs. Baltimore City, 110 Md. 431.

4. **THE ALLEGATIONS OF FACT IN THE BILL, AS DISTINGUISHED FROM THE MERE APPREHENSIONS, SURMISES AND PROPHECIES CONTAINED THEREIN, ARE NOT SUFFICIENT TO INVOKE THE RESTRAINING POWER OF A COURT OF EQUITY.**

Baltimore City vs. Sackett, 135 Md. 62.
Taylor vs. Mayor & City Council of Baltimore, 130 Md. 146.
Adams vs. Michael, 38 Md. 123.

5. THE CONTRACT BETWEEN THE DEFENDANTS AND THE ACTS TO BE DONE THEREUNDER ARE NOT ILLEGAL; AND ARE NOT CONTRARY TO CHAPTER 205 OF THE ACTS OF 1908; AND DO NOT REQUIRE THE APPROVAL OF THE STATE BOARD OF HEALTH OF MARYLAND.

ARGUMENT.

THE CIRCUIT COURT FOR BALTIMORE COUNTY HAS NO JURISDICTION IN THIS SUIT.

A statute of this State and two decisions of this Court have narrowed down the question of jurisdiction in this cause to the inquiry, whether this bill seeks redress for an alleged injury to persons or real estate.

The statute (Section 147, Article 75, of Bagby's Code) says that "no person shall be sued out of the county in which he resides until," etc.

The bill alleges that both defendants reside in Baltimore City (Record, page 10).

This court has decided that notwithstanding this statute, the Circuit Court for Anne Arundel County has jurisdiction to entertain a bill seeking redress for an alleged injury to land situated in that county, although the defendants are non-residents of that county.

Baltimore City vs. Sackett, 135 Md. 56.

In other words, that if the suit is local in its nature the Circuit Court for the County where the land is situated has jurisdiction, although the defendants are non-residents of such county.

This Court has also decided that the Mayor and City Council of Baltimore cannot be sued on a transitory cause of action in a court not within its territorial limits.

Phillips vs. Baltimore City, 110 Md. 431.

The question, then, of jurisdiction in the case at bar turns upon the inquiry whether this bill seeks to redress an injury to persons or to real estate. That is to say, if the suit seeks redress for alleged injury to persons, the cause of action is personal or transitory, and the Circuit Court for Baltimore County has no jurisdiction; but if, on the other hand, the bill seeks redress for an injury to land in Baltimore County, the suit is local and the Circuit Court for Baltimore County has jurisdiction.

THE "SUBJECT OF THE INJURY" IS THE HEALTH OF PERSONS.

There is no allegation in the bill that any real estate or land in Baltimore County will be injuriously affected by the garbage which it is proposed to sell to farmers in that county.

On the contrary, the bill shows that it is the purpose of the defendants to sell the garbage to the owners of the land to be used by the latter for the enrichment of the land, to wit, for fertilizer purposes; and all the persons, who own real estate immediately adjacent and near to the point where the garbage is to be unloaded, are

anxious that the garbage be deposited at said unloading places and used to fertilize their land. It may not be out of place to mention that on the day this demurrer was argued in the Court at Towson, there were in the courtroom a number of residents of Baltimore County who own farms immediately adjoining said unloading places and who improve their farms by the use of said garbage for fertilizer purposes, anxious to indicate their desire to have the garbage to fertilize their lands.

It will be noticed that the allegations of the bill are that the unloading of the said garbage and spreading it over the land for fertilizer purposes will prove detrimental to the health of

(1) people living in the neighborhood;

(2) those whose business or pleasure calls them to Dundalk and Sparrows Point or the shores nearby;

(3) persons travelling the public highways of the County in the vicinity.

In this particular, the case at bar is radically different from the Sackett case, 135 Md. 56. In the Sackett case the bill *was filed by a number of property owners and residents of Anne Arundel County* to restrain the defendants from disposing of the garbage of the City of Baltimore in a certain manner, it being claimed in the bill that the action of the defendants would result in a nuisance to the *plaintiffs' real estate and destroy the marketable value of said land.* Solicitors for the property owners in the Sackett case, in arguing the question of jurisdiction, stated that the gravamen of that suit was the *destruction of the value of the land* of their clients.

The following is an extract from page 27 of the brief of the appellees filed in this Court in the Sackett case:

> "In paragraph 7 of the bill of complaint filed in this cause, the complainants set out at length their property interests in the neighborhood of the proposed piggery, the same aggregating over $760,000, and expressly aver that the maintenance of such piggery will almost entirely *destroy the value of their property holdings in* said section, and render the same *virtually unmarketable.*
>
> It is true that the bill alleges that personal discomfort and inconvenience will also result from the piggery, but those things are largely incidental. Their ultimate effect is to destroy the *value of the land itself, and that is really the gravamen of the suit.*"

It is, therefore, seen that there is a sharp distinction between the "subject of the injury" in the Sackett case and in the case at bar. The "subject of the injury" in the Sackett case was real estate; the "subject of the injury" in the case at bar is the health of certain persons.

It is, therefore, respectfully insisted that the suit at bar is transitory, and that the Circuit Court for Baltimore County has no jurisdiction.

In *Crook vs. Pitcher*, 61 Md. 513, this Court 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.
>
> On the other hand, actions for injuries to persons, or to personal property, actions on contracts, and

in fact all actions founded on transactions, which might have taken place anywhere, are transitory. Mostyn vs. Fabrigas, Cowp. 161; Berwick vs. Ewart, 2 W. Bl. 1036; Con. Dig. Action N., 12

Where the action is local, and the suit is brought in another place, the proper mode of taking advantage of the defect is by demurrer * * *.

The distinction between local and transitory actions still exists in this State."

In this connection it may not be inappropriate to quote an extract from the well-known case of *Gunther vs. Dranbauer*, 86 Md. 1. Said Judge McSherry, in delivering the opinion of the Court, at pages 6-8:

"But there must be a test by which it may be determined whether a particular cause of action sounding in damages is local or transitory; and an unerring one inheres in the nature of the subject of the injury as differing from the means whereby and the mere place at which the injury was inflicted. 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. But if the subject of the injury be an individual, then an injury to that individual person, no matter by what means occasioned, or where inflicted, is essentially an injury to a subject not having a fixed, stationary, immovable location; and an action to recover damages therefor would necessarily be transitory. To borrow an apt illustration used in Mason vs. Warner, 31 Mo. 508: 'If an agistor of cattle open a pit in his field and negligently leave it open, whereby my horse at

pasture is permitted to fall into it and is killed, the means and place of injury are local, but the subject of the injury—the horse—is transitory and capable of injury as well at one place as another. But if my horse trespass upon the agistor's field, break the close, and tread down and eat the grass; here the means of injury—the horse—is movable, transitory, but the subject of the injury—the realty—is immovable, local and therefore not capable of being injured at any other place.'

It is apparent that an injury to a person on a highway is not an injury to the highway. It does not follow that because an injury to a person occurs on a highway that the right of such person to use the highway is indispensably at issue. An action founded on and growing out of an obstruction of a highway, and raising distinctively and specifically the plaintiff's right to use the way is essentially a local action, because it involves an interest in the local fixed subject itself; but an injury happening to an individual on that same highway by reason of any tort or wrongful act of another is not necessarily an injury to the bare right of user, even though an obstruction of the highway may be incidentally concerned as a mere instrumentality immediately producing the injury complained of. 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. The right of the plaintiff in or to the use of the highway would then be the subject of the injury. But there is no issue here as to the right of the plaintiff to use the highway. The suit was not brought to recover damages for an interference with the plaintiff's right

> of user, but to recover for a personal injury sustained on the highway by reason of the defendant's negligence in placing and leaving either on or near to the highway an instrumentality calculated to cause, and in this instance actually causing, a personal injury. The subject of the injury is the person and not the highway. The highway can only be injured as a highway where it is, for it has a fixed location there and can be no where else—the person could have been injured there or elsewhere, for the person is transitory * * *.
>
> But it is needless to review the cases in detail, for Mr. Poe in his excellent work on Pleadings, page 29 (1st Ed.), sums up the law in these words: 'The local actions are Ejectment, Dower, Replevin and Trespass to real property. *All the other actions are transitory.*' "

Applying the above language of Judge McSherry to the facts of the present bill, the argument would run as follows:

> This suit at bar is not brought to restrain the defendants from interfering with any one's right of user of the highways, shores or wharves situated in Baltimore County, but to restrain the defendants from placing or leaving on the land near said shores, highways and wharves an instrumentality calculated, it is alleged, to injure the health of persons having occasion to go there. The subject of the injury is the person and not the highways, wharves or shores. The land, wharves, shores or highways can only be injured as such where they are, for they have a fixed location there and can be nowhere else—but the persons using said shores, wharves or highways could be injured in their health there or elsewhere for their persons are transitory.

The case last cited (*Gunther vs. Dranbauer*) was an action at law, but *Dorsey vs. Omo*, 93 Md. 74, was a suit in equity, and Judge McSherry delivered the opinion in that case also.

Mrs. Omo filed a bill in the Circuit Court for Prince George's County against Dorsey, a resident of Howard County, for specific performance of an agreement to assign a mortgage on land in Prince George's County, and the lower Court granted relief, but, on appeal to this Court, the decree was reversed and the bill dismissed, this Court holding that the Circuit Court for Prince George's County had no jurisdiction over a resident of Howard County simply because the farm on which he held a mortgage was situated in Prince George's County. Judge McSherry said at pages 80 and 81:

> "This jurisdictional inquiry comes up in this way. The land covered by the Dorsey mortgage lies in Prince George's County. The mortgagee, Alverda S. Dorsey, lives in Howard County. The bill filed by Mrs. Omo against Alverda S. Dorsey was filed in the Circuit Court for Prince George's County. Under the written agreement of November the tenth, eighteen hundred and ninety-seven, the mortgagee agreed to assign the mortgage to Mrs. Omo upon the latter making payment of the whole amount due thereon. Mrs. Omo contends that the whole mortgage debt, with the exception of the small sum she tenders herself ready to pay has been liquidated, and that in virtue of the agreement she is entitled to have the mortgage assigned to her. The bill filed by her against the mortgagee is a bill for specific performance of the agreement to assign the mortgage; and the jurisdictional objection specifically raised in the answer is this: Has the Circuit Court for Prince

> George's County authority to pass a decree requiring Alverda S. Dorsey, who is a resident of Howard County and the sole defendant in the case, to assign the mortgage? Howard County is not within the jurisdiction of the Circuit Court for Prince George's County; and unless there is some statute which confers upon that Court authority to entertain such a bill as this for specific performance against a resident of another county, the decree which was passed and which required the mortgagee to assign the mortgage to Mrs. Omo was passed without jurisdiction and is a nullity. Let us see whether there is any such statute."

After reviewing the legislation on the subject, Judge McSherry concluded, on page 83, as follows:

> "Now, in none of this legislation is there an intimation that a bill for specific performance of a contract could be filed out of the county where the sole defendant resided, and in the county where the land is located, simply because the subject-matter of the contract was a lien on the land situated beyond the limits of the county where the defendant lived. * * * Having no jurisdiction over the person of the defendant because the case does not belong to any of the classes where jurisdiction is given though the defendant does not reside in the county where the bill is filed, the Circuit Court for Prince George's County had no authority to pass the decree requiring the mortgagee, Alverda S. Dorsey, to perform the contract and hence the decree which it did pass and which granted that relief must be reversed and the bill must be dismissed."

The proposition maintained is further illustrated in the case of *Longley vs. McGeoch*, 115 Md. 182, where it was held that "an injunction operates in personam if

the person is within the jurisdiction; it is not material that the subject-matter may be without the jurisdiction."

In the last cited case, the plaintiffs were residents of Baltimore County and owners of real estate located in that county. One of the defendants, William M. Longley, was a resident of Baltimore City and president of the other defendant, the W. M. Longley Quarry Company, a corporation, with its principal office in Baltimore City. Defendant Longley was the owner of a tract of land adjacent to the property of the plaintiffs, and the other defendant operated a stone quarry upon this land. The bill was filed in the Circuit Court for Baltimore City for an injunction prohibiting the defendant from blasting at said quarry.

A demurrer was filed to the bill, one of the grounds of demurrer being that the Circuit Court for Baltimore City was without jurisdiction because the quarry was situated in Baltimore County.

This Court, as stated, held that the Circuit Court of Baltimore City had jurisdiction since an injunction operates in personam.

In *Worthington vs. Lee*, 61 Md. 530, this Court, through Chief Judge Alvey, said, at page 542:

> "Decrees for specific performance are against the person bound by the contract; they are in personam and not in rem. *White vs. White*, 7 G. & J. 208, 211; *Massie vs. Watts*, 6 Cranch, 148; 1 Story's Eq., Sec. 742. Therefore it is essential to the effective character of the decree, that the parties against whom it

> is made, be within the jurisdiction and reach of the Court. If they be beyond its reach and coercive power, the Court is without the means of enforcing its decree. Neither process of contempt nor injunction will aid the Court, or affect the parties beyond its jurisdiction."

In this last-mentioned case, Judge Alvey quotes the following from *Hart vs. Sansom*, 110 U. S. 154:

> "Generally, if not universally, equity jurisdiction is exercised in personam, and not in rem, and depends upon the control of the Court over the parties, by reason of their presence or residence, and not upon the place where the land lies in regard to which relief is sought. Upon a bill for the removal of a cloud upon title, as upon a bill for the specific performance of an agreement to convey, the decree, unless otherwise expressly provided by statute, is clearly not a judgment in rem, establishing a title in land, but operates in personam only, by restraining the defendant from asserting his claim, and directing him to deliver up his deed to be cancelled, or to execute a release to the plaintiff. Langdell Eq. Pl. (2nd Ed.), Secs. 43, 184; *Massie vs. Watts*, 6 Cranch, 148; *Orton vs. Smith*, 18 How. 263; *Vandever vs. Freeman*, 20 Tex. 334."

In Ireton vs. Baltimore, 61 Md. 434, this Court said:

> "The injury sued for in this case was done to real estate, and the action therefore was local and not transitory. This is the common law rule, and by decision in *Patterson vs. Wilson*, 6 G. & J. 499, has been held to be the law in this state."

This Court has further discussed the question of jurisdiction in local and transitory actions in

Baltimore vs. Gamble, 132 Md. 473;
Graham vs. County Commissioners of Harford County, 87 Md. 321;
B. & Y. Turnpike Company vs. Crothers, 63 Md. 571;
Baltimore vs. Meredith Ford and Jarrettsville Turnpike Company, 104 Md. 351;
Fowler vs. Pendleton, 121 Md. 297.

If the Court cares to look at any cases outside of Maryland, there is quite an illuminating discussion of the question of local and transitory suits in connection with injunction bills in *Columbia National Sand and Dredging Company et al. vs. Morton, et al.*, 8 Amer. & Eng. Annotated Cases, 511. In that case it was said:

> "It is to the principal question involved in any case that we look to determine whether the action be local or transitory in its nature. If the principal fact carry with it the idea of some certain place, for example—relates to land—it is local, and the action must be maintained in the place where it is situated.
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> * * *
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> From a very early period, Courts of Equity having jurisdiction of the person of a party have exercised the power to compel him to perform a contract, execute a trust, or undo the effects of a fraud, notwithstanding it may relate to or incidentally affect the title to land in another jurisdiction. The doctrine is thoroughly well established within this limitation, that the principal question involved must be one of contract, trust, or fraud, raising up a duty which a person within the power of the Court may be compelled to perform, although the act when performed may operate to affect, and even to pass, the title to land outside the territorial jurisdiction of the Court.

It is, therefore, upon this branch of the case, respectfully submitted that since neither of the defendants resides in Baltimore County and the suit is transitory in its nature, the Circuit Court for Baltimore County had no jurisdiction to entertain the bill.

THE ALLEGATIONS OF FACT IN THE BILL, AS DISTINGUISHED FROM THE MERE APPREHENSIONS, SURMISES AND PROPHECIES CONTAINED THEREIN, ARE NOT SUFFICIENT TO INVOKE THE RESTRAINING POWERS OF A COURT OF EQUITY.

In the discussion of the question raised by the third, fourth and fifth grounds of the demurrer, to the effect that the bill does not aver sufficient facts to justify a court of equity to exercise its restraining power by injunction, we start with the proposition that where the thing proposed to be enjoined is essential to the health and comfort of the people at large, an injunction should not issue unless under very extraordinary circumstances.

In the *Sackett Case*, 135 Md. 62, 63 and 64, this Court said:

> "In Taylor vs. Mayor and City Council of Baltimore, 130 Md. 145, 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 (page 62).
>
> Upon the allegations of the bill in this case, we are unable to hold the conditions complained of are of such a character or so injurious in their present effect upon the property and other interests of the appel-

$16,500 from said garbage and save an annual cost of $75,000 heretofore paid for the disposition of the same, making a net saving to the city of some $91,500 a year.

Paragraph 7—(latter portion).

That your orators are advised that the action of the defendant in transporting to said Jubb Farm the garbage from Baltimore City and there causing it to be either spread out over the ground, reduced in a temporary reduction plant, or fed to pigs in the manner proposed, will result in a nuisance the effects of which will be felt by all your orators and other residents of this section in that it will destroy the reasonable and ordinary comforts and convenience of living therein, will almost entirely destroy the value of their property holdings in said section and render the same virtually unmarketable. That your orators have been advised by competent medical authorities that the maintenance of the proposed piggery on Jubb Farm will endanger the health of the entire community, including all your orators, that said farm will become a breeding place for flies and other noxious insects that are commonly recognized as carriers of disease, that the waters of Bodkin Creek and of the Chesapeake Bay which are now used for fishing, boating and swimming by many of your orators will become greatly polluted and unfit for such uses, and that almost constantly, and especially through the summer months, said garbage and the pigs which are fattened thereon will result in a stench most obnoxious and distasteful to persons of ordinary sensibilities. That all of the aforegoing will result in irreparable loss, damage and injury to your orators and each of them, for which injuries they will have no adequate redress at law.

Paragraph 6—(part of it.)

Your orators charge and aver that the disposal of such a large quantity of garbage, namely, an average of one hundred and twenty-eight (128) tons per day, by spreading the same over the soil of that part of Baltimore County mentioned in the preceding paragraph hereof, will prove a source of disease and pestilence and a menace to the health not only of the people living in the neighborhood but of other people of Baltimore County, especially those whose business or pleasure calls them to Dundalk and Sparrows Point, or to the various shore and other properties nearby, and to those persons travelling the public highways of the County. * * Said garbage, even though spread over the land, will continue to ferment and decay, notwithstanding cold weather and the stench therefrom will increase as the days grow warmer, and said garbage spread over the land will become a breeding place for billions of flies and other noxious insects that are carriers of disease and will result in the spreading of disease, principally typhoid and kindred sicknesses and the contamination of springs and water supplies. The menace to the health of the people of Baltimore County through the spreading of garbage in such quantities as an average of one hundred and twenty-eight (128) tons per day will be terrible even in the coldest of weather likely to endure in this climate and after the termination of said contract, in the spring and summer, the danger to health will be great and more appalling.

One of the leading cases in this State on the subject of the sufficiency of the allegations of a bill to call forth the restraining power of a court of equity is that of *Adams vs. Michael*, 38 Md. 123. There it was held that it is not every inconvenience that will call forth the restraining power of a court of chancery by injunction; that the granting of injunctions of this character involves the exercise of a most delicate power, and the court is always reluctant to act except in cases where the right is clear and unquestioned, and the facts show an urgent necessity.

In delivering the opinion in that case, Judge Alvey said:

> "It is alleged, that, owing to the dirt, odor, smoke, and appurtenances of such factory, together with the inflammable nature of the material used in the manufacture of felt-roofing, the property of the complainants would be utterly destroyed as dwellings, and that 'one of your orators would be deprived of the comforts of his home, and the health of his family would be impaired by the nuisance as aforesaid.' The complainants further allege, 'that irreparable and continuing injury to their property and the value thereof, and to their just enjoyment of the same, will result from the erection and carrying on of the said manufacturing business as aforesaid' (page 126).
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> * * *
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> But, though the law invoked be thus well established, the difficulty in the complainants' case consists in the defective manner in which the facts of it are disclosed. As we have seen, the allegations of the bill, while very strong as to what is to be the consequence of the establishment of the factory, they are exceedingly general and indefinite as to the facts and

circumstances from which the Court alone can determine whether the nuisance will be of the nature and character supposed. It is not enough for the parties complaining simply to allege that particular consequenses will follow the erection of the factory; that may be their opinion or apprehension; but facts must be stated so that the Court can see and determine whether the allegation is well founded (pages 128-129). * * *

The granting of injunctions on applications of this character involves the exercise of a most delicate power, and the Court is always reluctant to act except in cases where the right is clear and unquestioned, and the facts show an urgent necessity. The general rule is, that an injunction will only be granted to restrain an actual existing nuisance; but where it can be plainly seen that acts which, when completed, will certainly constitute or result in a grievous nuisance, or where a party threatens, or begins to do, or insists upon his right to do certain acts, the Court will interfere, though no nuisance may have been actually committed, if the circumstances of the case enable the Court to form an opinion as to the illegality of the acts complained of, and the irreparable injury which will ensue" (page 129).

Without unduly extending the brief upon this point by the citation of a large number of cases, we respectfully submit that the result of the authorities when applied to the allegations of the bill in the present case is, that the allegations of facts contained therein as distinguished from mere inferences, apprehensions and prophecies, are insufficient to justify the granting of an injunction.

THE CONTRACT BETWEEN THE DEFENDANTS IS NOT ILLEGAL.

In paragraph 8 of the bill it is alleged that the contract between the defendants "is illegal in that it contemplates

a disposition and disposal of the garbage of Baltimore City within nine miles of the Lazaretto Lighthouse on the Patapsco River contrary to the provisions of Chapter 205 of the Acts of 1908; and that said contract and acts to be done thereunder are illegal because the same are without the approval of the State Board of Health of Maryland" (Record, pages 8 and 9).

A most cursory examination of Chapter 205 of the Laws of Maryland of 1908 discloses that said statute has no application to the contract between the defendants. Said chapter is very short and is as follows:

> "AN ACT TO PROHIBIT THE ERECTION OF ANY GARBAGE REDUCTION PLANT WITHIN NINE MILES FROM THE LAZARETTO LIGHT HOUSE, ON THE PATAPSCO RIVER.
>
> SECTION 1. *Be it enacted by the General Assembly of Maryland*, That no person, firm or company or corporation shall be permitted to erect, construct or establish a garbage reduction plant at or on any place within nine miles of the Lazaretto Light House, on the Patapsco River, and all persons, firms, companies or corporations are hereby prohibited from erecting, constructing or establishing such plant or plants for the reduction of garbage, offal or similar refuse at or on any place within the said limits.
>
> SECTION 2. *And be it enacted*, That this Act shall take effect from the date of its passage.
>
> Approved March 30, 1908."

The words, "a garbage reduction plant," as used in the statute, have a well-known and almost technical meaning.

"Reduction is a process in which the raw material is so treated that a separation of the liquid and solid portions take place, and grease is recovered from one or both of them. The products resulting from the reduction of garbage are grease, recovered from both the liquid and solid portions, waste water, which may or may not contain putrescible organic matter in solution, gases produced in the cooking operation liberated and escaping into the air, and tankage or solid residue. Grease and tankage have a market value and can be readily disposed of. The waste water if not properly disposed of may contain substances in solution and suspension that undergo decomposition and produce a nuisance if disposed of into open sewers or small bodies of water. The gases produced in the cooking operations are very liable to create a nuisance if provision is not made for their proper combustion and destruction.

The reduction process is suited to the treatment of garbage and dead animals. Where used, other methods of disposal must be provided for the other wastes.

There are several patented processes in operation for the reduction of garbage, all more or less satisfactory in the results they accomplish."

Public Health Bulletin 107, Treasury Department United States Public Health Service, October, 1920, page 73.

It is confidently submitted that in no proper use of the terms can it be said that the spreading of garbage (as defined in the bill of complaint) upon land and plowing it under for fertilizer purpose constitutes either the erection, the construction or the establishment of "a garbage

reduction plant" within the meaning of said Chapter 205 of the Laws of Maryland of 1908.

THE CONTRACT BETWEEN THE DEFENDANTS AND THE ACTS TO BE DONE THEREUNDER DO NOT REQUIRE THE APPROVAL OF THE STATE BOARD OF HEALTH OF MARYLAND.

The allegation of Paragraph 8 of the bill of complaint to the effect that the contract between the defendants "and the acts to be done thereunder are illegal because the same are without the approval of the State Board of Health of Maryland" is based upon the supposition that Chapter 810 of the Laws of Maryland of 1914 is, in some way, violated by said contract and the acts to be done thereunder.

Said Chapter 810 contains twenty-three (23) sections, and confers upon the State Board of Health "additional, and in some respects, unusual powers" (as this Court said in Welch vs. Coghlan, 126 Md. 1) "for the better preservation of the public health by preserving the purity of the waters of the State and providing for the supervision and control by the State Board of Health over water and ice supplies, sewerage, trade wastes and refuse disposal; and for the maintenance, alteration, extension, construction and operation *of systems and works* relating thereto."

This Act, as said by Judge Stockbridge in delivering the opinion of the Court in the last cited case, is "but another and more pronounced step in the direction of establishing government by boards or commissions. The basis for all legislation of this character is to be found in the police power of the State" (page 7).

Said Act contains the following language:

> "SECTION 8. *And be it further enacted,* That after the passage of this act, the State, a County, municipality, district, corporation, company, institution, or person shall not install a system of water supply, sewerage or refuse disposal, for public use, nor materially alter or extend any such existing system without having received a written permit from the State Board of Health so to do; nor shall any permit for this purpose be issued until complete plans and specifications for the installation, alteration or extension, together with such information as the State Board of Health may require, have been submitted and approved by the Board. All construction shall take place in accordance with the approved plans."

It will be noted that the above quoted language is sufficiently broad to subject every governmental agency in the State of Maryland, including the State itself, to the control of said Board, but we insist that the statute, when construed as a whole, does not apply to the contract between the defendants and the acts to be done thereunder, referred to in the bill of complaint in the case at bar. In other words, that a contract, whereby the City of Baltimore sells the refuse from the kitchens of Baltimore City to farmers who spread the same upon their land and plow it under the soil for fertilizer purposes, *does not constitute the installation of a system of sewerage or refuse* disposal, or the construction and operation of a "refuse *disposal plant" or "refuse disposal works," within the meaning of said statute.*

Said Chapter 810 relates, by its express terms, to the installation of "a system" of sewerage or refuse dis-

posal, and contemplates that complete plans and specifications for the installation, alteration or extension of such a system shall be prepared and approved by said Board of Health, and the construction or extension of such system or plant shall be "in accordance with the approved plans." Throughout the statute are indications that the framers had in mind the building and operation of "refuse disposal plants" or "refuse disposal works."

It is, therefore, insisted:

1. That the said Act, when properly construed, does not require the defendants to obtain the approval of the State Board of Health to their contract or to the acts to be done thereunder;

2. That if said Chapter 810 does apply to said contract and the acts to be done thereunder, then said statute is unconstitutional and invalid so far as it relates to the Mayor and City Council of Baltimore, being in direct conflict with Section 7 of Article 11 of the Constitution of the State of Maryland.

We are aware, of course, that this Court, in *Welch vs. Coglan*, has held said Act to be constitutional in part, but this Court has never stamped this Act as constitutional so far as the Mayor and City Council of Baltimore is concerned.

Said this Court, at pages 8 and 9:

"One of the grounds of attack upon this Act was its alleged violation of the Constitution, with regard to the debt incurring power of Baltimore City. This objection need not be considered, as the order of the Board of Health which has given rise to the present

surrounding country and the whole State. The hands of a great City should not be tied by injunction, at the instance of people unduly affected with fears and apprehensions.

We are all citizens of one State and one Country and the health of a part cannot be seriously affected without injuring the health of the whole. The whole State is interested in seeing that the City functions properly and that it works out the problems of urban government satisfactory.

If the City of Baltimore fails in the performance of her governmental functions, the people of the entire State suffer. Modern civilization and government do not exist without cities, and cities cannot exist without garbage; so that this suit really involves a very practical everyday problem of life. As the author of Lucile has said:

"We may live without poetry, music and art;

We may live without conscience, and live without heart;

We may live without friends; we may live without books;

But civilized man cannot live without cooks"

and we cannot have cooks, kitchens and food without garbage.

The decree overruling the demurrers should be reversed and the bill dismissed.

Respectfully submitted,

ROLAND R. MARCHANT,
City Solicitor,

ALLEN A. DAVIS,
Deputy City Solicitor,
Solicitors for Appellants.

WILLIAM F. COGHLAN,
Et Al.

vs

The
MAYOR AND CITY
COUNCIL OF
BALTIMORE,
Et. Al.

In the

Court of Appeals

of Maryland.

April Term, 1921.

General Docket,
No. 62.

BRIEF FOR APPELLEES

Statement of the case.

On January 18th, 1921, William F. Coghlan, William P. Bosley, Robert C. Clark, Harrison Rider and John W. Harrison, who constitute the Board of County Commissioners of Baltimore County and, ex-officio, the Board of Health for Baltimore County, filed a bill of complaint in the Circuit Court for Baltimore County, in Equity, against the Mayor and City Council of Baltimore and William F. Huse. The object of the bill was to procure an injunction to restrain the defendants from sending the garbage of Baltimore City to Bear Creek in Baltimore County, there to be accumulated or spread over the land in Baltimore County for fertilizer purposes. The defendants appeared in response to an order to show cause why the injunction should not issue and demurred to the bill of complaint. The Circuit Court for Baltimore

County, after argument, overruled the demurrers of the defendants and ordered a preliminary injunction to issue. From this order of the Court overruling the demurrers of the defendants and ordering the injunction prayed in the bill to issue, the defendants appealed

The bill was filed as stated above by the Local Board of Health of Baltimore County and set forth that under a contract recently entered into by the Mayor and City Council of Baltimore and William F. Huse, all the garbage of Baltimore City amounting to one hundred and twenty-eight tons per day, will be sent to certain wharves on Bear Creek, which are controlled by Huse, who will spread the garbage, and sell as much as he can for spreading over the land in Baltimore County adjacent and near these wharves for fertilizer purposes.

The bill alleges that the wharves in question are located in a more or less thickly settled, thriving and prosperous community and close to several villages in Baltimore County and various shore properties and private pleasure resorts and near to public highways which are much frequented by the public.

The bill further alleges that the disposal of such a large quantity of garbage by spreading the same over the land for fertilizer purposes in this part of Baltimore County, near Dundalk, Sparrows Point and other villages of Baltimore County, will prove a source of disease and pestilence. The reasons are stated in the bill.

It is further alleged that the Defendant, Huse, has not any means or machinery whatsoever for the scientific or other reduction of said garbage or for its sanitary disposal and that this fact was known to the Mayor and City Council of Baltimore at the time it entered into said conract and that it is proposed by said Huse to spread the garbage over the land for fertilizer purposes, with the assent of the said Mayor and City Council.

The bill further alleges that Baltimore City has a farm in Anne Arundel County, where until recently, it has disposed of its garbage to a piggery. That this property in Anne Arundel County has a water front, wharves especially adapted for the unloading, storage and handling of garbage and is isolated as compared to the property in Baltimore County bordering on Bear Creek and that at the property of Baltimore City in Anne Arundel County it is possible to dispose of the City's garbage without detriment to the health of public and in a sanitary manner.

It is further alleged that the contract between the Mayor and City Council of Baltimore and William F. Huse is illegal because it contemplates a disposition of the City's garbage within nine miles of the Lazaretto Light House, in violation of Chapter 205, Acts of 1908, and because said contract and the acts to be done under it are without the approval of the State Board of Health of Maryland as required by Code volume 3 Article 43, Sections 269 to 289 inclusive.

There is filed with the bill, as exhibits, a resolution of the Plaintiffs, in their official capacity, and a letter from the State Board of Health of Maryland, which contains a statement of the evil effects to be anticipated through the performance of the contract alleged in the bill, and the advice to the Plaintiffs to bring this suit.

This case came before the Court below on demurrer under which is raised:

1. The question of the jurisdiction of the Circuit Court for Baltimore County .
2. The right of the Plaintiffs to bring this suit.
3, 4, & 5. The sufficiency of the bill.

Argument.

The right of the Plaintiffs to bring and maintain this suit in the Circuit Court for Baltimore County.

The Plaintiffs sue as the Board of Health of Baltimore County.

Section 247 of the Local Laws of Baltimore County (1916) confers upon the Board of County Commissioners of Baltimore County, sitting as a Local Board of Health, wide and exhaustive powers looking to the preservation of the health of the people of Baltimore County. To this Local Board is committed the general care of the sanitary interests of the people of Baltimore County, and to this Board is specifically given the power **"to apply to the Judges, or to any Judge of the Circuit Court for such County, in term time or vacation, for an injunction to restrain and prevent such nuisance, no matter by whom or by what authority committed"** and there is also given to this Board "full power and authority to preserve the health of the County, to prevent and remove nuisances, and to prevent the introduction of contagious diseases within said County."

It will thus be seen that the Plaintiffs (Appellees here) are charged by statute with the duty and are given by statute the right to prevent nuisances and to preserve the health of the County and to prevent the introduction of contagious diseases within the County through the restraining order of the Circuit Court of Baltimore County.

Sections 248 and 270 of the Local Laws of Baltimore County (1916) relate to certain duties of the Board of Health for Baltimore County and its officers, the abatement of nuisances, etc., and the imposition of penalties for the maintenance of nuisances, but it is provided by Section 271 as follows: "Nothing in the preceding sections shall be construed as limiting or qualifying the right of said County Commissioners, constituting the local Board of Health, to maintain proceedings in equity to enjoin the commission, maintenance or continuance of nuisance of any kind affecting health."

Section 20, Article 4 of the Constitution provides:

"A Court shall be held in each County of the State, to be styled the Circuit Court for the County in which it may be held. The said Circuit Courts shall have and exercise, in the respective Counties, all the power au- the present Circuit Courts of this State now have and and exercise, **or which may hereafter be prescribed by** thority and jurisdiction, original and appellate, which **law.**"

The provisions of the Local Laws for Baltimore County conclusively show the right of the Plaintiffs to maintain their bill and the same provisions confer jurisdiction on the Circuit Court for Baltimore County in Equity to entertain the application of the plaintiffs for an injunction to restrain any nusances affecting the health of the people of Baltimore County.

Independent of the right of the Plaintiffs to bring and maintain this suit in the Circuit Court for Baltimore County, under the local statutes referred to above, that Court has jurisdiction of the subject matter of this suit because the situs of such subject matter is located in Baltimore County and the restraining order of this Court would operatt in Baltimore County.

The last case on this subject is that of Baltimore City vs. Sackett 135 Md., page 56.

In this case there was a bill filed in Anne Arundel County against the Mayor and City Council of Baltimore and two other defendants for an injunction to restrain the operation of a piggery where the garbage of Baltimore City has been disposed of for more that two years prior to the filing of this Bill. All the defendants to this suit were non-residents of Anne Arundel County. These defendants demurred to the Bill and the demurrers in the case at bar are virtually a copy of the demurrer filed in the Sackett case. The jurisdiction of the Circuit Court for Anne Arundel

County was sustained. On page 61 of the opinion this Court quotes with approval a broad statement in 29 Cyc 1237 "that 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."

The briefs in the Sackett case, supra, as well as the opinion of the Court in that case, contain all the leading authorities which bear on the question of the jurisdiction of Circuit Courts to restrain nuisances located in their respective jurisdictions and the Sackett case has been so recently before this Court that it is thought unnecessary to repeat the citation of those authorities in this brief. The Court's attention is called, however, to the fact that the injunction prayed for **will operate in Baltimore County where** the garbage is now being accumulated and spread over the land. Code Article 16, Sec. 86.

THE SUFFICIENCY OF THE BILL

The allegations contained in the Bill are complete and precise. Could anyone say that the accumulation of all the garbage of such a large city as Baltimore at Huse's wharves in Baltimore County or the spreading of this garbage over the land near these wharves would not be a source of disease and pestilence? Huse has no machinery whatsoever for the reduction of garbage. The City proposes to let Huse sell the garbage for fertilizer purposes, the garbage to be spread over the land. There is a very limited number of farmers who can use this garbage. The territory adjacent to Huse's wharves is not all given up to farming. It is close to several large villages of Baltimore County, one of which has a population of something over ten thousand. It can be estimated that if the average number of tons per day is one hundred and twenty-eight, as the Bill alleges, that a ton of garbage must leave Huse's wharves every five minutes during a working day of ten hours. It is incon-

ceivable that this garbage can be taken care of by farmers, by plowing it under.

Everyone knows that the garbage will accumulate at Huse's wharves and there rot and decay. Everyone knows that what is plowed under will at every subsequent cultivation of the ground be disturbed and so far as odor is concerned, be resurrected and all during the spring and summer and every time the land is cultivated the garbage which is hauled down into that country will give off foul and obnoxious odors, and will be and continue to be an ever increasing menace to the health of a very large portion of the people of Baltimore County.

Of course every case depends upon its own facts and circumstances. This is especially true of suits to enjoin an anticipated or prospective nuisance and it is submitted that in the case at bar the plaintiffs have alleged facts which are sufficient to show and which fairly tend to show that the thing complained of, when done, will in all probability, result in a nuisance which, were it actually an existing one, would be enjoined by this Court.

The principle of law applicable to the case at bar is that, while the general rule is that an injunction will be granted to restrain only an actually existing nuisance, the Court will order it to issue where it plainly appears that the acts which are complained of will, when completed, constitute or result in a grievous nuisance.

THE CITY'S CONTRACT ILLEGAL.

Not only will the contract and acts complained of result in a menace to the health of the people of Baltimore County, but said acts and said contract are illegal. In this connection the Court's attention is called first to Chapter 205 of the Acts of 1908, which forbids the disposal of the garbage of Baltimore City within nine miles of the Lazaretto Light House, within which distance the wharves of Huse are lo-

cated. In the City's brief in the Sackett case, supra, there occurs this language: (page 19) "The disposal of garbage like the disposal of sewage is a matter which the City is not merely authorized by law but is required by law to do. The city cannot dispose of its garbage within Baltimore City, because an act of the Legislature forbids it from doing so at any place within nine miles of the Lazaretto Point. (Act 1908, Ch. 205"

The Act of 1908 was passed not only for the benefit of the people of Baltimore City but also for the benefit of the people who at that time lived in the twelfth and fifteenth districts of Baltimore County. Part of this territory has been annexed to Baltimore City by the Act of 1918. Before the passage of the Act of 1908, the City disposed of its garbage to a large extent by sale of it to farmers who used it for fertilizing purposes and the Act of 1908 was designed to prevent such use of the garbage within nine miles of the Lazaretto Light House and at the very place where it is now being dumped. The late City Solicitor, Mr. S. S. Field, in his brief in the Sackett case, gave the Act of 1908 its accepted meaning, but it was contended in the Court below that while Baltimore City could not maintain a reduction plant for the sanitary disposal of garbage within nine miles of the Lazaretto Light House, it could nevertheless, within that distance of the Light House, dispose of its garbage in an unsanitary manner by spreading it over the ground, because such method of disposition was not a plant within the meaning of the Act of 1908. The mere statement of such a proposition is sufficient to refute it.

The City's contract and acts are further illegal because they are in violation of Article 43 of the Code, volume 3, sections 269 to 276.

The sections of the Code referred to above were enacted by Chapter 810 of the Act of 1914, and appear under the title "Waters, Ice and Sewerage." In this Act sewage is de-

fined to include "all domestic and manufacturing waste" (sec. 269) and the State Board of Health of Maryland is given general supervision and control over all sewerage systems. By Section 276, a municipality is forbidden to install a refuse disposal plant and to materially alter or extend any existing system, without having a written permit from the State Board of Health so to do. Provision is made for the issuing of such permits when complete plans and specifications for the disposal plant have been submitted to the State Board of Health and approved by it. The Bill alleges, and Exhibit B, filed with the Bill, affirmatively shows, that the action of the City in entering into the contract with Huse is without authority from the State Board of Health.

CITY'S CONTRACT UNREASONABLE AND UNNECESSARY

We have seen that the City's contract is an illegal one, the performance of which will result in a menace to the health of the people of the County. But even if the contract were a legal one, and power was vested in the Mayor and City Council of Baltimore to dispose of its garbage in this section of Baltimore County, we contend that the disposal of this vast quantity of garbage in the manner contemplated thould be enjoined:

1. Because such a disposition is unreasonable, and

2. Because there is no necessity for it.

In M. & C. C. of Baltimore vs. Fairfield Improvement Company, 87 Md. page 352, at page 361 Judge McSherry says:

"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. As thus understood the power of the municipality to erect and maintain hospitals and pest-houses may

be exerted and applied precisely as the same power if not delegated could have been availed of by the State. Acts done under such delegated authority, which without that authority would in themselves be public nuisances, furnish no ground for civil or criminal proceedings at the instance of the State; for the authority to do the acts makes them, when done, perfectly lawful as respects the public; and being lawful, there is no superior public right which they invade or violate. These are what have been sometimes described as 'legalized nuisances', (Wood on Nuisances, ch.23), **since they are strictly necessary and probable results of legislative authorization.** They ultimately rest for their sanction upon the paramount power of the Legislature, and the importance of the public benefit and convenience involved in their continuance as affecting the greatest good to the greatest number. Northwestern Fertilizing Co. v. Village of Hyde Park, 97 U. S. 659. 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 their being done is, ordinarily, in no way impaired or affected. The mere naked grant of power to a municipality to do acts, which if done without the sanction of that power would be nuisances, does not in all instances carry with it a guaranty of immunity from claims from private injuries that result directly from the exercise of that power."

Now it is alleged in the Bill that the City has an isolated farm in Anne Arundel County where it has been disposing of its garbage and where it can now dispose of its garbage without detriment to the health of the public. The use, therefore, of Huse's wharves and of adjacent property, whereon the garbage will be spread, cannot be said to be necessary, nor can the evil effects of the disposal of this garbage by spreading it over the land be said to be **probable results of** any legislative authority.

Judge McSherry further says, page 368: "The contract is on its face unreasonable. Its tendency is to cause a dissemination of the disease and not to protect the community; and for this, if for no other reason, the injunction ought to be made perpetual."

The last quotation is peculiarly applicable to the facts of the case at bar. The City has taken no steps to protect the public. On the contrary it is delivering all of its garbage to an individual, who is to spread, and sell the garbage for spreading, over land near his wharves. This individual has no machinery or means whatsoever to reduce the garbage and the City is fully aware of this fact.

The contract sought to be restrained will result, if unrestrained, in a dissemination of disease and is clearly unreasonable from the standpoint of public health. No one can say otherwise.

SACKETT CASE DISTINGUISHED.

The case at bar is not controlled by the case of Baltimore City vs. Sackett, supra. In that case the City had entered into a contract with a piggery and it was the operation of the piggery that was sought to be restrained. The Bill in the Sackett case alleged that the Mayor and City Council had made plans for the erection of a temporary plant for the reduction of the garbage from January 1st to March 1st, 1919, when the piggery was to begin its operations. In the case at bar no plans have been made by the City for the disposal of its garbage, except by spreading it over the land.

In the Sackett case the place where the garbage was to be reduced or fed to the pigs was not within nine miles of the Lazaretto Light House. In the case at bar Huse's wharves and where the garbage is to be spread are within nine miles of this light house.

In the Sackett case it is not alleged that the City had not the approval of the State Board of Health in awarding the

contract to the piggery and in making temporary plans for the reduction of the garbage until the piggery was established. In the case at bar the allegation is that the City is acting, in the contemplated disposal of its garbage, not only without the approval of the State Board of Health, but against its wishes.

In the Sackett case the disposal of the City's garbage is made on the City's farm located in a very sparsely settled community. In the case at bar the disposal of the garbage is by spreading it over the land in a more or less thickly settled community, close to several villages, near the public highways ,much frequented by the public, and near to various bungalows, cottages and shore properties.

In the Sackett case this Court would not say that a piggery was a nuisance per se and that the City's plan to dispose of it garbage through a piggery was illegal or unreasonable. How different is this from the facts of the case at bar.

CONCLUSION.

It is of high importance to the people of Baltimore County that this Court determine once for all what right Baltimore City has in the disposition of its garbage in Baltimore County. In the 15th election district of Baltimore County, where the City has been dumping its garbage since January 15th, there are a number of villages and un-incorporated towns and while the 15th district is of average size as compared with the other fourteen districts of Baltimore County, its assessable basis is something over twenty-six millions of dollars of real estate and tangible personal property and the district is one of the most populous of the County. Along the shores of the Patapsco and its tributaries are several thriving communities, among which are Dundalk, St. Helena and Sparrows Point. Sparrows Point is where the Bethlehem Steel Company is located. Some ten thousand people live there the year round and the Bethlehem Steel Com-

pany employs a great number of workmen, often between twenty and thirty thousand, most of whom travel daily to and from Sparrows Point by means of the public County roads, the street cars and railroad. Dundalk, during the war, was controlled by the Shipping Board and a great number of houses have been built there and it is known as the "White City," because all the houses of recent construction there are of concrete. The distance between Sparrows Point and Dundalk is five miles as the crow flies and mid-way between these two towns is the central point from which the garbage of Baltimore City, amounting to about one thousand tons per week is distributed to some twenty or thirty farmers for fertilizing purposes and where all the garbage that cannot be taken care of by this limited number of farmers is left to rot and decay. It will no doubt be seriously contended that no court in this State can enjoin a municipality such as Baltimore from committing what is called a "legalized" nuisance. But we cannot conceive that the acts and contract complained of in this case will result in a nuisance which can be classed as "legalized". We realize that municipalities are obliged at times to injure and damage the property of some in the performance of their public functions for the greatest good of the greatest number. The case at bar, however, discloses a state of facts which are to say the least shocking to persons of ordinary sensibilities. As we are writing this the refuse of the City of over seven hundred thousand of inhabitants is being delivered to an irresponsible private party who has no means or machinery whatsoever to scientifically and in a sanitary manner care for t, and who is to dispose of it by spreading it over the ground in a more or less thickly settled, prosperous and thriving community for fertilizer purposes. Where is the necessity of this action on the City's part? If Baltimore City is obliged to dispose of its garbage (about which there can be no doubt) who can say that the menace to the health of fifteen thousand people, as disclosed by the Bill in

this case, is a probable result of the necessities of the situation. No one ever dreamed that Baltimore City would undertake to dispose of its garbage in such a grossly unsanitary and unscientific manner. Hence the legislature in passing the Act of 1908, forbade the City from erecting a garbage disposal plant or plants within nine miles of the Lazaretto Light House. The Court will remember that an individual, William F. Huse, is co-defendant with the City and if the Court determine that the City cannot be restrained in the performance of the contract set out in the Bill, the defendant Huse, who is to receive, sell and spread the garbage in Baltimore County, should be enjoined from so doing.

At the time the defendants appealed this case the Circuit Court for Baltimore County (Duncan, J.) was asked to pass an order that the appeal and bond of the appellants should not stay the injunction which the Court had ordered to issue but a few days before. The Court refused to sign this order and accordingly from January 15th to the time of this writing and for an indefinite time hereafter the garbage of Baltimore City has been and will be sent to the 15th district of Baltimore County and there accumulated or spread over the ground. Therefore, in view of the dangerous conditions with respect to health that now exist in Baltimore County, this Court is asked to sustain the order appealed from, and to definitely and precisely declare the right of the plaintiffs in this case to their preliminary injunction.

Respectfully submitted,

Edward H. Burke,

Solicitor for Appellees.

Transcript of Record

FROM THE

CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE CASE OF

THE MAYOR AND CITY COUNCIL OF BALTIMORE, A MUNICIPAL CORPORATION, AND WILLIAM F. HUSE, Appellants,

VS.

WILLIAM F. COGHLAN, WILLIAM P. BOSLEY, ROBERT C. CLARKE, HARRISON RIDER AND JOHN W. HARRISON, BEING AND CONSTITUTING THE BOARD OF HEALTH FOR BALTIMORE COUNTY, Appellees,

TO THE

COURT OF APPEALS OF MARYLAND.

ROLAND R. MARCHANT,

For Appellants.

EDWARD H. BURKE,

For Appellees.

William F. Coghlan, William P. Bosley, Robert C. Clarke, Harrison Rider and John W. Harrison, Being and Constituting the Board of Health for Baltimore County,

vs.

The Mayor and City Council of Baltimore, a Municipal Corporation, and William F. Huse.

January 18, 1921—Bill of Complaint with Nisi Order for injunction filed.

Same day; Plaintiffs Exhibit A & B filed. App. of Edward H. Burke, atty. for plaintiff. Spna issued, copy of Bill of Complaint with Nisi Order sent.

January 21, 1921—Summoned the Mayor and City Council of Baltimore, a Municipal Corporation, by service on William F. Broening, its Mayor, and copy left with him this 20th day of January, 1921, summoned William F. Huse and copies left with him this 20th day of January, 1921. Sheriffs return filed.

January 28, 1921—Demurrer of Mayor & City Council of Baltimore to the Bill of Complaint filed. Service of copy admitted by plaintiffs attorney.

January 28, 1921—Demurrer of William F. Huse to the bill of complaint filed. Service of copy admitted by plaintiffs attorney.

February 3, 1921—Bill of Complaint amended by interlineation by consent.

February 4, 1921—Demurrers refiled to amended Bill of Complaint. Order filed.

February 25, 1921—Demurrer overruled with leave to defendants to answer within fifteen days, and it is further adjudged, ordered and decreed that a writ of injunction issue.

February 26, 1921—Writ of injunction with Order of Court attached & spna issued.

February 28, 1921—Order for an Appeal to the Court of Appeals of Maryland by the defendants with affidavits thereon filed.

February 28, 1921—Appeal Bond filed.

BILL OF COMPLAINT.

To the Honorable, the Judges of said Court:

Your Orators, complaining, say:

1st. That you Orators William F. Coghlan, William P. Bosley, Robert C. Clarke, Harrison Rider and John W. Harrison, are and constitute the Board of County Commissioners of Baltimony County, and ex officio, the Board of Health for Baltimore County, in which last named capacity they bring this suit.

2nd. That the defendants, the Mayor and City Council of Baltimore and William F. Huse, have entered into a contract whereby for a period of ninety days from January 5th, 1921, or thereabouts (the exact date being unknown to your orators) all garbage collected in the City of Baltimore will be loaded on scows and said scows hauled or towed to said Huse's wharves on Bear Creek in Baltimore County, where said garbage will be unloaded. That in said contract said Mayor and City Council of Baltimore have reserved the right to terminate the same on fifteen days' notice to said William F. Huse.

The allegations as to the fact and substance of said contract, as hereinabove set forth, are based on statements which have appeared in the daily press of Baltimore City, under date of January 15th, 16th and 17th, 1921, which statements as to the fact and substance of said contract aforesaid, were confirmed by the Acting Mayor of Baltimore City and Assistant City Solicitor of Baltimore City in conversations with your orators' attorney on January 17th, 1921.

3rd. That the garbage of Baltimore City is the refuse from the kitchens of Baltimore City, and consists of animal and vegetable matters in various stages of decay

and putrifaction. Baltimore is a city of over seven hundred thousand souls and its garbage to be collected and sent by scows to the whaves of said Huse under said contract will average at least one hundred and twenty-eight (128) tons per day, or a total during the ninety days' duration of said contract of at least eleven thousand five hundred and twenty (11,520) tons.

4th. That the defendant, William F. Huse, has not any means or machinery whatsoever for the scientific or other reduction of said garbage or for its sanitary disposal. This fact was well known to the defendant, the Mayor and City Council of Baltimore, at the time of entering into said contract and it *it* proposed by the said Huse, with the assent of said Mayor and City Council, to spread said garbage or to sell as much as he can for spreading, over the territory and land of Baltimore County, adjacent and near his said wharves for fertilizer purposes.

5th. That the wharves of said Huse on Bear Creek, where said garbage will be unloaded are well within nine miles distance of the Lazaretto Litghhouse on the Patapsco River, and are located about two miles from the eastern city limits of Baltimore City and about two and one-half miles from the village of Dundalk and about the same distance from the village of Sparrows Point. Dundalk is an unincorporated village in Baltimore County of some three hundred homes, having a population of approximately fifteen hundred and is a modern town, with concrete streets and a public water and sewage system. Sparrows Point is an unincorporated village in Baltimore County having a population of approximately ten thousand with improved streets and a sewage system. More immediately round about the wharves of said Huse on Bear Creek are small and large truck farms, shore houses and bungalows. The small village in Baltimore County known as Edgemere is less than two miles away. Running near said wharves are modern and improved highways, much frequented by the public. In the summer time especially and during the colder months also, many persons, men and women, with their children visit

the numerous shores and private pleasure resorts along Bear Creek and other creeks making off from it and the Patapsco River, in the vicinity of said Huse's wharves, and your orators allege that said wharves and the farm *lands adjacent and near thereto, over which it is pro*posed to spread said garbage, are not isolated, but are in a more or less thickly settled, thriving and prosperous community, close to several villages in Baltimore County and various shore properties and private pleasure resorts.

6th. Your orators charge and aver that the disposal of such a large quantity of garbage, namely, an average of one hundred and twenty-eight (128) tons per day, by spreading the same over the soil of that part of Baltimore County metnioned in the preceding paragraph hereof, will prove a source of disease and pestilence and a menace to the health not only of the people living in the neighborhood but of other people of Baltimore County, especially those whose business or pleasure calls them to Dundalk and Sparrows Point, or to the various shore and other propetries nearby, and to those persons travelling the public highways of the County. It is inconceivable that such a large quantity of garbage can be plowed under or covered with earth by said Huse or by the limited number of farmers and their help in that neighborhood and vicinity, even though they abstained from all other farm work and devoted all their labors to hauling away from the wharves of the said Huse and to spreading and plowing under the garbage of Baltimore City as received by him under said contract. Said garbage even though spread over the land will continue to ferment and decay notwithstanding cold weather and the stench therefrom will increase as the days grow warmer, and said garbage spread over the land will become a breeding place for billions of files and other noxious insects that are carriers of disease and will result in the spreading of disease, principally typhoid and kindred sicknesses and the contamination of springs and water supplies. The menace to the health of the people of Baltimore County through the spreading of garbage in such quantities as an average of one hundred and twenty-eight (128) tons per day will be terrible even in

the coldest of weather likely to endure in this climate and after the termination of said contract, in the spring and summer, the danger to health will be great and more appalling.

The project of dumping all the garbage of Baltimore City in its raw state on Baltimore County, to be spread over the land for fertilizer or allowed to accumulate, ferment and rot, according to the whim of an irresponsible private party, is highly reprehensible, repulsive and even criminal in its negligent disregard of the health of the citizens of Baltimore County.

And your orators charge and aver that by reason of the large quantities of garbage to be unloaded on said Huse's wharves under said contract, the limited number of farmers to haul said garabeg away for fertilizer purposes, and bad weather conditions which at this season of the year are bound to prevail rendering the removal of garbage from said wharves improbable at times and practically impossible at other times, vast quantities of garbage will accumulate on said wharves and there rot and putrify, and give off foul and obnoxious odors dangerous to health and become a source of fevers and pestilence.

7th. That until recently the Mayor and City Council of Baltimore disposed of the garbage of Baltimore City to a piggery located in Anne Arundel County on a farm owned by this defendant, which has a water front, wharves specially adapted for the unloading, storage and handling of bargage. The piggery has been abandoned. The contract with Huse was the outgrowth of a desire on the part of the Mayor and City Council of Baltimore to dispose of Baltimore City's garbage as cheaply as possible. The Acting Mayor of Baltimore has stated, according to the Baltimore Morning Sun of January 17th, 1921: "But, if we are held up on the Bear Creek plan, we have a last resort. We can still dump the garbage on our farm at Graveyard Point (the piggery) and, if necessary, have a force of men bury it."

Your orators charge and aver that Baltimore City's property at Graveyard Point in Anne Arundel County

is isolated as compared to property in the neighborhood of Bear Creek and that at Graveyard Point the garbage of Baltimore City could be disposed of without detriment to the health of the public and in a sanitary manner.

While said contract is said by the Acting Mayor of Baltimore City in the public press and in conversation with your orators' attorney to be a temporary arrangement for the disposal of the garbage of Baltimore City and will be terminated before the expiration of the ninety day period if other and suitable means can be found for the economical disposition of said garbage, yet your orators have been advised, and as the Board of Health for Baltimore County have determined by their formal resolution that the disposition of said garbage by delivery at the wharves of said Huse for fertilizer purposes is highly detrimental to the health of the people of Baltimore County and should be enjoined.

But without the intervention of this Honorable Court the defendants will create in Baltimore County a nuisance, the evil effects whereof will become more apparent from day to day while said contract is in existence, and afterwards in the succeeding spring and summer. The attitude of the defendants is defiant of any authority of your orators to prevent the completion of said contract and their action is predicated on the alleged advice of the Health Commissioner of Baltimore City that the disposition of the garbage of Baltimore City for fertilizer purposes by spreading it over the land of Baltimore County in the vicinity of Bear Creek will not be injurious to health, and your orators say that said alleged advice is manifest error and contrary to common sense and the advice of the State Board of Health of Maryland. A copy of the resolution of your orators is filed herewith as part hereof marked "Plaintiffs' Exhibit A."

8th. Your orators charge and aver that said contract is illegal in that it contemplates a disposition and disposal of the garbage of Baltimore City, within nine miles of the Lazaretto Lighthouse on the Patapsco River, con-

trary to the provisions of Chapter 205 of the Acts of 1908; and that said contract and the acts to be done thereunder are illegal because the same are without the approval of the State Board of Health of Maryland.

9th. This bill of complaint is filed and exhibited to your Honors in the sanitary interests of the people of Baltimore County, for the health of said county and for the prevention of a threatened and prospective nuisance.

10th. Your orators file herewith a letter under date of January 17th, 1921, from Dr. J. S. Bowen, an officer of the State Board of Health of Maryland, to your orators. Said letter is marked "Plaintiffs' Exhibit B." And all the statements and opinions therein contained, especially in regard to the dangers to be apprehended from the disposition of the garbage of Baltimore City at Bear Crek, are prayed to be taken as part hereof as fully as if at length incorporated herein.

To the end therefore:

That the defendant, the Mayor and City Council of Baltimore may be peremptorily enjoined against sending the garbage of Baltimore City to property in Baltimore County bordering on Bear Creek, said garbage there to be accumulated and/or to be spread over land in Baltimore County for fertilizer purposes.

That the defendant, the Mayor and City Council of Baltimore may be peremptorily enjoined from further carrying out or doing anything in the furtherance of the contract between it and the defendant, William F. Huse, looking to the conveyance of the garbage of Baltimore City to land in Baltimore County bordering on Bear Creek, said garbage there to be accumulated and/or spread over land in Baltimore County for fertilizer purposes.

That the defendant, William F. Huse, be peremptorily enjoined against receiving at his wharves in Baltimore County on Bear Creek, or elsewhere in Baltimore County, the garbage of Baltimore City, and against accumulating said garbage and/or spreading it over land in Baltimore County for fertilizer purposes.

That your orators may have such other and further relief as the nature of their case may require.

May it please your Honors to grant unto your orators the State's writ of subpoena directed to the defendant, the Mayor and City Council of Baltimore, a municipal corporation, Baltimore City, Maryland, and to the defendant, William F. Huse, residing at 2800 Montebello avenue, Baltimore City, Maryland, commanding them and each of them to be and appear in this Court on some day certain to be named therein and answer the premises and abide by and perform such decree as may be passed therein.

And as in duty bound, etc.

WILLIAM F. COGHLAN,

WILLIAM P. BOSLEY,

HARRISON RIDER,

ROBERT C. CLARKE,

JOHN W. HARRISON,

Being and constituting the Board of Health for Baltimore County.

EDWARD H. BURKE,

Solicitor.

PLAINTIFFS' EXHIBIT A.

January 18, 1921.

Whereas, it has come to the attention of the County Commissioners of Baltimore County, sitting as the Board of Health for Baltimore County, that the Mayor and City Council of Baltimore, and one William F. Huse have entered into a contract of ninety days' duration, subject to termination on fifteen days' notice by the Mayor and City Council of Baltimore to said William F. Huse for the disposal of the garbage of Baltimore City by sending it to and unloading it upon the wharves of said Huse at Bear Creek in Baltimore County.

And whereas complaints have been made against the disposal of said garbage in the manner contemplated and the Board has been advised that the accumulation of the garbage of such a large city or the spreading of such garbage over the land for fertilizer purposes is highly detrimental to the health of the people of Baltimore County.

Therefore be it resolved, that the execution of said contract be protested by the Board and enjoined by action instituted in the Circuit Court for Baltimore County.

WILLIAM F. COGHLAN,
HARRISON RIDER,
(Corporate Seal) WILLIAM P. BOSLEY,
ROBERT C. CLARKE,
JOHN W. HARRISON,
Being and constituting the Board of Health for Baltimore County.

True copy—Test:

JOHN R. HAUT,
Chief Clerk.

PLAINTIFFS' EXHIBIT B.

Mt. Washington, Md.,
January 17, 1921

To the County Commissioners of Baltimore County,
Mr. Wm. F. Coghlan, President,
Court House,
Towson, Maryland.

Dear Sirs:

From information contained in newspapers of Baltimore City under several dates beginning on January 15, 1921, and from information otherwise obtained, it appears that the City of Baltimore has entered or is about

to enter into a contract with Wm. S. Huse of Bear Creek, Baltimore County, whereby the said Wm. S. Huse will buy all the garbage of Baltimore City, and the City of Baltimore will deliver all the garbage of Baltimore City to Wm. S. Huse at Bear Creek, Baltimore County, the contract to run for ninety days, the amount of garbage thus disposed of to be 11,520 tons, more or less.

It is believed that this contract, if made and complied with, will cause a nuisance, dangerous to public health, productive of physical discomfort, and otherwise injurious to a population of 13,000, more or less. An injunction is therefore advised in this case, for the following reasons:

1. To avoid the dangers expected, it would be necessary for Mr. Huse to receive at his place in Bear Creek 11,520 tons of garbage, in ninety days, and to distribute the same among the farmers of that section within about ninety days. Allowing one ton to a wagon, and ten hours to a working day, the disposal of this garbage would require a load removed to its final destination, there spread and plowed under, for every five minutes. Manifestly this is impossible.

a. The population, however well disposed, could not handle so much garbage under the most favorable conditions of weather.

b. Not all farmers will desire garbage.

c. Weather conditions will frequently be prohibitive.

d. Not all garbage removed will be plowed under.

2. This garbage while collecting at Bear Creek, and being less or more distributed, will continuously undergo fermentation and decomposition, giving off noxious odors, whether resting or in transportation. At the end of ninety days, under the most favorable conditions, the neighborhood would be dotted over with local nuisances, a very great nuisance remaining at Bear Creek and the fly-breeding season at hand.

3. The fly-breeding capacity of these accumulations in May and succeeding months cannot be estimated. A true statement would be unbelievable.

4. There is no sufficient reason for transporting this garbage out of Baltimore during the next three months.

If the quantity and the sanitary condition of the material is more than Baltimore should endure, no smaller population should be expected to endure it.

If its presence in Baltimore during that time is, in a sanitary sense, objectionable, its presence at Bear Creek would be in the same sense objectionable.

If its delivery at Bear Creek at this season is, in a sanitary sense, unobjectionable, its detention in Baltimore would be, in the same sense unobjectionable. But the garbage belongs to Baltimore City whether objectionable or unobjectionable, and it should not be possible for a single citizen, or several citizens of Baltimore County to buy, or for the City of Baltimore to sell and deliver 11,500 tons of garbage to one point in Baltimore County, without the consent of the population of Baltimore County.

I regard the impending condition as one of the most serious situations that has ever confronted Baltimore County.

Sincerely trusting that you will ask for an injunction and that the same will be successful, I am

Very truly yours,

DR. JOSIAH S. BOWEN,

JOSIAH S. BOWEN, M. D.,

Deputy State Health Officer,

Fourth District of Maryland.

State of Maryland,

Baltimore County, to wit:

I Hereby Certify, that on this 18th day of January, in the year 1921, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid. personally appeared William F. Coghlan, William P. Bosley, Robert C. Clarke, Harrison Rider and

John W. Harrison, being and constituting the Board of Health for Baltimroe County, and the complainants above named, and they each made oath in due form of law that the matters and facts set forth in the aforegoing bill of complaint are true as therein stated to the best of their knowledge, information and belief.

As witness my hand and Notarial Seal.

(Notarial Seal) W. CARROLL VAN HORN,
Notary Public.

On the foregoing bill and exhibits, it is this 18th day of January, 1921, ordered that a writ of injunction be issued as is prayed in said bill, unless cause to the contrary be shown on or before the 28th day of January, 1921; provided, a copy of said bill and of this order be served on the defendants on or before the 20th day of January, 1921.

FRANK I. DUNCAN.

DEMURRER.

The defendant, the Mayor and City Council of Baltimore, appearing especially for the purpose of this demurrer, demurs to the whole bill of complaint in the aboveentitled cause, and for grounds of demurrer says:

First: That this Court is without jurisdiction because upon the face of the bill it appears that neither of the defendants are residents of Baltimore County, and the bill contains no averment of any fact or facts giving this Court jurisdiction over this defendant.

Second: That the bill does not show any right in the plaintiffs to bring this suit.

And this defendant reserving at all times the right to object to the jurisdiction of this Court, for the reasons above stated, and without in any way waiving its right to make said objection, for additional grounds of demurrer says:

Third: That this Court is without jurisdiction, because there is no sufficient allegation of any wrong act-

ually 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.

Fourth: That the bill contains no sufficient statement of facts showing any wrong committed or threatened, which is remediable in a Court of Equity.

Fifth: That the bill contains no sufficient statement of facts showing any irreparable damage to the plaintiffs, or any of them, either suffered or impending.

ROLAND R. MARCHANT,

Solicitor for Mayor and City Council of Baltimore.

State of Maryland,
City of Baltimore, to wit:

I hereby certify, that on this 27th day of January, 1921, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared William F. Broening, Mayor of Baltimore City, and made oath in due form of law, on behalf of the Mayor and City Council of Baltimore, that the aforegoing demurrer is not intended for delay.

As witness my hand and Notarial Seal.

(Notarial Seal) WILLIAM B. HENKEL,
Notary Public.

Service of copy admitted this 28th day of January, 1921.

EDWARD H. BURKE,

Solicitor for Plaintiffs.

DEMURRER.

The defendant, William F. Huse, appearing specially for the purpose of this demurrer, demurs to the whole bill of complaint in the above entitled cause, and for grounds of demurrer, says::

First. That this Court is without jurisdiction, because upon the face of the bill it appears that neither of the defendants are residents of Baltimore County, and the bill contains no averment of any fact or facts giving this Court jurisdiction over this defendant.

Second. That the bill does not show any right in the plaintiffs to bring this suit.

And this defendant, reserving at all times the right to object to the jurisdiction of this Court for the reasons above stated, and without in any way waiving his right to make said objection, for additional grounds of demurrer says:

Third. 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 facts showing irreparable damages to the plaintiffs, or any of them.

Fourth. That the bill contains no sufficient statement of facts showing any wrong committed or theratened which is remediable in a Court of Equity.

Fifth. That the bill contains no sufficient statement of facts showing any irreparable damage to be plaintiffs, or any of them, either suffered or impending.

ROLAND R. MARCHANT,
Solicitor for William F. Huse.

State of Maryland, City of Baltimore, to wit:

I hereby certify, that on this 27th day of January, 1921, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared William F. Huse, one of the defendants, herein, and made oath in due form of law that the aforegoing demurrer is not intended for delay.

As witness my hand and Notarial Seal.

(Notarial Seal) WILLIAM B. HENKEL,
Notary Public.

Service of copy admitted this 28th day of Jany. 1921.

EDWARD H. BURKE,
Solicitor for Pltfs.

PETITION AND ORDER.

To the Honorable, the Judge of said Court:

Your petitioners, the Mayor and City Council of Baltimore, and William F. Huse, defendants in the above entitled cause, respectfully petition the Court to pass an order directing that their demurrers heretofore filed in this cause to the original bill be taken and considered as having been refiled to the amended bill.

ROLAND R. MARCHANT,
Solicitor for Defendants.

Upon the aforegoing petition it is ordered by the Circuit Court for Baltimore County, in Equity, this 4th day of February, 1921, that the demurrers heretofore filed by the defendants to the original bill be, and they are, hereby taken and considered as having been re-filed to the amended bill.

FRANK I. DUNCAN.

ORDER OF COURT.

The defendants to the above case having filed their demurrers to the Bill of Complaint filed therein, and said demurrers having been set for hearing and having been heard it is this 25th day of February, 1921, by the Circuit Court for Baltimore County, in Equity, after arguments by counsel for the respective parties, Adjudged, Ordered and Decreed that said demurrers be and they are hereby overruled, with leave to the defendants to answer within 15 days from this date.

And it is further Adjudged, Ordered and Decreed that a writ of injunction be issued as is prayed in said Bill of Complaint, but liberty is hereby reserved to the defendants to move for the rescinding of this part of this Order,

and for a dissolution of the injunction to be issued as aforesaid, at any time after filing their answers to said bill, on giving the plaintiffs five days' previous notice of such motion, and the Clerk is hereby directed to annex a copy of this Order to the writ of injunction.

FRANK I. DUNCAN,
Judge.

APPEAL.

Mr. Clerk

Please enter an appeal on behalf of the defendants, the Mayor and City Council of Baltimore and William F. Huse, from the order passed on the 25th day of February, 1921, to the Court of Appeals of Maryland.

ROLAND R. MARCHANT,
Solicitor for the Defendants.

I hereby approve the above appeal.

WM. F. BROENING,
Mayor.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 28th day of February, in the year 1921, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeard William F. Broening, Mayor of Baltimore, and on behalf of the Mayor and City Council of Baltimore made oath in due form of law that this appeal is not made for the purpose of delay.

As witness my hand and Notarial Seal.

(Notarial Seal) EDWIN H. BRANDT,
Notary Public.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 28th day of February, in the year 1921, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared William F. Huse, and made

oath in due form of law that this appeal is not made for the purpose of delay.

As witness my hand and Notarial Seal.

(Notarial Seal) EDWIN H. BRANDT,
Notary Public.

State of Maryland, Baltimore County, to wit:

I. William P. Cole, Clerk of the Circuit Court for Baltimore County, do hereby certify that the aforegoing is a full and true transcript, taken from the record and proceedings of said Court in the therein entitled cause, in accordance with the rules of the Court of Appeals relating thereto.

(Seal) In Testimony Whereof I hereto subscribe my name and affix the seal of said Circuit Court this 2nd day of March, A. D. 1921.

WILLIAM P. COLE,

Clerk of the Circuit Court for Baltimore County.

Plaintiff's Costs, $43.10
Defendant's Costs $11.70
Record $22.00.