[EQUITY SUBPŒNA.]

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THE STATE OF MARYLAND, TO

James S. Suter &
The Mayor & City Council of
Baltimore

OF BALTIMORE City — GREETING:

WE COMMAND AND ENJOIN YOU, That all excuses set aside, ~~you~~ be in your person before the Judge of the Superior Court of Baltimore City, at the Court House in said City, on the first day of December ~~day of~~ _____ next, to answer the complaint of

George P. Kane

against you in the said Court exhibited.

HEREOF fail not, as you will answer the contrary at your peril.

WITNESS the Honorable Z. COLLINS LEE, Judge of our said Court, the — first — day of November in the year of our Lord eighteen hundred and fifty eight

ISSUED the 22d *day of* November 1858

Geo E Langsdale

164
1838 Inf (5)

George P. Kane

v

James S. Suter &
The Mayor & City
Council of
Baltimore

Subp

Summoned Ambo
The Mayor & City Council of Balto
by service on Thos Swann Mayor.

Thos Creamer
Sheriff
D & T
Filed Dec 1838

The Joint and Several answer of The Mayor & City Council of Baltimore and James S. Suter to the Bill of complaint of George P. Kane, filed against them in this Honorable Court

These respondents reserving to themselves the benefit of exceptions to the many errors, misstatements and mistakes in said Bill contained, nevertheless for answer thereunto, answering say that they admit that Samuel D. Longe had a tract of land on Jones Falls upon which was erected a Mill, called the Rockdale Mill and that Jones Falls flowed through the said tract and was used as the water power for said Mill: these Defendants also admit that under the act of Assembly passed at its session of 1853 Ch 376, the Mayor & City Council of Baltimore did procure by all the necessary legal steps, by inquisition, verdict of the Jury and confirmation thereof by the Circuit Court of Baltimore County, condemnation of a part of said land, and the absolute fee simple Estate, in the part thus condemned - That the amount awarded by the Jury under said Inquisition was Thirty two thousand dollars for the land and water rights taken and the entire and absolute fee simple Estate therein, which afterwards became vested in said City. That to the portion of the land & water & water rights thus condemned, the said Kane has not the shadow of a title of any kind whatsoever - that the dam, the demolition of which, by these Defendants, is complained of in the said Bill, abutted on both sides of said Falls, upon the land so aforesaid condemned to the use of the Mayor & City Council of Baltimore - and that the stream of Jones' Falls as it flowed in its bed, ran upon the land & was confined in its channel by its banks which land & Banks and all water-rights thereunto attached belong to the Mayor & City Council of Baltimore, up to high water-mark, exclusively & in fee: that so far from the said stream or the Banks thereof belonging to the

said Kane, the lines of the land so as aforesaid condemned form in part the boundaries of the property purchased by the said Kane, and that the said land & water rights thereunto attached, are expressly excluded from his contract of purchase which will appear by the terms of the Published Advertisements of sale, under which his said purchase was made & which is herewith filed as a part of this answer - marked **A**

And these Respondents further state that after the confirmation of the Inquisition aforesaid, the said Fonge having refused the amount awarded to him therein: and notice also having been given to the said Mayor & City Council of Baltimore by persons claiming certain interests in the said land, and also to the sum awarded by said Jury and warning them not to pay the same to the said Fonge, they the said Mayor & City Council of Baltimore found a Bill of interpleader to be filed in the Circuit Court for Baltimore City, wherein it was prayed among other things that upon payment into said Court of the sum of Thirty two thousand dollars being the sum so as aforesaid awarded by the Jury in the Inquisition case of the Mayor & City Council of Baltimore against said Fonge, that the said Court would decree that such payment for the benefit of whomsoever might be entitled to it should be equivalent to a tender of the amount to said Fonge, that an Injunction might issue prohibiting suit to be brought against the City: and that the claimants should implead each other in that Court; and that the Mayor & City Council of Baltimore should be decreed to be the full & true fee simple owners of all said Property land & water rights condemned in said Inquisition case, to the use & occupation of the said City: that said sum was accordingly paid under order & decree of said Court, to await the final disposition of the fund among the claimants

thereto: that some time after the money was thus paid into the Court said Fonge petitioned for the benefit of the Insolvent laws and that Thomas M. Lanahan was appointed & duly qualified as his permanent Trustee, and in that character applied to the said Circuit Court for the money which had been paid therein as aforesaid - that said cause was so proceeded in, that said Circuit Court passed its final decree, awarding the entire fee simple estate in the land condemned by the said Inquisition, to be vested in the City of Baltimore: and that the money therefore what had been paid into Court as aforesaid should be delivered over to said Lanahan to be by him distributed in his character of Merchant Trustee, to whomsoever might be entitled to the same.

That said Lanahan in his character of permanent Trustee of said Fonge did offer all that real Estate of said Fonge for sale - upon the 12 May 1858 and did exclude from the advertisement of sale that part of the land & water rights of said Fonge which had been previously & as aforesaid condemned under said Inquisition: and the fee simple in which had been decreed in the said cause to be vested in the Mayor & City Council of Baltimore: and these respondents deny as is asserted in said Bill that when the property which was purchased by said Kane was up for sale, that it was sold as a "Merchant Flour Mill having valuable water - rights thereto appendant: on the contrary of this allegation, these respondents aver that no water rights whatever were attached to or contained within the territorial limits of the land purchased by said Kane, or described in said advertisement as appendant or appurtenant thereto: and in fact there

respondents aver that said land and water rights claimed by the City of Baltimore and so as aforesaid condemned for its use were expressly excluded from the land purchased by said Kane by his contract with said Trustee - wherefore he has not a shadow or plausible pretence of title to what he claims in and by his said Bill -

These Respondents admit that shortly after his purchase of said property he was put into possession of the same, but they deny that any possession was given to him of the land or water rights so as aforesaid belonging to the City of Baltimore, but taking advantage of the portion which his purchase afforded him and of the opportunity thus offered, of using what did not belong to him the said Kane has most wrongfully and contrary to the repeated warnings and remonstrances of these respondents, continued to use for his own emolument, the water and dam of the said City, in driving his mill, in defiance of the said City and in contempt of its rights

These respondents have no knowledge of any contract existing between the said complainant with Alexander Winchester, Esq. relative to the manufacture of any quantity of flour and therefore neither admit or deny the same and leave the complainant to the proof thereof - But these Respondents aver that said Kane had no authority or right to enter into a contract, the fulfilment of which depended upon the use of the dam and water rights of the City of Baltimore.

These Respondents deny that the said James S. Suter did enter upon the dam belonging to the Rockdale Mill, as there was & is no such dam in existence that these respondents know of, and destroyed the same or any part thereof; but they admit that they entered upon the dam belonging to the said City, the water from which without right thereto had been wrongfully used by said Kane, and removed a part thereof, whereby the water which had been impeded in its flow by the said dam was restored to its accustomed and proper channel; and these Defendants admit that they did destroy the said dam in part and apart their right so to do as it was the property of the City & by its authority that the act was done: that it is essentially necessary to the introduction and continuance of a supply of pure water with & in the limits of the City of Baltimore, that the authorities thereof should have the absolute control of the flow of water down the Falls & unimpeded by any obstacle of a permanent character and immoveable at their will; that the Water Board under the ordinances of the City having in charge the management & control of the operation of bringing into & distributing through the City pure water from Jones Falls, have been greatly obstructed and inconvenienced in the performance of their duties by means of the irregular flow of Jones Falls by reason of said dam & the use of the water ~~from~~ therefrom by said Kane so that they cannot at all times, and in such quantities only as may be required, cause the same to flow as would be desirable through the pipes prepared to receive it. Sometimes the water will be held up when it is wanted and at others flow rapidly down & in larger quantities than can be properly distributed and thus wasted and lost.

these respondents admit that the City of Baltimore does claim the unqualified and absolute fee simple estate in all the said land & water & water rights so as aforesaid to condemn to their use. and thereby to sustain such title not only upon the decree of the said Circuit Court for Baltimore City. made in a cause wherein the said Thomas McLanahan trustee of said Longe was a party, under which the complainant claims, but also under the authority of the said act of Assembly by which the corporation are expresly empowered to acquire by condemnation the fee simple in any land, real estate, spring brook, water & water course for the purpose of conveying water within the limits of the city & which the said corporation might think necessary for that purpose. And these respondents annex hereto as part of this answer a copy of said Decree marked B.

And these respondents further aver that the said land & water & water rights now held by the Mayor & city council of Baltimore & the absolute fee simple Estate therein are held, and in the Judgement of the said corporation are necessary to be so held & used for the introduction of a plentiful supply of pure water within the limits of said city; and that the title and use of the said dam & water as claimed by said complainants would interfere and in the manner in which they have been used by Complainant as

as aforesaid, has interfered injuriously with the operations of the said corporation in the conveyance of water within the limits of said city, and these respondents deny the allegations of said Bill that the use of said water by the complainants is not injurious to the rights of the city of Baltimore therein, and has not affected the same, and these respondents deny that said complainant has any legal or Equitable title whatever to the dam or the land upon which it is situated, or to Jones Falls flowing over the same, independent of any claim thereto by the city of Baltimore, and these respondents deny that the said Corporation have committed any tort whatever upon the land, dam, or water rights of the Complainant as is set forth in his said bill of Complaint, and these defendants deny that they have com= =mitted any wrong or trespass upon the property of the complainants, even supposing that they had no right to pull down and destroy said Dam, as they did do in part as herein before stated: that the demolition of said dam was completed in itself by one act, which has not been repeated or continued and which, if an injury to him at all this court has no jurisdiction to redress, but that it is properly cognizable at law wherefore these respondents plead to this of this count, that the cause of injury complained of & set forth in

this bill is a matter of legal and not of Equitable cognizance and these respondents pray hence to be dismissed with their costs in this behalf most unjustly sustained — and as in duty &c &c

G L Duluny
Solr for Defts.

State of Maryland
Baltimore City to wit

Personally appeared before the subscriber a justice of the peace in and for the said city, James S. Suter and made oath in due form of law that the matters of fact set forth in the aforegoing answer are true to the best of his knowledge information and belief

Sworn before Daniel E. Myers
this 24th day of November 1858

Daniel E. Myers

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George P. Kane

vs

The Mayor & City Council
of Baltimore
&
James G. Suter

Mr Livingston,
File this answer
& enter motion to
dissolve the Injunction
issued in this case

G. H. Dalany
Solr. for Defts.

Fd 24th Nov 1858

George P Kane
vs
The Mayor & City Council of Baltimore

} Superior Court in Equity.

Motion to dissolve Injunction.

Ordered that the motion to dissolve the Injunction in the above case be heard on Saturday next ~~Thursday~~ provided notice thereof be given ~~24 Nov 1858~~ to the Solicitors for complainant, this 24th day of Nov 1858; and provided also that either party may in the interim take evidence before any commissioner of this Court or any Justice of the Peace, upon one days ~~reasonable~~ notice to the other.

24 Nov 1858.

L Collins Lee

26 November 1858

Ordered that the time for hearing the motion to dissolve the Injunction in this case be enlarged until the 4th day of December 1858

L Collins Lee

Fd 24th Novr 1838

Copied

Tran
v
Mayor & City Council
of Balt. & others

In Supreme
Court in Equity

Hon Sampson,

Issue Commission
in this case to take testimony. E. H. R.
Delany, Esq.

Dobbin & Talbot
for Pltff
G. L. Duncan
Solicitor for Defts

Nov. 26/55

(8.)

Kane
v
Suter

Agreed for a Commission

Fd 26th Novr 1858

George P. Thane
vs
The Mayor & City Council of Baltimore
et al

Superior Court of Baltimore City

It was agreed in the case before the commissioner that the exhibits & commission should not be annexed to the depositions & exhibits, returned by them but that they should have the same effect as if annexed

G. L. Dulany
Solr. for Defts
Dobbin & Talbott
for Complnt

19.

Kane
vs
Mayor & City
Council

Agreed.

Fd. 4th December 1838

Kane
v
Mayor & City
Council

In Supr Court
Balto. City.

It is agreed in this case that the record of the proceedings of the case in the Circuit Court for Baltimore City, of the Mayor & City Council of Baltimore is & are & others shall be used in evidence as though filed under the Commission issued in this cause and subject to the same exceptions

Robert Halbert
for Compts:
G L Dulany
Solicitor for
Defts

(11.)

Mayor & City Council

at

Kane

Agreem^t

Fd 18 December 1858

Kane
vs
The Mayor & City
Council of Baltimore

In Honor
Court

The Defendants except to so much of the testimony of Thomas McHannahan, as is offered to prove by his oral declarations what interest or estate or the boundaries thereof, he designed to sell to to the Complainant in this case

G. L. Duncan
Solr. for Defts

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Mr Langston
File these
Exceptions
G. Delany
Solic for Defdt

Filed 11th January 1839

Shane
vs
The Mayor & City
Council of Baltimore.

Superior Court
of Baltimore
In Equity

The Defendants ~~excepted~~ to the admissibility in evidence in this case, the deed from H. N. Gambrill & others to the Mayor & City Council of Baltimore; the deed from William E. Hooper & others to the Mayor & City Council of Baltimore & the deed from the Mount Vernon Company as the Mayor & City Council of Baltimore, ~~[illegible]~~ same being inadmissible, & as inter-alias acta

G. L. Dulany
Atty for Defts.

Kane (131)
vs
The Mayor & City Council
of Baltimore

Mr Taylor /
Please file these
Exceptions
G L Dulany
Solr for Defts.

Fd 11th January 1859

Kane
vs
Mayor & City Council of Balto

} decretal opinion & order

The record in this case shows that the Mayor & City Council had acquired an absolute fee simple right and title to the bed of the Falls where the mill in this case was located. That afterwards Geo P Kane became the purchaser of said Mill and that the dam was in point of fact situated on the property previously acquired by the City for the purpose of supplying the City of Balto with an increase of pure water.

If to carry out this purpose it should become necessary in the opinion of competent & skilful officers of the City to take down this dam then the Mayor and City Council would have the power & right to do so.

But if it shall appear that no necessity requires the pulling down of the dam, then the City will not exercise their rights & power, and so enjoy their property for the purpose required of them, as

not practicable to inspect or dis=
=turb the property or rights of
the Company or any other
owner of property adjoining
or bordering on said Falls

The Injunction heretofore
granted is therefore dissolved

T. Collins Lee

Kane (41)
vs
Mayor & City Council

Opinion & order

Copied
Fd 11th January 1859

Kane
vs.
The Mayor
& City Council
of Baltimore &
James S. Suter

In Superior
Court Balt
City.
In Equity.

Mr. Sampson.

Please enter a prayer of appeal by complainant to the Court of Court disposing the Injunction –

Robert Talbott
for Compl.

Ordered by the Court this 13th day of ~~April~~ January 1859 That the appeal be allowed, on filing a bond by complainant in penalty of $5000. with surety to be approved by the Court –

Z Collins Lee

(15)

Kane

v

Suter &c

Prayer of Appeal &
order of Ct. allowing
appeal

Fd 13th Jany 1859

Know all men by these Presents that
Mr George P. Kane. Wm. Spence and
J. Crawford Neilson
of the City of Baltimore in the State of
Maryland, are held and firmly bound unto
The Mayor and City Council of Baltimore and
James S. Suter in the full and just sum
of Fifty thousand dollars, current money
to the which payment well and truly to be
made and done we bind ourselves and each
of us, our and each of our heirs, executors
and administrators, jointly and severally,
firmly by these presents, sealed with our
seals and dated this Thirteenth ~~nine~~
day of January in the year of our Lord
One thousand, eight hundred and fifty
nine -

Whereas the said George P. Kane hereto fore
filed his bill of complaint in the Superior
Court for Baltimore City, sitting in Equity,
and obtained from said Court an Injunction
against said Suter and Mayor and City
Council of Baltimore. And Whereas the
Superior Court aforesaid have since passed
an order dissolving said Injunction, from
which said Order the said George P. Kane
is about to appeal to the next Court of
Appeals for the State of Maryland. "
Now the Condition of the above obligation is
such that if the above bound George P. Kane
shall not cause a transcript of the record

proceedings in said cause to be transmitted to the Court of Appeals of the State of Maryland, within the time required by law and prosecute the same into effect, and shall also indemnify the Mayor and City Council and James S. Suter from all loss and injury which they may sustain by reason of such appeal, and pay all costs and damages, in case the said order shall be affirmed, then this bond to be void and remain in full force and virtue, otherwise of no effect.

Signed, sealed and delivered in presence of,

Francis Gilden

Chas. C. Egerton Jr.

Geo. M. Kane (Seal)

Wm. Sperry. (Seal)

T. Crawford Neilson (Seal)

Kane 16.
vs
Suter et al

I Believe the within
Bond Sufficient
Geo. E. Sangston Clk

13. January 1859
Bond Approved
L. Collins Jdge

filed 13. Jany 1859