

No. 4721

167

The Mayor & City Council
of Baltimore vs.

John H. Hoffman
et al.

d/35/6/17

To the Honorable The Circuit Court for
Baltimore County sitting as a Court of Equity—
Humbly complaining show unto your
Honors your orators The Mayor and City
Council of Baltimore that by section 928 of
Article 4. of the Code of Public Local Laws which
was a reenactment of an Act of the General
Assembly of Maryland passed at January
Session 1853, chapter 376 entitled, "An act
for supplying the City of Baltimore with pure
water", it was provided that your orators might
from time to time contract for, purchase, lease
and hold to them and their successors in
fee simple, or for a term of years, any land,
real estate, spring, brook, water and water-
course, and also the right to use and occu-
py for or, or for a term of years, any land
real estate, spring, brook, water or water-
course which they might deem expedient
and necessary for the purpose of conveying
water into the said city, for the use of the
said city, and for the health and conveni-
ence of the inhabitants thereof, and also
the right to ~~use~~ and occupy the lands through
which they might deem it necessary to con-
vey the said water, and they were invest-
ed with all the rights and powers neces-
sary for the introduction of water into the
City of Baltimore and to enact and pass all
ordinances from time to time which should be

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deemed necessary and proper to exercise the powers and effect the said objects.

And in exercise of the powers thereby conferred your orators purchased in fee simple certain lands lying in Baltimore County, adjacent to or including a portion of the bed of a certain natural water course called the Gunpowder River, with the water-rights appurtenant and belonging to said lands, including the right to use the water of the said stream in its natural pure and unpolluted condition

And embraced in said purchases were lands conveyed to your orators by Edward Patterson Junior, Samuel Smith Patterson and Robert Patterson, the owners thereof, by a deed dated the 6th day of February A.D. 1866, lands purchased from the Gunpowder Copper Works, a body corporate described in a deed thence to your orators dated the 7th day of February A.D. 1866, lands purchased from Eliza George and others, and described in a deed from them to your orators dated the 9th day of February A.D. 1866 and certain other lands known by the names of Summerfield, Glen Ellen, and Rockwood.

And in further exercise of the said powers and of the proprietary rights acquired by said purchases, your orators caused to be constructed a dam across the said stream of water or Gunpowder River and thereby

formed a certain lake, and has also caused to be constructed a conduit or tunnel leading from said dam and lake to a reservoir of your orators situated near the city of Baltimore; from which said reservoir the said water is ^{now being} ~~intended~~ to be distributed and is ~~already~~ ^{now being} distributed to various parts of the said city, in order to supply the inhabitants thereof with pure water for drinking and other necessary purposes.

And your orators further show that the said works have been made and constructed at great expense, and the water so derived from the said Gunpowder River and dam, and conducted into the said city constitutes by far the larger part of the water supply of the said city, and is indispensably requisite and necessary for the use and enjoyment of its citizens and inhabitants and the promotion and preservation of their comfort and health —

And your orators further show that the water of the said stream in the manner in which it naturally flowed along or upon the said lands so purchased by your orators and along or through which the same was accustomed to flow and in the manner in which the former owners of the said lands were of right entitled

to have the same flow, was pure and whole-
some and admirably and perfectly adap-
ted to be used as drinking water for mankind
and for the uses and purposes for which
your orators so acquired the right to con-
duct the same into the said city as you
said -

And your orators further show that in and
by an Act of the General Assembly of
Maryland passed at January Session 1870
chapter 25, it was further declared to be un-
lawful for any person wilfully to pollute the
water in any lake, dam, reservoir, line
of conduit, water-pipe, gate-house or other
work constructed or used for supplying
the City of Baltimore with water, or to
throw or cause to be thrown therein, or so
near thereto as to pollute the water therein
with any impure or noxious matter. -

And your orators further show that
William H. Hoffman, George D. S. Hoffman
and John D. Hoffman copartners trading
under the name of William H. Hoffman and
Sons are the owners and occupiers of a
paper-mill known by the name of the Marble
Valle Paper-Mill situated in Baltimore
County, near the said Gunpowder River
and above the said lake and dam of your
orators, and about five or six miles ^{distance} therefrom
at which said paper-mill the said

William A. Hoffman and Sons are engaged
extensively in the manufacture of paper using
in such manufacture amongst other sub-
stances sulphuric acid, white-bleach and
other chemicals; that the refuse water from
the said paper-mill, holding in solution
divers corrosive ingredients, and coloring
matter, is by the said William A. Hoffman
George D. S. Hoffman, and John D. Hoffman
caused or suffered and permitted to empty
or flow into the said Gunpowder River
wherby the water of the said stream or river
is greatly discolored and polluted; and that
the said William A. Hoffman, George D. S. Hoffman
and John D. Hoffman have also erected near
the bank of the said stream a certain privy
for the use of the persons employed at or
about the said paper-mill, and the right
soil of the said privy is by them caused, or
suffered and permitted to be discharged or
be washed down into the said Gunpowder
River wherby the water thereof is greatly
polluted, and the water of the said
Gunpowder River after being so discolored
and polluted by the refuse from said
paper-mill and said privy descends re-
ciprocally into the said lake of your orators
and by reason of the said hurtful and
offensive substances so carried down with
the same, the water of the said lake re-

paper-mills and the discharge of said water so injuriously impregnated with artificial substances and chemicals, from said mills, and also against the permission by the said Hoffmans of the discharge of filth from their said privy at said Marble Dale Mill, to be made to the said, William H. Hoffmann, George D. Hoffmann and John B. Hoffmann, but the said Hoffmans regardless thereof and well knowing that such their use of their said mills and premises is necessarily prejudicial to your estates and that the refuse water from their said mills, so discolored and impregnated with hurtful substances and the filth from their said privy by being so discharged into the said stream necessarily pollutes the same, continue nevertheless in their said improper, unlawful and injurious acts and doings, and as your estates believe and charge do purpose and intend still to carry on their said operations in the same injurious and unlawful manner, whereby great and irreparable injury is threatened to your estates and to all those who will use the water conducted from said lake into the City of Baltimore by the said water-works of your estates, and your estates can have no adequate relief in the premises without the interference of a Court of

Equity.

To the end therefore that the defendants hereinafter named may answer the premises and that the said William H. Hoffman, George D. Hoffman and John D. Hoffman copartners as aforesaid and each of them, and their servants and agents may be enjoined from causing or suffering the refuse water from their said paper-mills, or either of them, or any water from their said premises or either of the said premises which has by them been caused or permitted to become discolored or impregnated with lime, sulphuric acid or other chemical, to empty or flow into the said Gunpowder River or any tributary thereof, and also from ⁺permitting the night soil of their said mill or the washings therefrom to empty or flow into the said Gunpowder River; and also from polluting the said Gunpowder River or any tributary thereof, above the said Lake and dam of your orators in any manner whatsoever, or causing the water of the said stream above said dam or any part thereof to be made less pure than it would be naturally, and from introducing into the said river above said dam any artificial ingredients or substances whereby the quality or purity thereof may be in any manner impaired or injured. And that your orators may have such further or other relief as the nature of

this case may require and to your Honors
may cum tunc —

May it please your Honors to grant unto
your orators the writ of injunction to be directed
to the said William A. Hoffman, George S.
Hoffman and John D. Hoffman copartners
trading under the name of William A. Hoffman
and Sons, and each of them, enjoining and
strictly prohibiting them and each of them
and their servants and agents from causing
or suffering the refuse water from their said
paper-mills or either of them, or any water
from their said premises or either of the
said premises, which has by them been
caused or permitted to become discolored or
impregnated with lime, sulphuric acid or
other chemicals, to empty or flow into the
said Gunpowder River or any tributary thereof,
and also from permitting the night soil
of their said privy or the washings therefrom
to empty or flow into the said Gunpowder
River; and also from polluting the said
Gunpowder River or any tributary thereof, above
the said lake and dam of your orators in any
manner whatsoever, or causing the water of the
said stream above said dam or any part thereof
to be made less pure than it would be naturally,
and from introducing into the said
river above said dam any artificial ingredients
or substances whereby the quality

or purity thereof may be in any manner im-
 paired or injured - And also the writ of
 subpoena against the said William H.
 Hoffman of Baltimore County and the
 said George D. S. Hoffman and John W.
 Hoffman of Baltimore City commanding
 them and each of them to appear in this
 Court on some certain day to be therein
 named to answer the premises and abide
 by such decree as may be passed therein
 And as &c

Wm. H. Hoffman
 Pls. Complainant

State of Maryland, Baltimore City, to-wit:
 I hereby that on this 11th day of May
 A.D. 1882 before the subscriber, a Justice of the
 Peace of the State of Maryland in and for
 Baltimore City of and said personally appeared
 Robert K. Martin, Chief Engineer of the
 Baltimore City Water Works and made oath
 on the Holy Evangelists of Almighty God that
 the matters and things contained in the
 foregoing Bill of Complaint are true to the
 best of his knowledge & belief.

Wm. A. Bayzand J.P.

State of Maryland, Baltimore City, Sect.

I HEREBY CERTIFY, That William H. Bayzand
Esquire, before whom the annexed acknowledgment and affidavit was made,
and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland,
in and for the City of Baltimore, duly commissioned and sworn, and authorized
by law to administer oaths and take acknowledgments. I further certify that
I am acquainted with the hand writing of the said Justice and verily believe the
signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the
seal of the Superior Court of Baltimore City, this 10th
day of May A. D. 1882.

J. A. Prevost

Clerk of the Superior Court of Baltimore City.

8/169

4721

The Mayor & City Council
of Baltimore

vs

William H. Hoffman
et al.

Bill

Wm Isaac

Please file

M & G for complt

4721

Filed June 6/82

The Mayor & City Council
of Baltimore

vs

William H. Hoffman & c
Mr Isaac.

In the Circuit Court of
Baltimore County
In Equity.

Enter my appearance for the
Respondents in this case

Hy. Stockbridge
Solr for Respondents

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The Mayor & City

Council of Baltimore

vs

William H. Hoffman
et al

Mr Clerk

Please file

H. Stockbridge

fold re

Filed June 15/82

To the Honorable the Circuit Court of
Baltimore County: In Equity:

The answer of William H. Hoff-
man, George H. S. Hoffman and
John H. Hoffman to the bill of com-
plaint of "The Mayor and City Coun-
cil of Baltimore" against them here-
before in this Honorable Court exhibited

These respondents, reserving to them-
selves, all, and all manner of excep-
tion properly to be taken or had to the
said bill of complaint for the many
uncertainties, imperfections, and insuffi-
ciencies thereof, yet for answer thereto
or to so much thereof as they are advised
that it is proper that they should make
answer unto, answering, say:

1. That they admit that by an act of
the general assembly of Maryland passed
at the January session 1853 and sub-
sequently copied or re-enacted in the
code of Public Local Laws of the State
of Maryland there were certain powers
conferred upon the said complainant
for purchasing, leasing, condemning lands
for the purpose of supplying the City
of Baltimore with pure water for the
use of the inhabitants thereof as well
fully appear by reference to the said
act of assembly, to which these respon-
dents now, and hereby, refer as a part of
their answer, and ask that the same

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and not the ^{said} complainant's statement thereof, may be taken to show the extent and manner of the complainant's rights in the premises.

2. Further answering, these respondents say, that they have no definite or personal knowledge of the purchase of lands or the construction of dams or other works, upon the Gunpowder River in Baltimore County or the character of the water of the said stream or the use or value or importance of the same as alleged in the said bill of complaint and they therefore neither admit, nor deny the allegations of the said bill with reference thereto, but leave and require the said complainant to make strict proof thereof.

3. These respondents admit that the General Assembly of Maryland at the January session 1870, chapter 25, passed a penal law for the punishment of all persons polluting the water in the water works of the said complainant, as set forth in the said act; but they deny that they have ever violated the provisions of the said act and deny that this tribunal has any jurisdiction over violations of the said act, and they hold themselves ready at all times to answer any charge for any such violation in the forum having proper jurisdiction thereof.

4. Further answering, these respondents deny that they are partners doing business under the name of William H. Hoffman & Sons, as is

alleged in the said bill of complaint or are the owners of the paper mill spoken of therein, as the "Marblevale Mill"; they admit that this respondent, William H. Hoffman is the owner of the said mill which is situated upon the Gunpowder River in Baltimore County about eight miles above a certain dam across said stream which is reputed to be the dam of the complainant and is the dam referred to in the said bill of complaint and they show and aver that these respondents George H. S. Hoffman and John H. Hoffman have no business connection with the said mill or with the said William H. Hoffman save that they are the sons of the said William, and are employed by him in different departments of the business carried on by him; and they further show and aver for further answer to the said bill, that the said William H. Hoffman became the owner of the said Marblevale mill more than thirty years ago, and about the year 1850; that the same has been continuously used as a paper mill from that time to the present, and had long previous thereto been improved and used as a paper mill, and as a valuable water power had been improved and used prior to its use as or for a paper mill. They admit that in the operations of said paper mill they use the latest and best modern improvements for the manufacture of paper but nothing in anywise more objectionable

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or injurious than had been used for a long series of years at the same place prior to the time when the said complainant claims to have acquired its rights in the said stream; they admit that they use in their said paper mill for the purposes of their said manufacture about three hundred pounds of sulphuric acid in a year and more or less of chloride of lime for bleaching purposes; but they show and aver that it is their constant effort to use the same in their manufacture, and not to waste the same and allow it to pass unused into the water of the stream and they show and aver that they are so successful in their effort so to do that the water is not perceptibly affected by the small quantity that passes from the said mill into the very large body of water constituting the stream as is shown by the fact that the fish of said stream neither avoid the said water nor are injured by it; and they also show and aver that their said use of the said mill and of the said water for the purposes thereof was well known and for many years assented to by those from whom the said complainant claims to have acquired title and under whom it claims its rights; and ~~that~~ they submit that they are advised that such license to this respondent, William H. Hoffman so to use

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his said mill and the waters of the said stream for more than thirty years and to those ^{from} whom he acquired his title for a much longer period prior thereto, and after that he, under and in consequence of such license has erected valuable works and placed therein expensive machinery ~~machinery~~ and by giving employment to a considerable number of hands engaged in the several departments of labor connected with said paper mill has led them to become permanent residents of Baltimore County in the vicinity of the said paper mill, rights have become vested which cannot equitably or lawfully be disturbed by a diversion of the stream to a new and different use from that to which it was previously devoted without compensation to these respondents, or those to whom those rights belong; and these respondents deny that they have erected or that there exists at or near the said paper-mill, or in connection therewith any spring or any structure of any kind so situated that the soil or refuse thereof is discharged or washed down into the said stream as alleged in the said bill of complaint, or that there is anything at or in connection with the said paper mill calculated in any way to pollute the water of the said Sunpowder River save what is necessarily incident to the operation of the said mill as

is heretofore set forth.

5. Further answering these respondents admit that the said William H. Hoffman is the proprietor of another paper-mill, known as the "Rockdale Mill" and with which these respondents are connected as aforesaid which is situated upon an affluent of the said Gunpowder River some fifteen to eighteen miles above the said Marblevale Mill; and they admit and aver that the same is managed and operated substantially in the same manner as the said Marblevale Mill. And they show and aver that the said Rockdale Mill was erected in or about the year 1850 and has been used as a paper mill from that time to the present, by these respondents, or some of them, and they show and aver that there are upon the said Gunpowder River or its affluents between the said Marblevale Mill and the said Rockdale Mill not less than ten or twelve paper-mills or factories of different kinds by whose operations the water of the said stream is doubtless contaminated, if it is contaminated at all rather than by the operations of the said Rockdale Mill; and they deny that it is possible at the dam or lake of the said complainant, or at any other place by any known test to discover any taint communicated to the water of the said Gunpowder River by the operations

of the said Rockdale Mill.

6 Further answering, these respondents admit that they have declined to involve themselves in ruin by abandoning their property and rights so long exercised, because of the new use to which the complainant proposes to appropriate the water of the said stream, without compensation or remuneration; and they show that they are advised that their property cannot be taken, even for public use, without just compensation being first paid, and they show and aver that they are and at all times have been willing to cease the working of their mills, or to surrender their ^{property} and rights upon the receipt of just compensation as agreed upon between the parties or awarded by a jury as provided by the Act of Assembly of 1853 referred to by the complainant, ^{in its said bill of complaint} and they now and hereby bind themselves according to their respective rights and interests ready to do so.

Further answering they show that they are informed and believe that the said complainant before it proceeded to erect or construct its works referred to in its said bill of complaint made satisfactory tests to ascertain the purity or quality of the water of the said Gunpowder River, and they deny that since that time they have made any change in character or condition of the

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said mills which could tend to deteriorate
the water of the said River or in any way
injurious affect the same and they
show and aver that it is their interest
and effort at all times to prevent the
escape of any chemicals into said
stream, and that so far as these ^{respects}
are concerned the water of said
stream passes to the works of the said
complainant in as pure a state
as it was accustomed to do at the
time when it erected the said water-
works and if contaminated at all
by the operation of said mills without
any more contamination than it pre-
viously received therefrom.

Wherefore they pray to be hence dis-
missed with their costs unjustly sus-
tained.

And as in duty bound &c

Henry Stockbridge

Solr. of Defendants

State of Maryland

Baltimore City Sch.

I hereby certify that
on this 14th day of June A.D. 1882 be-
fore me the subscriber a Justice of the
Peace of the State of Maryland in and
for Baltimore City aforesaid appear-
ed George H. S. Hoffman and
made oath in due form of law that
the matters and facts stated in the

State of Maryland, Baltimore City, Sect.

I **HEREBY CERTIFY**, That *George A Kemnick*
Esquire, before whom the annexed acknowledgment and affidavit was made,
and who has thereto subscribed his name, was, at the time of so doing, a Justice of the Peace of the State of Maryland,
in and for the City of Baltimore, duly commissioned and sworn, and authorized
by law to administer oaths and take acknowledgments. I further certify that
I am acquainted with the hand writing of the said Justice and verily believe the
signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the
seal of the Superior Court of Baltimore City, this *14th*
day of *June* A. D. 1882.

Francis A Prevost
Clerk of the Superior Court of Baltimore City.



8/167
4721

The Mayor & City
Council of Baltimore

vs.

William H. Hoffman
George H. S. Hoffman &
John H. Hoffman

Mr Clerk

Please file this answer
Henry Stockbridge
Solicitor for Respondents.

Filed June 15/82