

Record.

No. 54

Frank C. Bostock and Edgar  
M. Noel

VS.

Conway W. Sams and others,  
Judges of the Appeal Tax  
Court of Baltimore City.

WM. J. O'BRIEN, JR.,  
GANS & HAMAN,  
FOR APPELLANTS.

OLIN BRYAN,  
ALONZO L. MILES,  
FOR APPELLEES.

IN THE

COURT OF APPEALS

OF MARYLAND.

Appeal from the Circuit Court  
of Baltimore City.

FILED APRIL 5th, 1902.

Transcript of Record

FROM THE

Circuit Court of Baltimore City

IN THE CASE OF

Frank C. Bostock et al.

Appellants.

*vs.*

Conway W. Sams et al.

Appellees.

TO THE

Court of Appeals of Maryland.

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GANS & HAMAN,

WILLIAM J. O'BRIEN, JR.

} Solicitors for Appellants.

OLIN BRYAN,

ALONZO L. MILES,

} Solicitors for Appellees.

## Bill of Complaint.

(Fd. 8th. November 1901.)

FRANK C. BOSTOCK AND ED-  
GAR M. NOEL,

*vs.*

CONWAY W. SAMS, SOLOMON  
H. FREBURGER, AND OSCAR  
LESER, Judges of the Ap-  
peal Tax Court, of Baltimore  
City, The Mayor and City  
Council of Baltimore, a body  
corporate, Thomas G. Hayes,  
Mayor of Baltimore City,  
and Thomas F. Farnan, Act-  
ing Marshal of Police of  
Baltimore City.

In the Circuit Court of Bal-  
timore City.

*To the Honorable, the Judge of said Court:*

The Bill of Complaint of Frank C. Bostock and Edgar M. Noel, the latter a resident of Baltimore City, and State of Maryland, against the above named defendants respectfully represents unto Your Honor as follows:

### I.

That the said Frank C. Bostock heretofore has leased for a valuable consideration, from a certain William P. Harvey, who is the owner thereof, a vacant lot of ground, about one hundred and fifty feet square, situated at the northeast corner of Mount Royal and Maryland Avenues, in Baltimore City; and that said Frank C. Bostock has entered into an agreement with the said Edgar M. Noel by which the said Noel has undertaken, for a consideration, to erect for the said Bostock a building on the above mentioned vacant lot.

### II.

That for the purpose of executing said building agreement, the said Edgar M. Noel heretofore, on October 22nd 1901, in accordance with an ordinance of the Mayor and City Council of Baltimore, approved June 7th, 1889, and which is now codified in Article 50 of the Ordinances of the Mayor and City Council of Baltimore, contained in the Code of 1893, the portion of said ordinance herein especially referred to

constituting Section 27 of said Article 50, duly applied to the Appeal Tax Court of Baltimore City for a permit to erect said building, Mount Royal Avenue being more than fifty feet in width.

### III.

Your orators show that sections 27 and 28 of said ordinance of June 7th, 1889, as a codified in Article 50 of the Baltimore City Code, are as follows :

“27. Whenever application accompanied by the payment of the cost of the advertisement provided for in section 28 is made to the Judges of the Appeal Tax Court for a permit or permits to erect any new building or buildings on any street or avenue of the width of fifty feet or more, the person or persons making such application shall be required, before such permit or permits shall be granted to file with the Appeal Tax Court a plat accurately describing the piece or parcel of ground to be improved, giving the front and depth thereof, its distances from the nearest established corner of a street, lane or alley, and the number of improvements (if more than one) proposed to be erected thereon; also an accurate description of the frontage, height, depth, material to be used in the proposed building or buildings and the general appearance and cost of same.

28. It shall be the duty of the Judges of the Appeal Tax Court to grant such permits on application, without charge, except as hereinbefore provided, and to keep a record of all permits issued; provided that no such permit shall be granted unless in the judgment of said judges of the Appeal Tax Court or a majority of them, the size, general character and appearance of the building or buildings to be erected, will conform to the general character of the buildings previously erected in the same locality, and will not in any way tend to depreciate the value of surrounding improved or unimproved property; and provided further, that before any such permit shall be granted, at least ten days' notice by advertisement inserted in some daily newspaper shall be given by the Appeal Tax Court that application for such permit has been made.

And before any permit shall be granted to erect any building or buildings within the limits of the City of Baltimore, the applicant shall first satisfactorily prove to the Judges of the Appeal Tax Court that provision has been made for such drainage as the topography of the ground requires.”

## IV.

And your orators further show that the said Edgar M. Noel, at the time of applying for said permit, duly filed with the Appeal Tax Court a plat accurately describing the piece of ground to be improved by said building, giving the front and depth thereof, its distances from the nearest established corner of a street, lane or alley, and the number of improvements proposed to be erected thereon; also an accurate description of the frontage, depth, material to be used in the proposed building, and the general appearance and cost of the same; and your orators further show that the said building proposed to be erected by them will be erected under the supervision of the Building Inspector of Baltimore City, and in conformity with all the building laws of Baltimore City, governing the erection and construction of said building, and that provision has been made for all drainage that the topography of the building requires.

## V.

And your orators further show that the said Appeal Tax Court appointed Monday, the 28th of October, 1901, at 3 o'clock P. M., as the time for a hearing of the application for the said permit and any objections or remonstrances against the granting of the same, and that on said day, and at said time, a number of owners of property in the vicinity of the above mentioned vacant lot, appeared before the said Appeal Tax Court, and offered to submit evidence in support of their objections to the granting of said permit; and your orators also attended and offered to submit evidence, by witnesses then present, in support of their application for said permit.

And your orators show that many of the parties who attended the said session of the Appeal Tax Court, were the same parties who are parties complainant in a bill of complaint for an injunction recently filed in this Honorable Court, entitled I, Townsend Burdick and others, against Frank C. Bostock, which bill of complaint seeks to obtain an injunction to restrain the said Bostock from erecting a building on the said mentioned lot of ground to be used for the purposes of a Zoo, and your orators further show that the said Appeal Tax Court, at said session, refused and declined to hear any testimony whatever, either in support of, or in objection to the application for said permit, stating at the time that their decision in the matter would be governed by their own knowledge of the facts and advice obtained by them from the Inspector of Buildings of Baltimore City, and other officials of the City.

## VI.

And your orators further show that shortly after said session, said Appeal Tax Court of Baltimore City filed an order and decision in the matter, refusing to grant said

permit, which order and decision is in the following language:

“In the matter of the application for a permit to erect a building on Mt. Royal Ave., to be used for the purposes of a Zoo.

The Appeal Tax Court having considered the same under Ordinance 91 and 92, approved June 7th, 1889, see Art. 50, sec. 27 and 28, page 1037, Baltimore City Code 1893, which requires that the applicant for a permit to erect any new building, should, among other things, file a description of the improvement to be erected, and that it shall be the duty of the Judges of the Appeal Tax Court, not to grant such permit unless “the size, general character and appearance of the building or buildings to be erected will conform to the general character of the buildings erected in the same locality and will not in any way tend to depreciate the value of the surrounding improved or unimproved property.”

This language is found in Sec. 28 of said Art. 50, and controls the granting or refusing of said permit.

As officers of the City of Baltimore, the Judges of the Appeal Tax Court must perform the duties required of them as they find them in the Ordinances of the Mayor and City Council.

The important and interesting question, of the constitutionality or unconstitutionality of the Ordinance under consideration is one that the Appeal Tax Court cannot decide.

That question can only be passed upon by the proper tribunal.

The Appeal Tax Court must execute the laws of the City as they are upon the Statute books, until they are repealed or declared null and void.

Therefore, if we find that the proposed building will not conform to the general character of the buildings previously erected in said locality, and will tend to depreciate the value of surrounding property, we cannot issue the permit.

Upon the plans and specifications for this building presented to the Inspector of Buildings and examined by the Appeal Tax Court, we are of the opinion that these do not conform to the general character of the buildings in the

said locality. The use of this building, when erected, will be for the purposes of a Zoo.

These purposes are among other things to show wild animals, in reality, conducting a continuous circus upon one of the most beautiful streets in the City of Baltimore. It is a matter of almost common knowledge that from this Zoo come disagreeable noises, unpleasant odors, and but a short time ago a building used for the same purposes upon this identical spot was burned down, causing considerable excitement in that neighborhood from the fear that the wild animals would escape.

As the Ordinance above quoted gives the Appeal Tax Court the authority to act, the application for a permit made by Edgar M. Noel, builder, for Frank C. Bostock, will not be granted.

CONWAY W. SAMS,  
*President.*"

## VII.

And your orators show that it is manifest from consideration of the above set forth order and decision of the Appeal Tax Court that said Court, in refusing to grant said permit, have based their refusal solely and only on the ground that the plans and specifications for the building presented by your orators to the Inspector of Buildings, and examined by said Court, do not conform to the general character of the buildings in the locality of said lot.

The said Court assigns as reasons for said conclusions as follows:

1st. The building, when erected, is to be used for the purposes of a Zoo.

2nd. These purposes include the showing of wild animals, and in reality the conducting of a continuous circus.

3rd. That it is a matter of common knowledge that from a Zoo come disagreeable and unpleasant odors.

And your orators show unto your Honor that the above set forth reasons do not in any way justify the conclusion reached by said Appeal Tax Court in the premises, and that in arriving at said conclusion in reference to the general character of the building proposed to be erected, and whether or not the same conformed to the general character of the buildings in said locality, the said Court had no right to consider said assigned, and particularly said Court had no right in passing upon the matter, to consider to what use or uses the building would be put when erected, and therefore, your orators show that said conclusion, being based upon reasons which are illegal and invalid, and on which said Appeal Tax Court had no war-

rant in law for relying, the decision itself is in law *coram non iudice*.

And in this connection your orators show that the reasons above set forth relied on by said Appeal Tax Court have been made the basis of a bill for injunction recently filed in this Honorable Court by I. Townsend Burdur and others, against the said Frank C. Bostock, which said bill for injunction the said Frank C. Bostock has answered, under affidavit, and has moved to dissolve the preliminary injunction issued thereon by this Honorable Court.

And your orators further show that said answer entirely denies any and all allegations of said bill to the effect that the said Zoo will constitute a nuisance; and your orators further show that it is entirely competent and proper for such allegations to be investigated and tried in this Honorable Court, but that the said Appeal Tax Court had no right to try said issues nor to base its decision in refusing said permit on its conclusion as to said issues.

#### VIII.

And your orators further show that even if it should be determined that the said decision of the Appeal Tax Court in refusing to grant said permit, is based on reasons which the said Court had the right and power to consider, and that their conclusion in the matter is therefore justified by said reasons, yet nevertheless, it is conclusively evident from the said order and decision of the Appeal Tax Court in the matter, that their refusal to grant said permit is based solely and entirely on that portion of the Ordinance in question, which provides :

“That no such permit shall be granted unless in the judgment of said judges of the Appeal Tax Court, or a majority of them, the size, general character and appearance of the building or buildings to be erected will conform to the general character of the buildings previously erected in the same locality, and will not in any way tend to depreciate the value of surrounding improved or unimproved property.”

And your orators further show that the said Appeal Tax Court in basing their refusal to grant the said permit upon said portion of said Ordinance, wrongfully refused to grant said permit, because your orators show that they are advised and believe, and therefore aver that said portion of said Ordinance is illegal and invalid, and of no effect in law, in that,

1st. The Mayor and City Council of Baltimore City had no power or authority to enact such a provision, and that said portion of said Ordinance is therefore *ultra vires* and void.

2nd. That at the passage of said Ordinance, there was no Statute of the General Assembly of Maryland in force authorizing the passage of the above set forth portion of said Ordinance, nor has the passage of said Ordinance ever since been ratified by an Act of the General Assembly of Maryland.

3rd. That even if there had been such Statute authorizing or ratifying said Ordinance, yet nevertheless, the same would have been void and illegal in that the same is unconstitutional, in that it deprives a citizen of Baltimore City of his property without due process of law.

4th. And that said portion of said Ordinance is void, illegal and unreasonable in that it commits to the said Appeal Tax Court unlimited and unbounded discretion in granting or refusing said permits, and does not undertake to provide any general rules or regulations limiting the exercise of said discretion of the said Appeal Tax Court.

## IX

And the said Edgar M. Noel has also, by his attorneys tendered to the said Appeal Tax Court the cost of the advertisement of the notice in connection with said application provided for by the above set out Section 28 of said Ordinance, but said Appeal Tax Court refused to receive the same, and waived payment thereof, stating they would not grant said permit even though the costs of advertisement of said notice were paid to it, and even if said notice had been advertised, as required by said Ordinance.

## X

And your orators further show that in as much as they have in all respects duly complied with the provisions of said Ordinance which are valid, and all other laws and Ordinances relating thereto, and have duly applied for said permit in conformity with the valid provisions of said Ordinance and in view of the fact that said permit has been wrongfully refused by the said Appeal Tax Court that therefore your orators are entitled of right to proceed with the construction and erection of said building, which they are willing at all times to do under the supervision of the Inspector of Buildings of Baltimore City, and in conformity in all respects to the building laws and ordinances of said city; but your orators further show that they are informed and believe, and therefore aver that the said Conway W. Sams, Solomon H. Freburger and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, and the said Thomas G. Hayes, Mayor of the City of Baltimore, intend to make use of the authority of their official position, and their influence with the Police of said City, directed by Thomas F. Farnan, Acting Marshal of Police of said City, to prevent by force your orators and their employes from the construction of erection of said building, or any portion thereof, if your orators, their servants or agents, attempt to erect the same,

although your orators are ready and willing, and will construct and erect said building under the supervision of the Building Inspector of Baltimore City, and with due regard for all reasonable and valid regulations and ordinances of the Mayor and City Council, with respect to the construction or erection of buildings.

To the end therefore :

1st. That this Honorable Court will grant its writ of injunction directed to the said Conway W. Sams, Solomon H. Freburger, and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, and to the Mayor and City Council of Baltimore City, a body corporate, Thomas G. Hayes, Mayor of Baltimore City, and Thomas F. Farnan, Acting Marshal of Police of Baltimore City, and each of them, enjoining them and each of them their subordinates and servants, from preventing or in any way interfering with the construction by your orators, or their agents and employes, of said building, under the supervision of the Building Inspector of Baltimore City.

2nd. That your orators may have such other and further relief as the nature and equity of their case may require.

May it please your Honor to grant unto your orators the writ of subpoena directed to the said Conway W. Sams, Solomon H. Freburger, and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, and to the Mayor and City Council of Baltimore, a body corporate, Thomas G. Hayes, Mayor of Baltimore City, and Thomas F. Farnan, Acting Marshal of Police of Baltimore City, all residing in said Baltimore City, commanding them to be and appear in this Court at some certain day to be named therein, and answer the premises and abide by and perform such decree as may be passed therein.

And as in duty, etc.,

WM. J. O'BRIEN, JR.,  
GANS & HAMAN,  
*Solicitors for Plaintiffs.*

(Affidavit)

### **Order of Court Thereon**

(Fd. 8th November, 1901.)

Upon the foregoing Bill and affidavit, it is by the Circuit Court of Baltimore City, ordered this 8th day of November, 1901, that the defendants in this case show cause on or before the 23d day of November, 1901, why the writ of injunction prayed for in said Bill should not issue as therein

prayed; Provided, however, that a copy of this Order be served on the said defendants on or before the 13th day of November, 1901.

ALBERT RITCHIE.

*Endorsed as follows:*

Copy of within Order of Court served on Wm. Pinkney Whyte, City Solicitor on the 8th day of November, 1901, in the presence of William H. McElroy.

Also copy of within Order of Court served on Alonzo L. Miles, Counsel Board of Police Commissioners on the 9th day of November 1901 in the presence of William E. Shaw.

JOHN B. SCHWATKA,  
*Sheriff.*

### **Demurrer on Behalf of Defendants.**

(Fd. 18th November 1901.)

FRANK C. BOSTOCK, et al.,	}	In the Circuit Court of Bal-  timore City.
<i>vs.</i>		
CONWAY W. SAMS, et al.		

The defendants, Conway W. Sams, Solomon H. Freburger and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, the Mayor and City Council of Baltimore, and Thomas F. Farnan, Acting Marshal of Police of Baltimore City, Thomas G. Hayes, Mayor of Baltimore City, demur to the Plaintiffs' Bill, and for cause of demurrer show:

1. That the Plaintiffs have not stated in their Bill such a case as entitles them to any relief in Equity against these defendants, or any of them.

2. That these defendants, Conway W. Sams, Solomon H. Freburger and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, have discretionary powers as to the granting or refusal of permits for the erection of a building or buildings, as prescribed in the ordinance to which reference is made in the Bill of Complaint, and upon the invalidity of which the Plaintiffs rely, and that said ordinance is valid and binding; and the powers therein conferred are powers properly conferred by the other named defendant, the Mayor and City Council of Baltimore, upon its duly authorized agents, the members of the Appeal Tax Court, and the plaintiffs are not, therefore, entitled to any relief in this Court.

3. That the refusal, upon the part of the members of the Appeal Tax Court, of the permit which was applied for by the Plaintiff, Edgar M. Noel, under and by virtue of the

power and authority conferred upon said Court by said ordinance in said Bill referred to, was the proper exercise of police powers, which the other defendant, the Mayor and City Council of Baltimore, had by the authority in it vested, conferred upon said members of the Appeal Tax Court, its duly authorized and accredited agents.

OLIN BRYAN,  
ALONZO L. MILES,  
*Attorneys for Above Named Defendants.*

(Affidavit)

**Decree of Court.**

(Fd. 18th March 1902)

FRANK C. BOSTOCK, et al.,	}	In the Circuit Court of Baltimore City.
vs.		
CONWAY W. SAMS, et al.		

The above cause coming on to be heard upon demurrer to the Bill of Complaint, and after argument of counsel for the respective parties it is thereupon, this 18th day of March, 1902, by the Circuit Court of Baltimore City, Adjudged, Ordered and Decreed that the demurrer filed to the Bill of Complaint be and the same hereby is dismissed without prejudice to the plaintiffs.

HENRY STOCKBRIDGE.

**Order for an Appeal.**

(Fd. 1st April 1902)

FRANK C. BOSTOCK AND EDGAR M. NOEL,	}	In the Circuit Court of Baltimore City.
vs.		
CONWAY W. SAMS et al.		

*Mr. Clerk:* Please enter an Appeal in this case to the Court of Appeals of Maryland on behalf of the plaintiffs from the decree of this Court dated March 18th, 1902, dismissing the Bill of Complaint.

GANS & HAMAN,  
WILLIAM J. O'BRIEN, JR.,  
*Solicitors for Appellants.*

Which said appeal being by the Court here also granted, it is thereupon ordered by the Court here that a Transcript

of Record of Proceedings in the cause aforesaid be transmitted to the Court of Appeals of Maryland under the Rules thereof, and the same is transmitted accordingly.

Test: BARREDA TURNER, *Clerk.*

In testimony that the foregoing is truly taken from the Records and Proceedings of the Circuit Court of Baltimore City in the therein entitled cause,

[SEAL]

I hereunto set my hand and affix the Seal of the Circuit Court of Baltimore City aforesaid this 4th day of April, 1902.

BARREDA TURNER,  
*Clerk of the Circuit Court  
of Baltimore City.*

FRANK C. BOSTOCK

AND

EDGAR M. NOEL

vs.

CONWAY W. SAMS

ET AL.

IN THE

Court of Appeals

OF MARYLAND.

APRIL TERM, 1902.

GENERAL DOCKET,

No. 54.

BRIEF FOR APPELLANTS.

The questions presented in the case are precisely those presented in No. 53, except the one question of remedy.

In No. 53 the remedy applied for was mandamus. In this case the remedy was by a bill for injunction. The Court below dismissed the bill, without prejudice, on the sole ground that the true remedy was by mandamus. It was by reason of this decision that the petition for mandamus was filed. The propriety of the remedy by injunction is, we think, settled by the case of the

Chesapeake and Potomac Telephone vs. M. &  
C. C. of Baltimore, 89 Md. 689.

We refer to the brief No. 53 for the discussion of the main question in the case.

GANS & HAMAN,  
WM. J. O'BRIEN, JR.,  
*For Appellants.*

FRANK C. BOSTOCK AND  
EDGAR M. NOEL

vs.

CONWAY W. SAMS AND  
OTHERS, Judges of the  
Appeal Tax Court of Balti-  
more City, and others.

IN THE

COURT OF APPEALS

OF MARYLAND

APRIL TERM, 1902.

GENERAL DOCKET, No. 54.

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*Appeal from the Circuit Court of Baltimore City.*

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BRIEF FOR APPELLEES.

This is an appeal by Frank C. Bostock and Edgar M. Noel from an order of the Circuit Court of Baltimore City refusing a writ of injunction on bill, and on a demurrer filed to said bill by the appellees, defendants below, which the plaintiffs prayed to be issued, directed to the said defendants, Conway W. Sams, Solomon H. Freeburger and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, and the Mayor and City Council of Baltimore, Thomas G. Hayes, Mayor of Baltimore City, and Thomas F. Farnan, Acting Marshal of Police of Baltimore City, to restrain them from preventing or in any way interfering with the construction, by the plaintiffs below, of the building referred to, on the northeast corner of Mount Royal and Maryland avenues, in the city of Baltimore.

An application for a permit to erect such building by the plaintiffs below to the Appeal Tax Court of Baltimore City had been made under the terms of article 50, sections 24 to 28, inclusive, of the Baltimore City Code of 1893, and was refused by the said Judges of the Appeal Tax Court, to whom the application had to be made. (Record, page 2.)

The allegations of the bill of complaint are almost *in totidem verbis*, with the statements of grievance in the petition for mandamus against the Judges of the Appeal Tax Court in the preceding case, No. 53, and on the general questions involved, the same line of contention would be followed by the appellees in this case, as in the former, so that it would be a work of supererogation to reproduce the same in this brief. Reference is therefore made to the former brief for the line of argument on the validity of the ordinance.

The question upon which this case was decided by the Court below related to the jurisdiction of the Court.

The grounds of defense set up by the appellees in that Court were as follows :

1. That the plaintiffs have not stated in their bill such a case as entitles them to any relief in equity against these defendants, or any of them.
2. That these defendants, Conway W. Sams, Solomon H. Freeburger and Oscar Leser, Judges of the Appeal Tax Court of Baltimore City, have discretionary powers as to the granting or refusal of permits for the erection of a building or buildings, as prescribed in the ordinance to which reference is made in the bill of complaint, and upon the invalidity of which the plaintiffs rely, and that said ordinance is valid and binding, and the powers therein conferred are powers properly conferred by the other named defendant, the Mayor and City Council of Baltimore, upon its duly authorized agents, the members of the Appeal Tax Court, and the plaintiffs are not, therefore, entitled to any relief in this Court.

3. That the refusal upon the part of the members of the Appeal Tax Court of the permit which was applied for by the plaintiff, Edgar M. Noel, under and by virtue of the power and authority conferred upon said Court by said ordinance in said bill referred to, was the proper exercise of police powers, which the other defendant, the Mayor and City Council of Baltimore, had by the authority in it vested, conferred upon said members of the Appeal Tax Court, its duly authorized and accredited agents.

Upon the question of jurisdiction, it is admitted, of course, by the appellees, that "it has been decided by this Court in too many cases to be longer open to question, that where a municipal corporation is seeking to enforce an ordinance which is void, a Court of Equity has jurisdiction at the suit of any person injuriously affected thereby, to stay its execution," (Radecke case, 49 Md. 232.) yet that is not the case here.

In the case of Hooper vs. City Passenger R. R. Co., 85 Md. 509, it is held that the company was entitled under *its legislative grant* to use electricity upon any of its lines, and that this right could not be destroyed by the refusal of the Mayor to issue a permit for the erection of the poles, and the injunction which has been granted by the Court below restraining the city authorities from interfering with the erection of the poles was sustained by this Court.

The case of the Mayor and City Council of Baltimore vs. Chesapeake and Potomac Telephone Co., 89 Md. 717, which was referred to as justifying the issue of the writ of injunction is not in point, for there this Court held substantially that no permit was necessary, because the city had entered into a binding contract with the telephone companies, whereby it had authorized the opening of the streets, and therefore the formality of a permit was unnecessary.

But in the present case, the 24th section of article 50 of the Code of Baltimore City of 1893, the permit is absolutely required.

24. It shall not be lawful for any person, without a permit from the Appeal Tax Court, to erect within the limits of the city, any building upon a new foundation, whether in connection with an existing building or not, or to pull down any old building or part of a building to the ground, and build upon the old foundation, or to put an additional story upon any building or part of a building by increasing the height of the walls; and any person or persons who may build within the city of Baltimore shall be required to take out a permit for each and every house he or they may purpose to build.

It is seen from this section that it is not lawful for any person *without a permit* from the Appeal Tax Court, to erect within the limits of the city, any building upon a new foundation, etc., so that it is an unlawful act to attempt the erection of any building without a permit.

It is, therefore, suggested that an Equity Court would not and ought not issue an injunction to restrain the police department and other proper municipal departments from interfering with a man who is attempting to do an unlawful act.

The City Charter, section 744, requires the police to enforce all ordinances of the Mayor and City Council of Baltimore not inconsistent with the provisions of this subdivision of the article.

The order of the Circuit Court of Baltimore City should be affirmed.

WM. PINKNEY WHYTE,

*Attorney for Appellees.*