

Serve on
Wm. Pinkney Whyte
City Solr
at Long S. Miles
Council Police Board
of Police Comm.

Copy of Writ of Habeas Corpus
served on Wm. Pinkney Whyte
City Solicitor on the 8th day of
November 1907 in the presence
of William H. W. Elroy, also
copy of Writ of Habeas Corpus
served on Alonzo S. Miles Council
Board of Police Commissioners on
the 9th day of November 1901 in
the presence of William E. Shaw
John B. Schwartz
Sheriff
Fees \$1.00

250
A 1901

IN THE CIRCUIT COURT OF
BALTIMORE CITY.

FRANK C. BOSTOCK and
EDGAR M. NOEL,

VS.

CONWAY W. SAMS, SOLOMON H. FRU-
BURGER & OSCAR LESER, JUDGES OF
THE APPEAL TAX COURT OF BALTIMORE
CITY, THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a body corporate,
THOMAS G. HAYES, MAYOR OF BALTI-
MORE CITY, & THOMAS F. FARMAN,
ACTING MARSHAL OF POLICE OF BALTO.
CITY.

BILL FOR INJUNCTION.

Order 8th November 1901

Mr. Clerk:

Please file.

Gans & Haman
W. J. O'Brien
Solicitors for Plaintiffs.

A. No. 1250.

Copy order - Copied (2)
Copy - Copied

Feb. 8th November 1901.

FRANK C. BOSTOCK and	:	
EDGAR M. NOEL,	:	
PLAINTIFFS,	:	
VS.	:	IN THE
CONWAY W. SAMS, SOLOMON H.	:	
FREBURGER, and OSCAR LESER,	:	CIRCUIT COURT
JUDGES OF THE APPEAL TAX	:	
COURT OF BALTIMORE CITY,	:	OF BALTIMORE CITY.
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,	:	
DEFENDANTS.	:	

BILL FOR INJUNCTION.

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:-

1.

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, sit-

uated 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.

2.

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, Mt. Royal Avenue being more than fifty feet in width.

3.

Your orators show that sections 27 and 28 of said ordinance of June 7th, 1889, as 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."

4.

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, height, 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.

5.

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 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 there present, in support of their application for said permit. And your orators show that many of the said 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 Burden 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 entirely 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.

6.

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 Ordinances 91 and 92, Approved June 7th, 1889, see art. 50, sec. 27 & 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 previously erected in the same locality and will not in any way tend to depreciate the value of 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. There-

fore, 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 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."

7.

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 the following:-

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 noises 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 the said locality, the said Court had no right to consider said assigned reasons, 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 warrant in law for relying, the decision itself is in

law coram non judice.

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 Burden and others, against the said Frank C. Bostock, which said bill for an 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.

8.

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 force or 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 time of 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 any 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 by the said Appeal Tax Court.

9.

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.

10.

And your orators further show that in as much as they have in all respects duly complied with the provisions and all other laws and ordinances relating thereto of said Ordinance which are valid, 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 ready and 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 or 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, 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 bound.

*Wm. J. O'Brien Jr.
Gailor Hannon*

Solicitors for Plaintiffs

8242
 Mrs. Clary
 Mrs. Clary
 John B. Schmitt
 Sheriff
 Edmund. Clary

Ct. Ct.
 250 a.
 1891 No. 41 Docket.

Boston
 vs
 James,
 et al.

Subpoena to answer Bill of Complaint.

a. No. 1250.

Filed 9th November 1891
 Gaus & Kauran
 Wm. J. O'Brien
 Sols.

Searge & Squitell, Attys. at L., 9th Nov 1891,
 per Thos. J. Korman, Acting
 Marshal of Police.
 Thos. J. Korman
 Sheriff

November 8th 1891.
 James G. Squitell - for Commy Return,
 returned to Sheriff, & Secar deor, Judges
 of the Supreme Court Baltimore City,
 Mayor & City Comise of Baltimore and
 Thomas G. Searge, Mayor of Baltimore City.
 Wm. J. O'Brien
 Cor. Row 8th

The State of Maryland,

To Conway W. Saus, }
 Solomon H. Frubiger }
 +
 Oscar Leser, }

Judges appeal
 Tax Court,

Mayor & City Council of Balto. City,
 Thomas G. Hayes, Mayor of Balto. City,
 Thomas F. Fernan, Acting Marshal
 of Police of Balto. City.

Of Baltimore City, Greeting:

WE COMMAND AND ENJOIN YOU, that all excuses set aside, you be in your person before the Circuit Court of Baltimore City, at the Court House in said city, on the second Monday of November 1901, next to answer the complaint of

Frank C. Postack,
 et al.

against you in said Court exhibited.

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

Witness the honorable HENRY D. HARLAN, Chief Judge of the Supreme Bench of Baltimore City, the 9th day of September A. D. 1901.
 Issued the 9th day of November A. D. 1901.

Barreda Turner
 Clerk.

a
259
190

Docket No.

Frank C. Bostack
et al
vs.

Conway H. Sams
et al.

Order of Appearance.

a. No. 1250.

Filed *9th* day of *Nov* 190 *9*

Frank C. Bastock, et al
vs.
Conway H. Sams, et al.

IN THE
Circuit Court

OF

BALTIMORE CITY.

d. No. 1250.

September Term, 1901

MR. TURNER:

Enter my appearance for ^{the} Defendants, Conway H. Sams, Solomon St. Freebarger, and Oscar Leber, Judges of Appeal Tax Court of Baltimore City, The Mayor and City Council of Balto. ^{Substituted} J. Stayer, Mayor of Balto. J. M. Pinkney White Olin Bryan, Solrs.

*A 250
1901.*

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In the Circuit Court of Balti-
more City.

oooooooooooooooooooo000oooooooooooooooooooo
Frank C. Bostock,
et al

vs.

Conway W. Sams,
et als.

oooooooooooooooooooo000oooooooooooooooooooo
Demurrer on behalf of Defendant
oooooooooooooooooooo000oooooooooooooooooooo

Mr. Clerk,-
Please file.

Min Beyor

a. No. 1250.

Ed. 18th November 1901.

Frank C. Bostock and
Edgar M. Noel,
Plaintiffs,

vs.

Conway W. Sams, Solomon
H. Freeburger and Oscar
Leser, Judges of the
Appeal Tax Court of Bal-
timore City, the Mayor
and City Council of Balti-
more, a body corporate,
Thomas G. Hayes, Mayor of
Baltimore City, and
Thomas F. Farnan, Acting
Marshal of Police of
Baltimore City.

In the Circuit Court
of
Baltimore City.

The Defendants, Conway W. Sams, Solomon H. Freeburger 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 the 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.

Wm. B. Bryan
Alonso L. Miles
Attorneys for above named Defendants.

STATE OF MARYLAND, BALTIMORE CITY, TO WIT:

I HEREBY CERTIFY that on this *18th* day of November, 1901, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Conway W. Sams, one of the defendants in the above entitled case, and made oath in due form of law, for himself and all the other defendants above named, that the demurrer filed by them herein is not intended for delay.

Wm. A. Sams

IN THE ²⁵⁰
CIRCUIT COURT OF BALTIMORE
CITY. *a 1901.*

FRANK C. BOSTOCK ET AL
VS.
CONWAY W. SAMS ET ALS

DECREE.
18th March 1902.

Mr. Clerk:

Please file.

a. No. 1250.

Ed. 18th March 1902.

FRANK C. BOSTOCK ET AL : IN THE
 VS. : CIRCUIT COURT OF
CONWAY W. SAMS ET ALS : BALTIMORE CITY.

DECREE.

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 in this case be and it is hereby sustained and the bill of complaint be and the same hereby is dismissed without prejudice to the plaintiffs.

Nancy St. George

Serve on 6
Wm Pinkney White
+ 7
Oliver Bryan,
Solic.

10

250
1901

a.
No. 41 Docket.

Ct. Ct.

Portlock,

vs.

Saus,
et al.

Rule for Hearing.

Service admitted this

day of

a. No. 1250.

Solicitor for

Filed 3^d day of March 1902

Copy of the within order of Court served on
Wm Pinkney White Solicitor on the 1st day of
March in presence of Benjamin Sotman,
Solicitor of the within order of Court also served
on Oliver Bryan Solicitor on the 1st day of
March 1902 in presence of Benjamin Sotman
J. C. S. \$1.00
George Washington
Sherrill

In the Circuit Court
Of Baltimore City.

Frank C. Bostock,

-vs.-

Conway W. Sames,
et al.

January Term, 1902.

Ordered by the Court, this 3^d day of March 1902 upon
the motion of Plaintiffs Solicitor,
that the *Demurrer* be
above cause be set down for hearing on the 14th day of March 1902 Provided, a copy of this Order
be served on the opposite party or their solicitor *S* on or before the 10th day of March 1902.

Hurry Stoenoridge

True Copy.

TEST:

Clerk.

IN THE ²⁵⁰ *a 1901.*
CIRCUIT COURT OF BALTIMORE
CITY.

FRANK C. BOSTOCK and

EDGAR M. NOEL

VS.

CONWAY W. SAMS ET ALS.

ORDER FOR APPEAL.

Mr. Clerk:

Please file.

*Gaus & Haines
Attorneys for
Sole Proprietor*

a. No. 1250.

Feb. 1st April 1902.

FRANK C. BOSTOCK and :
EDGAR M. NOEL :
VS. :
CONWAY W. SAMS ET ALS :

IN THE
CIRCUIT COURT OF
BALTIMORE CITY.

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.

James H. Homan
William J. Brian Jr.

~~Solicitors~~ for plaintiffs.