15
1858 3.

No. 60

In the Court of Common Pleas
for Baltimore City:

The County Commissioners
for Baltimore County

AGAINST:

The Mayor & City Council
of Baltimore

493

~~WILLIAM J. HAMILL,~~ Edward Dorsey
Clerk of the ~~Court of Common Pleas~~ Superior Court of ~~for~~ Baltimore City:

Issue in this case, and send copy of the declaration and notice, with the writ, to be served on the defendant.

Brought the 25 day of October 1854

N. Wm

appeal 19 May 59

Gp. 27th Oct. 1854.

State of Maryland, Baltimore City, to wit:

The County Commissioners for Baltimore County

by

Nathaniel Williams and Henry Alley their attorneys sue

The Mayor and City Council of Baltimore.

1. For money payable by the defendants to the plaintiffs, for ~~goods bargained and sold by the plaintiff to the defendant~~.
2. ~~Work done and materials provided by the plaintiff for the defendant at h request.~~
3. Money lent by the plaintiffs to the defendants.
4. Money paid by the plaintiffs for the defendants at their request.
5. Money received by the defendants for the use of the plaintiffs.
6. Money found to be due from the defendants to the plaintiffs, on accounts stated between them.

~~7. That the defendant, on the day of by h promissory note, now overdue, promised to pay to the plaintiff $ after date, but did not pay the same.~~

And the plaintiffs claim ~~$~~ Four thousand dollars

To the Defendants

TAKE NOTICE.—That on the day of your appearance to this action, in the Superior COURT OF ~~COMMON PLEAS~~ ~~for~~ Baltimore City, a rule will be entered, requiring you to plead to the said declaration within fifteen days thereafter.

N. Williams
H. Alley

Plaintiff's Attorneys

Receipt of
Lloyd H. Williams

Received Nov. 19th 1855 of John L. Stansbury Twenty two Hundred and Twenty three Dollars and Thirty three Cents in full for being the amount due me as States attorney for Baltimore County for Removed Cases from Baltimore City, as per return of A. M. Fitzhugh Clk, as per order passed. Nov. 19. 1855

Lloyd N. Williams

$2,223.33/100

Treasurer's office Balt. County
June 30/1857

I hereby certify that the above is a true copy of the original taken from John L. Stansbury's receipt Book (retained in this office) of the above date.

J. J. Nelson Treas. Balt. Co.

County Court Jurors for Baltimore County } In the Circuit Court of Baltimore City October Term 1858.
Mayor & City Council of Baltimore

The above copy admitted, by consent of parties, in evidence & bonds of the counsel.

L. A. Delaney
Atty for Defts

(1)

for 27 Oct 1857

The County Commissioners for Baltimore County

against

The Mayor and City Council of Baltimore

—

Edward Downing Clerk of
the Superior Court of Baltimore
City —

I plead in this case

Brought the twenty seventh day of
October 1859 —

Nath. Williams
Pltfs Atty

No. 60 Sp. Ct. (2)

The County Commissioners for Baltimore County

vs

The Mayor & City Council of Baltimore.

Action for $4000. –
Copy of writ & notice within to be served on defendants.

Summoned & ~~Copy Left~~
The Mayor & City Council of Baltimore
By Service on Thomas Swann
Mayor of the City of Baltimore
Copy Left
Samuel G. Gaskins
N. Williams
H. May
Filed 17. Dec 1857

[Writ of Summons.]

JAS. LUCAS & SON'S STEAM PRESS.

BALTIMORE CITY, TO WIT:

State of Maryland, to the Sheriff of Baltimore City,

GREETING.

You are hereby commanded to summon The Mayor & City Council of Baltimore

~~of Baltimore City~~, to appear before the Superior Court of Baltimore City, to be held at the Court House in the same city, on the second Monday of January next, to answer an action at the suit of The County Commissioners for Baltimore County and have you then and there this writ.

WITNESS the Honorable Z. COLLINS LEE, Judge of the said Court, the fourteenth day of September 1857.

ISSUED the 27th day of October 1857.

Edwd. Dowling Clk

The Court
Commissioners
by
The Mayor & City
Council

Jul. Term 1856
Superior Court

Ordered that the Counsel to the board of County Commissioners of Balto. County Messrs Henry May & Nathaniel Williams, cause legal proceedings to be had immediately against the Mayor and City Council of Baltimore to enforce the payment of monies advanced by the County for removed cases tried in the Circuit Court of Baltimore County, November Term 1864. in accordance with the acts of Assembly

The Treasurer and Clerk will send a copy of the aforegoing Order to Each of the Counsel

Test

B. O. Nelson Test Clk

Acts

1852 Chap. 315

1854 Chap. 269

15
1858

The County Commissioners
for Baltimore County

vs Rough
Draft

The Mayor & City Council
of Baltimore.

"Box "R." No. 17"

Record Made to
June Term 1859

State of Maryland,
City of Baltimore towit:

At a Session of the Superior Court of Baltimore City in the Fifth Judicial Circuit of the State of Maryland begun and held at the Court House in and for the City aforesaid on the second Monday in January being the sixth day of the same month in the year of our Lord one thousand eight hundred and fifty nine -

Present
The Honorable
Z. Collins Lee Judge.
Thomas Cleaver Esquire Sheriff
Geo. E. Langston Clerk.

Among other were the following proceedings towit:

The County Commissioners of Baltimore County
vs
The Mayor & City Council of Baltimore

Action &c

Be it remembered that heretofore towit on the twenty seventh day of October in the year of our Lord one thousand eight hundred and fifty seven The County Commissioners of Baltimore County by N. Williams Esquire their Attorney came and delivered to the Clerk of the Superior Court of Baltimore City, the following Memorandum towit: (1)

"Whereupon issued the writ of the State of Maryland of Summons, out of the said Court here against the Mayor & City Council of Baltimore aforesaid, directed to the Sheriff of Baltimore City in manner following towit: (2)

(Wrt

And the said Plaintiffs by their Attorney aforesaid, on the day of prosecuting and suing forth the foregoing writ, declare against the said Defendants in the Action aforesaid with a notice to their Declaration annexed in form following, to wit: (3) Copies of which said declaration and notice were made and sent with the said writ to the Sheriff of Baltimore City thereon endorsed, "to be served on Defendants."

At which said second Monday in January, to wit: in the year eight one hundred and fifty eight, being the return day of the foregoing writ, Come into the said Court here the said Plaintiffs by their Attorneys aforesaid, and the Sheriff of Baltimore City aforesaid to whom the said writ in form aforesaid directed, makes return thereof to the Court here they endorsed, to wit:

"Summoned by the Mayor & City Council of Baltimore, by service on Thomas Swann, Mayor of the City of Baltimore. Copy left. Samuel S. Gaskins."

And the said Defendants although forewarned, Come not, And afterwards, to wit: on the second day of the said January Term of the said Court to which the said summons was returned, the said Defendants still failing to appear as aforesaid, the Court in pursuance of the act of Assembly in such Case made and provided, ordered the personal appearance of the said Defendants to be entered to said action.

in the Action aforesaid, in which the Same therein specified

(on)

And the said Plaintiffs by their Attorney aforesaid, on the day of prosecuting and suing forth the foregoing writ, declare against the said Defendants in the Action aforesaid with a notice to their declaration annexed in form following, to wit: (3) Copies of which said declaration and notice were made and sent with the said writ to the Sheriff of Baltimore City thereon endorsed, "to be served on Defendants."

At which said second Monday in January, to wit: in the year eight hundred and fifty eight, being the return day of the foregoing writ, Come into the said Court here the said Plaintiffs by their Attorneys aforesaid, and the Sheriff of Baltimore City aforesaid, to whom the said writ was in form aforesaid directed, makes return thereof to the Court here, they endorsed, to wit:

"Summoned by the Mayor & City Council of Baltimore, by service on Thomas Swann, Mayor of the City of Baltimore. Copy left. Samuel S. Gaskins."

And thereupon in pursuance of the notice aforesaid, it is ruled by the Court here, on Motion of the said Plaintiffs by their Attorney aforesaid, that the said Defendants answer to the declaration of the said Plaintiffs in the Action aforesaid, within the time therein specified, (or)

or Judgment by the Court here will be rendered against them in default thereof. And the said Defendants ~~by their Attorneys aforesaid~~ in person defend the wrong and injury when &c. And pray leave of the Court here to imparle until the second Monday in May then next to answer to the declaration of the said Plaintiff, in the Action aforesaid, and they have it: the same day is given to the said Plaintiff, then and there &c. —

At which said second Monday in May, to wit: in the year last aforesaid to which day the said Defendants had leave to imparle, and then to answer to the declaration of the said Plaintiff, in the Action aforesaid Come again into the said Court here as well the said Plaintiff by their Attorneys aforesaid, as the said Defendants by their Attorney aforesaid. And thereupon the said Defendants by their Attorney aforesaid pray leave of the Court here further to imparle until the second Monday in September then next, to answer to the declaration of the said Plaintiff, in the Action aforesaid, and they have it: the same day is given to the said Plaintiff, then and there &c. —

At which said second Monday in September, to wit: in the year last aforesaid, to which day the said Defendants had leave to imparle and then to answer to the declaration of the said Plaintiff, in the Action aforesaid Come again into the said Court here, the parties aforesaid by their Attorneys aforesaid. And thereupon the said Defendants by their said Attorney, pray leave of the Court here, further to imparle until the second

(Monday)

[illegible] Defendants by [illegible] Days to answer their Attorney, who delivers to the Clerk of said Court the following Memorandum of his appearance for the Defendants: Court: 41 and by affidavit [illegible]

Monday in January then next to answer to the declaration of the said Plaintiffs in the Action aforesaid, and they have it: the same day is given to the said Plaintiffs then and there &c.

And now at this day, that is to say, the said second Monday in January, Court: in the year eighteen hundred and fifty nine, to which day the said Defendants had leave to imparle, and then to answer to the declaration of the said Plaintiffs in the Action aforesaid, Come again into the said Court here, the parties aforesaid, by their Attorneys aforesaid; And the said Defendants by their said Attorney file in said Cause, the following plea, Court: (5)

At the foot of which is the following, Court:

"Service of Copy Admitted. A. Williams Jr. attorney" and thereupon, the said Plaintiffs file in said Cause the following Joinder in issue, Court: (in 5)

Whereupon joining the issue aforesaid within joined it is ordered by the Court here, that twenty persons from the panel of Petit Jurors returned to the Court here by the Sheriff of Baltimore City aforesaid be drawn by ballot according to the Act of Assembly in such Case made and provided; and thereupon the twenty persons being so drawn by ballot, and written upon two lists, one of which said lists is delivered to the Counsel for the respective parties, and the Counsel for each of the said parties having stricken out four persons from the said lists; thereupon the remaining twelve persons being Called, Come Court: (6) Who being impannelled and sworn or affirmed to say the truth in the

(premises)

premises, upon their Oath or affirmation Do say; that the said Defendants are indebted, and did undertake & assume as the Plaintiffs have alleged against them in their said declaration - and within by pleading have also alleged - And they assess the damages of the said Plaintiffs by occasion of the premises, to the sum of Two thousand two hundred and twenty three dollars and thirty three Cents Current money -

Therefore it is Considered by the Court here, that the said Plaintiffs recover against the said Defendants, as well the said sum of Two thousand two hundred and twenty three dollars and thirty three Cents Current money, the sum found by the Jury, to be sustained by occasion of the premises, as the sum of Ten dollars and thirty five Cents like money, for their Costs and Charges, by them about their suit in this behalf laid out and expended; and the said Defendants in Mercy &c.

Memorandum - Judgment on Verdict for Plaintiffs was rendered in this Cause on the 12. day of April 1859, for $2223.33 the sum found by the Jury, with Interest from said 12 - April 1859 &c

Geo. E. Sangster Clk

Memorandum - Before the Jurors aforesaid withdrew from the bar of the Court here, the said Defendants by their Attorney aforesaid, filed in said Cause the following Bill of Exceptions, to wit: (Y.)

And afterwards, to wit: on the Nineteenth day of May, in the year last aforesaid, the said Defendants

by their Attorney aforesaid prays an Appeal from the Judgment aforesaid so as aforesaid rendered to the next Court of Appeals to be held for the State of Maryland and to them it is granted: It is thereupon ordered by the Court here that a transcript of the proceedings in the Action aforesaid with all things thereunto relating be transmitted to the said Court of Appeals, and the same are hereby transmitted accordingly -

R. 38
D 14
52
6.50
Sd. 25
Cert. 25
7.00

12 C/.

Agreement to beat that
copies on file records -

The County Commissioners of Baltimore County vs The Mayor & City Council of Baltimore	In the Superior Court of Baltimore City — January Term 1859

It is agreed between the parties in this Case by their Counsel, that one full record in one of the Cases removed from the Criminal Court of Baltimore City to the Circuit Court for Baltimore County tried at November Term 1854, being produced and read in evidence, that that Copies of the proceedings in all the other Cases removed from the Criminal Court of Baltimore to the Circuit Court ~~of~~ for Baltimore County tried at November Term 1854, including the taxation of Costs as set forth in the Docket entries, certified under the seal of the said Circuit Court, may be read in evidence and have the same effect, as if a full Copy of the proceedings in each Case, duly authenticated, were

produced & offered in evidence at the trial.

G. L. Dulany
Atty for Defts

all objections being waived by the Defendants to the foregoing proof which could be taken, to the originals as evidence, if they were produced.

G. L. Dulany
Atty for Defts

Defendants
Proofs

The Counsel for the Defendants prayed the Court to instruct the Jury that if they find from the proof the Records offered by the Plaintiffs, yet the Plaintiffs ~~in this case~~ are not entitled to recover in this case the allowances claimed by them of $30 in each case based by the Defendants the District Attorney in addition to his legal fee of $3.33 1/3 because said allowances do not appear to have been made ~~by~~ by any orders or judgments of the Court made in said Causes respectively

(6)

1. Asa Higgins Foreman
2. William Weir "
~~Lawrence Kynes~~
~~Ebenezer~~
~~John Turner~~
~~Daniel Cramer~~
3. John Harrison "
~~Thomas Nelson~~
4. Lewis E. Fortier "
5. Wilson A. Fuller "
6. Nicholas V. Brown "
7. Zilghman W. Sparklin "
8. Jarrett D. Johnson "
~~Noah Lawrence~~
~~Charles Wetherell~~
9. Jarrett J. Emmart "
10. Thomas Crocall "
11. Luther Fox "
~~John Hilbert~~
~~Wm Ridgaway~~
12. R. D. Taylor "

$2223.33.

Hamilton —
Rayer

1. 1

The Plaintiffs pray the Court to instruct the Jury that the Transcripts of the Records, & the short Copies of the Judgments exhibited in evidence in this cause show that the Marshal & General sums therein mentioned as costs & Compensation taxed & allowed to the State's attorney of Baltimore County ~~Lloyd Williams~~ were due & payable by the Plaintiff to the said State's attorney; and that if the Jury find that a statement of the said costs & Compensation & all other costs in said cause was sent to the Defendant by the Clerk of the Circuit Court for Baltimore County between

the 1st & 10th of July 1855;
and shall further find that
the Plaintiffs did pay to the
said State's attorney ~~Lloyd Williams~~ the sum
of $2,223 33/100, being the amount
of said Costs & compensation so
taxed & allowed as aforesaid
then the Plaintiffs are entitled to
recover from the defendant
the amount so paid by the
Plaintiffs; provided the Jury
further find that ~~Lloyd Williams~~
the said State's Attorney was
resident in Baltimore County
at the time of the ~~sessions we~~ trial
of the Causes mentioned in said trans-
cripts & that copies of Judgments
~~and that the said allowance~~
~~of the fees in question were by~~

and under the authority of the Judge of the Circuit Court of Baltimore County

(5.)

Plea &c.
Sundry issues

filed 7th April 1859

County Commissioners
for Baltimore County
&
The Mayor & City Council
of Baltimore.

The said Defendants by their Solicitor & Counsel say that they did not undertake and assume as the Plaintiff hath alleged against them in this Declaration aforesaid.

G. W. Dalamy
Atty for Defts

Service of copy admitted

W. J. Williams
7 April '59.

The Plaintiffs
join issue on the
Defendants plea

W. J. Williams
Pltff's Atty

(7.)

Exceptions

filed 12th April 1859

The County Commissioners for Baltimore County
vs
The Mayor & City Council of Baltimore

} Superior Court of Baltimore City

At the Trial of this cause the plaintiffs to support the issue on their side offered in evidence the following records & papers (here insert the documentary evidence of the plaintiffs the agreement of counsel &) X

Whereupon the plaintiffs ~~prayed~~ the Court to instruct the Jury (here insert the plaintiffs prayer) and the defendants prayed the Court to instruct the ~~jury~~ (here insert the defendants prayer)

Whereupon the Court granted the plaintiffs prayer & rejected that of the defendants. Wherefore the defendants excepted to the granting of the plaintiffs prayer & the rejection of that of the defendants, and the Court here to sign & seal this their Bill of exceptions - which is accordingly done this 12th day of April A.D. 1859

Z. Collins Lee (Seal)

X The Plaintiffs then produced the original Return of the Clerks of the Court for Baltimore County made to the Mayor & City Council of Baltimore (Here insert it)

filed 19 May 1859

County Commrs of Baltimore County
vs
The Mayor & City Council of Balto

In Superior Court of Balto

Mr Langston

Enter an appeal by the Defendants in this Case

G. L. Duncan
Atty for Defts

Corp. Counsel

Mayor &c

N. B. Cole

(1) Agreement as to certain property not to be expended on the Record.

Papers to go on Record

1. Agreement to Trust Check copies of full
2. Agreement Records
3. Receipts & Vouchers Pillsbury & Agreement
4. Papers & Opinion of Dyer

The County Commissioners of Baltimore County
vs
The Mayor & City Council of Baltimore.

In the Superior Court of Baltimore City.

It is agreed that the Transcripts of Records & Copies of Docket Entries from the circuit court for Baltimore County ~~*~~ called for in the Bill of Exceptions shall not be inserted in the Record to be sent to the Court of Appeals; but that the same shall be used in the Court of Appeals as if inserted. And it is further agreed that the Return was made by the Clerk of the Cir^t Court for Balt^r County in conformity with the act of 1854 Ch 286 and that the Return made to the Mayor & City Council of Balt. may ~~for appellants~~ be used in the Court of Appeals & not inserted in the Record.

~~for Appellees~~
N. W. Williams
Attys for appellants

May 1859.

Geo. L. Dulany Atty for Appellants

N. W. Williams
W. M. Addison

for appellees.

4.

B. Co. Comm.rs

vs

Mayor &c of

Baltimore

County Commrs.
of Balto. County
agst.
The Mayor and
City Council of
Balto.

Superior
Court for
Balto. City

To Wm Meade Addison Esq.

You are hereby notified that G L Dulany appeared for the Mayor and City Council in the above case on the 10th of July 1858 in the manner required by the Act of 1856 Ch 112.

G L Dulany
Atty. for Plts.