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22

1862

Mayor & City Council
of Baltimore

Charles Howard

- et al -

Police Commissioners

&
James & Platters Bank

Order Feb 4th 1862
in the opinion filed

Refused

6th February 1862

To The Hon. William Geo. Krebs
Judge of the Circuit
in Court of Baltimore City,

The Bill of Complaint
of the Mayor & City Council of Baltimore, a body
Corporate, under the Laws of the State of Maryland,
humbly complaining, shows unto your Honor:-

That by an Act of the General Assembly
of Maryland, passed at the January Session
1860 and numbered Chapter 7, Charles How-
ard, William N. Gatchell, Charles D. Hicks,
& John W. Davis were appointed Commissioners
together with the Mayor for the time being or whomsoever may be lawfully acting in that capacity
& established & constituted a Board of Police
of the City of Baltimore. That by said Act
(Sec. 3.) said Commissioners were required to appoint
one of their own number treasurer of said Board
of Police & that upon the one so appointed were
conferred certain powers & rights, & imposed certain
duties to be done & performed as in said act is
fully set forth; That upon said Board of Police
was devolved the duty of preserving the public
peace at all times within the City of Baltimore,
preventing crime & arresting offenders, protecting the
rights of person & property & guarding the public
health, preserving order preventing removing mis-
sances, providing a proper police force, protecting
strangers, Emigrants, & travellers & generally of en-
forcing all laws of a police nature or relating to

the public health and all laws & ordinances of the Mayor & City Council of Baltimore which may be properly enforceable by a police force; That to enable the said board to perform said duties they were authorized to appoint & organize a large permanent police force; & to defray the expenses necessary & incident to the discharge of the duties imposed upon them, said Board of Police were authorized to make requisitions from time to time upon the Mayor, Register, Comptroller of the City of Baltimore or other disbursing officer or officers of the Corporation for such sums of money ~~for such sums of money~~ as they might deem necessary for executing their duties under said Act of Assembly; & your Orator, said Corporation, through its said Officers, was required & compelled to honor such requisitions, & to pay to said Board thereon, such sums of money, as were demanded by said Board for the purposes aforesaid, & not otherwise.

Your Orator further shows & charges that said Charles Howard, William N. Gatchell, Charles D. Hinks, and John W. Davis accepted the position & offices of Commissioners conferred upon them by said Act, organized thereunder, & elected said W. N. Gatchell Treasurer of said Board of Police appointed & organized a police force & for about the space of one year discharged certain of the

duties imposed upon them by said act of Assembly; That ^{they did} while so discharging said duties, make repeated requisitions upon the disbursing officer of said Corporation for large sums of money, as authorized by said Act, which sums were by such disbursing officer paid over to said Board of Police, & by it received & deposited in the name of said "Police Commissioners" with & in the "Farmers & Planters Bank" in the City of Baltimore, from which a great part thereof was drawn from time to time upon the Check of the Treasurer of said Board, Countersigned by Charles Howard President of said board, as they deemed the same required by the exigences of the public service entrusted to them; That said sums of money & all of them, & every part of all of them was the property of your Orator until the same was disbursed & paid out by said Board of Police in paying the services of said Police force or other expenses by them necessarily incurred in the discharge of the duties imposed upon them by said Act of Assembly, that it was demanded, paid to & received by them, deposited in said Bank & checked therefrom for that purpose, & could be lawfully demanded, received & used for no other purpose; that said Police Commissioners had, at no time, any right, title, or interest in or to said sums of money so deposited in said Bank or any claim or demand thereupon save as the servants or agents of your Orator for police purposes, & no right to use the same

Except for the purpose of remunerating themselves or others acting under their orders, for police service rendered your Orator, or for defraying other expenses necessarily incurred by them in the lawful discharge of said police duties.

Your Orator further shows & charges that on or about the 27th day of June 1861 the police force organized by said Board of Police, at the instance, & by the procurement of said Board, went off duty & ceased & refused to render service as a police force to your Orator, & has, since that date, rendered no service to your Orator whatever, & that said Board of Police from said 27th day of June until the present time have utterly failed to render your Orator any service, or to discharge any of the duties imposed upon them by law, & during nearly all of that time have been absent from the City of Baltimore & the State of Maryland where alone those duties could be performed.

Your Orator further shows & charges that at the time when said Police Commissioners ceased to discharge their duties ^{deposited in said Bank subject to the control of said Board} there were more than Eighty Seven hundred Dollars of the Police fund which had been received by said Board for the purposes hereinbefore set forth, & which was the property of your Orator, & subject to the control of said Board only, as public agents, & to be expended & used by them only for the public benefit, Notwithstanding which, your

Orator Charges, that said Board, or the Treasurer & President thereof, while rendering no service to your Orator or to the Public either directly or indirectly, either themselves or by their agents or employees or incurring any expense in the discharge of ~~the~~ official duties, have Combined & Conspired to withdraw said money of your Orator from said Bank, & in fraud of the rights of your Orator have withdrawn more than fifty four hundred dollars thereof, & the same applied & appropriated at their pleasure to purposes not contemplated or authorized by law.

Your Orator
X further shows that there is reason to believe that said Board of Police or the Treasurer & President thereof are about to withdraw the remaining thirty three hundred dollars from said Bank, & to appropriate & apply the same inequitably & illegally to purposes not authorized by ~~any~~ ^{said} act of Assembly or any other law & that if the same is so drawn & appropriated or paid out your Orator is without any redress or remedy having no known or responsible parties from whom to demand the money thus wrongfully applied or paid out, or otherwise may be remitted to a multiplicity of vexatious suits against insolvent & irresponsible parties who may thus fraudulently & without Equivalent have received the money of your Orator.

Forasmuch therefore as your Orator is remediless in the premises without the inter-

vention of a Court of Equity, where alone such matters are properly Cognizable, to the End that the said Defendants may, if they can show why Your Orator should not have the relief hereby prayed may it please Your Honor to grant unto your orator not only the most gracious writ or writs of Injunction of the State of Maryland issuing out of & under the Seal of this Honorable Court to be directed to the said Charles Howard, Wm. N. Hatchell, Charles D. Hinks, & John W. Davis to restrain them & each of them from drawing from said Bank applying paying out or in any manner appropriating said money of your orator deposited therein as aforesaid, & from making any other or further requisitions upon any disbursing agent or officer of your Orator so long as they shall neglect or fail to discharge the duties imposed on them by said Act of Assembly to be directed to said Farmers & Planters Bank to restrain it in like manner from honoring any draft ^{or check} drawn on it by said Police Commissioners or any of them or by any person in their behalf or from paying out said money on any pretext save as the same shall be authorized by this Honorable Court, but also the most gracious writ or writs of Subpoena against said Charles Howard, William N. Hatchell, Charles D. Hinks, & John W. Davis & said Farmers & Planters Bank commanding them to be & appear in this Honorable Court upon a day to be therein named full true direct & perfect answer to make to all the matters &

of facts herein charged & to abide by & perform such
decrees as shall be passed in the premises, & that
your orator may have such other & further relief
in the premises as the nature of his case shall
require & to your Honor shall seem meet & your
orator shall ever pray.

John Lee Chapman ex of Mayor

State of Maryland

City of Baltimore, To-wit

On this fifth day
of February, 1862 before me a Justice of the Peace
of the State of Maryland in & for the City of Balti-
more appeared John Lee Chapman ex officio
Mayor of the City of Baltimore & acting in the
name & on the behalf of the Mayor & City Council
of Baltimore the Complainant in the foregoing Bill of
Complaint made oath in due form of law that
the matters & facts stated in the foregoing Bill of
Complaint are just & true as therein stated to
the best of his knowledge & belief.

John O. Hayward

24
1862

Mayor & City Council

o

Howard & others

Feb 11 - February 1862

Mayor & City Council of Baltimore

vs

Charles Howard

William H. Gatchell Police

Charles D. Hinks & Comrs.

John W. Davis

+ Farmers & Planters Bank

In the Circuit Court
for Baltimore City.

Mr. Clerk

Enter an appeal
from the order of this Court passed in the above
entitled Cause - & transmit the papers to the Court
of Appeals -

A. Stockbridges
Sol^r for Complainant

Now still besides in the Bank of England
 of the State, ~~the power~~ upon such alle-
 getting the same as those made in
 this bill to loan paper ~~and~~ and ~~the~~ ^{the} ~~country~~
 and in its own, coming from the ~~country~~
 to cover to interest, and on which ~~the~~
 the ~~power~~ of the ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
~~power~~ in the hands of the ~~country~~ ^{of the} ~~country~~
 7 If this can be ~~done~~ ^{done} ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~
 answer, it may seem to shake at the heart
 of the system, and thus destroy its stability
 and existence. The real object the Com-
 missioner seeks is seen not in any opinion
 he offers to it, by the County of ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~
 ought to be ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 Legislative; and of this fact the Com-
 missioner, ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 will ground in, ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 "That the Commission have an ~~opinion~~
 " that Bank from which they are paying
 " the ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 " by the Legislative, it is ~~very~~ ^{very} ~~being~~
 such one are alone in ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 as far as the ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 It is therefore ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 1812. for the same ~~the~~ ^{the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 opinion that the ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
 the above Bill, as and the same ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~
~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~ ^{of the} ~~country~~

Wm Bentleys
 Esq.

24
 1812

4th February 1812

The Mayor & City
Council of Baltimore

Charles Howard W^m H. Galehell
Chas^d D. Hinks Paul W. Davis &
Farmer's & Planter's Bank

In the Circuit Court
for Baltimore
Bill for
Injunction.

The object of the Bill filed in this case is to obtain from this Court an Injunction to restrain the said defendants, and each of them from drawing from the said Bank the balance of a sum of money, which had been paid over by the disbursing officer of the corporation of the City of Baltimore, upon the requisition of the "Board of Police" of the said City, and by it deposited in the said Bank, and from applying, paying out, or in any manner appropriating the said money; and restraining the said Bank from honoring any draft, or check drawn on it by Commissioners, or any of them, or by any person in their behalf and prohibiting the said Commissioners from making any further requisitions upon any disbursing officer of the said Complainant.

The Bill alleges that the said money so deposited was the property of the Complainant until the same was ^{distributed} paid out by the said Board, in paying the expenses incurred in the discharge of the duties imposed upon them by Law, and that the said Police Commissioners, had at no time, any right title or interest in and to the same save as servants or agents of the Complainant, and no right to use the same, except in payment of expenses incurred as aforesaid.

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The Bill further charges that on the 27th day of June 1861, the Police force organized by said Board of Police, at the instance, and by the procurement of said Board went off duty, and ceased to render service as a police force to the Complainant, and has since that date rendered no service whatever; and that said Board of Police from that date, until the present time, have utterly failed, to render the Complainant any service, or to discharge any of the duties imposed upon them by Law, and during nearly all that time have been absent from the City of Baltimore & the State of Maryland,

It further Charges that the said Board or the Treasurer and President thereof, while rendering no service to the Complainant by themselves or employees, or officers, any expense in the discharge of official duties, have combined, and conspired to withhold, and in fraud of the rights of the Complainant, have withdrawn, more than fifty ~~five~~ hundred dollars, from said Bank, & the same applied, and appropriated at their pleasure, to purposes, not contemplated, or authorized by law

The Bill further shews that there is reason to believe, that said Board of Police &c. are about to withdraw the remaining thirty three hundred dollars from said Bank, and to appropriate the same inequitably and illegally to purposes not authorized by law, and that if the same is so drawn out, and appropriated the Complainant is without any redress, or remedy, having no known, or responsible parties from whom to de

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mand the money thus wrongfully applied or
paid out, or other ^{wise} may be remedied to a multi-
plicity of vexatious suits, against insolvent &
irresponsible parties, who may thus fraudulently
and without equivalent have received the money
of the Complainant,

From a careful examination of the act of
Assembly referred to establishing "the Board of
Police for the City of Baltimore", it will appear
that the Act was designed to create a system
for the police and other purposes indicated
in it - with which the Mayor or City Council of
Baltimore could not interfere in the slightest
degree, and to establish a Board of Police
Commissioners wholly independent of, and irres-
ponsible to, the Corporation.

The Commissioners composing this Board
were named ^{four} in, and appointed by ^{the law} the Legislature
and the law, provided for the filling of all va-
cancies, that might occur in the Board, and ap-
pointing successors to those whose term of office
expired, by the General Assembly in joint Col-
lect; - Their oath of office was to be taken be-
fore the Judge of the Superior Court of Balti-
more City, or the Clerk thereof; They were au-
thorized to appoint, one of their number Treas-
urer, of the Board; his appointment was to be
certified to the Clerk of the Superior Court, and
before he enters on his duties, he is required to
give Bond, to the State of Maryland, with
sureties, in the penalty of fifty thousand
dollars, to be approved by the Judge afove-
said, for the faithful discharge of his duties

his, and for the faithful application and
payment over, pursuant to the order and
direction of said Board, of all moneys
which may come to his hands as such
treasurer, which bond is to be kept by the
clerk of that Court, in the office thereof; and
any of the said Commissioners may be remo-
ved for official misconduct by a concurrent
vote of the two houses of the General Assembly,

In regard to the moneys, necessary to enable
the Board, to discharge the duties, imposed up-
on them, by the Law, the Mayor or City Council is
required, to raise and provide it, in the manner
prescribed in the Law, and the proper disbursing
office of the Corporation, is ordered, to pay it
over to the Board, upon its requisition, made
from time, to time; and it provides that if
"the said disbursing, officer shall not forth-
with pay over the amount of each requisi-
tion as made," it shall be duty, of the Board
"to issue certificates of indebtedness in the name
of the Mayor or City Council of Baltimore
for the amount of such requisitions, respective-
ly" to be as binding on said Corporation as
if they themselves had issued said certificates.
It thus appears, that in regard to the moneys,
necessary for the purposes, contemplated by the
said Law, the Commissioners are rendered whol-
ly independent of the City Authorities, the Board,
being expressly authorized, to raise such mo-
neys upon the credit and responsibility of
the Corporation, if it should refuse, or neglect
to provide them in the manner ^{designated or} required by the

law. The journal of their proceedings which the Board is required to keep, and the Books, in which, they are required to enter their receipts, and disbursements of money; the law declares "shall always be open to the inspection of by the General Assembly of Maryland, or any committee appointed by it: No such right, or privilege of inspection of the journal, and Books of accounts, is given to the Mayor & City Council. The last section of the Law is very significant, in regard to the relation in which the Board and Corporation stand to each other it provides "That nothing, in this section shall be construed to give to the said Mayor & City Council, or any officer of said Corporation any control over said ^{Board} or any officer appointed thereby."

From the above reference to the Act of Assembly, by which this Board of Commissioners was created, it appears, that they derive their appointment, and authority, entirely from the State; - are responsible to it alone; are removable for misbehaviour by only by the Legislature on joint ballot: - that the funds, with which they are to perform their duties, are to be supplied by the Corporation, from specific taxation; and if not so furnished, they have the power themselves to raise it: and that their Treasurer, is to give bond and security to the State for the faithful application of the money coming into his hands; and that ^{they} are to account for their ^{receipts} ~~payments~~ and disbursements of it to the State, and to no one else. In the framing of this law human ingenuity seems to have

been taxed to the utmost, to ^{frame} ~~devised~~ a plan, by which, a separate organization, could be devised to exercise ~~its~~ powers, for the benefit of a municipal corporation, within its territorial limits and at the same ^{time} to be entirely independent of such Corporation, not responsible to it in any way, nor liable to be called to account by it. That the object in view, has been accomplished I think is apparent from an examination of the Law.

It is clear that there is no privity of contract between these Commissioners, and the Corporation therein in reference to the services which they are to render, or to the appropriation of the funds to come into their hands.

It is true that the Bill by way of shewing a right to equitable relief, & laying a foundation for the claim which it sets up, to the interposition of this Court by injunction alleges "that their moneys" in the hands of the Commissioners, or on deposit in the said Bank, and all of them, and every part of all of them was the property of the Mayor or City Council of Baltimore, until disbursed; - and "that said Commissioners had at no time, any right, title or interest in or to said sums of money, or any claim or demand thereupon, save as the agents, or servants" of the said Mayor or City Council for police purposes". These allegations are made, in my opinion, under a misapprehension of the purport, policy and purposes of this Law. Its language and provisions certainly exclude altogether the idea that they are, in any sense, the agents of

servants of the Corporation, and show quite as clearly, that the money, which they are to employ in defraying the expenses incident to their duties, when it comes into their hands, is not ~~longer~~ the money of the Corporation. There is no one of the attributes of property, which can be predicated of it, in favour of the Corporation. There is no proceeding, either at Law, or in Equity, by which a judgment, or decree could be obtained, by the Corporation for it, and there is no trust express or implied that can attach to it, in its behalf.

It is to be observed that "the Mayor or City Council" is required to raise this money, and "specifically" to apply the same amount as shall be sufficient, upon all the assessable property in the City of Baltimore," and it is declared that "no bill of City taxes" with some unimportant exceptions, "shall be recoverable, from any person, unless the same shall contain the proper charge for such tax to be denominated the police tax". From these provisions, it is manifest, that this money, was to come into the hands of the Corporation, so to speak ^{with an} earmark; and was to constitute the fund, upon which the Commissioners were to make their requisitions, from time to time; and could ^{not} properly come into the hands of any corporate officer as the money of the Corporation, and be amalgamated with its general revenue, or in any sense be treated as belonging to it; and in regard to this money it, may rather be regarded, as the agent of the Commissioners, than they

as the agents & servants of the corporation.
 The true theory of the system is this, that the
citizens of Baltimore, who by the payment of
 this specific tax furnish the means, by which
 this Board is enabled to discharge its duties,
 are to receive, ^{thereby} an equivalent, in the protection
 and preservation of their houses, their property,
 and their persons, ~~from~~ ^{deprived of} violence, and injury,
 and the Mayor & City Council as a corpora-
~~tion~~, has no connection, with the working,
 of the system, or with the benefits resulting
 from it.

The Mayor & City Council in the further
 statements for the purpose of making out
 its case for relief, alleges "that said Board
 " while rendering no service to it or to the
 " public, & have combined and conspired to
 " withdraw said money from said Bank"
 " — and that there is reason to believe
 " that the said Board are about to withdraw
 " the remaining "sum," and to apply the same
 " inequitably, and illegally to purposes
 " not authorized by law."

The bill makes no allegation that there
 is danger of damage of loss to any one, in
consequence of the pecuniary condition
or insolvency, of these Commissioners or of
any one of them, or in consequence of the
insufficiency, of the said Bond given by
the ^{said} Treasurer, or the sureties chosen. In
 the absence of any reflection upon them in
 this respect, they are to be assumed as persons,
 altogether above reproach in this particular.

The omission of such averments, under the circumstances of this case, ^{should be} in my opinion a fatal objection to granting the relief prayed if there were no others apparent from the proceedings.

As to the charge that this Board exhibit rendering ^{no service} to the Mayor & City Council, is as there is reason to believe, as it alleges, about to withdraw the loan tender of this sum, and to apply the same in the manner above stated. There is in my opinion nothing in these allegations to warrant any interference on the part of this Court with the Defendants in reference to this money. I have endeavored to shew, that the Board, is not required by the law, to render any service whatever, to the Corporation, - and the loose, vague, and indefinite allegation that the Corporation intend to apply it, when drawn inequitably, and illegally, and to purposes not authorized by law, coming from the Corporation alone, certainly are insufficient to ~~draw~~ ^{call} forth from ~~the~~ ^{the} Court, the exercise of ~~the~~ ^{its} power, by the strong and summary process of injunction without notice to, or answer from any of the parties so charged. In fact this Act of Parliament would be defective in a most vital element; if it can be successfully maintained, that notwithtanding all its guarded provisions, to protect the system, from interference with it, by the Mayor & City Council, and to prevent any obstruction of its operations from that quarter,

at

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1862

Bills Paid

36
\$ 103 ⁵⁰/₁₀₀

of 6 March 1862

