1 187
1863

The Mayor & City Council
of Baltimore
vs Bill
The Baltimore & Ohio
Rail Road Company

Mr Adams.
File the bill
& issue process
John L Thomas
Wm Price
Solicitors

Order March 11th 1863

Copied a

Copied a

Record made to
June Term 1863
Fd 11 March 1863

On the foregoing Petition this 11th day of March 1863.
that a Writ of Injunction do issue in pursuance of the prayer of the Complainants in the behalf of
submitted filing a Bond by the Complainants in the penalty of
Twenty Thousand Dollars with sureties to be approved
by the Clerk of this Court, conditioned according to the
exigencies of the Act of Assembly in such cases made and provided
Injunction of the Defendants, their servants and agents
and all persons claiming under them, or any of them, or acting in concert
with them until the final decree in this cause shall be made
or until the Complainants shall have filed a sufficient Bond
with security to be approved by the Clerk of this Court
the Complainants shall be at liberty to proceed in the
matter herein set forth.
A Copy
Test

To the Honorable William George Krebs
Judge of the Circuit Court of Baltimore City

Humbly complaining show unto your Honor your Orators the Mayor and City Council of Baltimore, a municipal corporation chartered by the State of Maryland and exercising its corporate powers and function as such shows unto your Honor that your orator is the owner of Forty five thousand and fifty shares of the Capital Stock of the Baltimore and Ohio Rail Road Company a corporation chartered by the State for which said acts of assembly and the several supplements thereto and for other acts hereafter referred to your orator prays leave to refer to the statue book of Maryland and pray that so far as is necessary they may be deemed as part of this bill of complaint

That the said Baltimore and Ohio Rail Road Company came duly into existence and is now engaged in carrying on the business for which it was chartered

Your Orator further shows that the Northwestern Virginia Rail Road Company a corporation chartered by the State of Virginia has completed its work which is now fully equipped and in successful operation and by its connection with the

Baltimore and Ohio Rail Road at Grafton in the State of Virginia, and with the Ohio Rail Roads beyond Parkersburg forms the most direct the shortest and most ~~reliable~~ reliable avenue for trade and travel between Baltimore and the city of Cincinnati the heart and centre of the great West. That to aid the said Northwestern Virginia Rail Road Company in the construction completion and equipment of its work the city of Baltimore with the assent of the State of Maryland endorsed the Bonds of said North Western Virginia Rail Road Company to the amount of one Million five hundred thousand dollars taking a mortgage from the latter company to secure said debt which is now the first mortgage or lein upon the property and franchises of said road and the Baltimore and Ohio Rail Road Company with the assent of the State, the city of Baltimore and the stockholders of said Company also endorsed the bonds of said North Western Virginia Rail Road Company at different and sundry times to the sum of one Million five hundred ~~tim~~ thousand dollars and holds the second mortgage on said North Western Virginia Rail Road to secure the payment of said endorsed bonds

Your orator further shows that the Baltimore

and Ohio Rail Road Company heretofore loaned to the Central Ohio Rail Road Company the sum of four hundred thousand dollars and took a mortgage from the said latter company which is now the fourth mortgage upon the said latter work. A mortgage ~~upon the said~~ for twelve hundred and fifty thousand with the interest now amounting to one hundred and fifty thousand dollars standing before and having priority over it, as also a second mortgage for eight hundred thousand dollars and a third mortgage for nine hundred and fifty thousand dollars with interest thereon for six years besides other bonds called Income bonds and various other indebtedness amounting in all as your orator is credibly informed to nearly seven millions of dollars. Your orator is advised and therefore charges that the said debt of four hundred thousand dollars has been long ~~regarded~~ regarded as lost and hopeless.

Your orator further shows that the Baltimore and Ohio Rail Road Company since the commencement and during the continuance of our national troubles has been frequently taken possession of by those in rebellion against the Government

(at least that portion of it lying in Virginia between Harpers Ferry and Cumberland Md.) and its bridges have been destroyed the track and rails torn up and removed the cars and engines burnt or otherwise destroyed insomuch that the cost necessary to reinstate and repair the same will cost a very large sum of money, and will tax the ability of the Company severely to meet and defray the said necessary expense.

That your orator has heard with astonishment that, the Baltimore and Ohio Rail Road Company have determined to grant a loan to the said Central Ohio Rail Road Company either by advancing the money or by the purchase of the said first mortgage on the property and works of the said Company, the sum so to be advanced being twelve hundred thousand dollars.

Your orator states that on the Eleventh of February last past a proposition was made to the Board of Directors of said Baltimore and Ohio Rail Road Company by the President thereof recommending the said loan.

That the said proposition was not only favorably entertained by the said board but the same was referred

to the Committee of Finance which Committee will unanimously report with the exception of one member this day and within a few hours of this time if not prevented from so doing by the interposition of this Honorable Court. That your orator has good reason to fear and believe and does actually fear and believe that the said loan will be consummated unless prevented by the injunction of this Court.

Your orator distinctly charges that the said loan is beyond the corporate powers ~~of~~ of the said Company and will be a fraud upon the rights of your orator and the other Stockholders of the same. That ~~the~~ if the said Baltimore and Ohio Rail Road Company have funds in hand for which it has no use within its legitimate powers it is in duty bound to hand the same over to the Stockholders to whom the same belong or the same may be applied to repair the ruin and destruction on the said road as aforesaid.

Your orator further charges that the consumation of the said loan if the same is not prevented will lead to a policy on the part of the said Company favoring

the business and trade of the said Central Ohio Rail Road, and injurious if not destructive to the great interest which the said Baltimore and Ohio Rail Road Company already possesses in the North Western Virginia Rail Road, and injurious to the City of Baltimore as a stockholder in the Baltimore & Ohio Rail Road Co. and as a creditor of the Mechanics Exchange Bank said Company all which said acts and doings of the said Baltimore and Ohio Rail Road Company are contrary to equity and good conscience and unjust illegal and injurious towards your orator. In consideration whereof and for as much as your orator is without remedy save in this Honorable Court where matters of this and the like nature are cognizable and relievable

To the end therefor that the said Baltimore & Ohio Rail Road Company under its corporate seal and the oath of the President thereof may true direct and perfect answer make to all and singular the premises and that it may be adjudged ordered and decreed by this Honorable Court that the said Baltimore & Ohio Rail Road Company be perpetually enjoined from making the said loan and from diverting the funds of the said Company in aid of the said Central Ohio Rail Road Company as above stated or otherwise, and that the

orator may have such other and further relief in the premises as may be consistent with equity and good conscience and as its case demands

May it please your Honor to grant to your orator an writ of the State of injunction to the said Baltimore and Ohio Rail Road Company commanding and enjoining the said Company from making the said loan to the said Central Ohio Rail Road Company or from purchasing the said first or any other mortgage now existing against said Company or from diverting the funds of the said Baltimore and Ohio Rail Road Company per any such purchase And also the writ of the State of Subpoena to the said Baltimore & Ohio Rail Road Company commanding it to be and appear in this Honorable Court on a certain day therein to be named to answer the premises and to stand to and abide such decree as may be passed therein

And your orator will ever pray etc etc

John Thomas Jr
Cty Counsellor
Mr Rice for Complainants

State of Maryland City of Baltimore set. On this eleventh day of March 1863 before the subscriber a justice of the Peace of the State of Maryland in and for the city of Baltimore personally appeared John Lee Chapman Mayor of the City of Baltimore and made oath on the Holy Evangels of Almighty God that the several matters and things stated in the forgoing bill are true to the best of his knowledge and belief

Wm R. Hopkins J.P.

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1863

Resolutions
referred to
the committee on the
Police

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The Bill of the
Mayor & City Council
of Baltimore

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Copied

Rd 24 March 63

WHEREAS, The Baltimore and Ohio Railroad Company is at this time the holder of $400,000 of the 4th mortgage bonds of the Central Ohio Railroad, secured by mortgage on its property, subject to prior mortgages thereon, that is to say—a mortgage on the Western division of the road from Columbus to Zanesville, for $450,000, and one on the Eastern division from Zanesville to Bellaire, for $800,000, which, covering, as they do, the entire line, constitute the 1st mortgage thereon—a 2d mortgage for $800,000, covering also the entire line—a 3d mortgage on the same property for $950,000, making an aggregate indebtedness of $3,000,000, secured by mortgages having precedence to that under which the bonds held by this company are secured.

And, whereas, Proceedings have been instituted in the Circuit Court for the Southern District of Ohio for the purpose of foreclosing the first and second mortgages aforesaid, which, if presented at this time may seriously affect, if not absorb in the payment of the prior liens the security which this company has for its claim of $400,000.

And whereas, This Company is advised that it has the power, by paying the first mortgagees the amount due to them, to substitute itself in their place and stead to all intents and purposes, and in this manner to exercise a control over the proceedings in the said Circuit Court looking to a sale as aforesaid.

And whereas, It is desirable that this Company should if practicable exercise such control as well for the security of the debt due to it, as for the purpose of preventing the Central Ohio Railroad from passing at this time into hands that might by possibility be disposed to use it to the prejudice of this Company and of the city of Baltimore, by diverting trade and travel which, while the two roads continue to be worked in concert, may be reasonably expected to come to the said city.

Therefore, be it resolved, That the Committee on Finance is hereby authorized to take such steps as may be necessary in their judgment to substitute this Company in the place and stead of the first mortgagees aforesaid, paying to them the amount due upon their respective claims under the said mortgages, provided that such substitution and payment shall not be made until such measures are taken, or agreement entered into, as shall dismiss, or stay proceedings to effect a sale of the mortgaged property, by the second mortgagees aforesaid, and estop them from paying off the first mortgage for the term of — years from this time; nor, until an agreement shall be completed that shall secure to the satisfaction of the said Committee on Finance the harmonious working of the Central Ohio and the Baltimore and Ohio Railroads, looking to the interests of the latter and the city of Baltimore, nor until the punctual payment of the interest on the first mortgage bonds aforesnid shall be satisfactorily secured.

The subject was very fully debated and the vital

"Nor before a further order of the Circuit Court for Baltimore City in the suit instituted in the said Court, by the Mayor and City Council of Baltimore against this Company be first had and obtained, by this Company, in the premises mentioned in the order passed by the said Court on this day, therein."

In the course of the debate, continuing for several hours, the President, Mr. Garrett, substantially remarked: That it must be a source of

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Ct. Ct.

No. 5 Docket.

Mayor & City Council

vs.

Balto & Ohio R R Co

Injunction Bond.

I believe the within Bond ~~to be~~ sufficient,

J. Thos Adams Clerk.

Bond approved,

Wm Geo. Krebs.

Filed 11th day of March 1863

(INJUNCTION BOND TO STATE.) (A.) (Printed by McCoull & Slater, N. W. corner of Baltimore and Charles-sts.)

Know all Men by these Presents,

THAT WE John A Thompson and Saml Maccubbin the Register and Comptroller of the Mayor & City Council of Baltimore & on behalf of said Mayor & City Council of Balto.

the City of Baltimore, and State of Maryland, are held and firmly bound unto the State of Maryland, the full and just sum of Twenty Five Thousand

lars, current money, to be paid to the said State of Maryland, or its certain Attorney; to ch payment well and truly to be made and done, WE bind ourselves, and each of us, our and each of our Heirs, Executors, and Administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 11th day of March in the year of our Lord one thousand eight hundred and sixty Three

Whereas, by an order of the Circuit Court for Baltimore city, passed in a cause wherein the said Mayor & City Council of Baltimore

are Complainants, and The Baltimore and Ohio Rail Road Company are

the Defendants an injunction is about to issue to restrain the said defendants as prayed in the bill in said cause exhibited, upon the complainants filing a bond with security in the above penalty.

Now the Condition of the above Obligation is such, That if the said complainants shall do and prosecute the said writ of injunction with effect, and satisfy and save harmless the said defendants if the same be not prosecuted with effect, and in such cases pay all costs and damages that may be occasioned by the issuing thereof, and shall in all things obey, abide by, perform and fulfil such decree and order as shall be made in the premises, then the above obligation to be void, otherwise of full force and virtue.

Signed, sealed and delivered in the presence of

Alfred Mace

[signature]

Jno A Thompson Register SEAL.

Saml Maccubbin Comptr SEAL.

SEAL.

SEAL.

State of Maryland, Baltimore City, Sct.

I hereby certify, that on this Eleventh day of March, 1863, personally appeared before me the subscriber, a Justice of the Peace of said State, in and for said City, Alfred Mace and made Oath on the Holy Evangely of Almighty God, that he knows the pecuniary circumstances of the within named sureties, and that they are worth the amount of the penalty set forth in the within bond, over and above their just debts and liabilities.

[signature] J.P.

7 / 189 / 1863

The Mayor & City Council of Baltimore

v

Thos Ball & others

Order Mar. 24th 1863.

Copied. a

Filed 24 March 1863

The Mayor & City Council of Baltimore

v.

The Baltimore & Ohio Rail Road Company

In Equity in the Circuit
Court for Baltimore City

The Solicitor of the Defendants comes into Court and moves for a dissolution of the Injunction granted in the above cause, having filed the answers of the Defendants.

Jno G Blake
for Defts

In the Circuit Court for Baltimore City

Ordered this twenty fourth day of March in the year 1883 that the motion to dissolve the injunction heretofore granted by this court in the application of the Mayor and City Council of Baltimore against the Baltimore and Ohio Rail Road Company be heard on the thirtieth day of March inst. provided a copy of this order be served on the Complainants or their Solicitor on ~~or before the~~ this day — ~~instant~~

Wm Geo Krebs

No. 6

Answer

5 / 187 / 1863

The Mayor Aldermen & Council of Baltimore

vs

The Balto & Ohio R R Co

2

Answer of Defts

Mr Adams

File their answer and accompanying depositions

JMBL

for Defts

Copied

Fd 24 March 1863

The answer of the Baltimore and Ohio Rail Road Company to the Bill of Complaint of the Mayor and City Council of Baltimore.

These respondents, to so much of said Bill as they are advised, it is material for them to answer, answer and say.

That they admit the allegations of said Bill touching their charter, organization and present working, as well as what is alleged in regard to the incorporation of the ~~Complainants~~ Mayor and City Council of Baltimore.

They admit also that the North Western Virginia Rail Road Company chartered by the State of Virginia has a road in operation from Grafton on the line of the Baltimore and Ohio Rail Road to Parkersburg on the Ohio River; but they deny that the said Road is fully equipped, as alleged in the said Bill, if by that it is meant to say that the North Western Virginia Rail Road Company possesses Rolling Stock adequate to its purposes or an organization to use it, if it possesses such. On the contrary, as these respondents allege, the said road is worked with the Rolling Stock of the Baltimore and Ohio Rail Road, and by the agents and employees of these respondents, exclusively.

These respondents further admit that the North Western Virginia road in connection with

+ Without prejudice to their right to maintain that the said Bill filed on the instance of the Mayor of Baltimore Express notice, among the respondents of the corporate authorities of the City government, and without their joining in the action, as and the Bill, the corporation known as the Mayor and City Council of Baltimore.

the Baltimore and Ohio Rail Road on the East, and certain Rail Roads in the State of Ohio on the West forms a direct line of railway communication between Baltimore and Cincinnati. But these respondents deny the inference which may be drawn from the allegation of the Bill, that Cincinnati is "the heart and centre of the great West," if it is meant that when Cincinnati is reached by a line of railway from Baltimore the trade of the West is thereby secured to the latter City. On the contrary, these respondents say, that while Cincinnati is a Western City of great importance and a connection with which is most desirable yet that the trade of the so called West is by no means centred there. Looking to the country East of the Mississippi this trade comes from a vast and fertile region embracing the States of Ohio, Indiana and Illinois, and lying between and adjacent to the roads from Parkersburg to Cincinnati on the one side and from Pittsburg to Chicago on the other, and through the heart of which passes the Central Ohio rail road and its prolongation by other roads as far as St. Louis on the Mississippi. In other words, the Baltimore and Ohio Rail Road should be regarded, as the trunk of three great branches, ramifying themselves over the West, one diverging at Grafton, one from Wheeling, and one from Cumberland — all of these branches are important and none more so than that which connects Baltimore with the great central region ~~described~~ traversed by the Central Ohio Rail Road — That the Central Ohio Road

road is in connection with a road lateral to the main stem of the Baltimore and Ohio Rail Road and diverging therefrom at Benwood, a point miles below including the present terminus of the said main stem of which lateral road terminates on the edge of the Ohio River opposite to Bel air the station on the Ohio Bank of the river of the Central Ohio Rail road

These respondents further admit that the City of Baltimore endorsed the Bonds of the North Western Virginia Rail Road Company for $1.500.000, and took a mortgage of indemnity, and that these respondents endorsed bonds of the said Company to the amount of $1.000.000 secured by a second mortgage, and subsequently endorsed $500.000 secured by a third mortgage, - and these respondents say that in addition to the sum last mentioned they have advanced in Cash to aid the said North Western Virginia Company upwards of $2.000.000.

And these respondents admit that they loaned to the Central Ohio Company the sum of four hundred thousand dollars, the same being now represented by bonds of said Company secured by a fourth mortgage.

And these respondents admit that there are mortgages on the property of the Central Ohio Rail Road Company prior to the mortgage which secures the four hundred thousand dollars aforesaid; and which prior mortgages are of the following amounts and stand in the order here enumerated, - a mortgage on the road from Columbus to Zanesville for $450.000, and one on the road from Zanesville to Bellaire of $800.000. These two covering the entire line constitute what is known as the first mortgage for $1.250.000 - The second mortgage covers the same property and is for $800.000. The third mortgage on the same security is for $950.000. The aggre-

gate indebtedness for principal of these three mortgages is $3.000.000. Then comes the mortgage under which these respondents are secured. Nor do these respondents know of any intervening liens to their prejudice, ~~other than those above enumerated~~. The interest in arrear of these mortgages these respondents do not know with accuracy but believe it may be estimated, under the agreements of that Company, as a sum less than the aggregate interest on said bonds for four years.

To so much of the said Bill of Complaint as alleges that the aforesaid debt of $400.000 has long been considered hopeless, these respondents have no means of replying inasmuch as they do not know by whom the debt has been regarded as desperate. No official action has been had on the part of the Complainants expressive of their opinion, and if common report is what is to be relied on, it can certainly afford no ground for the action of this honorable Court.

That the said indebtedness may be injuriously affected and its value endangered by depreciating it and crying down the security on which it rests and exaggerating the extent of the prior liens is not impossible: but the road and its equipment on which this claim is secured has cost more than $7.000.000, – is one of the great trunk lines of the country, is one which is without a competitor for the trade which is peculiar to it, and, if properly and

judiciously managed, ought to be able to pay off its indebtedness including the amount due to these respondents and ~~to ultimately~~ possibly ~~exhibit~~ ultimately a value ~~was~~ to ~~property for~~ its Stockholders, whose money, to the extent of one and a half millions of dollars, has been invested in it.

Your respondents admit, that since the commencement of the present troubles the business of the Baltimore and Ohio Rail Road in the Valley of Virginia has been much and more, than once interfered with by the military operations in that quarter. But the extent of these interferences is so vaguely stated in the said Bill that these respondents can only admit the fact generally without assenting to the particular allegations of the said Bill in this connection. But to so much of the said Bill as alleges that the repair of the damage done will cost a large sum of money and tax severely the ability of the Company to meet and defray – these respondents answering say that the said repairs have been so far made and paid for from the means heretofore accumulated, and the general resources of the Company, – that the road is open in its entire length and is doing at this time a greater business than has ever before passed over it, and has been in full operation ever since the 7th. day of January last; and that the ability of the Company has not only not been severely taxed but the Company has just declared a dividend of three per cent to its Stockholders payable in cash on 31st. inst., and has large funds earned and soon to

be received by it more than sufficient to put its road throughout into the best possible condition to compete with other roads having different termini, with interests hostile to those of the City of Baltimore.

That to so much of the said Bill of Complaint as alleges that the Complainants, the Mayor and City Council of Baltimore, had heard with astonishment that these respondents had determined to grant a loan to the Central Ohio Rail Road Company, these respondents answer and say that they are disposed to believe that the allegation has been made inadvertently, inasmuch as the Complainants are a corporation, which can only act by resolution of its component parts, one of which is the second Branch of its City Council, and which Branch, only a day or two before the filing of the said Bill, absolutely defeated a proposition adverse to the course now objected to, by a very large majority, the vote being eight to two.

But these respondents admit that they propose to cause themselves to be substituted in the place and stead of the holders of the first mortgages of the Central Ohio Rail Road Company: and say that the measure is one eminently judicious in every respect.— That the interest will be paid on the money which may become necessary in the transaction cannot be doubted. If there is any doubt, the business will not go forward. These respondents will thus secure an investment of funds, bearing seven per cent. interest, which would otherwise accumulate on their

hands, until such time as they needed them for the objects already indicated. They will naturally acquire an influence in the management of the affairs of the road, in exercising which for their own benefit, they will necessarily advance the interests of Baltimore with which their own are indissolubly connected; and they will also in this way be enabled, as they have every reason to believe to protect materially the $400.000 already invested as a loan in the Central Ohio Rail Road.

And in this connection these respondents append hereto a copy of the Resolutions adopted by them at their meeting held on the 11th. instant, and which authorise proceedings so soon as the order of this honorable Court granting an injunction shall be dissolved.

To so much of the said Bill as refers to the action of the Board of Directors of these respondents and their finance Committee and the possible action of the Board at the meeting held the day the injunction was served these respondents for answer refer to the said Resolutions which show the action that actually took place.—

And to so much of said Bill as charges that the substitution of the said Baltimore and Ohio Rail Road Company in the place and stead of the first mortgagees of the Central Ohio Rail Road Company "is beyond the corporate power of the said Company," to wit, these respondents, and will be

a fraud on the rights of the Complainant and other stockholders and that if these respondents "have funds in hand they have no use for within their legitimate power they are in duty bound to hand the same over to the stockholders to whom the same belongs, or the same may be applied to repair the ruin and destruction on the said road as aforesaid," — these respondents answering say that the measure proposed in the Resolutions aforesaid is altogether within the Corporate power of these respondents, as they are satisfied this honorable Court will decide when the question comes before it — and that if within the power of these respondents it can only be a fraud on the Complainants by detaining from them their dividends, a matter which it is respectfully suggested this Court is not Competent to enquire into in the present form of proceeding or in this Cause, the law pointing out very clearly the mode of redress open to the Complainants in this regard. *

To so much of the said Bill as charges that the proposed measure will be the inauguration of a policy favoring the Central Ohio Rail Road and injuring if not destroying the interest which the Complainants have in the North Western road, the Baltimore and Ohio Rail Road and the City of Baltimore, these respondents say that the allegation is so utterly vague and intangible as to make it difficult to meet it. It treats the Bill as a Bill quia timet without specifying the injury apprehended. But so

* Over these respondents further answering say that the Central Ohio Rail Road is in no connection with a certain other Rail Road called the Baltimore and Ohio Rail Road and claiming that the name of Baltimore in the title of the Rail Road is a fraud on the other road.

far as it can be answered, these respondents answering say that the interest which they themselves have in the North Western Virginia road, is more than double that of the plaintiffs, that, identified as their interests are in the City of Baltimore, the benefits which they respectively confer on each other are reciprocal, and they would be prejudicing themselves were they to do aught to hurt either the Virginia road or the City to which, through the road of these respondents, it has been made tributary. That with its river trade and its Cincinnati connection the North Western road is in a great degree distinct from and independent of the Central Ohio Road, while the latter will bring to Baltimore a traffic which the former cannot reach and which, if it is not brought to Baltimore by the measures proposed, will unquestionably be diverted in a greater or less degree to a rival City.

And respectfully submitting that they have fully answered the said Bill of Complaint, these respondents pray to be hence dismissed with their reasonable costs in this behalf unjustly sustained.

"Sign" John H. B. Latrobe
for Respondents

Nicholas Latrobe
Solicitor for respondents

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CT. CT.

No. 5 Docket.

Mayor & City Council

vs.

Baltimore & Ohio RR

SUBPŒNA *to answer Bill of Complaint.*

Summoned by
Service on John W Garrett
Presdt.

Edwd R Sparks
Ref.

Filed 28 March 186 3

Thomas

[Equity Subpœna.]

THE STATE OF MARYLAND

To The President & Directors of the Baltimore & Ohio R R. Company.

Of Baltimore City Greeting:

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

The Mayor & City Council of Baltimore

against you in said Court exhibited.

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

Witness, *the Honorable WILLIAM GEORGE KREBS, Judge of our said Court, the* 9th *day of* March 1863

Issued the 11th *day of* March *Anno Domini* 1863

J. Thomas Adams *Clerk*

187 3
1863

Ct. Ct.

No. 5 Docket.

Mayor & City Council

vs.

Balto & O. R. R. Co.

INJUNCTION.

Service admitted
J. W. Garrett
Pres.

Injunction served on the President & Directors of the Baltimore & Ohio Rail Road Co by service on John W. Garrett Presdt March 11. 1863 at 10 minutes after 2 O'clk P.M. in presence of Geo. M. Addison.

Edw. K. Clark
Deft.

Filed 28 March 1863

Thomas

MARYLAND, SCT.

The State of Maryland

To The President & Directors of the Baltimore & Ohio R R Company

Greeting:

Whereas, The Mayor & City Council of Baltimore

has exhibited to us, in our CIRCUIT COURT FOR BALTIMORE CITY, their Bill of Complaint for relief in Equity, and for AN INJUNCTION to restrain you the said

The President & Directors of the Baltimore & Ohio R R Company from making a loan to the Central Ohio R. R. Company or from purchasing the first or any other Mortgage now existing against said Company or from diverting the funds of the said Baltimore & Ohio R R Company for any such purpose.

until the matter can be heard and determined in equity.

Now THEREFORE, these are to COMMAND and strictly to ENJOIN and PROHIBIT you the said

The President & Directors of the Baltimore & Ohio R R Company your Agents or Attorneys from making a loan to the Central Ohio R R Company or from purchasing the first or any other Mortgage, now existing against said Company, or from diverting the funds of the said Baltimore & Ohio R R Company for any such purpose

until the further order of our said Court in the premises.

WITNESS the Honorable WILLIAM GEORGE KREBS, Judge of the Circuit Court for Baltimore City, the 9 day of March 1863

ISSUED the 11 day of March 1863

J Thomas Adams Clerk.

11 — 187 / 1863

Qd 7 Abril 1863

The Mayor & Citizens of Baltimore
vs
The Baltimore & Ohio Rail Road

Motion Circuit Ct for Balto City

W. Adams

Please enter an appeal from the order in this case dissolving the injunction heretofore issued

John L. Thomas
Cit Counsellor

No 9

Agreement of Counsel

8 187/1862

The Mayor & City Council of Balto

Pres & Dirs of Balto & Ohio R R Co

Agreement of Counsel

Filed 4th April 1863

1

The Mayor & City Council of Baltimore
vs
The Baltimore and Ohio Rail Road Company } In Cir. Ct. for Balt. City

It is admitted in the above case that the connection between the Baltimore and Ohio Rail road ~~[illegible]~~ and the Central Ohio Rail Road takes place at Benwood, four miles below Wheeling – where there is a lateral road not quite a third of a mile in length which diverges from the main stem of the Baltimore and Ohio Rail Road, and ends on the Banks of the Ohio River opposite to Bel Air, the station of the Central Ohio Rail road, and that the communication between the two roads is kept up by means of a steam ferry boat for the transfer of goods and passengers

It is agreed that either party may read all acts of Virginia & Maryland which are printed in any authentic form in the same manner as if the same had been referred to & made part of the bill or answer.

It is admitted that the Central Ohio Rail Road runs from Bel air on the west bank of the Ohio River opposite Benwood which is its eastern terminus to Columbus the Capital of Ohio, which is its western terminus. That the entire road lies within the State of Ohio.

Either party to be at liberty to use rail road maps for illustration and to read printed rail road reports and documents

Wm Price for Complt.
Nicholas Latrobe
for respondents

187 1863

Mayor & City Council of Baltimore
vs
The Baltimore & Ohio Rail Road Company

Opinion

Filed 2nd April 1863

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10.56

The Mayor & City Council of Baltimore
vs.
The Baltimore & Ohio Rail Road Co

In the Circuit Court for Baltimore City

Bill for Injunction
Motion to dissolve

The Bill in this case was filed by the Complainant for the purpose of obtaining the interposition of this Court, by way of injunction to prevent the defendant, from "granting a "loan to the Central Ohio Rail Road Co. either "by advancing the money or by the purchase of the first "mortgage on the property, and works of the "said Company," and "from diverting the funds "of the defendant, in aid of the said Central "Ohio Rail Road Co. as above stated, or other-"wise". The sum of money, the advance of which, by loan, purchase, aid to the said Company, or otherwise, the Complainant seeks to prevent is $1,250,000, the amount of what is called the first mortgage upon the works and property of said Company, given to secure the payment of bonds negotiated by it, to pay the costs, and expenses of its works, and ~~debts~~ charges incident thereto,

The standing of the Complainant in Court

to make the complaint, and to ask the relief which it does ~~within this bill~~ is asserted upon the ground, that it is the owner of a large number of shares of the Capital stock of the said Baltimore & Ohio Rail Road Company; That it, the Complainant, has assumed very large responsibilities for the North Western Virginia Rail Road Company, chartered by the State of Virginia which has constructed a road in connection with the said B. & O. R R at Grafton in Va, and extending to Parkersburg on the Ohio river, by endorsing the bonds of the said North Western Va R R Co to the amount of a million, and half dollars; That this road forms the shortest, and most direct avenue for trade, & travel between Baltimore & Cincinnati.

The complainant insists that the said loan, or aid to the said Central Ohio R.R. Co, or purchase of the said mortgage should not be permitted, because it

It would lead to a policy on the part of the defendant favouring the business, and trade of the Ohio Road, & injurious, if not destructive, to the great interest, which the defendant has, in the said Virginia Road, and injurious to the Complainant, as a stockholder in the defendant's road, and as creditor of the said Virginia road

It would be a fraud upon the rights of the Complainant, and other stockholders in the B & O R R Company

And because it is beyond the corporate powers of the said Company.

There are other reasons, of minor importance, suggested in the Bill, against this application of said funds, but they are comprehended, in the same class, with some of those above mentioned, and it is not necessary to make particular reference to them.

In regard to any objections ~~which bear~~ to the action of the defendant, in reference to this transaction, urged by the Complainant, which look to the policy which the defendant may pursue in regard to the said Ohio road, or to the measures it may adopt in consequence of any interest it may acquire therein, it is sufficient to say that this Court in deciding as to the relief prayed in this Bill, cannot consider, or be influenced by, such objections. for the reason that whilst a Court of Equity will restrict a Corporation within the sphere of its chartered powers, it will not interfere, with the course of policy, or with the plans, and measures of expediency, which its officers or managers, may think proper to adopt and pursue, in the legitimate exercise of its powers.

In regard to the charge that the consummation of this transaction would be a fraud upon the defendant, and other stockholders &c, it is not meant of course to charge actual fraud, or fraud in fact, but legal fraud only, growing out of the assumption, and exercise of power not conferred by the Charter of the Company.

The remaining, and important point to be considered, is that which relates to the power of the Baltimore

Ohio R.R. Company to consummate this transaction.

Has this Company, the right, or power under its original charter, or under any supplement thereto, to loan this money, to the said Ohio Company, or to aid it by an advance thereof, or to purchase and take an assignment of this fourth mortgage and the bonds secured thereby? for it is, against its action, in either of the above modes, that the opposition of the complainant is directed.

1. The defendant insists that this right and power is conferred upon it, by the Act of 1836 chap 276 which is a supplement to its charter

2. That it has the right and power to purchase and take an assignment of this mortgage because it is a creditor of the said Ohio Company to the amount of $400,000. for which it holds a fourth mortgage upon the works, and property of that Company, and such purchase and assignment are necessary to prevent a foreclosure of said first mortgage, and sale of the property of said company, at great sacrifice, and the loss of the defendants mortgage claim.

The act of 1836 supplemental to the Charter enacts, "That when in any case, The President & "Directors of the Baltimore & Ohio Rail Road Company "shall be of the opinion that the construction of a rail road "lateral to any part of the road or roads of the said

"~~of the said~~ Company, or in continuation of, or ~~in~~ connec-
"tion with such lateral road, would be advanta-
"geous to said company, but that it would not be
"convenient for them to incur the whole cost of con-
"structing the same, then the said President and
"directors, may on behalf of said company, subscribe
"towards the construction of such lateral, continuing,
"or connecting road, and acquire an interest therein,
"to an extent, not exceeding two fifths of the esti-
"mated cost of constructing any such road".

I understand, that there is no denial of the fact, that the Central Ohio Rail road, is fairly included within the class of "lateral, continuing, or connecting roads" to which the above act applies; Further, it is admitted, that this road is now in connection with the Baltimore, and Ohio Rail Road; and it is not denied that this connection is "advantageous to the said Company".

It is insisted however by the Complainant, that ~~this is~~ the question here is not in regard to "the construction of a road that would be advantageous to the said Company", and "towards the construction of which" as authorized by the said law, the said Company might subscribe, and thus give it aid, but this is the case of a road already constructed, equipped, and in full operation, and according to a proper construction of the law, the defendant

can give it no aid in the manner proposed, and cannot appropriate ~~its~~ funds for any of the purposes above referred to. The complainants contend for a strict, and rigid construction of this supplement to the charter of the said Company, insisting, upon the well established principle, that a corporation can exercise no powers, but those expressly granted by its charter, or such as are incident to, or necessary for, the execution of, the powers granted.

The case upon which they have relied with most confidence, is that of Coleman vs Eastern Counties Railway Company, and English Corporation, ~~and~~ It is reported in 10 Beavens Reps. p1. and bear~~ing~~ a striking resemblance in some respects to the case before the Court. There the directors of ~~two~~ a Railway Company, conceived that it would add to the traffic & profits of the railway if a Steam Packet Company could be formed, communicating between the termination of their road, and the northern ports of Europe and accordingly took proceedings for the establishment of such a company. An injunction was applied for and granted upon the application of one of the Shareholders in the Steam Packet Co. to restrain the directors from entering into the proposed arrangement. Upon a motion to dissolve the injunction it was said, in behalf of the parties who had obtained it, that for the "purposes of promoting the

general interests of the Railway Company they propose to give encouragement, to the establishment of an adjunct to the railway, acting in direct communication with it; and which must inevitably greatly extend the traffic of the railway and increase its profits". The mode in which the encouragement was to be given, was by a guarantee of a certain annual dividend upon the stock paid in by the shareholders in the Steam Packet Co, and upon the dissolution of the Co, the payment of its capital to them, in exchange for a transfer of its assets and property. The Complainants however insisted that the injunction should be continued, "that the powers given by the Legislature to companies are given between the public & the company; that such companies are to be strictly confined to the powers given them by their acts, It is therefore incumbent on the defendants to shew that their act gives them either express, or implied powers of carrying into effect their projected arrangements. It would be contrary to the policy of the law to allow extensive powers give for certain purposes, to be diverted, without the sanction of the legislature, towards a perfectly different object". The Master of the Rolls was of opinion, that the act of Parliament incorporating the railway Company gave it no power to make such an arrangement, and continued the injunc

He said "I am clearly of opinion that the powers that are given by an act of parliament like that now in question, extend no further than is expressly stated in the act, or is necessarily, & properly required, for carrying into effect the undertaking and works, which the act has expressly sanctioned"; "Is there any thing in the Act of Parliament sanctioning such a course of proceeding? Do the powers to construct, maintain, regulate the traffic & imply that the directors are to be at liberty to pledge the funds of the Company for a completely different transaction, in the hope that it may be a profitable one, and add to the profits of the Rail-way Company? Surely there is nothing in the powers given by this act of Parliament, which can authorize that". The learned Judge however in the course of his opinion says "I think it right to observe that companies of this kind have so recently been introduced into this Country, that neither the legislature, nor Courts of Justice have yet been able to understand all the different lights in which their transactions ought properly to be viewed" And he further said "it has been argued, that "I must either allow this to be done, or that I must hold that nothing can be done, that is at all out of the express words of

the act of parliament". This he by no means admitted but in reply to this argument said "I shall remain of opinion, until it has been otherwise decided by higher authority, that this is not within the powers given by the act of parliament, and when another and a different case is brought before the Court, it will be judged of by the circumstances which attend it".

I have considered this case somewhat at large, because the Solicitor for the complainant has seemed willing to rely upon it, as by itself sustaining the principles of strict, and rigid construction which should govern this Court, in defining the powers of the road company under its charter, and the supplements to it; but I cannot discover, that it has the force, and weight, for that purpose, which is ascribed to it.

In the first place the distinguished V. Chan who decided it, in 1846 invidestly acknowledges, that he had but imperfect lights, to guide him, to a proper view of these transactions of these companies, because, at that time, they had but recently been introduced into the country.

In the second place, he regarded the arrangement to which that company was about engaging, as a diversion of its funds from its legitimate business, to "a completely different transaction"

And in the third place he declined to admit, as a consequence of this decision, "that he

held that nothing could be done that is at all out of the express words of the act of Parliament "creating the company, the construction which the Complainant contends for, and declared that another and different case would be judged of by the circumstances attending it. I am therefore, of opinion that there is nothing in this authority which demands of me the adoption of the strict and rigid ~~[illegible]~~ construction of the charter of the Balt & O R. R Co. which the Complainant contends for.

If this Court then ~~[illegible]~~ is free to adopt one, or the other of these rules of construction, what guide has it to direct its choice?

Smith in his commentaries on Statutory and constitutional construction, sec. 491 says "The reason "of the Statute, that is, the motives which led to "the making of it, the object in contemplation at the "time the act was passed, is another criterion by "which to ascertain the true meaning of the act. "Attention should be paid to the circumstances "whenever there is question either of explaining "an obscure, ambiguous, indeterminate passage "in the act of the legislature, or of applying it to "a particular case" so in sec. 448. "In expressing to what is called "extensive interpretation", he says "As we extend a clause to those cases, which "though not comprised within the meaning of the

"terms, are nevertheless comprised in the intention of "that clause, and included in the reason that pro-"duced it, in like manner &c". It is needless to multi-ply references to authorities, to prove what will be found distinctly stated by elementary authors, and set forth in numerous decisions of high authority. That Courts in expounding and construing Statutes, are not confined the mere words of the law, to the meaning only, of the terms used, and to a literal interpretation of its language, but must take a more enlarged view, and give their attention to "the reason of the statute", the motives which led to the making of it", "the object in contemplation at the time the act was passed", and "to the circumstances" under which it was enacted.

This duty necessarily requires of me an historical glance at least at the origin of the Baltimore & Ohio Railroad Company. It was brought into being in the year 1826, by the enterprize, and energy, of certain leading members of this community who sought to give this city a fresh start upon a new track, in the race of competition, for the trade of the West. They were the pioneers, in the great rail road enterprize, at a time, when there was no such ~~no~~ ~~rail~~ between trading points, in the world, and but two short samples ~~of the~~ in this country used for removing coal from mines to a near point of delivery, ~~in this country~~, and the like number used for the same purpose, in England. It would be out of place for me to indulge a natural feeling of State pride, by more than a simple reference

to the gigantic development of this mighty system which had its first impetus, in the determined resolution, and early action of these public spirited individuals, and the liberal grants of power from legislative authority. I have referred only to legitimate subjects of judicial ~~investigation~~ attention, for the purpose of ascertaining, the reason, motives, objects & purposes, in contemplation of the legislature, when the Charter of this Company was granted & this supplement passed, & the extent & course of the ramifications, & of such roads & connections with which, would be "advantageous to the said company"

The motive then, which gave rise to this work was rivalship with other cities, and the object & purpose was, to attract to the City of Baltimore the trade of the growing west for which they were competitors with it. These facts must be weighed & considered by the Court, in determining the construction to be given to this supplement, and deciding as to the cases, and transactions to which it may properly apply.

But there ~~is~~ is, ~~was~~ fortunately in the decision of the highest tribunal of this State, a clear & distinct expression of opinion, upon ~~on~~ the above principles and rules of construction ~~collected~~ brought together from the highest authorities, which relieves this Court from much ~~of~~ ~~the~~ responsibility in applying them to this case

In the case of the Mayor & City Council of Baltimore

vs The Baltimore & Ohio Rail Road Company 6 Gill. 288. The Court of Appeals ~~cases~~ employs this language

"It is a matter of notoriety, and history, that in "chartering the Baltimore & Ohio Rail Road Com- "pany, the legislature, and the people of Maryland, "regarded the completion of the work as a great "State object, tending eminently to promote the "future wealth and prosperity of Maryland, & "particularly of the City of Baltimore, and to "contribute to the permanence of the Union of "the United States. They were also duly sen- "sible that this gigantic, and patriotic under- "taking could not be accomplished but at greater "pecuniary expense, and hazard of loss to its undertakers, "As an encouragement to the enterprize they "were willing to confer on it every immunity, "privilege and exemption, which could reason- "ably be required, and tend to its completion. "In expounding therefore, those provisions of "the Charter of the Company, by which its "expressed privileges are imparted, liberal "rules of interpretation, for its benefit ought "to be adopted to effectuate the benevolent de- "signs of the legislature, and not such rules of "restriction, and limitation, as should be ap- "plied, to the charters of companies, incorpo- "rated, for the peculiar benefit of their stockholders"

In that case the Court gave a construction to certain clauses in the charter of the Company not according to their literal import, or verbal meaning of the phrases, but in conformity with their views of the intention, and purpose of the clauses.

Now what is the object, and purpose of the arrangement, or transaction proposed by the Company? It is unquestionably, to secure the benefits & advantages to result from a connection with an important road in continuation of a lateral road, connected with their main stem. The Central Ohio Road is in jeopardy from legal proceedings, on the part of a creditor who has the power to compel a sale of its works, and thereby throw them into such hands, as that the Baltimore & Ohio road will derive no benefit and advantage from a connection with the former, but will lose all the trade, which it now contributes, To secure, and retain this connection, which the President & directors deem greatly "advantageous to the Company" they propose to take the place of this creditor who holds the first mortgage on the works & property of this debtor, given to secure bonds executed by it. The money for which these bonds were given was no doubt applied "to aid the construction of the Central Ohio Road, and "to pay the cost of constructing" the same. Now according to the

strict and literal language and terms of this supplement, the President & Directors of the Balt & Ohio road would have been authorized to subscribe low and the construction of this road whilst it was in progress, and to have paid two fifths of its estimated cost, and to have thus acquired an interest therein to that extent. This might have been done to bring into existence a road which was advantageous to the defendant. These Pres't & Directors being of opinion that the existence of this road, so far as they are interested in it, is threatened, propose merely to do now what they had an unquestioned right to do before the work was completed, to advance to parties who originally contributed the money to pay the cost of constructing the work, the money so furnished by them. This in my opinion is to "effectuate the designs of the legislature" in passing this supplement, to give to the Company such an advantage, and benefit as the law intended it should acquire by original subscription to the cost of the work, and substantially in the manner authorized, though not at the period designated in the very words of the law. It certainly cannot be objected in this case as it was in the case from Beavers above referred to, that the application by the Rail Road Company, of its fund to the

the consummation of this transaction, would be "to divert them towards a perfectly different object" from that contemplated by this supplement. It was evidently because the learned Judge who decided that case believed that the funds of the company would be so diverted, that he denied the power in the Company to be concerned in the establishment of a line of steam boats. His language is, "to the power to construct ~~to build cars, change the tariff~~ regulate & maintain the traffic, to imply the liberty to pledge the funds of the Company for a completely different transaction". The Rail road Company, here by no means designs to apply its funds to "a perfectly different object", or "for a completely different transaction" from that authorized by their supplemental charter. That gives them power, to aid a road that may be advantageous to their road; ~~by~~ to give this aid by the appropriation of money towards the cost of such road and thus to acquire an interest in such ~~[illegible]~~ road to the extent of the money so expended. This is precisely what the Rail Road Company proposes to do, varying only from the literal terms of the authority, in regard to time at which the aid is furnished, the aid being given after the road has been completed by taking the place of those who originally supplied the money to pay the costs of its construction. This is far from being a "perfectly different object"

or a completely different transaction." When the thing done by a corporation is substantially that which its charter authorized, Courts have not been disposed to declare the act unauthorized though not strictly, and literally the same as that mentioned in the law. In the case of Thompson & others 3 Sanford Chan. Rep. 625. A rail road Company was chartered with power to build a bridge for their railway across a river, At or near the place where it was to cross a private bridge had been built by individuals duly authorized by law; the Company purchased the bridge of the owners, There the objection was made that the Company thought it had the power to build a bridge, yet it had no power to purchase one already built; but the Court held that the owners were authorized to sell, & the Company to buy the bridge. If by an adherence to the literal meaning, and construction ~~of the language~~ of the language of this supplement I should deny to the Company the power, and right to consummate this transaction, I am of opinion that I would disregard the manifest direction of the Court of Appeals in the case above cited "to expound the provisions of this Charter" and its supplements by "liberal rules of interpretation for the benefit of the Company, to effectuate the benevolent design of the legislature".

But it is insisted by the Company, that independent by of any power derived from a proper construction of its charter, ~~the Company~~ it has the right, as a creditor of the Central Ohio Road; and the holder of its bonds secured by mortgage; to protect itself, and fortify the security which it already holds, by taking an assignment of this ~~first~~ mortgage, previous to that which it ~~holds~~ already has.

An examination of the authorities will shew, that it is well settled, that where a corporation is authorized by its charter, to become a debtor by borrowing money, or otherwise; or to become a creditor by advancing money, or dealing with persons in such manner as that they ~~by the~~ lawful transactions they become its debtors; it has in the one case, the incidental right to take mortgages, assignments of stock, or other property, of to secure the moneys, owing to it by its debtors, and in the other case, the like right to give mortgages of its property, or in other usual manner, to secure the debts which it lawful contracts. It has in fact all the rights and powers incidental to the reciprocal relation of debtor and creditor. As creditor it may compromise with its debtor; give him time; accept something else in satisfaction; give him a release. U. S. Bank of Augusta vs Earle 13. Pet. 521. It may hold lands in another State, which have been conveyed to it as security for, or in payment of a debt. 5 McLean 111. Dean, J. And

where a statute prohibited banks from purchasing, and holding real estate, it was held in construction of this provision, that a Bank which had lawfully obtained a mortgage on lands, to secure an existing debt, might make its security available by purchasing the property. 30 Miss. 410. 11 Barb. 213. See also Angel & Ames on corporations Sec. 191. 11 Alab. 437, 15 Alab. 472, 1 Pratt 364, 21. Ann 441. 4 Johns Chan, 370, 1 Green N.J. Chan 117. 1 R.I. 347. 3 Woodb. & Ill 112.

This Company is already, and has been for many years the holder of bonds of the central Ohio R. Road to the amount of $400,000 dollars. The power of the Company to make an investment of its money in these bonds, at the it was made, was not questioned by the Corporation of Baltimore nor by any one else; and it now proposes to do nothing more than it did then, though on a larger scale; and upon the point just considered, I have no doubt that, in the exercise of the rights of a cautious, and prudent creditor, it has the power to take the assignment of this first mortgage, with a view to and fortify its lien for and further secure the debt which this Ohio Company already owes to it. As to what has been said by way of objection to this transaction, that the Company will go beyond the limits of the State to consummate, and exercise an extra-territorial power, and acquire an extra-

territorial, it is sufficient to say, that Baltimore & Ohio Rail Road Company, is in its very nature extra-territorial. It was incorporated, for the purpose of constructing a road, from the City of Baltimore, to a point far beyond the limits of the State, to the Ohio river. To do this it had to deal with a foreign jurisdiction, to acquire extra territorial, rights and powers, which were cheerfully granted to it by a neighbouring state, and under which it completed its work to a point, on that river. So under the supplement, which I have been considering, the power of the company to give aid, by contributing to the cost of constructing lateral roads &c. is not restricted to this State, but may be extended, to any such roads, through out of the State of Maryland.

I should not do justice to myself, in view of the responsible task which the decision of this case devolves upon me, if closing this opinion, without referring, in support of my action ~~in that case~~ to a decision, of high judicial authority in England, shewing the course which the Courts of Equity in that country pursue in cases like this, where some doubt may be raised in regard to the rightful exercise of power by a corporate body; and where, the power if it be not allowed, and exercised, at the time, ~~in time~~, ~~but~~, with the fruits of it, be forever lost.

It is case of the ~~Attorney General~~ The Mayor &c of Liverpool reported in 1 Mylne & Craig 171

The Corporation by its Common Council had determined to raise a sum of money exceeding half a million of dollars, and in furtherance of their design were negotiating for a loan upon its bonds, and mortgage of its corporate property, to be appropriated, to a specific purpose admitted to be laudable and praiseworthy; The parties objecting to the measure through their information filed by the Attorney General were merchants in that city; and they submitted to the Court that the "raising of such loan, and the proposed application thereof when raised, would be in direct contravention of the scope of the Act of Parliament, and of the intention of the Legislature in that behalf, and prejudicial to the rights and interests of the rate payers of the borough of Liverpool &c they also referred to the financial condition, and indebtedness of the corporation, to shew that such application of funds, would be improvident, and improper under the circumstances, and alleged that such proceedings were a fraud upon the act, and an abuse of powers, and they prayed that the defendants might be restrained by injunction from carrying into effect the proposed loan, and from taking up at interest, money for the purpose of making the expenditures contemplated. An injunction ex parte was granted, and upon the motion to dissolve it, it was said by the Solicitor in favour of the motion, "that it was unnecessary to discuss the conduct of the defendants, or the pro

purely of the particular appropriations which they propose to make. These may be assumed to be strictly correct, and laudable, yet it will by no means follow that the Court will dissolve the injunction or leave them at liberty to carry their plan into execution. The question is strictly one of right. It was insisted, as it is here, that what the defendants proposed to do "was wholly repugnant, not only to the particular provisions, but to the general scope, and purview of the act of Parliament, and "directly in fraud, ~~of the~~ and contravention of its provisions and spirit". The decision was made by Ld Langdale Master of the Rolls; He said "The question is whether under the provisions of the "Statute a case is raised which makes it incumbent "on the Court to prohibit the act which the corporation "of Sevirport are about to carry into effect". He continues "as I have found grounds, to support the order I propose to make, (which was to dissolve the injunction) independently of expressing any opinions which may arise in the construction of that Act, my purpose is, rather to state difficulties which may be supposed to exist on the face of the Statute, than to give a judicial opinion, on any of these questions". "I have no doubt whatever of the jurisdiction of this Court to prevent any thing from being done, which is clearly against the object, principle, and provisions of the Statute". He says further that the State ~~is~~ rate is par-

ined in words which may leave it to considerable discussion, what is it intention, and effect, and whether or not the subject matter in question comes within its provisions" — And further "It is the right to do the act that is challenged, and those who differ with the corporation as to the propriety of the act, or the power to do the act are certainly entitled to put the question in a train for adjudication". And he adds that "if the defendants can do this at all, they can only do it between the present time, and the 26th of this month". It is obvious, therefore, that to continue the injunction, instead of being as it ordinarily is, the means of preserving rights, would in this instance operate to destroy them. On the other hand, the only object I could have in continuing the injunction, would be to prevent the property from being injured, that is to say, to prevent its being exposed to any danger from the act proposed to be done. Now I do not find that any danger exists as to the property in question. It is a large sum of money, but the case is not put upon that; it is not put upon the circumstance of their being any danger from the mode in which the property is intended to be dealt with; Balancing the inconveniences which would arise from continuing the injunction, and from dissolving it, I should undoubtedly run much greater risk of doing mischief by continuing the injunction than I can do

harm, by dissolving it. I think, therefore, exercising the discretion which is vested in the Court in cases of this kind, my proper course is to dissolve the injunction." The case cited and that at bar are so similar that I may almost adopt the language above quoted,

The most that can be said in regard to the meaning of this supplement, is that it is doubtful—

Here the transaction contemplated by the Company must be consummated immediately otherwise the benefits to result from it, will be lost, as proceedings, are now ready, in the proper Court in Ohio, for an immediate sale of the property of the Ohio Company.— Here the case has not been put upon the danger to the money to be invested in this first mortgage, or that it will be lost by being so invested. The works and property of the Ohio Road have cost more than 7,000,000 dollars, and it is not pretended that this first mortgage is not perfectly safe, and that the property is not amply sufficient to secure it. As this purchase or investment if made at all, must be made at once, as this question of right to make it is merely doubtful, and as there is no danger of losing the money to be invested, I must adopting the view of the learned judge above whose language I have quoted, dissolve this injunction

Wm Key Webb

10

Mayor & City Council of Balto. vs. The President & Directors of the B. & O. R. R. Co.

187 / 1863

order

order April 7th 1863

Fd 7th April 1863

Order Overruling Demurrer

No. 14

Mayor & City Council of Baltimore vs. The President & Directors of the B. & O. R. R. Co.	In the Circuit Court for Baltimore City. March Term 1863

The Defendant having moved to dissolve the Injunction heretofore issued in this Cause, the Solicitors of the respective parties were heard & the proceedings read & considered.

It is thereupon this 7th. day of April 1863, by the Circuit Court for Baltimore City Ordered, that the Injunction heretofore issued in this Cause, be and the same is hereby dissolved.

Wm. Gerkrebs

12 187

The Mayor & City Council of Bel 1863

vs

The Bel & Ohio Rail Road Co —

Mr Adams
Mr Cox for Pltf
Mr Pet
J L Thomas Jr
C C

Fd. 10 April 1863

No. 15

Petition of J. L. Thomas

To The Hon
William Geo Hunt
Judge of the Circuit Court
for Butler Co

The Petition of the Knox Stockholders of Butler Co. most respectfully represent that heretofore an injunction was issued restraining the Butler & Ohio Rail Road Co from investing any of the funds of said road in the Centre Ohio Road. and other persons. as by reference to said injunction will appear.

That the injunction so issued has been dissolved by this Court — and an order has been passed to dissolve said injunction.

That an appeal has been entered on the part of said Complainants from the order dissolving said injunction —

Your Petitioners asks that it may be allowed to give such a bond as will stay the operation and effect of the order dissolving said injunction — or that upon their giving of said Bond that the order dissolving the same may be suspended until said appeal be heard & determined

John L Thomas Jr
C & for Complainants

187
1863

The Mayor & City Council of Baltimore

vs

The President & Directors of Baltimore & Ohio Rail Road

Certificate of Affirmence by the Court of Appeals

Fd 22° April 1864

The Mayor and City Council of Baltimore vs Baltimore and Ohio Rail Road Co.	Court of Appeals of Md. December Term 1863

The Appeal in this cause standing ready for hearing, was argued by the Counsel of the respective parties, and the proceedings have since been read and considered by the Court, It is thereupon this 24th day of February 1864 by the Court of Appeals of Maryland, and by the authority thereof adjudged, ordered and decreed that the orders of the Circuit Court for Baltimore City passed on the Seventh day of April 1863 and on the 24th day of April 1863 from which the appeal in this cause was taken, be and the same are hereby Affirmed with Costs to the Appellees and the cause hereby remanded to said Circuit Court for further proceedings

Jas. L. Bartol
Bruce L. Goldsborough
S. Morris Cochran

State of Maryland, sct.

I George Carle Clerk of the Court of Appeals of the State of Maryland do hereby Certify that the aforegoing is truly taken from the record and proceedings of the Court of Appeals

aforesaid

In Testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals this Eighth day of April A.D. 1864

Geo. Earle, Clerk
Court of Appeals of Md.

The Mayor and City Council of Baltimore vs The Baltimore and Ohio Rail Road Company	Court of Appeals of Md. December Term 1863 James L. Bartol, Justice delivered the opinion of this Court.

The question presented by this appeal is one of great importance, both on account of the magnitude of the interests involved in the cause and of the general importance of the principles involved in its decision.

We have read with much care the elaborate opinion delivered by the learned Judge of the Circuit Court, and examined the adjudged cases in England and this Country cited by him, as well as those referred to in the argument, and are of opinion that the conclusions stated by him are in general correct. It is not necessary for us however, in disposing of the case, to enter upon the discussion of all the points presented in the briefs, and argued with so much ability by Counsel.

The facts presented by the record so far as it is material to refer to them may be briefly stated as follows. By a lateral road which diverges from the main stem, the Balto: & Ohio Rail Road extends to a place called Benwood on the Bank of the Ohio River, opposite

Bel Air the station of the Central Ohio Rail Road, with which it connects by means of a steam ferry boat, for the Benefit of goods and passengers. Sometime before the filing of the bill in this cause, the appellee had loaned to the Central Ohio Road $400:000 which was secured by the bonds of the latter, and a mortgage of its property, subject however to the encumbrance of prior mortgages amounting in the aggregate to $3000:000. The first and second mortgages, constituting the first mortgage on the whole road amount to the sum of $1.250000. On the same day this bill of complaint was exhibited, the appellee, at a meeting of the board of directors adopted the resolution, to be found ante page, and the object of the bill was to obtain an injunction prohibiting the appellee from carrying into effect the object and purpose of the resolution. The ground upon which the interposition of the Court was invoked, was as alleged in the bill, because the act contemplated by the resolution was "beyond the corporate powers of the Baltimore and Ohio Rail Road Company"

The appellee claims the right to make the advance and appropriation of money for the purpose stated in the resolution on two grounds.

1st. Under the supplement to its Charter passed in 1836 ch 276.

purpose stated in the resolution on two grounds.

1st. Under the supplement to its Charter passed in 1836 ch 276.

2nd. Because being a mortgage creditor of the Central Ohio Rail Road Company to the amount of $400,000 it has the power to purchase the prior mortgage for the purpose of preventing a foreclosure of the same, and the consequent loss of its own mortgage claim.

These propositions will be briefly considered, in the light of the well established principles of law, governing the construction of Statutes conferring powers upon incorporated companies. Those principles are stated with great precision and clearness in the first, second third and fourth points of the appellants brief. To each one of which we assent, without repeating them here, except that we do not agree to the proposition stated in the last part of their fourth point "that a corporation cannot exercise any implied powers, except such as are shown to be incidental to its very existence" To adopt such a principle would be carrying the doctrine of strict construction too far, and would in many cases defeat the ends and objects of the Charter.

Acts of incorporation, like other Statutes, must have a reasonable and sensible interpretation, so as to accomplish the intention of the

legislature, and all such powers are implied as may be necessary to carry into effect those expressly granted; that is to say such as are reasonably incidental to the exercise of the express powers.

It must also be borne in mind that we are not dealing with an ordinary private corporation, created only for the pecuniary benefit of its stockholders. The powers granted to the appellee are of the most extensive and comprehensive kind, involving in their exercise great public interests to promote which was the chief object of its Charter. Looking to the great and important objects which the legislature designed to accomplish by the Charter of the Baltimore & Ohio Rail Road Company, the Court of Appeals (in 6 Gill 297) have declared the rules by which its Charter ought to be construed.

After stating that the Legislature regarded the completion of the work as a "great state object," the Court say: "In expounding, therefore, those provisions of the Charter of the "Company, by which its expressed privileges "and exemptions are imparted, liberal rules "of interpretation for its benefit ought to be "adopted to effectuate the benevolent designs "of the legislature, and not such rules of

"restriction, and limitation as should be ap-
"plied to the Charters of Companies incorpo-
"rated for the peculiar benefit of their Stock-
"holders."

We come now to the supplement of 1836 ch. 276, and find the Appellee authorized, according to its discretion "to subscribe towards "the construction of any lateral, Continuing, "or connecting road, and to acquire an interest "therein to an extent not exceeding two fifts "of its estimated cost."

We are clearly of the opinion, upon the agreed facts in this record, that the Central Ohio Road is a road connecting with the Baltimore & Ohio rail road, within the meaning of the act of 1836, and that consequently the Appellee possessed the express power under its Charter, to subscribe for, or aid in its construction to the extent declared in the act. Under such a power the appellee might lawfully loan or furnish money to the Ohio Company to aid in its construction and take a mortgage or other security therefor. We adopt the rule stated by the Court in 3 Sandfords Ch. R. 625 "That where the thing done by a corporation is substantially that which its Charter authorized, Courts have not been disposed to declare the act unauthorized, though not strictly and literally

the same as that mentioned in the law"
It is not necessary for this Court to express any opinion upon the abstract question, whether the appellee would be authorized, under the act of 1836, without reference to its existing claim against the Ohio Company to make the appropriation necessary to acquire the first Mortgage claim against that Company, with the view, and purpose of controlling the working of that road so as to promote the great interests involved in the successful operations of the Baltimore & Ohio Rail Road.
The appellee, was a creditor of the Ohio Company to a large amount. No allegation, is made in the bill that the debt so existing was not lawfully created, and within the corporate powers of the appellee.
Now one of the purposes declared in the Resolution for making the advance necessary to acquire the first Mortgage, was for the security of the debt already due.
This Court cannot say that such a purpose was not perfectly legitimate and proper, and the means proposed fairly within the implied powers of the Company.
In such a case the decision of questions of expediency, as to the fitness of the means employed, are properly confided by the law

to the board of directors. Courts of Justice

employed, are properly confided by the law

to the board of directors. Courts of Justice will not undertake to pass upon them, they are manifestly incompetent to the task, and to attempt to do so would oftendefeat the ends of the law, Their province is to determine only whether the Corporation, in the act complained of, has exceeded its Corporate powers: and having arrived at the conclusion in the case before us, that the bill of Complaint is not well founded in that behalf the order of the Circuit Court dissolving the injunction will be affirmed We concur in the ruling of the Judge of the Circuit Court upon the question presented by the second appeal, and for the reasons assigned by him in his opinion thereon, we affirm that order also.

Orders Affirmed.

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Test
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Court of appeals of Md.

13

Mayor & City Council
187
1863

Baltimore & Ohio R R Co

Opinion

Opd 24 April 1863

Opinion of Court
No. 16

The Mayor & City Council of Balto
&
The Balto & Ohio R. Road Co

In the Circuit Court for Baltimore City
Order ~~continuing~~ dissolving Injunction
In the matter of the compliance of a bond under the 5th Art of the Code

On the 7th day of April 1863 this Court passed an order ~~continuing~~ dissolving the injunction heretofore issued in this cause, which restrained the Rail Road Company, from investing its funds to the amount of twelve hundred and fifty thousand dollars in the purchase of bonds of the Central Ohio Rail Road, called the first mortgage bonds.

Under the provision of the 21 sec. of the 5th Art. of the Code, which allows an appeal "from an order dissolving an injunction", the Complainant has prayed an appeal from the order so passed, which has been granted.

In addition to the privilege of appeal, of which the Complainant has thus availed itself, it desires to obtain the benefit of the 23 sec. of the same Article of the Code, which declares that "No appeal "from any order, shall stay the execution, or sus- "pend the operation of such order, unless the party "praying the appeal, shall give bond, with security, "to indemnify the other party, from all loss, and "injury which said party may sustain by reason

"of such appeal, and the staying the operation of "such order; such bond to be approved by the judge "of the Court where the proceedings are pending;" &c

For the purpose of placing the complainant in a condition to obtain the benefit of this section the Solicitor of the Complainant tenders to the Court for its approval a Bond with security to be signed by the Mayor, with the seal of the City thereto attached by the officer having charge thereof, in such penalty as the Court may prescribe and in the condition required by said section.

It is to be observed that a Bond approved by the Court under this section must be sufficient to indemnify the other party from all loss, and injury which such party may sustain by reason of the appeal, and staying the operation of the order.

If then the operation of the order passed by this Court dissolving this Injunction is to be stayed, and the injunction consequently restored, and the Rail road company thus prevented from making this investment, the Corporation of Baltimore must indemnify the Company from all the loss, and injury which it may sustain thereby, by giving the required bond.

One of the objects to be accomplished by the purchase is to prevent the loss of its mortgage claim for $400,000, and arrears of interest amounting now to more than $600,000: another is to secure a valuable trade which it may lose if this first mortgage

should pass into the hands of a rival company. To cover the damage which the company may sustain by lapses such as these, the penalty of the bond should be of very large amount, several millions of dollars could not be deemed unreasonable for this purpose. In Blondheim vs Moore 11 Md 372. The Court of Appeals says "The Bond is given for the express purpose of indemnifying" the other party "from all loss, and injury which he may sustain because of the appeal. The act provides, that the bond shall be approved by the judge & and we are bound to assume this power will be exercised with every caution, and not until the court is fully certified of its sufficiency." It will be perceived then, that the responsibility imposed upon the Court in reference to this bond is of a most serious and weighty character.

The conclusion however to which I have come, upon the question, of the power of the Mayor, or any other official agent, of the corporation, to execute a bond of this character, or to enter into a contract of the nature which such an obligation of this kind would create, is such, that it is not necessary for me to fix a penalty for this bond.

In my opinion no officer of the Corporation had such power.

To perceive distinctly the point of controversy in this matter, it is proper to keep in mind, that-

this view does not affect the power of the Mayor to institute legal proceedings in the exercise of the right of the Corporation "to sue", given to it by its charter, nor to his right to take an appeal, as has been done in this case, from the decree or judgment of an inferior Court; nor does it touch the question whether the Mayor & City can by ordinance, or resolution, authorize, and empower the Mayor, or any other official agent to execute such a Bond as the Code requires for the purposes aforesaid, such powers may be undisputed, and in this particular case it is conceded that he has the power to take an appeal, and to prosecute it to a final result, which can be done without giving such bond,

The simple question then is, Can the Mayor or any other officer of the Corporation, bind it by such a bond, or obligation as is proposed to be given under this Section of the Code?

No ordinance, or resolution of the Corporation, has been exhibited, to the Court, conferring such power upon him, nor is it insisted that he possesses it by virtue of any such ordinance, or resolution.

Assuming that he has power not derived from ordinance, ~~to bind~~ as the agent of the corporation, to bind it in some cases by contract or obligations, yet this could only apply to contracts necessary & proper ~~contracts~~ to carry out the purposes and objects of ~~the corporation~~ its charter; and not to one of this character which has no connection with such purpo-

poses, and objects. The right of the Mayor, however, to give this bond, is not claimed by virtue of any ordinance, but it is insisted, that it is incident, to the power, which it is said, he has, to cause suits to be brought, on behalf of the corporation, and to prosecute appeals from judgments, or decrees rendered against it.

Now if he has such power, to prosecute suits, and appeals, he cannot justly claim as incident thereto, any powers or rights not necessary to enable him to prosecute suits, or as in this case to prosecute an appeal. The giving of such a bond is by no means necessary to the complete exercise of the right, or privilege of appeal it can be prosecuted as fully without it, as with it. and consequently it can not be claimed as incident to the power of taking an appeal in such a case,

Such a Bond, as that which it is proposed to give, in connection with this appeal, would be the contract or obligation of the Corporation of the City.

In reference to contracts made by the corporation it will be found, on reference to the ordinances, prescribing the duties, of certain officers connected with its fiscal departments, and to other municipal legislation, That all contracts made by the corporation, must be directed, or authorized by the Council, the legislative department of the City government. The correctness of this view, I think is manifest from the provisions of the Revised ordi

nances of the City No 9. entitled "an ordinance to appoint a Comptroller, and prescribing his duties" It's 4th section provides "That the said Comptroller shall examine all contracts made by the City officers", "He shall report within thirty days after the meeting of the council in annual session, all contracts made by the corporation, as directed, or authorized by the council".

Whilst there can be no doubt from the language of these quotations, that contracts can be made by certain City officers, and it may be in some cases by the Mayor, yet it is quite as clear that if they are to be regarded as "contracts made by the corporation" they "must be made" as directed or authorized by the Council", otherwise they will not have obligatory force to bind the corporation,

Again in the second section of this ordinance it is declared "that it shall be the duty of said comptroller to examine all accounts in which the corporation is concerned either as debtor, or creditor, where provision for the settlement thereof is made by law, and where no such provision has been made, to report ~~the same~~ to the City council ~~through~~ facts relating thereto, with his opinion thereon". From this appears that no claim against the corporation as debtor, such as a claim upon this bond would be, can be settled, unless pro-

vision for the settlement of it had been made by law. This officer in the discharge of the important and responsible duty imposed upon him by this ordinance, would necessarily enquire, whenever a claim against the corporation as debtor was submitted to him, whether the officer who entered into the contract, or obligation was legally authorized to do so? Or if he was not at the time he entered into it, whether the City Council had ratified his act, and made provision for the settlement of the debt.?

The duty to be performed by this officer, shews how important it is, that every party, who enters into a contract with an officer of the City, or takes an obligation from him, intended to bind the corporation, should be satisfied that the officer is authorized by law, or ordinance to bind it in such manner. Such officer should be prepared to point out the ordinance, which gave him the power to enter into such contract, or obligation, or to shew that the power or right to do so was so necessarily incident to some power conferred upon him by ordinance, that no reasonable doubt could exist upon the subject, otherwise at some distant day, some future comptroller may condemn the claim arising out of it, and report it (to the Council) (which may not think it proper to make provision for the settlement of it, with his opinion against it) and thus great

loss and damage may be incurred, all of which might have been avoided if it had been clearly shewn at the time the contract was entered into by the city officer, that he was acting under an ordinance of the City in making the contract. Such considerations as the foregoing, would admonish any private individual, to act with caution, in transactions with city officers in which they assume to bind the Corporation. This Court therefore in a matter of so much magnitude as the obligation now proposed to be assumed for the corporation, and intended to indemnify the Railroad Company against the heavy losses that it may sustain, must act with the utmost caution, and not take a bond in regard to the obligation, force, or sufficiency, of which, any reasonable doubt can be entertained.

In confirmation of the views above expressed in regard to the necessity for an ordinance of the council directing and authorizing the making, of all contracts which are to bind the corporation, I refer to the 5 Section of Ordinance 8. which provides for the appointment of a Register & which shews that if the contract or obligation requires the seal of the City to be attached to it, as this bond would, it must appear that ~~the~~ seal is called for "in a case in which it is required by an ordinance of the Corporation". That section directs that the Register shall take under his charge the corporate seal of the City, and

use it, in all cases which now are, or may hereafter be required, either by the Laws of the United States, the Several States, the ordinances of this Corporation, or the usage, and customs of nations."

It is so clear upon principle, and from reasons derived from the legislation of the Corporation, that such a bond as this could not be given so as to bind it, without express authority conferred by ordinance, as to be almost unnecessary to refer to any decided cases on the subject. There is one however which should not pass unnoticed, because its analogy to this is very close, and because it decides the principle which I have adopted to regulate my action. It is reported in 30. Vermont (Shaw) Reports pl. 171 in the name of The Bank of Middlebury vs The Washington & Rutland Rail Road Co. That was the case of an action against that Rail Road Co on a Replevin bond which was on its face executed by the said Rail Road Company by Geo. W Strong, president of said Company, and there was a question raised as to the validity of the said Bond on the ground that there was a want of authority in the President of the said Company, to execute the Bond in behalf of the corporation. The Judge who decided the case below and whose judgment was affirmed, said "That George W Strong as President & Director of said Company has no incidental power which would enable him, to execute the replevin Bond so as to bind the Company but it must be found "that the board of directors of

a meeting where the major part of them were present unitedly assented to the execution of the Replevin Bond by Strong as their President in behalf of the Company, this would confer upon him a power to execute it"
The Chief Justice in deciding the case above says "Nothing more is requisite than to shew the authority of the agent to contract in behalf of the Company in the particular form, that is, with a Seal. To this purpose it is required to shew the authority of the agent to make the contract in some form. That does not seem to be question in the present case. The case shews the express assent of the majority of the board of directors. There is no ground to question that a corporation is bound by the action of a majority of the board of directors, expressed in the usual mode which they adopt in the transaction of the business of the board. And he proceeds to say
2, It must appear that the majority of the board of directors assented to the execution of a contract of the class in question, or that they subsequently adopted it". I am therefore of opinion that the Mayor has no power or authority to execute a bond of the character offered; nor has any other officer of the city such power or authority, and must therefore decline approving such a bond

Wm. Geo. Krebs

14 — 187
1863

Mayor & City Council

vs

Baltimore & Ohio RR Co

Fd 24th April 1863

Mayor & City Council
of Baltimore
vs
The Balto & Ohio R.R. Co.

In the Circuit Court
for
Baltimore City

Mr Adams.

Please enter an appeal from the decision of the Court in this cause of 24th April 1863 & transmitts both appeals in the same record

April 25 - 1863.

Jno Price
Atty for the City