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No. 13 Special
Docket for
April term
1865

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Brief for use
of Mr. Macken

For Appellant
WALTER JOHNSON,
VINCENT W. MACKEN,
JOHN CARSON.

v
The complainants could have found objection and relief
for opening streets.
in the court of law, upon appeal from the commissioners

No. 13.—Special Docket.

IN THE COURT OF APPEALS OF MARYLAND,

APRIL TERM, 1865.

THE MAYOR AND CITY COUNCIL OF BALTIMORE, Appellant,

lant,

vs. VICTOR CLUNET & OTHERS, Appellees.

Appeal from the Superior Court for Baltimore city.

of Circuit

APPELLANTS' BRIEF.

This is an appeal from an order of the Circuit court of Baltimore city, granting an injunction.

The bill of the appellee, filed 6th February, 1865, shows that the Mayor and City Council of Baltimore, having passed the ordinance of 5th May, 1864, entitled, "An ordinance to open a street in continuation of Holliday street, from Baltimore street to Second street;" the Appeal Tax court constituted by the ordinance of 1861, No. 18, approved 28th February, 1861, commissioners for opening streets, proceeded, in obedience to said first mentioned ordinance, and according to the course prescribed in the ordinance of 1858, No. 15, to ascertain and estimate the damages and expense, to be occasioned by the opening of the said extension of Holliday street, as directed to be opened, and to assess three-fourths of the amount thereof, upon the ground and improvements benefitted by the opening of the street, in proportion to the value of the benefits received by the respective owners thereof. It is not pretended that after the completion of the said valuation of damages, estimate of expenses and assessment of damages and expenses, the Appeal Tax court omitted in any respect to perform the duties specified in the 8th

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section of the said ordinance of 1858. And, although the complainants aver that inadequate damages have been allowed to some of them, and too large an estimate placed upon the benefits to accrue to others, it is evident that these are questions to be determined by a jury on an appeal taken in the regular way, and cannot enter into the consideration of a court of equity, upon an application for an injunction. Appeals had in fact been taken, and at the time of granting the injunction, the proceedings were pending in an appeal in the Criminal court of Baltimore city, as appears from the sheriff's return.

To justify the interference of equity it is contended, on the part of the complainants, that the ordinance of 1864, was in excess of the powers of the Mayor and City Council, and that any action thereunder, looking to the condemnation of the property of the complainants, is unwarranted by law. The several grounds of objection assigned in the bill, are the following, viz:

1. That the provision contained in the 7th section of the ordinance of 1858, No. 15, giving the right to the owner of any house or lot, a part of which it is necessary to take for the street, to require, if he choose, that he shall be compensated for the whole, the city in such case selling the part not required, at public auction, and applying the proceeds to the re-imbursement *pro tanto* of the money so paid for the whole, is illegal; and consequently, that in as much as in the present case, the owners of some lots required in part for the street have elected to give up the whole, the entire proceedings are vitiated.
2. The provision in the 4th section of the ordinance of 1864, that from any damages which might be awarded thereunder to Wm. W. McClellan or Catharine M. Raborg, should be deducted the amount of certain orders which had been received by the city in payment of the assessment upon them under the repealed ordinance of 1858, No. 59. And the following proviso contained in the 5th section of the ordinance of 1864: "The said ordinance shall not take effect until the City Council or clerk shall certify to the said judges of the Appeal Tax court, that the parties, (relators,) in the mandamus cases lately pending in the Court of Appeals of the State of Maryland, regarding an ordinance repealing that entitled, "An ordinance to repeal the ordinance entitled, 'An ordinance to widen Holliday street, between Baltimore and Fayette streets, and to open a street in continuation of Holliday street, from the south side of Baltimore street to Exchange place, and to

change the name of Commerce street to Holliday street, approved October 21st, 1858, and any other cases against the city growing out of the repeal of said ordinance, have in consideration of the passage of this ordinance, and of the improvement being about to be made, which is hereby ordained, release to the Mayor and City Council of Baltimore, all claims for any damages in relation to said appeal, or to any matter embraced in the petition for the mandamus aforesaid, in said cases, and have withdrawn all appeals in the said cases entered to the Supreme court of the United States; and also that Wm. W. McClellan and Catharine M. Raborg, or their representatives, have given their written assent to the provisions of the fourth section of this ordinance."

These enactments, it was charged, were an improper attempt on the part of the Mayor and City Council to combine with the opening of the new street, the collateral object of the settlement of old claims, and were also unlawful by reason of making the going into effect of the ordinance conditional upon the assent of certain individuals.

- 3. It was charged that the ordinance was not demanded by public convenience or necessity.
- 4. The ordinance of 1858, No. 15, regulating the method of procedure in opening streets, provided in its 9th section that any person dissatisfied with the assessment of damages or benefits might appeal to the Criminal court of Baltimore. The Act of Assembly 1853, ch. 451, had provided that the Superior court for Baltimore city shall have and exercise concurrent jurisdiction with the Criminal court of Baltimore, in appeals from the decisions of any commissioners or other persons, appointed in virtue of any ordinance, to ascertain the damage which will be caused, or the benefit which will accrue to the owners or possessors of grounds or improvements, by locating, opening, extending, widening, straightening or closing up in whole or in part, any street, square, lane or alley, within the city of Baltimore.

And the Code of Public Local Law, Art. 4, sec. 837, authorized the Mayor and City Council to provide for granting appeals to the Criminal court of Baltimore, or the Superior court of Baltimore city, from the decisions of any commissioners, &c., in street cases. And it is complained that the Mayor and City Council, in the ordinance of 1864, in connection with the

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change the name of Commerce street to Holliday street, approved October 21st 1858, and any other cases against the ordinance of 1858, No. 15, have sought to deprive the complainants of the right of selection between the two appellate tribunals, which is supposed to be guaranteed to them by the Act of 1853, and the Code of Public Local Law.

5. Finally, it is charged, that the Act of 1838, ch. 226, giving powers to the city of Baltimore respecting the opening of streets was repealed by the adoption of the Code, and that subsequently to the passage of the Code, the Mayor and City Council possessed no power to pass any ordinance which did not contain a provision for an appeal to either of the said courts, at the election of the party supposing himself to be aggrieved.

Upon the said bill an order was passed the 6th day of February, 1865, granting an injunction according to the prayer thereof, prohibiting the Mayor and City Council of Baltimore, its officers, agents and servants, "from proceeding to enforce the said ordinance, entitled, 'An ordinance to open a street in continuation of Holliday street from Baltimore street to Second street,' and from taking any further steps or proceedings thereunder for the opening of such street until the further order of this court."

On the 17th of February, 1865, the Mayor and City Council of Baltimore having filed their answer, [*Record*, pp. 8 - 11,] appealed to this court.

On behalf of the appellant it is submitted:

- I. That no reasonable objection lies to the provision contained in the 7th section of the ordinance of 1858, No. 15, which is made the first ground for the application for an injunction. Where an entire lot is required, the city takes the whole, and pays for the whole. Where a part only is used, an estimate must be made of the damages to be caused by the taking of that part, and, if it be rightly made, the value of the residue will be the difference between the value of the whole and the sum thus allowed for damages. But, as the market value of an existing entire lot, can be got at with more certainty than the damages which will be occasioned by the occupation of a part, the option is given the owner to require that the whole shall be taken off his hands, it being then left to the city to ascertain the proportion between the damages caused by the taking of part, and the

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value of the residue, in the best possible mode, viz: a sale of such residue at public auction. What it brings, being credited against the whole price paid the owner, leaves the exact amount of damages sustained by the lot, and really paid.

II. The proviso ingrafted upon the ordinance of 1864, might reasonably have been complained of by Wm. W. McClellan and Miss Raborg, but affected no body else. It was perhaps void. It may be that the Mayor and City Council, having determined that public convenience required the opening of the street, had no right to make the enjoyment of the improvement dependent upon any collateral condition whatsoever. But the question is merely speculative. The suits were dismissed, the releases executed, and the written assent given. Whether therefore the proviso was good or bad, valid or invalid, was immaterial at the time of the institution of the proceedings in question.

In no case could it affect the validity of the Ordinance itself.

III. The third ground on which the bill is placed, viz: that public convenience or necessity does not call for the street,—is plainly outside of the proper cognisance of a court of equity. To the discretion of the Mayor and City Council alone, the law confides the decision of the question of the propriety of opening any street.

2 Code, Art. 4 sect. 837; 1838, ch. 226, sect. 1.

(1.) —————
IV. By the 837th section of Article 4 of the Code of Public Local Law, the Mayor and City Council of Baltimore are authorized to provide for granting appeals to the Criminal court of Baltimore, or the Superior court of Baltimore city. The ordinance of 1864, No. 68, by its 2nd section, adopted and

value of the residue, in the best possible mode, viz a sale of such residue at public auction. What it brings being credited against the whole price paid the owner, leaves the exact amount of damages sustained by the lot, and really paid.

II. The proviso inserted upon the ordinance of 1864 might reasonably have been complained of by Wm. W. MacCallister and Miss Rarborg, but affected no body else. It was perhaps void. It may be that the Mayor and City Council having determined that public convenience required the opening of the street, had no right to make the enjoyment of the improvement dependent upon any collateral condition whatsoever. But the question is merely speculative. The suits were dismissed, the reliefs granted, and the writs were given. Whether therefore the proviso was good or bad, valid or invalid, was immaterial at the time of the institution of the proceedings in question.

In no case could it affect the validity of the Ordinance itself.

III. The third ground on which the bill is placed, viz that public convenience or necessity does not call for the street—plainly outside of the proper cognizance of a court of equity. To the discretion of the Mayor and City Council alone, the law confides the decision of the question of the propriety of opening any street.
E Code, Art. 4 sect. 837; 1838; ch. 286, sect. 1.

IV. By the 837th section of Article 4 of the Code of Public Local Law, the Mayor and City Council of Baltimore are authorized to provide for granting appeals to the Criminal court of Baltimore, or the Superior court of Baltimore city. The ordinance of 1864, No. 68, by its 2nd section adopted and

incorporated the provisions of the ordinance of 1858, framed under the Act of 1838, ch. 226, with which, the Code agrees in every essential particular in all that relates to the proceedings down to the time for taking appeals.

act

It could not have been the intention of the Legislature that appeals relating to the same street should be pending in two courts at the same time. The consideration which forbid such unseemly clashing in ordinary litigation apply with ten fold force to the case of the opening of a street, with its complex adjustments of damages and benefits. The power of selection between the tribunals must be exercised by somebody. Every one of the numerous individuals whose interests are involved may appeal. Who shall determine the court in which the cause of all shall be decided? To concede the privilege to the party who may spring first, is to encourage a race of litigation, where public policy rather calls for repose, and acquiescence in the fair conclusions of the tribunal of original jurisdiction.

It is opposed to all usage, in this State at least, to give to litigant parties a choice of appellate tribunals. The condition of the dockets of the respective courts, or other circumstances of a general character, may make it more convenient to carry appeals in street cases to the Superior court rather than to the Criminal court, or to the Criminal court rather than the Superior court. A power therefore is conferred on the Mayor and City Council to provide by ordinance for appeal to the one or the other. This, we submit, is the natural and reasonable construction of the clause under consideration. And it is the construction which ever since the passage of the Act of 1853, ch. 451, has been uniformly acted on and received without question.

There is therefore nothing in the fourth ground on which the application for the injunction was based. And the fifth ground seems to be but another form of stating the same matter.

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(2) We have hitherto assumed, for the sake of argument, that the Act of 1853 ch. 451, and the corresponding enactment in the code, were valid exertions of legislative power. But the General Assembly could not constitutionally ~~exercise~~ confer co-ordinate jurisdiction in street cases upon the Superior Court. Before the adoption of the Constitution of 1851, the jurisdiction to hear appeals in this class of cases was vested only in Baltimore City Court. The Constitution, in creating the Criminal Court of Baltimore, defined its jurisdiction thus: "Who shall have and exercise all the jurisdiction now exercised by Baltimore City Court." When therefore the same instrument, in establishing the Court of Common Pleas, and the Superior Court, is silent respecting appeals in cases of opening streets, and, after dividing between these two last mentioned courts the several species of jurisdiction which ~~had~~ previously belonged to the old County Court, declares in general terms, as to the Superior Court, that it should have jurisdiction "in all other civil cases which have not been heretofore assigned to the Court of Common Pleas," it seems a necessary inference that there was no intention to interfere with the jurisdiction ~~which had~~ ~~been~~ previously enjoyed by the City Court, and by the Constitution conferred upon the

Criminal Court. The general intent to avoid any overlapping of jurisdiction is evident, and the comprehensive clause at the end of the 11th section of Article 4 must be construed with reference to the general intent. That the Criminal Court has jurisdiction is clear, and is not disputed. Is it not equally clear that the framers of the Constitution never meant that part of its jurisdiction should be shared by the Superior Court. The Superior Court is carefully prohibited from trenching on the jurisdiction of the Court of Commodore Pleas. Why is it to be supposed that it should be at liberty to encroach upon that of the Criminal Court.

See Const. 1851 Art. 4. Sec. 10, 11 and 13.

The point now advanced is not new. The objection that it was not competent to the Mayor and City Council of Baltimore, under color of the Act of 1853, to confer the right to entertain an appeal from the Commissioners for opening streets, was taken in the case of Cecil Alley in 1854, and the decision of the Superior Court (Frick J.) against its own jurisdiction was acquiesced in. (Darlington v. The Mayor and City Council of Baltimore, Superior Ct. 1854.)

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incorporated the provisions of the ordinance of 1858, framed under the Act of 1858, ch. 226, with which the judges agree in every essential particular in all that relates to the proceedings down to the time for taking appeals. It could not have been the intention of the Legislature that appeals relating to the same street should be pending in two courts at the same time. The consideration which forbids such unseemly clashing in ordinary litigation apply with ten fold force to the case of the opening of a street with its complex adjustments of damages and benefits. The power of selection between the tribunals must be exercised by somebody. Every one of the numerous individuals whose interests are involved may appeal. Who shall determine the court in which the case of all shall be decided? To concede the privilege to the party who may spring first, is to encourage a race of litigation, where public policy rather calls for repose, and acquiescence in the fair conclusions of the tribunal of original jurisdiction.

It is opposed to all usage, in this State at least, to give to litigant parties a choice of appellate tribunals. The selection of the docket of the respective courts, or other circumstances of a general character, may make it more convenient to carry appeals in street cases to the Superior court rather than to the Criminal court, or to the Criminal court rather than the Superior court. A power therefore is conferred on the Mayor and City Council to provide by ordinance for appeal to the one or the other. This we submit is the natural and reasonable construction of the clause under consideration. And it is the construction which ever since the passage of the Act of 1853, ch. 451, has been uniformly acted on and received without question.

There is therefore nothing in the fourth ground on which the application for the injunction was based. And the fifth ground seems to be but another form of stating the same matter.

The fourth ground is that the ordinance of 1858, ch. 226, is unconstitutional. It is submitted that the ordinance of 1858, ch. 226, is not unconstitutional. It is submitted that the ordinance of 1858, ch. 226, is not unconstitutional. It is submitted that the ordinance of 1858, ch. 226, is not unconstitutional.

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V. The complainants could have found effectual and adequate relief in the court of law, upon appeal from the commissioners for opening streets.

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JOHN CARSON,
ARTHUR W. MACHEN,
WM. SCHLEY,
For Appellant.

Chq #2: Extra 43
No. 13
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April term 1865 36.40

The Mayor and City
Council of Baltimore

Victor Clunet, next
friend of Clara Clunet
and others, Samuel H.
B. Merryman, Greg. H.
C. Neal, Chas. W. Sisco
and others.

Appellants Brief

Filed May 29. 1865

The Mayor and City Council
of Baltimore

Appellant

vs

Victor Clewett & others

Appellees

In the Court of Appeals

Special Docket

April 7, 1865

This is an appeal from an order of the Circuit Court
of Baltimore City granting an injunction.

The Bill of the appellees, filed 6th February 1865, ~~subscribed~~
shows that the Mayor and City Council of Baltimore
having passed the Ordinance of 5th May 1864, entitled
"An ordinance to open a street in continuation of Holliday
Street from Baltimore Street to Second Street"

the Judges of the Appeal Tax Court,
approved 28th February 1864,
constituted by the ordinance of 1861 No 18, Commissioners
for opening streets, proceeded, in obedience to said first
mentioned ordinance, and according to the course prescribed
in the ordinance of 1858 No 15, and after due notice
to ascertain ^{testamentally} the damages ^{expense} to be occasioned by the
opening of the said extension of Holliday Street
as therein provided, as directed to be opened, having
estimated and to ~~afford~~ ^{assess three fourths} the amount thereof
~~two thirds~~ of the amount thereof upon the
upon the ground & improvements benefited by
the opening of the street, in proportion to the
value of the benefits received by the respective
owners thereof. It is not pretended that
after the completion of the said valuation of damages,

estimate of expenses & assessment of damages & expenses, the Appeal Tax Court omitted in any respect to perform the duties specified in the 8th section of the ~~Ordinance~~ said Ordinance of 1858. And, although the complainants aver that inadequate damages ~~also~~ have been allowed ~~them~~ ^{to} some of them, and ~~the benefits~~ ~~to~~ too large an estimate placed upon the benefits to accrue to others, ~~of them~~, it is evident that these are questions to be determined by a jury on an appeal taken in the regular way, and cannot enter into the consideration of a court of equity upon an application for an injunction. ~~Superior~~ Appeals had in fact been taken, and ~~the proceedings~~ ~~was~~ ~~before~~ ~~the~~ at the time of ~~the~~ ~~the~~ ~~filing~~ of granting of the injunction, the proceedings were pending on appeal in the Criminal Court of Baltimore City, as appears from the Sheriff's return.

^{to justify}
 As a ground for the interference of Equity it is ^{on the part of the complainants} contended, that the Ordinance of 1864 was in excess of the powers of the Mayor and City Council, and that any action thereunder looking to the condemnation of the property of the complainants, is an ~~unwarrantable~~ exercise of power is unwarranted by law. The several grounds of objection assigned in the Bill, are the following, viz:

1. That the provision contained in the 7th section of the Ordinance of 1858 No 15 giving the right to the owner of any house or lot



The following is a list of the names of the persons who have been admitted to the office of the Secretary of the Board of Education since the first of January, 1880. The names are given in the order in which they were admitted, and are followed by the date of their admission.

1. J. H. [Name], [Date]

2. [Name], [Date]

3. [Name], [Date]

4. [Name], [Date]

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a part of which is necessary to be taken
 it is necessary to take for the street, to require,
 if he choose, that he shall be compensated
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 paying him for the selling the part not
 required at public auction, and applying the
 proceeds to the re-embursement pro tanto of
 the ~~damages~~ money so paid for the whole,
 is illegal; and consequently, that
 in as much as in the present ^{case} proceedings
~~certain whole~~ the owners of ~~certain~~
 some lots ~~for~~ required in part for the
 street have elected to ~~demanded~~ give
 up the whole, the ^{entire} ~~whole~~ proceedings
 are vitiated.

2. ~~That the~~ A provision in the 4th section of the
 Ordinance of 1864, that from any damages
 which might be awarded thereunder to Wm.
 W. McClellan or Catharine M. Raborg, should
 be deducted the amount of certain orders,
 which had been received by the City in payment
 of the assessment upon them, under the ordinance
 of 1858 No 59 ~~repealed~~ ordinance of 1858
 No 39. And ~~that~~ the ~~pro~~ following proviso
 contained ~~inserted~~ in the 5th section of the Ordinance
 of 1864,

"The said ordinance shall not take
 effect until the City Councilor

[Here is the residue of the
 5th Section of Ord. 1864 No. 68.



I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above mentioned matter. I have the honor to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,
 Yours obedient servant,
 J. M. [Name]
 [Address]

shall certify to the said judges of the Appeal Tax Court that the parties (relators) in the mandamus cases lately pending in the Court of Appeals of the State of Maryland regarding an ordinance repealing that entitled "An ordinance to repeal the ordinance entitled 'An ordinance to widen Holliday Street between Baltimore and Fayette Streets, and to open a street in continuation of Holliday Street, from the south side of Baltimore Street to Exchange Place, and to change the name of Commerce Street to Holliday Street'" approved October 21, 1858, and any other cases against the city growing out of the repeal of said ordinance, have in consideration of the passage of this ordinance, and of the improvement being about to be made which is hereby ordained, release to the Mayor & City Council of Baltimore all claims for any damages in relation to said ~~Appeal~~, or to any matter embraced in the petitions for the mandamus aforesaid, in said cases, and have withdrawn all appeals in the said cases entered to the Supreme Court of the United States, and also that Wm W. McClellan and Catharine M. Raborg, or their representatives, have given their written assent to the provisions of the fourth section of this ordinance!



that apply to the said paper of the 11th
 the Court that the paper (relating) on the
 numerous cases that have arisen in the
 Court of appeals of the date of January
 regarding an ordinance appearing
 that entitled the ordinance to refer
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 to which Halliday's direct relation
 Baltimore and Fayette County
 and to open a street in Baltimore
 of Halliday's direct, from the Court
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 October 21, 1858, and any other
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 Mayor of City Council of Baltimore
 all claim for any ordinance in relation
 to Baltimore, or any other ordinance
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 in this case, and have withdrawn
 appeals in the said case, and the
 Supreme Court of the United States, and
 that Mr. W. M. McKelton and William M.
 Hays, in their respective papers, have given their
 written opinion to the jurisdiction of the Court
 Section of the ordinance.

These enactments, it was charged, were an improper attempt on the part of the Mayor and City Council to combine with the opening of the new street the collateral object of the settlement of old claims, and were also unlawful by reason of making the going into effect of the ordinance conditional upon the assent of certain individuals.

3. It was charged that the ordinance was not demanded by public convenience or necessity.
4. The ordinance of 1858 No 15, ~~according to which~~ regulating the method of procedure in opening streets, provided in its 9th section that any person dissatisfied with the assessment of damages or benefits might appeal to the Criminal Court of Baltimore. The act of Assembly, 1853 ch. 451, had provided that the Superior Court for Baltimore City shall have and exercise concurrent jurisdiction with the Criminal Court of Baltimore in appeals from the decisions of any commissioners or other persons, appointed in virtue of any ordinance, to ascertain the damage which will be caused, or the benefit which will accrue to the owners or possessors of grounds or improvements by locating, opening, widening, straightening, or closing up in whole or in part, any street, square, lane or alley, within the City of Baltimore. And ~~the~~ ~~837~~ The Code of Public Local Law Art. 4 sec. 837 authorized the Mayor and City Council to provide for granting appeals to the Criminal Court of Baltimore or the Superior

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Court of Baltimore City, from the decisions of any commissioners &c in street cases. And ~~it is charged that the Ordinance of 1864~~ it is complained that the Mayor and City Council, in the Ordinance of 1864, in connection with the Ordinance of 1858 no. ~~17~~ 15, have sought to deprive the complainants of the right of selection between the two appellate Tribunals, which is supposed to be guaranteed to them by the Act of 1853 and the Code of Public Local Law.

5. ~~It is charged that~~ Finally, it is charged that the Act of 1838 ch. 226 giving powers to the City of Baltimore respecting the opening of streets was repealed by the adoption of the Code, and that subsequently to the passage of the Code the Mayor & City Council possessed no power to pass any ordinance which did not contain a provision for an appeal to either of the said courts at the ^{election of the} party supporting himself to be aggrieved.

Upon the ~~Bill~~ said Bill an order was passed the 6th day of February 1865 granting an injunction according to the prayer thereof, prohibiting the Mayor and City Council of Baltimore, its officers, agents and servants from proceeding to enforce the said ordinance

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entitled 'An ordinance to open a street in continuation of Holliday street from Baltimore street to Second street,' and from taking any further steps or proceedings thereunder for the opening of such street until the further order of this court."

On the 17th of February 1865, the Mayor and City Council of Baltimore having ~~assented~~ filed their answer, [Record pp 8-11] appealed to this Court.

On behalf of the appellant it is submitted

I. That no reasonable objection lies to the provision contained in the 7th section of the ordinance of 1858 No 15, which is made the first ground for the application for an injunction. Where an entire lot is required the City takes the whole, and pays for the whole. Where a part only is used, an estimate must be made of the damages to be caused by the taking of that part, and, if it be rightly made, the value of the residue will be the difference between the ~~market~~ value of the whole and the sum thus

allowed for damages. But, as the market value
 of an existing entire lot can be got at with more
 certainty than the damages which will be
 occasioned by the ~~cutting off~~ ^{occupation} of a part, the ~~owner~~
 option is given to the owner to require that
 that the whole shall be taken of his hands, —
 it being then left to the City to ascertain the
 proportion between the damages caused by the
 taking of part and the value of the residue, in
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 being credited against the whole price paid the
 owner, leaves the exact amount of damages
 sustained by the lot, and really paid.

II. The proviso ingrafted upon the Ordinance of 1864, might reasonably have been complained of by Wm. W. McClellan and Miss Raborg, but affected no body else. ~~Probably~~ It was perhaps void, ~~and inoperative~~. It may ~~well~~ be that the Mayor and City Council, having determined that ~~the~~ public convenience required the opening of the street, had no right to make the enjoyment of the improvement dependent upon any collateral condition whatsoever. But the question is ~~a~~ merely speculative, ~~over~~. The suits were dismissed, ~~and~~ the releases executed, and the written assent given. Whether therefore the proviso was good or bad, valid or invalid, ~~was of no import~~ was immaterial at the time ~~was~~ of the institution of the proceedings in question.

III. The third ground on which the bill is placed — viz. that public convenience or necessity does not require the street call for the street — is plainly outside of the proper cognisance of a court of equity. To the discretion of the Mayor and City Council ^{alone,} the law confides the the decision of the question of the propriety of opening any street. ~~unappealed~~ ~~their determination~~ ~~would be called in~~ ~~disputed~~ ^{anywhere} ~~the~~ ~~ultimate~~ ~~court~~ ~~of~~ ~~chancery~~ ~~is~~ ~~not~~ ~~the~~ ~~proper~~ ~~tribunal~~ ~~to~~ ~~decide~~ ~~on~~ ~~it~~

2 Code Art. 4 Sect. 837. 1838 ch. 226 sect. 1.

The first part of the document
 is devoted to a general
 description of the
 subject matter.
 It is divided into
 several sections,
 each of which
 deals with a
 different aspect
 of the problem.
 The first section
 discusses the
 historical background
 of the subject,
 while the second
 section deals with
 the theoretical
 aspects of the
 problem. The third
 section is devoted
 to a description
 of the experimental
 work, and the fourth
 section discusses
 the results of the
 experiments. The
 final section
 contains a summary
 of the work and
 some conclusions.
 The document is
 written in a clear
 and concise style,
 and is well
 organized. It is
 a valuable
 contribution to
 the literature on
 this subject.

IV. By the § 37th section of Article 4 of the Code of Public Local Law ^{the Mayor and City Council of Baltimore} ~~and~~, are authorized to provide for granting appeals to the Criminal Court of Baltimore ~~or~~ the Superior Court of Baltimore City. The ordinance of 1864 N^o. 68, ~~by its enactment~~ contained in the ~~its section section~~ by its 2nd section adopted ^{and incorporated} ~~and incorporated~~ the provisions of the ~~act of 18~~ ordinance of 1858 ~~which was framed~~ ^{under} ~~in agreement with~~ the Act of 1838 ch. 226, ~~which it incorporate~~ with which the Code agrees in every essential particular in all that relates to the proceedings down to the time for taking appeals.

~~It could not~~ It could not have been the intention of the legislature that appeals ~~should be~~ relating to the same street should be pending at the ~~same~~ in two courts at the same time. The considerations which forbid such unseemly clashing in ordinary ^{litigation} ~~cases~~ applying with ten fold force to the case of the opening of a street, with its complex adjustments of damages and benefits. The power of selection ~~is~~ between the tribunals must be exercised by some body. ~~Any person~~ Every one of the numerous individuals whose interests are involved may appeal. Who shall



17. The right of action of a party to the

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determine the court in which the cause of all shall be decided? To concede the privilege to the party who may spring first, is to encourage a race of litigation, where public policy rather calls for repose & acquiescence in the fair conclusions of the Tribunal of original jurisdiction.

It is opposed to all usage, in this State at least, to give to litigant parties a choice of appellate Tribunals. The ~~State~~ ^{State} of public business or other circumstances of the condition of the dockets of the respective courts, or other circumstances of a general character, may make it more convenient to carry appeals in street cases to the Superior Court rather than to the Criminal Court, or to the Criminal Court rather than the Superior Court. A power therefore is conferred on the Mayor & City Council to provide by ordinance for appeal to ^{the} one or the other. This, we submit, is the natural and reasonable construction of the clause ^{under consideration} ~~in question~~. And it is the ~~construction~~ ^{construction} which ever since the passage of the act of 1853 ch. 451 has been ~~act~~ uniformly acted on and received without question. ~~We submit therefore~~

There is therefore ~~nothing~~ ^{nothing} ~~as before~~ in the fourth ground on which the application for the injunction was based. And the fifth ground seems to be but another form of stating the same matter.

V. The complainants could have found effectual and adequate relief in the Court of law, upon appeal from the Commissioners for opening streets.

John Carson

Arthur W. Macker

Wm. Schley
for Appellant

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