# Taylor v. Mayor and City Council of Baltimore: Baltimore Sewerage and the City's Agenda in the Early Twentieth Century

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### I. Introduction

Taylor v. Mayor and City Council of Baltimore was decided by the Court of Appeals in 1917. Nettie Taylor sued the city in 1914 because of the disagreeable smell coming from the newly constructed Back River Sewage Treatment Plant. She sued for damages done to her hotel property by the odor. Taylor's hotel was situated on a tract of land on Back River, in the Essex area. The hotel Taylor owned was partly a brothel as well as a saloon, which was a common establishment in the surrounding area. The Court of Appeals ruled in Taylor's favor, ordering the city to pay damages for the substantial interference with her property rights.

There were several historical trends that were developing during this period. Baltimore was in great need of a sewerage system after years of failed attempts to obtain one throughout the nineteenth century. Views about the environment were changing across the nation as well. Finally, the Prohibition movement was gaining ground, while at the same time the city of Baltimore was cracking down on prostitution. All of these trends come into play in this case in some form. Further investigation into these trends and the court's reasoning for its ruling will demonstrate the court's reluctance to support Baltimore's agenda over personal property rights.

This paper will begin by analyzing the historical context in which this case arose and how the trends were involved in the case. Following that analysis will be several biographies of the players in the case. Next, the paper will discuss the various stages of the case, including the trial in Howard County, the arguments of each side before the Court of Appeals, and the court's ruling. Finally, the paper will present an analysis of the various issues in the case, followed by a conclusion.

### II. Historical Context

## A. Brief History of Essex and Back River

Essex did not exist as a community until 1909.<sup>1</sup> The Taylor Land Company initiated development of the land in 1909 and the first general store went into business in 1910.<sup>2</sup> The area was primarily utilized for recreational purposes up to and during the time of this case.<sup>3</sup> The first major attraction built in the area was Hollywood Park, which went into business in 1895 and was operational until 1921.<sup>4</sup> Hollywood park became a haven for drinkers who couldn't get their drinks elsewhere due to liquor prohibitions on Sundays.<sup>5</sup> In addition to Hollywood Park, there were numerous parks and hotels similar to Nettie Taylor's.<sup>6</sup> During the early twentieth century, Essex was a hotspot for recreational activities, such as drinking, gambling, and prostitution. The area attracted not only working class Baltimoreans, but also local and state politicians.<sup>7</sup>

### B. Prostitution and Prohibition during the Early Twentieth Century

Prostitution and Prohibition posed significant problems and issues to the city of Baltimore in the 1910s. Prostitution was well established throughout the city and county, and prohibition was just beginning to coalesce into a national movement. Both issues help demonstrate the public view towards a business like Nettie Taylor's in the 1910s and provide a glimpse as to how and why the case played out as it did.

Prostitution during the 1910s was a relatively significant issue in the city of Baltimore. Several commissions formed to investigate the evils of prostitution and propose changes to

<sup>&</sup>lt;sup>1</sup> NEAL A. BROOKS, A HISTORY OF BALTIMORE COUNTY, at 326 (1979).

 $<sup>^{2}</sup>$  Id.

<sup>&</sup>lt;sup>3</sup> GEORGE J. MARTINAK, A SHORT HISTORY OF ESSEX AND MIDDLE RIVER, at 7 (1963).

<sup>&</sup>lt;sup>4</sup> Id.

<sup>&</sup>lt;sup>5</sup> *Id*.

<sup>&</sup>lt;sup>6</sup> JACKIE NICKEL, 'OLD MIDDLE RIVER': A LOVING LOOK BACK, at 7 (2002).

<sup>&</sup>lt;sup>7</sup> Martinak, *supra* note 3.

combat the problem.<sup>8</sup> In 1910, a commission appointed by the Maryland Society for the Suppressing Vice found more than three hundred houses of prostitution in Baltimore.<sup>9</sup> These houses would be cited often, but generally they would still remain open and engage in the same business.<sup>10</sup> A report from the Vice Commission stated that the houses enjoyed political protection.<sup>11</sup> The report stated, "We found it to be an uncontestable fact that the disreputable saloons, gambling houses, houses of prostitution and disreputable furnished room houses were all assured protection, provided they paid a certain sum of money or a certain pecuniary equivalent."<sup>12</sup> In 1915, there were numerous crackdowns in houses of prostitution in Baltimore.<sup>13</sup> The Vice Commission, appointed by Governor Goldsborough, advised the closings of all houses of public prostitution.<sup>14</sup> The police commissioner acted on this advice and managed to close nearly every known house in 1915.<sup>15</sup> It is evident that prostitution played a significant role in Baltimore's politics during this time period and may shed some light on the court's decision in this case.

Prohibition was another hotly contested issue during the 1910s. Maryland was largely divided by the issue of prohibition, with most of the opponents to prohibition coming from the Baltimore area. <sup>16</sup> In 1916, Baltimore and Baltimore County legislatures voted on prohibition. <sup>17</sup> Prohibition lost in both legislatures, with one vote being the deciding factor in Baltimore. <sup>18</sup>

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<sup>&</sup>lt;sup>8</sup> Closing a Vice District by Strangulation, THE SURVEY, vol. 35, New York Survey Associates, Inc., at 229 (1915-1916).

³ Id.

 $<sup>^{10}</sup>$  Id.

<sup>&</sup>lt;sup>11</sup> Winthrop D. Lane, *Under the Cover of Respectability*, THE SURVEY, vol. 35, New York Survey Associates, Inc., at 746 (1915-1916).

<sup>&</sup>lt;sup>12</sup> *Id.* at 747

<sup>&</sup>lt;sup>13</sup> Closing a Vice District, supra note 8.

 $<sup>^{14}</sup>$  Ld

<sup>15</sup> Id

<sup>&</sup>lt;sup>16</sup> ROBERT J. BRUGGER, MARYLAND: A MIDDLE TEMPERAMENT 1634-1980, at 448 (1988).

<sup>&</sup>lt;sup>17</sup> *Id.* at 449.

<sup>&</sup>lt;sup>18</sup> *Id*.

Congress eventually took the question away from states with the 18th amendment in 1918.<sup>19</sup> However, Maryland did not enforce prohibition very strictly, making it one of the wettest states in the country.<sup>20</sup> Resistance to prohibition in Baltimore and Baltimore County during its beginning stages demonstrates the public sentiment towards drinking and places of business such as Nettie Taylor's.

### C. History of Baltimore Sewerage

The history of Baltimore Sewerage is marked by one failure after another. Baltimore's inability to construct a sewer system prior to 1904 tarnished the appeal of what was otherwise a successful city on the east coast of the America. Several commissions throughout the nineteenth century formulated plans for a sewer system for Baltimore. However, these plans would all fail for reasons ranging from economics to fighting between the two political parties. Eventually, the city had no more excuses following the Great Fire of 1904.

Baltimore used primarily cesspools for waste disposal from its beginning up until the early twentieth century.<sup>21</sup> Baltimore's sandy soil was ideal for cesspools, making the method the most economically viable form of waste disposal.<sup>22</sup> The cesspools were no longer adequate to meet the city's needs as the population of the city grew.<sup>23</sup> In addition to cesspools, residents turned to the use of storm drains while corporations and wealthier locals constructed private drains.<sup>24</sup> Much of the sewage from these storm drains and private drains made its way to the harbor (as depicted in the photograph below).<sup>25</sup>

<sup>&</sup>lt;sup>19</sup> *Id*.

<sup>&</sup>lt;sup>20</sup> Id. at 468

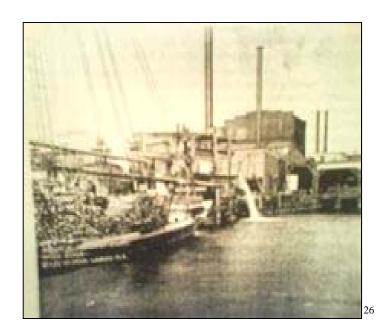
<sup>&</sup>lt;sup>21</sup> Alexander A. Lopata, *History and Development of the Sewerage System of Baltimore up to 1916*, Records of Phi Mu, University of Maryland at College Park Libraries, at 1 (1936).

<sup>&</sup>lt;sup>22</sup> *Id*.

<sup>&</sup>lt;sup>23</sup> *Id*.

 $<sup>^{24}</sup>$  Id.

<sup>&</sup>lt;sup>25</sup> Christopher G. Boone, *Obstacles to Infrastructure Provision: The Struggle to Build Comprehensive Sewer Works in Baltimore*, 31 Historical Geography 151, at 156 (2003).



The drainage into the harbor throughout Baltimore's history tarnished the city's

reputation.<sup>27</sup> The condition of the harbor was well described in an article by an editor of the *Baltimore Sun* in 1897.<sup>28</sup> He writes, "In addition to the smell of decayed matter there is a sort of 'extract de gas house' odor as a sort of side attraction, which is all powerful. It takes a few seconds for this special 'ozone' to get well settled in the nostrils, but when it is once there it is guaranteed to last 24 hours."<sup>29</sup> In addition to the deplorable state of the harbor during the nineteenth century, the ravines and streams of the city often could not provide adequate drainage.<sup>30</sup> This caused build-ups of sewage and storm water in street gutters and alleys when there were heavy rains in the city.<sup>31</sup> Baltimore suffered from this poor waste management throughout the nineteenth century and was far behind other major cities of the time. A writer from the *Washington Post* summed it up well in 1897, writing that "No other American city of

<sup>&</sup>lt;sup>26</sup> Photograph of a storm drain emptying into the harbor in Canton. Source: Charles C. Euchner, *The Politics of Urban Expansion: Baltimore and the Sewerage Question*, *1859-1905*, 86 No.3 Maryland Historical Magazine 270, at 275 (1991).

<sup>&</sup>lt;sup>27</sup> Boone, *supra* note 5.

<sup>&</sup>lt;sup>28</sup> *Id*.

<sup>&</sup>lt;sup>29</sup> Id.

<sup>&</sup>lt;sup>30</sup> Lopata, *supra* note 1, at 2.

<sup>&</sup>lt;sup>31</sup> *Id*.

equal or approximate population and wealth is so badly situated in this respect. Why a community so enterprising and progressive as the Baltimoreans have proven themselves to be have long neglected to construct sewers..."

The city of Baltimore appointed several sewerage commissions to combat the sewerage problem throughout the nineteenth century. Commissions in the 1850s and 1880s both devised plans for a sewer system in Baltimore.<sup>33</sup> However, both plans were rejected by the city because they were not justifiable economically.<sup>34</sup> Baltimore seemed content during this period with utilizing the much cheaper cesspools over an expensive sewer system project. Another sewerage commission convened during the 1890s to address the issue. The commission came up with a plan to utilize the sandy soils in nearby Anne Arundel County for filtration of sewage.<sup>35</sup> The plan was costly and ultimately the commission favored a much cheaper plan that provided for dumping of untreated sewage into the Chesapeake Bay.<sup>36</sup> The oyster industry and the public health community attacked this proposal, leading the commission to adopt the filtration plan to appease these two groups.<sup>37</sup> The commission still faced questions of how the sewer system would be paid for and who would control it.<sup>38</sup>

A solution to the problems facing the commission presented itself in 1899.<sup>39</sup> The Maryland Construction and Contracting Company made a proposal to the city to finance and construct a sewer system for Baltimore.<sup>40</sup> Private financing and construction of the sewer system had many advantages. First, the city would not have to wait for an enabling act to be passed by

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<sup>&</sup>lt;sup>32</sup> Boone, *supra* note 5.

<sup>&</sup>lt;sup>33</sup> *Id.* at 157.

 $<sup>^{34}</sup>$  Id

<sup>&</sup>lt;sup>35</sup> CLAYTON COLEMAN HALL, BALTIMORE: ITS HISTORY AND ITS PEOPLE, vol. 1 at 424 (1912).

<sup>&</sup>lt;sup>36</sup> Report of the Sewerage Commission of the City of Baltimore, at 80 (1897).

<sup>&</sup>lt;sup>37</sup> Boone, *supra* note 5, at 157.

<sup>&</sup>lt;sup>38</sup> *Id.* at 159.

<sup>&</sup>lt;sup>39</sup> *Id*.

<sup>&</sup>lt;sup>40</sup> *Id*.

the Maryland legislature. 41 Second, under the proposal, Baltimore would retain control and operation of the sewers after construction.<sup>42</sup> Finally, the project would be much cheaper due to the company's ability to hire cheaper labor than the city. 43 There was, however, some resistance to the idea of private involvement in the sewer system. The commission was not in favor as it had already weighed the pros and cons of private construction and decided against it. 44 In addition, private ownership did not have a favorable history in Baltimore due to overpricing and poor service by private companies in control of other public services. 45 Ultimately, a procedural mistake in the Maryland Construction and Contracting Company Act limited the company's construction rights to three counties in Western Maryland. 46 The company chose not to pursue the construction of sewers any further after this blunder.<sup>47</sup>

There was another significant push for a sewer in system in 1901.<sup>48</sup> Following a report from the Health Commissioner on the need for a sewerage system, Baltimore Mayor Thomas Gordon Hayes led a push to have a sewerage bill passed by the state legislature.<sup>49</sup> The Municipal Art Society, the same society that was behind Olmsted's new park plan for Baltimore, drafted a plan that provided for the dumping of treated sewage into the Chesapeake Bay. 50 The state legislature expressed general approval of the new plan and proceeded to the appointment of a new sewerage commission.<sup>51</sup> This plan was doomed to fail as well, however, due to the disagreement between the Democrats and the Republicans over the makeup of the commission.<sup>52</sup>

<sup>&</sup>lt;sup>41</sup> *Id*.

<sup>&</sup>lt;sup>42</sup> *Id*.

<sup>&</sup>lt;sup>43</sup> *Id*.

<sup>44</sup> *Id*.

<sup>&</sup>lt;sup>45</sup> *Id*.

<sup>&</sup>lt;sup>46</sup> *Id*.

<sup>&</sup>lt;sup>47</sup> *Id.* at 160.

<sup>&</sup>lt;sup>48</sup> *Id.* at 161.

<sup>&</sup>lt;sup>49</sup> *Id.* at 160.

<sup>&</sup>lt;sup>50</sup> *Id.* at 161.

<sup>&</sup>lt;sup>51</sup> *Id.* at 162.

<sup>&</sup>lt;sup>52</sup> *Id*.

The fighting between the two parties caused the bill to stall in the legislature and ultimately added to the list of failures by the city in attempting to construct a sewer system.<sup>53</sup>

The Great Fire of 1904 proved to be the final factor in the construction of a sewer system in Baltimore. The loss caused by the fire in 1904 was immense. Throughout roughly forty hours, the fire burned 1,343 buildings and caused somewhere between \$125,000,000 to \$150,000,000 worth of property damage.<sup>54</sup> The fire began at a warehouse (as seen in the photograph below) owned by the John E. Hurst Company and raged throughout most of the city.<sup>55</sup> A new spirit among the residents arose from the ashes of Baltimore and there was a drive to rebuild and improve the city.<sup>56</sup>



<sup>&</sup>lt;sup>53</sup> *Id*.

<sup>&</sup>lt;sup>54</sup> Hall, *supra* note 15, at 343.

<sup>&</sup>lt;sup>56</sup> Euchner, *supra* note 6, at 286.

<sup>&</sup>lt;sup>57</sup> Photograph of the warehouse owned by the John E. Hurst Company. Source: http://www.mdch.org/fire/collections/mdbf021/mdbf0211.html.

On April 7, 1904, the Sewage Enabling Act passed in the Maryland legislature.<sup>58</sup> The Sewerage Enabling Act provided ten million dollars for a new sewer system in Baltimore.<sup>59</sup> The mayor, E. Clay Timanus, appointed the Sewerage Commission of 1905 to oversee the construction of the new sewer system. 60 Among the commission's projects were brand new sewers (as seen below) separate from the storm water drainage and a sewerage pumping station in the city. 61 More importantly, the commission had to provide for the disposal of sewage that would meet Baltimore's needs.



The commission devised three plans for the disposal of sewage. 63 The first plan involved intermittent filtration through sand beds in Anne Arundel County, similar to the plan of the sewerage commission in the 1890s.<sup>64</sup> The commission later discovered that the soil in Anne Arundel would not be adequate for filtration. 65 The second plan provided for intermittent

<sup>&</sup>lt;sup>58</sup> Lopata, *supra* note 1, at 4.

<sup>&</sup>lt;sup>59</sup> *Id*.

<sup>&</sup>lt;sup>60</sup> *Id.* at 5.

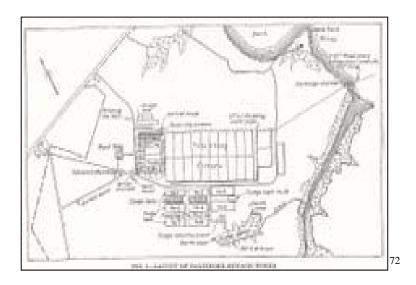
<sup>&</sup>lt;sup>61</sup> *Id.* at 8-10.

<sup>&</sup>lt;sup>62</sup> Photograph of Baltimoreans touring one of the sewers constructed as part of the commission's new sewer system for Baltimore. Source: http://www.mdhs.org/library/Z24BaltEvents.html.

<sup>&</sup>lt;sup>63</sup> *Id.* at 6.

<sup>64</sup> *Id.* 65 *Id.* 

filtration through artificial sands beds. 66 This plan also would not be sufficient because there was not enough sand in the area to filtrate the sewage.<sup>67</sup> The third and final plan involved a method of treatment in septic tanks, followed by spraying the sewage over filter beds, and ending in filtration through artificial sand filters.<sup>68</sup> The commission adopted this plan and after testing the system decided to eliminate the filtration through the sand beds. <sup>69</sup> The Sewerage Commission chose to construct the sewage treatment plant on the western shore of Back River.<sup>70</sup> Construction began in 1907 and the sewage treatment plant was operational in 1911.<sup>71</sup>



Baltimore finally had a sewer system once the sewage plan was complete. After years of suffering from a lack of proper sewage disposal, Baltimoreans had a sewer system to be proud of. Public health improved and the image of the city became much brighter. Baltimore actually benefited from waiting as long as it did in constructing sewers. It was able to learn from the mistakes of other cities and apply, for the most part, successful disposal practices. The exception

<sup>&</sup>lt;sup>66</sup> *Id*.

<sup>&</sup>lt;sup>67</sup> *Id*.

<sup>&</sup>lt;sup>68</sup> *Id*.

<sup>&</sup>lt;sup>69</sup> *Id.* at 7.

<sup>&</sup>lt;sup>70</sup> *Id*.

<sup>&</sup>lt;sup>72</sup> Drawing of the layout of the Back River Sewage Treatment Plant, displaying the septic tanks to the west of the filtration beds, which are represented by the rectangle in the center of the diagram. Nettie Taylor's property is northwest of the plant. Source: Id.

to this success was the Back River Sewage Treatment Plant, which would be the center of litigation for years to come.

### III. The Players

# A. Nettie Taylor 1872-1935: Appellant

Nettie Taylor was born in Baltimore, Maryland in 1872.<sup>73</sup> She married a man named Rueben Kenley in 1887, but the two were later divorced in 1892.<sup>74</sup> Subsequent to her divorce, Taylor married William E. Mitchell. She became the lessee of the property at issue in the case in 1908.<sup>75</sup> The property consisted of three separate tracts of land.<sup>76</sup> The tract that is relevant to this case is the tract with a hotel called Mitchell's Back River Park (see map below for location in relation to the sewage treatment plant).<sup>77</sup> There was a house and a storefront dwelling on the other two tracts.<sup>78</sup>

Mitchell's Back River Park was a hotel with a dancing and dining pavilion.<sup>79</sup> The hotel was a saloon and a brothel. Mitchell's Back River Park battled legal problems from its beginning. A protest to the hotel's acquisition of a liquor license was filed in 1907.<sup>80</sup> Eventually the protest was dropped, but this would only be the beginning of Taylor's legal problems. Throughout its existence, Mitchell's Back River Park was raided several times by the police.

One such raid occurred on Nov. 28, 1909, a Sunday.<sup>81</sup> About one hundred and fifty patrons were at the hotel drinking, which was against the law on a Sunday in Maryland.<sup>82</sup> Mitchell's Back River Park was cited several times for Sunday liquors sales, as well as for violating gambling

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Maryland State Archives, BALTIMORE CITY HEALTH DEPARTMENT BUREAU OF VITAL STATISTICS, (Death Record) Nettie Taylor Mitchell, February 19, 1935, Certificate No. F8977, MSA CM1132-193, CR 48,236.
 Maryland State Archives, BALTIMORE CITY COURT OF COMMON PLEAS, (Marriage Record) Rueben J. Kenly and Nettie Taylor, 25 June 1887, Volume JTG 1 page 245, MSA T991-1, 3/2/1/3; Maryland State Archives, BALTIMORE CITY CIRCUIT COURT, (Equity Docket B, Divorces and Foreclosures) Nettie Kenly v. Rueben Kenly, 1892, Volume 33B page 226, MSA T464-19, 3/4/2/19.

<sup>&</sup>lt;sup>75</sup> Taylor v. Mayor and City Council of Baltimore, 130 Md. 133, at 135 (1917).

<sup>&</sup>lt;sup>76</sup> *Id*.

<sup>&</sup>lt;sup>77</sup> *Id.* at 136.

<sup>&</sup>lt;sup>78</sup> *Id*.

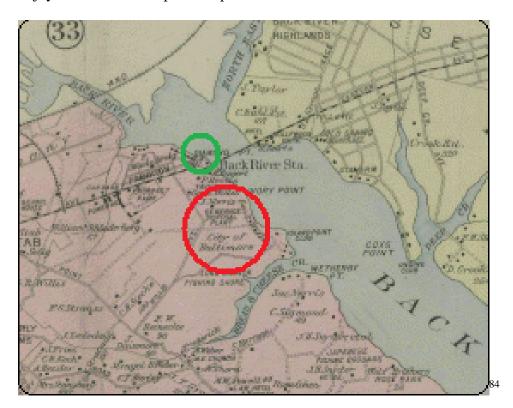
<sup>&</sup>lt;sup>79</sup> Id

<sup>80</sup> Protest Against 83 Saloons Filed At Towson, BALT. SUN, Apr. 16, 1907, at 7.

<sup>81</sup> Marshal Gorsuch Makes Arrests At Four Resorts, BALT. SUN, Nov. 29, 1909, at 9.

<sup>&</sup>lt;sup>82</sup> *Id*.

laws, keeping a disorderly house, and keeping a bawdy house.<sup>83</sup> The hotel remained in business for years despite these numerous infractions. It is possible that, if the statement by the commission concerning prostitution discussed above in section II. part B. is true, Mitchell's Back River Park enjoyed some form of political protection.



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<sup>&</sup>lt;sup>83</sup> Maryland State Archives, BALTIMORE COUNTY CIRCUIT COURT, (Criminal Docket) 1915-1924, WPC 17, MdHR 20,230-17, MSA C315-17, 2/49/10/035.

<sup>&</sup>lt;sup>84</sup> Map of Eastern Avenue running across Back River. Nettie Taylor's property is located within the green circle. The sewage treatment plant is located within the red circle. Source: Maryland State Archives, Papenfuse: Atlases and Maps of Baltimore City and County, 1876-1915 & Block Maps as of April 2005.

# B. Osborne I. Yellott 1871-1922: Attorney for Appellant



Osborne I. Yellott was born in Towson, Maryland in 1871. 86 He was born into a family of lawyers; his father and two great uncles were lawyers in the Baltimore area. 87 Yellott graduated from St. John's in Annapolis and then went on to the University of Maryland School of Law.<sup>88</sup> In 1894, he was a member of the House of Delegates in Maryland.<sup>89</sup> Yellott worked for his father in Towson before later starting his own law firm. 90 His hobby was driving and building automobiles.<sup>91</sup> He was a member and general counsel of the Maryland Automobile Club, which advocated for better roads and more favorable automobile laws. 92 Tragically, he died in 1922 in an automobile accident on Charles Street in Baltimore. 93

<sup>&</sup>lt;sup>85</sup> DISTINGUISHED MEN OF BALTIMORE AND OF MARYLAND, at 42 (1914).

<sup>&</sup>lt;sup>86</sup> Maryland State Bar Association Report, vol. 27, at 57 (1922).

<sup>&</sup>lt;sup>88</sup> *Id*.

<sup>&</sup>lt;sup>89</sup> DISTINGUISHED MEN, *supra* note 85.

<sup>&</sup>lt;sup>90</sup> Maryland State Bar vol.27, supra note 86.

<sup>&</sup>lt;sup>91</sup> *Id*.

<sup>&</sup>lt;sup>92</sup> *Id*.

<sup>&</sup>lt;sup>93</sup> *Id*.

# C. J. Leroy Hopkins 1884-1938: Attorney for Appellant

J. Leroy Hopkins was born in Baltimore, Maryland in 1884.<sup>94</sup> He studied law at the Baltimore University Law School. 95 When Hopkins was admitted to the bar, he went to work at Yellott's law firm in Towson. 96 He was also a member and counsel of the Maryland Automobile Club. 97 Hopkins would later become a bankruptcy judge in Baltimore. 98 Unfortunately, he suffered from a spinal condition throughout most of his life, which ultimately contributed to his death in 1938.99

<sup>&</sup>lt;sup>94</sup> Maryland State Bar Association Report, vol. 43, at 23 (1938).

<sup>96</sup> *Id.* 97 *Id.* 98 *Id.* 

<sup>&</sup>lt;sup>99</sup> *Id*.

# D. S.S. Field 1863-1920: Attorney for Appellee



S.S. Field was born in Virginia in 1863.<sup>101</sup> He graduated from the University of Virginia School of Law and soon after moved to Baltimore to practice law.<sup>102</sup> Mayor James H. Preston, a close friend and former colleague, appointed him city solicitor in 1911, a position he held until 1919.<sup>103</sup> Field had some close connections with politics that on several occasions caused him problems. His connection with Mayor Preston specifically caused him trouble with the 7th Baptist Church.<sup>104</sup> Field was the superintendent of the 7th Baptist Sunday School.<sup>105</sup> Preston was drawing heat at this time for his approval of local saloons, a position which Field supported publicly.<sup>106</sup> This led to church officials declaring that his political affiliations were harmful to the reputation of the church, and they subsequently called for his resignation as

<sup>&</sup>lt;sup>100</sup> DISTINGUISHED MEN, *supra* note 85, at

Maryland State Bar Association Report, vol. 25, at 54 (1920).

<sup>&</sup>lt;sup>102</sup> *Id*.

<sup>&</sup>lt;sup>103</sup> *Id.* at 55.

<sup>&</sup>lt;sup>104</sup> Dr. Straton Asked S.S. Field to Resign, BALT. SUN, May 27, 1913, at 14.

<sup>&</sup>lt;sup>105</sup> *Id*.

<sup>&</sup>lt;sup>106</sup> *Id*.

superintendent. 107 Field's most notable contribution as city solicitor came with his success during the litigation to extend the city limits of Baltimore in 1918. 108

E. Edward J. Colgan, Jr. 1879-1942: Attorney for Appellee



Edward J. Colgan, Jr. was born in Harford County in 1879. He attended the University of Maryland School of Law and passed the bar in 1903. 111 He was the assistant city solicitor at the time of this case. Later in his career, he would become a member of the Maryland State Senate, where he served from 1923 to 1929. 112 He was also president of the Baltimore Bar Association and later became an influential authority on municipal law. 113 Near the end of his

<sup>&</sup>lt;sup>108</sup> Maryland State Bar vol. 25, supra note 101.

<sup>109</sup> MARYLAND BIOGRAPHICAL ASSOCIATION: BOOK OF MARYLAND MEN AND INSTITUTION, at 165 (1920).

<sup>&</sup>lt;sup>110</sup> *Id*. <sup>111</sup> *Id*.

<sup>&</sup>lt;sup>112</sup> *Id*.

<sup>&</sup>lt;sup>113</sup> *Id*.

career, he was very involved in supporting President Roosevelt's court packing plan and the New Deal. 114

## F. James H. Preston 1860-1938: Appellee



James H. Preston was born in Harford County in 1860. 116 He graduated from St. Johns in Annapolis and later attended the University of Maryland School of Law. 117 Preston was a Democrat and was elected mayor in 1911 where he served two terms until 1919. 118 Nettie Taylor met with Mayor Preston prior to the filing of her lawsuit against the city. 119 Taylor and Robert H. Hall, the owner of hotel similar to Taylor's near the sewage treatment plant, went to his home to talk to him about the smell. 120 According to Taylor's testimony, Mayor Preston said to her, "I am very sorry, I didn't put it there, it will never get any better, it will get worse, you

<sup>&</sup>lt;sup>114</sup> *Id*.

<sup>&</sup>lt;sup>115</sup> *Id*.

<sup>116</sup> *Id.* 

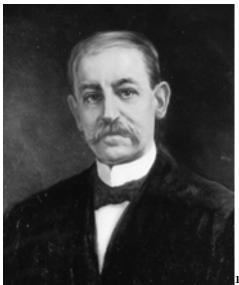
<sup>&</sup>lt;sup>117</sup> *Id*.

<sup>&</sup>lt;sup>118</sup> *Id*.

<sup>&</sup>lt;sup>119</sup> Maryland State Archives, HOWARD COUNTY CIRCUIT COURT (Civil Papers) Nettie Taylor v. Mayor and City Council of Baltimore, 1915-17, Box 41, page 56, MSA T408-28, 1/69/14/4. 120 *Id*.

have a lawyer and he can advise you about it." 121 It seems likely that Taylor and Preston knew each other prior to the initiation of this lawsuit, given that Taylor simply appeared at his house uninvited and Preston took the time to speak with her.

# G. Andrew H. Boyd 1849-1935: Wrote Opinion



Andrew Hunter Boyd was born in Winchester, Virginia in 1849. 123 He graduated from Washington and Lee where he studied law. After his legal studies were complete, Boyd moved to Cumberland, Maryland, where he practiced alone for a number of years before forming a law firm in 1877. 124 Boyd was an avid Democrat and became involved in local elections in Cumberland. He was later appointed to the Court of Appeals in 1893. He served for fourteen years before being appointed Chief Judge of the Court of Appeals in 1907, a position he held until 1924.

<sup>&</sup>lt;sup>122</sup> Maryland State Archives, MSA SC 3520-1629

http://www.msa.md.gov/msa/speccol/sc3500/sc3520/001600/001629/html/msa01629.html.

<sup>123</sup> CONWAY WHITTLE SAMS, ELIHU SAMUEL RILEY, THE BENCH AND BAR OF MARYLAND 1634-1901, at 530 (1901).

<sup>&</sup>lt;sup>124</sup> *Id.* at 531. <sup>125</sup> *Id.* 

### IV. The Case

### A. Procedural History

Nettie Taylor filed suit against the Mayor and City Council of Baltimore in the Circuit Court of Baltimore County on April 9th, 1914. Following the initiation of the suit, S.S. Field submitted a prayer to remove the case from the Circuit Court of Baltimore County in order to have a fair and impartial trial. The removal was granted and the case moved to the Circuit Court of Howard County. Judge Henry Forsythe J. ruled in favor of the city, leading to an appeal by Taylor on July 7th, 1916. The Court of Appeals of Maryland heard arguments during the October term of 1916. The Court of Appeals of Maryland heard arguments

### **B.** Facts

Nettie Taylor owned a tract of land with a hotel near Eastern Avenue and on Back River in the Essex area. The hotel was in business up to fifteen or twenty years before 1916. In addition to the hotel property, which was the main subject of this case, Taylor owned two other tracts of land with a house on one tract and a storefront dwelling on the other. Taylor was the lessee of the property for three years beginning in 1908, and later purchased the leasehold interest in 1911.

<sup>&</sup>lt;sup>126</sup> Maryland State Archives, BALTIMORE COUNTY CIRCUIT COURT (Civil Docket) Taylor v. Mayor and City Council of Baltimore, 1914, Volume WPC 24, case no. 9668, MdHR 20,222-23, page 220, MSA C358-23, 2/48/14/23.

<sup>&</sup>lt;sup>127</sup> Maryland State Archives, BALTIMORE COUNTY CIRCUIT COURT (Civil Papers) Taylor v. Mayor and City Council of Baltimore, 1914, Box 292 Case no. 9668, MSA T697-15, 2/54/14/16.

<sup>&</sup>lt;sup>128</sup> Maryland State Archives, COURT OF APPEALS (Docket) Taylor v. Mayor and City Council of Baltimore, October Term 1916 No. 26, Volume CCM 2, page 81, MSA S412-6, 1/67/6/3.

<sup>&</sup>lt;sup>129</sup> Maryland State Archives, COURT OF APPEALS (Opinions) Taylor v. Mayor and City Council of Baltimore, October Term 1916 No. 26, MdHR 707-188, page 5, MSA S393-174, 1/65/14/24.

<sup>&</sup>lt;sup>130</sup> Maryland State Archives, COURT OF APPEALS (Records and Briefs) Taylor v. Mayor and City Council of Baltimore, October Term 1916 No. 26, page 3, S1733-476, 1/65/4/46.

<sup>&</sup>lt;sup>131</sup> *Id*.

<sup>&</sup>lt;sup>132</sup> *Id*.

<sup>&</sup>lt;sup>133</sup> *Id*.

The city of Baltimore constructed the Back River Sewage Treatment Plant on land adjoining Taylor's property. 134 The sewage treatment plant's primary purpose was to collect sewage from Baltimore in order to treat it and afterwards dump the treated sewage into Back River. 135 One of the important stages of this process involved spraying the sewage into the air with the purpose of separating the solid sewage, or sludge, from the liquid sewage. <sup>136</sup> The sludge would then settle and eventually be sold for fertilizer. <sup>137</sup> The liquid sewage would be sprayed onto rock beds to undergo treatment. 138 The treated liquid sewage would next be dumped into Back River. 139 Taylor contended that the plant went into operation in 1913, while other sources indicate that the plant was operational in 1911. 140

Nettie Taylor sued the city specifically for the smell coming from the Back River Sewage Treatment Plant. 141 The odor, Taylor through her attorneys argued, came from the various processes that involved spraying the sewage into the air and allowing it to rest out in the open. 142 The air was allegedly clean and fresh up until the sewage treatment plant went into operation in 1913. 143 The smell would normally only manifest itself during the warmer periods of the year and when the wind was blowing from the south or southwest. 144 The odor was allegedly so severe that Taylor lost valuable business as a result. 145 Patrons would become nauseous and could not stand to eat when the smell was present. 146

<sup>&</sup>lt;sup>134</sup> *Id.* at 6. <sup>135</sup> *Id.* 

<sup>&</sup>lt;sup>138</sup> *Id*.

<sup>&</sup>lt;sup>139</sup> *Id*.

<sup>&</sup>lt;sup>140</sup> *Id*.

<sup>&</sup>lt;sup>141</sup> *Id*.

<sup>&</sup>lt;sup>142</sup> *Id.* at 7.

<sup>&</sup>lt;sup>143</sup> *Id*.

<sup>&</sup>lt;sup>144</sup> *Id*.

<sup>&</sup>lt;sup>145</sup> *Id*.

<sup>&</sup>lt;sup>146</sup> *Id*.

Swarms of gnats also visited the property when the wind was blowing from the south or southwest. 147 Allegedly, the gnats would breed in the sewage at the sewage treatment plant and visit Taylor's property along with the disagreeable smell. 148 The gnats would cover the hotel and often Taylor was not able to keep them out of the interior. The gnats were not initially mentioned in the complaint, but the Court of Appeals would consider them in the opinion nonetheless. 149

The depreciation of the property was an issue in the trial in the Circuit Court of Howard County. The expert witness, John J. Hurst, testified that the value of Taylor's hotel property was twelve thousand dollars before the odor and two thousand dollars after, making it a loss of ten thousand dollars in value. 150

### C. The Trial in Howard County



<sup>&</sup>lt;sup>147</sup> *Id*. <sup>148</sup> *Id*.

<sup>&</sup>lt;sup>149</sup> *Id*.

<sup>&</sup>lt;sup>151</sup> Picture of the Circuit Court of Howard County, taken c.1930. Source: http://www.mdkidspage.org/Courthouses.htm.

J. Leroy Hopkins and Edward J. Colgan, Jr. were the most involved in the trial in the Circuit Court of Howard County. Hopkins, representing Nettie Taylor, called around twenty five witnesses to testify about several issues. Witnesses testified about the smell, the gnats, Taylor's loss of business, and the value of the property. Two issues brought up in trial that possibly hurt Taylor's case were the nature and the source of the smell coming from the sewage treatment plant and the actual year the plant went into operation.

Every witness that Hopkins put forth testified about the odor coming from the sewage treatment plant. Colgan's questions, as attorney for the city in the trial, focused often on the source of the smell. Throughout his cross examinations, Colgan asked many of the witness about the use of night soil in the area. Colgan was trying to establish that the odor was not coming from the plant but instead from the night soil used by the numerous local farmers. The night soil discussed throughout the trial is similar to the sludge that the sewage treatment plant separates from the liquid sewage and sells as fertilizer. Colgan asked Taylor about the local use of night soil by farmers. She denied that local farmers used it, but admitted that they did use the sludge that came from sewage treatment plant. However, Jacob Norris, a Highlandtown resident familiar with the property, testified that farmers near Taylor's property used night soil. The uncertainty created by the testimony concerning night soil may have had a significant impact on the judge's ruling in the trial, for it could not be clearly established by Hopkins where the smell was actually coming from.

<sup>&</sup>lt;sup>152</sup> HOWARD COUNTY CIRCUIT COURT (Civil Papers), *supra* note 118, at 56-183.

 $<sup>^{153}</sup>$  Id

<sup>&</sup>lt;sup>154</sup> *Id*.

<sup>155</sup> *Id*.

<sup>&</sup>lt;sup>156</sup> *Id.* at 62.

<sup>&</sup>lt;sup>157</sup> Id.

<sup>&</sup>lt;sup>158</sup> *Id.* at 129-131.

Another issue that arose during trial was a dispute concerning the year the plant went into operation. Taylor testified that the sewage treatment plant went into operation in 1913. Colgan, however, stated that the sewage treatment plant was actually operational in 1911. This could lead to the conclusion that the odor must have come from a different source, since the sewage treatment plant was operational two years prior to the occurrence of the smell. It is not clear how much weight was given to this discrepancy, but it added to the issues concerning the actual source of the odor.

Colgan submitted a prayer after the close of Taylor's case. <sup>161</sup> Colgan prayed for the court to instruct that the jury that Taylor had not submitted legally sufficient evidence to entitle her to recover damages from the city. <sup>162</sup> Judge Forsythe (pictured below) granted the prayer, requiring the jury to submit a verdict to the city. <sup>163</sup> Shortly thereafter, Taylor submitted a bill of exceptions and appealed Forsythe's ruling. <sup>164</sup>



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<sup>&</sup>lt;sup>159</sup> *Id.* at 63.

<sup>&</sup>lt;sup>160</sup> *Id*.

<sup>&</sup>lt;sup>161</sup> *Id.* at 183.

<sup>&</sup>lt;sup>162</sup> *Id*.

<sup>&</sup>lt;sup>163</sup> *Id*.

<sup>&</sup>lt;sup>164</sup> Id.

<sup>&</sup>lt;sup>165</sup> Photograph of Judge Forsythe. Source: CLAYTON COLEMAN HALL, BALTIMORE: ITS HISTORY AND ITS PEOPLE, vol. 3, at 788 (1912).

### **D.** Arguments in the Court of Appeals

Taylor's principal argument on appeal and throughout the entire course of this case was that the severe smell originating from the Back River Sewage Treatment Plant constituted a taking of her property. <sup>166</sup> In addition, Taylor argued that the city was negligent in constructing and maintaining the sewage treatment plant. <sup>167</sup> Taylor offered evidence to prove only the first claim of a taking by the city. <sup>168</sup>

Taylor, through her attorneys, argued in her appellate brief that the injury suffered to her property was direct, not consequential. The injury suffered by a property owner must be direct for any taking to occur. Her argument stated that the city, through the operation of the sewage treatment plant, destroyed the pure air she once enjoyed. Taylor attempted to demonstrate that a taking can still exist without physical intrusion when there is a substantial interference with a right inherent in property. Taylor argued that the smell constitutes a substantial interference with her property right of fresh air.

Taylor also argued that the city was guilty of maintaining a nuisance.<sup>174</sup> She stated that the sewage treatment plant was a nuisance for which the city was liable, if even it was a fact that the sewage treatment plant was a necessary public improvement.<sup>175</sup> Therefore, even though there was no actual physical intrusion, Taylor argued that the city was liable for a taking by maintaining a nuisance that substantially interfered with her property right of fresh air.

<sup>&</sup>lt;sup>166</sup> BALTIMORE COUNTY CIRCUIT COURT (Civil Papers), *supra* note 126, at 2.

 $<sup>^{167}</sup>$  *Id.* at 3

<sup>&</sup>lt;sup>168</sup> COURT OF APPEALS (Records and Briefs), *supra* note 129, at 4.

<sup>&</sup>lt;sup>169</sup> *Id.* at 15.

<sup>&</sup>lt;sup>170</sup> *Id*.

<sup>&</sup>lt;sup>171</sup> *Id.* at 16.

<sup>&</sup>lt;sup>172</sup> *Id.* at 18.

<sup>&</sup>lt;sup>173</sup> *Id.* at 16.

<sup>&</sup>lt;sup>174</sup> *Id.* at 21.

<sup>&</sup>lt;sup>175</sup> *Id*.

The Mayor and City Council of Baltimore, through the city solicitor S.S. Field, defended against Taylor's claim by first declaring that the state legislature granted the city the authority to construct the sewage treatment plant under the Sewerage Enabling Act of 1904. Therefore, when the city is acting for the public good, it can only be liable if it exceeded the power granted to it, if it was negligent in its performance, or if when performing the duty a taking occurs. 177 The city argued that no evidence was offered to show negligence or that the city exceed its authority, leaving only the taking exception to municipal immunity. 178

The city stated that the damages suffered by Taylor were merely consequential. <sup>179</sup> In support of its arguments, the city cited numerous authorities to support the conclusion that the invasion of gaseous smells onto a private property owner's land does not constitute direct invasion of private property. 180 Therefore, the city argued that there was no constitutional taking of Taylor's property because the injury suffered was consequential and a natural and inevitable consequence of maintaining a sewage treatment plant. 181

### E. Court's Ruling

Chief Judge Boyd, writing for the court, found that there was no constitutional taking in this case. 182 The court stated that there must be some "substantial destruction of the rights to ingress to and egress from the property of the party complaining, or a deprivation and not merely a diminution of light and air to constitute such a taking by a municipality..."183 In addition, the court held that the city did not exceed the authority granted to it by the state legislature and was

177 *Id.* at 62.

<sup>&</sup>lt;sup>176</sup> *Id.* at 60.

<sup>&</sup>lt;sup>178</sup> *Id.* at 65.

<sup>&</sup>lt;sup>179</sup> *Id.* at 69.

<sup>&</sup>lt;sup>180</sup> *Id.* at 73.

<sup>&</sup>lt;sup>181</sup> *Id.* at 96.

<sup>&</sup>lt;sup>182</sup> Taylor, 130 Md. 133, supra note 75, at 142-143.

<sup>&</sup>lt;sup>183</sup> *Id*.

not negligent in the performance of its duty.<sup>184</sup> The court next discussed the question of whether a municipal corporation could be liable for maintaining a nuisance even though it had legislative authority.<sup>185</sup>

The court discussed in detail Mayor and City Council of Baltimore v. Fairfield Improvement Company to answer this question. 186 The issue in Fairfield involved the city of Baltimore placing a woman with leprosy on a tract of land adjoining the land of the Fairfield Improvement Company. 187 The court in Fairfield stated, "If it be conceded that the State may, in exercising a public power, create a private nuisance with immunity, the immunity grows out of the public necessity and rests upon the State's sovereignty." <sup>188</sup> However, the court stated that "it cannot--or at all events, will not, in the absence of an explicit legislative declaration--be assumed that the State would, if directly exercising the same power, so exercise it as to produce or cause an injury to the rights of property of an individual, unless, perhaps, the very doing of the act directed to be done will necessarily and unavoidably, under any condition, result in the creation of what would be, but for the authorization, a private nuisance." 189 Essentially, the court in Fairfield held that legislative authority alone does not insulate a municipal corporation from all liability that may result from its actions. The court in Fairfield acknowledged that "the Legislature can not be presumed, from a general grant of authority, to have intended to sanction or legalize any acts or any use of property that will create a private nuisance which will injuriously affect the property of another." <sup>190</sup>

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<sup>&</sup>lt;sup>184</sup> *Id*.

<sup>&</sup>lt;sup>185</sup> *Id*.

<sup>&</sup>lt;sup>186</sup> *Id*.at 144

<sup>&</sup>lt;sup>187</sup> Mayor and City Council of Baltimore v. Fairfield Development, 87 Md. 352, at 359 (1898).

<sup>&</sup>lt;sup>188</sup> *Id.* at 360.

<sup>&</sup>lt;sup>189</sup> *Id.* at 361.

<sup>&</sup>lt;sup>190</sup> *Id.* at 362.

Applying the principles articulated in *Fairfield*, the court in *Taylor* found "nothing in the statute under which the city is acting suggestive of an intention of the Legislature to authorize the city authorities to commit a nuisance." The court used the absence of a compensation provision in the Sewerage Enabling Act of 1904 as evidence of the legislature's intent. The court also stated, "Nor can it be said that the Legislature contemplated that the performance of what it authorized to be done would necessarily or even probably result in such damage to private property as the plaintiff complains of."

The court ultimately held that the city of Baltimore was liable for the odor coming from the sewage treatment plant. The court stated, "Where a sewer is maintained by a municipal corporation so as to discharge sewerage and filth upon private property, or to emit offensive odors, creating an unsanitary and dangerous condition interfering with the safe and comfortable enjoyment of such property so as to impair its value, the municipality will be liable." The court reversed the judgment of the Circuit Court of Howard County and ordered the city to pay the costs of the litigation.

<sup>&</sup>lt;sup>191</sup> *Taylor*, 130 Md. 133, *supra* note 75, at 149.

<sup>&</sup>lt;sup>192</sup> Ia

<sup>&</sup>lt;sup>193</sup> *Id*.

<sup>&</sup>lt;sup>194</sup> *Id*.

<sup>&</sup>lt;sup>195</sup> *Id.* at 147.

<sup>&</sup>lt;sup>196</sup> *Id.* at 149.

### V. Analysis

Taylor v. Mayor and City Council of Baltimore is an interesting case because of the collision of several historical and legal trends. Historical developments show how the ruling demonstrates the court's unwillingness to favor a city's agenda over the personal property rights of a landowner. Legal trends of the period show that courts around the country were employing similar nuisance doctrines to hold municipalities liable when there was an absence of express legislative authority.<sup>197</sup>

Baltimore's need for a sewerage system was substantial in the years prior to this case. The early failures of sewerage commissions and the state legislature prevented the city from developing a sewer system. Only the disaster of the Great Fire in 1904 was able to push the movement for a sewer system over the hill. After the construction was complete, Baltimore had one of the finest sewer systems in the nation. However, the Back River Sewage Treatment Plant would prove to be the flaw in the system. The Court of Appeals demonstrated in this case that no matter the urgency of the city's actions, the city must respect personal property rights. A general grant of authority from the state legislature does not lead to the conclusion that the city can provide for the greater good at any expense to personal property rights. The court's view was that there must be some form of compensation provided for or the plan must be carried out in a way that does not create a nuisance.

Another historical trend that demonstrated the court's refusal to approve the city's agenda was the city's view towards prostitution and alcohol. In the years leading up to this case,

Baltimore was cracking down on institutions similar to Nettie Taylor's in the city. The Essex and Back River area during this period was a recreational area where many hotels like Taylor's

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 $<sup>^{197}</sup>$  MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1870-1960: THE CRISIS OF LEGAL ORTHODOXY, at 28 (1992).

existed. Given that the area is outside of the city lines, it is possible the city decided that placing the sewage treatment plant there could be an indirect way of combating this kind of business in an area where it had no jurisdiction. Making the area less desirable for these unsavory activities would be a step in accomplishing the city's goal at the time of stamping out prostitution. In regards to this issue, it is interesting to note that there seemed to be a political connection with these types of establishments. Mayor Preston most likely knew Taylor prior to the initiation of this suit, given that she visited his home and spoke to him about the odor. In addition, several sources suggest that these businesses enjoyed a level of political protection. This is evidenced in this case in particular by the repeated violations by Taylor and her husband that ultimately led to no significant repercussions.

Courts during this time period were utilizing the nuisance doctrine to hold cities liable when there was an absence of legislative authority. Courts employed the nuisance doctrine in certain situations to determine whether it was legitimate for a governmental entity to exercise its police power. When a government had authority from legislature, the exercise of police power could be deemed legitimate and the government would not be liable. The court in *Taylor* demonstrated how a city could not claim immunity for the exercise of a police power when there was no express authority from legislature. The court held that there was no authority from the legislature to create a nuisance, which was evidenced by the lack of a compensation clause. Therefore, the city could not claim immunity for creation of the sewage disposal plant because there was no legislative authority that allowed it to create such a nuisance.

Finally, the court's decision in this case correlates with the public view of the environment at this time. Many were beginning to support the notion of protecting the

<sup>198</sup> Id.

<sup>199</sup> *Id.* 

<sup>&</sup>lt;sup>200</sup> *Id.* at 29.

environment instead of utilizing it solely for economic purposes. Keeping the air fresh and devoid of the terrible odor described in this case seems to be in line with the emerging public view of the environment.

### VI. Conclusion

Nettie Taylor attempted to sell her property to the city Baltimore five years after the conclusion of this case.<sup>201</sup> The odor that plagued the property did not disappear and Taylor suffered a substantial decrease in business.<sup>202</sup> The city did not purchase the property, but Taylor attempted to sell it again in 1929.<sup>203</sup> The city again chose not to purchase the property because the expenditure would gain them nothing, for the property was not needed to extend the grounds of the sewage treatment plant.<sup>204</sup>

The litigation in 1917 was not the last confrontation between Taylor and the city of Baltimore. Taylor sued the city again in 1929 because of the smell coming from the sewage treatment plant.<sup>205</sup> Only the hotel property was involved in the litigation in 1917. Taylor brought the action in the Circuit Court of Baltimore County in 1929 to recover damages for her remaining property, including the storefront dwelling and the house.<sup>206</sup> The litigation was unsuccessful, likely because the Statute of Limitations had run long before the institution of the suit.<sup>207</sup>

The litigation in 1917 also was not the last suit against the city of Baltimore over its sewerage system. There have been numerous suits throughout the years, in addition to other

<sup>&</sup>lt;sup>201</sup> Baltimore City Archives, Baltimore City Law Department, case file no. 54,261, RG 13.S2, at 27.

<sup>&</sup>lt;sup>202</sup> *Id*.

<sup>&</sup>lt;sup>203</sup> *Id.* at 30.

<sup>&</sup>lt;sup>204</sup> *Id.* at 31.

 $<sup>^{205}</sup>$  *Id.* at 18.

<sup>&</sup>lt;sup>206</sup> *Id*.

<sup>&</sup>lt;sup>207</sup> *Id.* at 22.

suits from Taylor's neighbors in the 1910s. Most recently, the Environmental Protection Agency sued the city of Baltimore and Baltimore County in 2005 for failure to comply with the Clean Water Act.<sup>208</sup> The EPA sued the city and county for allowing the build-up of untreated sewage to run into the Chesapeake Bay.<sup>209</sup> The sewerage system was not adequate for the task of treating all of the sewage in the city. This particular settlement led to one billion dollars in improvements.

that were arising during the early twentieth century. Public view about the environment was changing. The city was cracking down on prostitution and prohibition was becoming a national movement. In addition, Baltimore was in immense need of a sewerage system. The city seemed to be trying to kill two birds with one stone by selecting Back River as the location of the sewage treatment plant. The sewage treatment plant was necessary for its sewerage system, and placing a nuisance of that nature in an area with many hotels like Nettie Taylor's would be an indirect method of combating prostitution and saloons. However, the Court of Appeals demonstrated in this case that a city could not be immune from the creation of such a nuisance. No matter how important the sewage treatment plant was to the public good, the court refused to allow it to override personal property rights and held that Taylor could recover against the city. In the end, it seems as if Baltimore committed another blunder in its effort to build a sewerage system, one that would cost the city large sums of money in the past and possibly in the future.

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http://www.epa.gov/compliance/resources/cases/civil/cwa/baltimoreco072605.html.

<sup>&</sup>lt;sup>209</sup> \$1 Billion Clean-up Settlements Reached with Baltimore Co. and Washington Suburban Sanitary Commission, EPA Press Release, (2005), accessed at <a href="http://yosemite.epa.gov/r3/press.nsf/7f3f954af9cce39b882563fd0063a09c/3d1c3812b4c5459c8525704a00533ac2!0">http://yosemite.epa.gov/r3/press.nsf/7f3f954af9cce39b882563fd0063a09c/3d1c3812b4c5459c8525704a00533ac2!0</a> penDocument.

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