

GIBSON, et. al.,  
v.  
JOHN F. WEYLER,  
Warden &c.

IN THE SUPERIOR COURT  
OF  
BALTIMORE CITY.

At the trial of this cause to maintain the issue on their part the plaintiffs read in evidence the following admission of facts heretofore filed in this case.

(Here insert it.)

The following transactions then took place.

(Here insert A.)

The plaintiffs then proved by John F. Weyler, the defendant, that he is the Warden of the Maryland Penitentiary, that he was appointed Warden of the Penitentiary on May 9th., 1888, and that he assumed the duties of Warden on June 1st., 1888, and has been Warden ever since. The Penitentiary was very much enlarged about 15 years ago. The first appropriation for this purpose was made in 1890. In 1890 the old penitentiary was bounded by Forrest Street on the east, Madison Street on the south, Truxton Street on the north and the Baltimore City Jail wall on the west. Constitution Street, now called Clifton Place was then in use as an open public street. The Administration Building of the new work at the penitentiary was commenced in 1894; it was erected out of the first appropriation of \$250,000. in the corner of Eager & Forrest Street. This is the large building farthest east. This building does not cover what was formerly the bed of Constitution Street. The bed of Constitution Street is covered by the west wing of the main building (the Eager Street wing). This was begun after the appropriation of 1896, and as near as I can remember in the year 1896. The buildings were

*That returns information with the kind of what description has been read in this case, constituting what was formerly the bed of the Constitution Street and was bounded by Forrest St. in 1890 and that the old Penitentiary did not stand there that year.*

completed and moved into - we occupied them on December 10th.,

1899. After the beginning of this wing in 1896, ~~the use~~  
*has not at any time been used*  
of Constitution Street as a street. ~~ceased.~~ When the con-

struction of this wing began we had to commence with the foundations of the west wing, that involved building across Constitution Street, and after that Constitution Street could not be used for purposes of public travel by the public. As near as I can remember this may have been in 1895

but I am almost positive it was in 1896, because we could not do anything to the property until after we had got the \$500,000. appropriation. The exterior part of the walls

of the Eager Street wing are of granite and the interior of brick. It goes right across the bed of Constitution Street. No part of the bed of Constitution Street is

open between Eager and Truxton Street. It is not entirely covered by the building, part of it is vacant ground inside of the institution. The outer walls are on Eager Street crossing Constitution Street. The building on this wing is about 50 or 55 feet high. This wing is used for cells for housing the prisoners. These walls at the base are 3 feet wide, running up to about 2 feet. The entire build-

ings including steel cells, equipment of ~~the~~ buildings, cost in the neighborhood of \$913,000. without the ground: that is, the wing on Ferrest Street, the Administration Building, the wing on Eager Street, the power house and the long building for the dinning room and kitchen. *The Administration*

The part of the building over the bed of Constitution Street is absolutely essential to the rest of the building. There was paid for property taken for the penitentiary on both sides of Constitution Street less than \$30,000.

"Q The Act of 1890, Chapter 200, authorizes the Penitentiary Directors to acquire all the several lots of ground em-

*part of the building built on Forest and Eager Sts and is 6 feet wide.*

braced within the following bounds: that is to say between Eager Street on the north, Concord Street on the west, Truxton Street on the south and Forest Street on the east; to what extent has the Penitentiary bought or acquired lands which were contained within those bounds?

(Objected to; admitted subject to exception)

"A They have acquired all the lands.

"Q They have acquired all the land?

"A All the land south of Truxton Street, including the bed of Truxton Street.

"Q Eager Street on the north, Concord Street on the west, Truxton Street on the south and Forest Street on the east; all that has been acquired by the Penitentiary?

"A. Yes.

"Q Is there included within that definition what was formerly the bed of Constitution Street?

"A Yes; between Eager and Truxton.

"Q You knew that these buildings were being put up on the bed of Constitution Street?

"A I knew that building was put up across Constitution Street.

"Q You were aware the construction was going on?

"A Yes.

"Q Did you make any objection thereto?

"A I haven't anything to do with it.

"Q Did the Directors of the Penitentiary make any protest against building on the bed of Constitution Street?

(Objected to)

"A I cannot testify to that because the Directors attended to the purchasing of the property.

(Objection sustained)

"THE COURT: He can testify whether or not he heard

of any?

"A I heard of none.

(Motion to strike out; motion granted)

"Q (BY MR. BARTON): Who had charge of the erection of the building on behalf of the Penitentiary?

"A How do you mean?

"Q Which official?

"A The Directors had charge of it.

"Q That was not within your particular duties?

"A No.

"Q When did you as Warden take charge, or when did your duties include the charge of the part of the building on the Eager Street wing which stands on the bed of Constitution Street?

(Objected to)

"Q When was this new wing that covers now the bed of Constitution Street put into actual use for prisoners, for administrative purposes?

"A We moved into the building as I stated before on the 10th of December 1899 and have occupied it ever since.

"Q You have occupied it from that time on, you were the occupants of the Administration Building from that time on?

"A Yes.

"Q Were the prisoners contained or confined in cells in this new addition from this time on under your charge?

"A Yes sir; as Warden.

"Q What is the nature of the residue of the Penitentiary building; I am not referring to what you have spoken of as the Eager Street wing, which covers this specific property, but the balance of the Penitentiary building, what is it built of; what material, a stone building or a frame building?

"A All of the buildings except the dining room, which is not on the new land acquired, but which is on old ground, the power house, the Eager Street wing, the wing on Forrest Street and the Administration building are built, the exterior of walls of granite and the interior part of the wall is brick and the cells which the prisoners occupy are of steel.

"Q Is there a wall around the whole building?

"A The building themselves are the wall on Eager Street and Forest Street.

"Q How about Truxton Street; is that within the interior?

"A That is within the interior of the institution, not built on.

"Q The average height of the building is what?

"A Of those wings are between 50 and 55 feet; the administration building is over 100 feet.

"Q How old is the penitentiary building; I don't mean the new addition, but when was the penitentiary first established on this site?

"A The first prisoners taken into the Maryland Penitentiary, according to the records of the institution was in 1811.

"Q Was it then on this same general location?

"A No, sir; that was on Madison Street and part of Forest Street.

"Q It was in that same locality?

"A South of it.

"Q Is that part which was the original grounds of the penitentiary still owned and used by the penitentiary?

"A Still owned and used.

"Q And this is an addition to the old ground?

"A This is an extension made in accordance with the Act of 1890.

"Q So the penitentiary is nearly 100 years old in that locality on that site?

"A The first Ordinance introduced into the Legislature was in 1804, but the first appropriation was not made until 1809 and the building completed in 1811.

"Q In order to make sure there is no misunderstanding, let me ask you whether or not the grounds of the Maryland Penitentiary are enclosed by those walls, either of the building itself or in some other way on all sides or is any side open?

"A How do you mean "open"?

"Q Is any side unenclosed?

"A The old grounds are of course closed or enclosed by a wall; on Forest Street is a wall, on Madison Street side is a wall and there is a wall which divided the City Jail and the Maryland Penitentiary grounds and there was a wall of course on Truxton Street on the north side; all the old ground was enclosed by a wall.

"CROSS EXAMINATION.

"Q (BY MR. BRYAN): I had you an exhibit which has been filed, marked Exhibit "Weyler"; look at it and stated if you know what it is? *(See Exhibit Weyler filed by defendant with his pleading, filed with the defendant's plea)*

(Objected to; admitted subject to exception)

"Q What is it; are those the rules?

"A The rules and regulations governing the Maryland Penitentiary.

"Q As Warden of the Maryland Penitentiary are you, while you hold your office as such Warden, subject to those rules?

"A I am subject to those rules contained therein.

"Q State whether or not those are the rules which define your duties?

"A The rules and regulations define the duties of the Warden of the Maryland Penitentiary; yes.

"Q Are there any rules defining your duties except those contained in this exhibit?

"A Only the Statute which is practically the same.

"Q I ask you are there any other rules which govern you as Warden?

"A No, sir; no other rules.

"Q In answering one of Mr. Barton's questions you said We moved in and occupied the building; stat who you meant by "we", yourself alone, or whether you meant the Directors?

"A I meant to say that all of us moved from the old prison into the new buildings.

"Q As a matter of fact--- I am not speaking about the Statutes and the rules---but as a matter of fact who is in control of the Penitentiary building now and who determines what is to be done?

"A The Board of Directors of the Maryland Penitentiary.

(Objected to; admitted subject to exception)

"Q Explain to the Court how the Board of Directors manage the Penitentiary; by that I mean will you state how often any Committee comes there, if there be any Committee which comes there, and what it does and what you do and to whom you report and all about it; give a short history of what is done in that respect without going into all the details, just what is done.

(Objected to; admitted subject to exception)

"A The Board of Directors are in charge of the Maryland Penitentiary and they meet the first Wednesday of each month and receive reports from myself---first of all from the Monthly Committee who have charge during the interim of the meetings of the board ; they are in charge during

the month; they are the persons to which I report if anything is out of order and if I want advice from any one, instructions, and so on; they make their report of what has happened during the month to the Directors; I simply carry out the rules and regulations and laws of the State in reference to the Penitentiary and attend to the discipline of the prisoners.

(This testimony is subject to exception)

"Q Suppose one of the Deputy Wardens misbehaved and got drunk or anything of that sort, state whether or not you would punish him or would you report him to the Board?

"A It would depend on circumstances; I would suspend him and report him to the Board or I would dismiss him subject to the approval of the Board and report what the offense was and so on but what I did would always be subject to their approval.

"Q You have spoken of a monthly Committee taking charge of the business during the interval between the meetings of the Board; please state whether or not the monthly Committee which you refer to is the same as the Monthly Committee which is referred to on page 6 of the By-Laws?

"A The Monthly Committee referred to on page 6 of the By-Laws is the same to which I have referred and its duties are defined there.

"Q I have asked you about the By-Laws whether they are not the By-Laws?

"A Yes, sir; this was adopted in 1889.

"MR. STRAUS: These are the By-Laws?

"A Yes; in use to-day.

"Q Just to get an understanding of the matter let me ask you this: Suppose the Board of Directors were to have a special meeting tonight under the practice over there,

could they tell you to move out at once and quit?

"A They could dismiss me at once at any time.

"Q You do not claim to hold under any tenure except by the will of the Board?

"A Entirely so.

"RE-DIRECT EXAMINATION.

"Q (BY MR. BARTON); You live in the Penitentiary building, do you not?

"A The building adjoins the Administrative Building; that is specially built for the Warden; the Warden is obliged to live on the ground under the Statute.

"Q Your office is in the Administration Building, is it not?

"A Yes; the office is there.

"Q Your own office is in it?

"Q Yes.

"Q And your dwelling is near there?

"A Adjoins it on Eager Street.

"Q Do your duties carry you to your office every day?

"A I am there every day.

"Q Is anybody at the Penitentiary who is higher than you are in authority; I mean who are permanently there?

"A No one there only when the Monthly Committee visits there.

"Q I mean in the intervals between the meetings of the Committee and the Board.

"A No; not directly on the ground.

"Q You are the person in highest authority in the Penitentiary at all other times?

"A Yes; I am executive officer.

"Q The executive officer?

"A Yes.

"RE-CROSS EXAMINATION.

"Q (BY MR. BRYAN): When you are here who is in authority?

"A The Assistant Warden John F. Leonard, has charge today while I am absent.

"Q Both you and he are subject to the Board?

"A Certainly.

"Q The Board has control of the Building?

"A Yes.

"Q If the Board dismisses you tomorrow, you and your family will have to move out of the house?

"A Yes.

"MR. BARTON: The Board has not dismissed you up to this time?

"A I have not heard of it" *The defendant was here permitted by Council to call out it under two articles, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.*

*The plaintiffs have done it that stated.*  
Then Samuel F. Sherretts and Frederick W. Story *being duly sworn* called by the Defendant testified as follows:

(Here insert B.)

Then John F. Weyler was recalled for the Plaintiffs and testified that at the instance of the Board of Directors of the Penitentiary, Mr. John T. Ford who was at that time a member of the Board of Directors prepared the advertisement giving notice that Ordinance 111 for closing Constitution Street would be introduced in the City Council.

The Plaintiffs then called D. B. Marshall, a *being duly sworn (subject to exception)* real estate broker of Baltimore, who testified that the fair rental value of the bed of Constitution Street, if not covered by the penitentiary would be \$3. a front foot binding on Eager Street on one end and \$3. a front foot binding on Truxton Street at the other. Constitution Street was 60 feet wide. This would make the annual rental \$180., at each end or \$360., for the entire lot.

D "The plaintiffs then proved by Vivian Carroll that the plaintiffs in this cause are the heirs-at-law of the Thomas King Carroll (a former Governor of Maryland) and Juliana (Stevenson) Carroll, his wife, who are mentioned in the admission of facts hereinbefore set out as to the title to said lands in the year 1831, and also as the grantors in the three deeds hereinbefore set out, who were his grand-parents; that his said grandfather married Juliana Stevenson but did not marry but once; that neither Governor Carroll nor his wife nor any of their descendants, or any of the persons at any time interested in the lands sought to be recovered in this

~~D~~  
3.

case left any will or wills, but that the real estate of which the said Governor Carroll and Juliana (Stevenson) Carroll, his wife, respectively died seized, passed by descent to the plaintiffs herein, and they also proved by said witness all necessary deaths, births and marriages."

*Not inserted*

of which they respectively died seized passed by descent to the plaintiffs herein.

MR. BRYAN: We offer in evidence the City Code of 1879, Article 47.

It is agreed that this Article of the Code can be read from the City Code in this Court or in any other Court to which the case may go, as fully and to the same effect as if incorporated in the record.

MR. BRYAN: I also want to offer City Code of 1893, Article 48, Sections 1 to 27 inclusive, and also the City Code of 1896.

I will not take the time now to pick out those ordinances, but I will designate hereafter in the City Code of 1906 such ordinances as relate to the opening and Closing of Streets, the same to be read from the Code in this Court or any other Court to which these proceedings may go as fully as if incorporated in the Record.

Also offer Ordinance 216, approved October 14, 1893, which is introduced under the same stipulation as the above codification of the Ordinances in the City Code.

We also refer to the City Charter but it is not necessary to offer it.

The Plaintiffs then offered the following <sup>3</sup> Prayers.

(Here insert them)

And the Defendant <sup>6</sup> offered the following Prayers.

(Here insert them)

And the Court granted the *first* Prayers of the Plaintiffs, and rejected the *second and third* Prayers of the Plaintiffs, and rejected *the* *all the* Prayers of the Defendant. To which action of the Court in granting the *first* Prayers of the Plaintiffs and ~~in granting each of them~~, and in rejecting the *six*



Bill of Excipients

Feb. 17 Mch 1909