

A I have not heard of it.

(Examination concluded)

SAMUEL F. SHARRETT, called by Defendants,

sworn.

Q (BY MR. BRYAN): What is your business ?

A I am in the real estate business ; at the present time I am assistant commissioner for opening streets ; as their real estate man attending to the technical part of their work.

Q Have you ever held any public office under the Mayor and City Council of Baltimore ?

A I was Commissioner for Opening Streets for ten years.

Q Just explain to his Honor what the course of the Commissioners is in closing a street ?

(Objected to ; subject to exception)

A It is just the reverse of opening a street.

Q For instance an ordinance is passed to close Constitution Street we will say ?

A Yes.

Q When you come to assess benefits and damages where do you put the damages in closing a street ?

A To the abutting property.

Q Damages for what ?

A For depreciation in being deprived of the use of the street ; it is just the reverse of the case of opening a street ; there the abutting property is assessed for benefits for the use of the street and where the street is closed damages are allowed for cutting off that use, because they would have no open street.

Q In the case of opening a street you give the owner of the bed of the street damages for taking his property ?

A Where you open ; yes.

Q When you close a street what do you do so far as the owner of the bed of the street is concerned, that is the owner of the street subject to the servitude of the street ?

A We make him pay the expenses of closing, whatever that may be, and take back the ground.

Q He gets the ground ?

A Yes.

Q Freed from the easement of the street ?

A Yes ; and from the easement of the abutting property owners, adjoining property owners.

Q You call that benefits ?

A Yes.

Q Those benefits are always some sum of money ?

A Yes.

Q Of course we all understand that it is quite difficult to express an opinion as to what those benefits would be, but can you give his Honor any idea as to how you arrive at those benefits ?

(Objected to ; admitted subject to exception)

A That would be determined first by the amount that would be allowed to the abutting property for damages by the closing in the first place and the expense the city had been put to for advertising, examination of titles and preparation of plats and so on ; all that would be put in the bill and the man who got the property would have to pay it ; the city never realizes anything from opening a street and never expects to pay anything for closing a street.

Q The man who gets the street freed from the servitude of the street has to pay whatever sum is necessary to reimburse the city for the expenses incurred in closing the street ?

A That is the universal practice.

Q And in addition to that he has to pay such a sum as will enable the city to pay damages to the abutting owners for the loss of the use of the street ?

A Yes.

Q Speaking roughly can you tell whether or not that generally amounts to the full value of the land or not ?

A Some times it does and some times it amounts to more than the original property owner is willing to pay and he allows it to be sold by the city for if the property owner does not pay these expenses the city sells it.

Q To satisfy the claims and pay for the expenses incurred ?

A Yes.

Q Take Constitution Street as an example ; the Penitentiary owns the abutting land on both sides according to the proof and according to the proof so far we will assume the heirs of Mr. Carroll own the fee of the bed of the street ; if you close the street in the regular way

you would assess to the Penitentiary as the owner of the abutting land whatever damages may arise from that or how far the market value of it is depreciated by reason of it being deprived of its abuttment on a public street ; would you not ?

A Yes, sir.

Q And the damages---

A I will say in regard to Constitution Street I do not know anything about it ; I had nothing to do with it ; I have never had occasion to value property in that immediate neighborhood and of course I could not tell you anything in regard to damages.

Q I only want to get at the procedure ; you assess the owner of the abutting property whatever damages you think he suffers by reason of being deprived of the use of a street ?

A Yes; that is universal.

Q And put the benefits on the owner of the street that he gets by having his property relieved of the easement ?

A Yes.

Q And the general rule is that those benefits equal the total amount of the damages on both sides and the expenses---

A The expenses, the expense has to be added.

Q The expenses the city is put to in the proceedings ?

A Yes.

Q You were Commissioner for Opening Streets for ten years ?

A Yes, sir.

Q And closing a street is exactly the reverse of opening one ?

A It is just the reverse of opening a street when you close one ; in opening a street you assess a man so much benefits to his property abutting on that street or contiguous to it ; it is not necessarily the man who has property abutting directly on the street but any property that derives benefits or damages because the Commission can go wherever it thinks property is specially benefitted in order to assess their benefits and wherever property is specially damaged they can give damages.

Q And as the Commission finds it stands unless reversed on appeal?

A Yes, sir.

Q You were one of the Commissioners during the time I was City Solicitor ?

A I was ; I went in under Mayor Hodges and remained ten years.

Q You went in under Hodges and went out under Hooper ?

A Yes ; I have been attending to street cases ever since ; I have been intimately connected with street openings ever since and I helped the Burnt District Commission to get through with their condemnation proceedings and then I went to the Annex Commission and the Commissioner for Opening Streets ; I see Mr. Story there ; he knows more about this than I do.

THE COURT: Do I understand that you assess damages on anybody that you think is damaged ?

A Specially damaged ; yes.

Q You assess benefits on anybody you think specially benefitted ?

A In closing a street ?

Q Yes ; the assessment for benefits is charged up against the property ?

A Yes.

Q Entirely so ?

A Entirely against the property, that is in closing streets.

Q All you do is to assess the damages ?

A Yes.

Q And make the man who takes the bed of the closed street pay those damages and expenses ?

A Yes.

Q If he does not pay the damages and expenses then the bed of the street is sold ?

A It is sold by the City Collector.

Q You sell the fee simple bed of the street by metes and bounds ?

A Yes.

(Examination concluded)

FREDERICK STORY, called by defendants, sworn.

Q (BY MR. BRYAN): You are a member of the bar ?

A Yes.

Q You have some connection with the real estate department of the City Solicitor's office ?

A Yes.

Q What is that connection ?

A Of course I am a Republican and I am out of office now, but I work with the City nearly all the time and it is very seldom that I have not 4 or 5 or 6 important matters on hand investigating titles for the Mayor and City Council of Baltimore and so it has been for over 30 years.

Q You are over 30 years old then ?

A I have been a member of the Bar for a generation as we reckon 3 generations to a century.

Q Do you know about the Constitution Street Ordinance No. 111 for closing that street ?

A At the time this Ordinance was passed, it is No. 111 in the year 1892 I think you will find, and at that time I was as I have been for a good long time what we used to call Assistant to the Examiner of Titles ; when it was being carried out I was the Examiner of Titles and the rod was in my hand apparently ; at least Mr. Weyler thought so.

Q You must not tell what Mr. Weyler thought as it might not be admissible ?

A Well, then Mr. Weyler said so.

Q Do you know whether or not the proceedings under that Ordinance have been complied with and carried out ?

A They have not been complied with ; exactly how far they have proceeded I don't know, but I do know up to the time the new city charter wholly took affect that is to say nearly a year after it went into affect up to the last moment I ceased to be Examiner of Titles, which was in the spring of the year 1900, it had not even passed through the stages of receiving so much as the first notice, much less anything more ; the street book has not been found, there never has been any return and it has not been complied with ; it has never reached the City Register's office and therefore it has never been subject to any appeal to the Baltimore City Court.

Q Mr. Weyler--- excuse me, I mean Mr. Story---

A Weyler is a good name .

Q But he is not a lawyer, although he has handled some lawyers ?

A He is taking care of several.

Q Yes, and he will take care of some more.

A I suppose so.

Q Can you from your wide exaperience as Examiner of Titles for over 30 years and your connection with real estate department of the Baltimore City Law Department---

A I did not say over 30 years, but I said about 30 years.

Q Can you tell his Honor about the assessment of benefits against the bed of a street when it is closed ; can you explain how that is done ?

A It is customary your Honor and the Court of Appeals has decided that it is not a bad custom, they flopped a little bit as to the meaning of the words, but having understood what the words mean in Baltimore City, that is to say: when our Court said "benefits" they meant the opposite and meant "damages" and when they said "damages they meant the opposite to what was meant in any other place and meant "benefits"----and having that in view the Court agreed with and approved our method here in the City here for closing streets with that understanding of what the words meant.

MR. BARTON: Give us the cases ?

A I am not here to pass judgment on the Court of Appeals but I am speaking now as to what we did.

MR. BARTON: What was that custom that was approved of by the Court of Appeals ; I want you to give is the case where the Court of Appeals decided that so that we can read it for ourselves?

A I put it the other way and say that we so understood the court to mean that and therefore we kept a book for the closing of streets ; we kept a book in exactly the reverse of the other ; I am not talking now about the Court of Appeals, but I am telling you what we did.

MR. BRYAN: The Court of Appeals is res inter alios ?

A We kept a book for closing exactly the reverse of what it was for opening the streets.

THE COURT: Did you have a case in your mind when you were speaking about the Court of Appeals ; I thought maybe you might be referring to some case, or had it in your mind while you were test ifying ?

A Yes ; I confined it ; it is there.

THE COURT: But you have not the case in your mind now ?

A No, sir ; I cannot give the name to you off hand.

MR. BRYAN: Give it to Mr. Barton.

A I confined the case only I did not think that we were going into a long discussion of the law, but you only wanted to know what we did.

MR. BRYAN: No, we don't want any discussion of the law ?

A The cases are there.

Q We want to know what you did ?

A The book in closing a street is kept in exactly the opposite form that it is in the case of opening a street and therefore I only wanted to say that what I say in regard to the closing of a street that exactly the opposite will apply to the opening of a street and vice versa ; the book is begun by two or three printed slips in front and they are filled up and first are the oaths of the Commissioners to that particular book and the oath of the clerk of the Commissioners for opening streets as their clerk for that particular book ; then they have certain preliminary notices which they give that they will meet on such and such a day to perform this function and thereupon they meet and they hear whatever parties or objections of any kind that they please and they are

authorized to accept and do accept all surrenders and compositions of all kinds for the part of the ground that is to be in the opening included, in the opening as well as the surrounding parts included therein ; of course in closing a street the reverse process would be gone through with ; and then they make up what is called a first return ; and if my brother wants the case---

Q Tell us what they do and give us the case afterwards ; what do they do with the first return ?

A The awards are all made---

MR. BARTON: Are these steps which you have just recited provided for by the law ?

A By the Ordinance and they are always 5 x 9.

Q Are you testifying to what the Ordinances require you to do ?

A I am speaking about the universal practice of every book.

Q But you do follow the instructions-----

A As a matter of fact there are instructions and they are followed literally in every case.

MR. BRYAN: I do not want to go into the Ordi-

nances but I want to let the Court know how it is done ; what physical acts have to be done in the closing of streets ?

A The last case was Gardiner vs. The Mayor & City Council where our conduct and especially Mr. Story's conduct in the matter is passed on and approved.

MR. BRYAN: Just tell us what they do when they come to closing a street, where they put the damages ?

A The damages are put on the abutting property.

Q Of the abutting owner ?

A Where a street is closed the man is damaged who loses his outlet and he receives the money that the return is for ; the same return is made---it is presumed that the man who gets the land free from that user is benefitted and he must pay his benefits and the other fellow must receive his damages ; it is just the reverse of what it is the other way ; but all the awards are made to the parties by name, to such and such persons legally entitled to receive the same ; you stopped me---

Q I did not intend to stop you ; I wanted you to go ahead, when they come to fixing the amount of benefits assessed

against the owner of the servient fee; do you know what I mean ?

A Yes ; but we do not recognize that, we only recognize the fee simple.

Q In fixing that---

A A lot of ground, for instance at A----

Q How do you arrive at what those benefits are ?

A Mr. Sharretts properly stated it ; the charges in the case of a street closing to be paid by the lot which is released from what you call the servient estate or condition rather----

Q Releasing it from the dominant easement---

A No ; it is not nominal.

Q I did not say nominal, I said dominant?

A The charges against it are the whole damages that is suffered by the abutting owner or the owner around the corner, the Mayor and City Council of Baltimore, the share of the Mayor and City Council of Baltimore consists almost entirely in closing, so far as I remember, as I remember any expenses that is the Mayor and City Council's share of the damages and expenses they are made up of notices, string of per diems, surveyors' costs and costs

of examining the titles and also the expenses of the Register's office at the closing ; the man around the corner, he may, or may not, be damaged according as he is left without any other outlet or the distance is increased to an outlet by the closing of the street ; the man who abutts right on the improvement, the character of his land is wholly changed from being land that abutts on the street to land that does not abutt on the street ; he is damaged to that extent ; and that value is reflected in the difference of the value between the value of the land as fronting on the street and the value of land as not fronting on any street ; but it always lot A, B, C or D and those lots are to whatever the name is, X. Y. Z. or such other person or persons as may be legally entitled to receive the same.

Q One more question and I think I won't trouble you any more ; can you give us any idea from your experience whether or not the amount of benefits assessed against the fee simple bed of the street about equals the fee simple value of that property ; you know what I mean ?

A We never allow a balance to remain over so that the City

shall be subjected to any charges ; if the owner of what you call the dominant estate and the owner of the lowest estate is the same, we do not trouble ourselves so much about figuring so much exactly in dollars and cents damages, because his benefits help out the damages ; where it is necessary to discriminate between the benefits and the damages we figure to the closest degree and notify the parties sometimes and listen to them in regard to any protests.

Q If there were different owners involved you would have to separate the damages and the benefits ?

A Yes, sir.

Q If Mr. Straus owned the abutting land and I owned the bed of the street which was about to be closed he would get such damages as the market value of his property would be hurt by the closing of the street ?

A Yes ; he would get such damages as he cried for---

Q And if I owned the bed of the street to be closed I would have to pay such benefits as the sum of the damages and expenses amounted to---

A Unless the jury said otherwise.

Q As the Commissioner of Opening Streets determined upon ?

A They are governed by the amount of noise made before them very largely, if the parties come and cry and say we are willing to do so and so the Commissioners very possibly when the parties come and cry and cry, the Commissioners recognize their cries and they consider those cries and send those cries to the Register and from there they are sent to the Baltimore City Court.

Q You remember what is said about an honest man not being shaken by the clamors of citizens ?

A The law says that they shall listen to the clamor of citizens.

CROSS EXAMINATION.

Q (BY MR. BARTON): We desire to cross examine with the understanding that we waive none of our objections or exceptions by doing so ?

MR. BRYAN: Very well ; if we could make any objection to it we will waive it any how.

MR. BARTON: If the testimony is stricken out the cross examination goes out with it.

Q (BY MR. BARTON): What is the purpose of the City in closing a street ?

A I don't know as they have any purpose ; it has to be done under the Ordinance and we carry it out ; the Commissioners for Opening Streets and the Examiners of Titles have nothing to do with the purpose ; our purpose in this matter was to carry out Ordinance 111 as we were required.

Q You have been familiar with the methods of the City in closing and opening streets ?

A I understand you now---

Q What is the purpose for which streets are closed ordinarily ?

A Principally to relieve the office now called the City Engineer's office from the labor and expense of paving and repaving.

Q Are there not some other purposes ; suppose some one wanted to make an improvement on a piece of ground intersected by a short street ?

A The Mayor & City of Council of Baltimore have nothing to do with that ; at least they never regarded they were concerned in private matters.

Q You represented the Penitentiary Board in the acquisition of the property as far as the title was concerned ?

A No ; I represented exactly the other side ; the Mayor and City Council of Baltimore.

Q You said Mr. Weyler seemed to think you had a great deal to do with the title ; just what was your connection with examining the title and the acquisition of this title ?

A My connection briefly stated is just exactly this: one of our men of the City Commissioner's office, as it was then called, was repairing a piece of pavement around the corner, I think on the York Road, and telephoned down that he wanted a wagon load of cobble stones ; he was informed---I was standing I think by the phone---he was informed that he could not have them until the next day ; he said, What is the use of waiting, there is a pile right around the corner, can I have a couple of loads off of them ; he turned to me and said, Can he have them ; I said, yes ; he forthwith proceeded to take them and he was informed by Mr. Weyler that he would be arrested---

(Objected to)

Q I did not ask you for that-----

A The cobble stones were claimed by the Examiner ; I did claim them.

Q By whom ?

A The Examiner ; I was the Examiner ; I forthwith took possession of them because they were in the bed of the public highway, part of a public highway and were our property ; that resulted in an interview with Mr. Weyler ; you can ask Mr. Weyler the rest.

Q When was this ?

A That must have been in the year 1896, was it not ?

Q Was that when the Penitentiary was being built ?

A There was no penitentiary on that street when I claimed the cobble stones.

Q What street are you speaking of ?

A I presume it is Constitution Street or Clifton Place as it is called.

Q It may have been Truxton Street for all you know ?

A It might possibly have been Truxton Street, but Mr. Weyler can tell you.

MR. BRYAN: He is not on the stand.

A He was there every day and I was not.

MR. BARTON: You are Examiner of Titles ?

A I was ; I did not care where the cobble stones were ; they were in the street and that was enough.

Q You claimed the stones because they were in a public street ?

A I claimed ths stones because the Mayor and City Council put them there on its own property ; they were on its own property and were ear marked accordingly.

Q You knew the street was being torn up ?

A I did not ; I knew it was torn up when I saw it.

Q You knew the time when the penitentiary was being built, that it was being built there ?

A I did not give any attention to it.

Q Didn't you have an interview with me about it ?

A It was after that.

Q Were you officially connected with the City Law Department at that time ?

A I was at the time I had the interview with you ; you had an interview not with me, but with the Examiner of Titles ; you had no interview with me.

Q Did you not have two or three different interviews ; you were a sort of Poo Pah---

A I mean on that subject ; we had many interview socially

and privately but that interview was with the Examiner of Titles ; I think it was 3 or 4 months before you and I talked it over.

Q Do you know at whose request this Ordinance for closing Constitution Street was introduced ?

A It ought to appear, it ought not to be a question of my knowledge or anybody else's, but it ought to appear ; those notices had to be given in those days in 1892 and it ought to appear and you ought to be able to find it out for yourself.

Q What do you mean by that ; that the notices had to appear ?

A Somebody had to publish the notices in some paper in the City of Baltimore that application would be made, a thing about that long, three lines ; in this case there were four or five streets and I judge it would be an inch, that application would be made for this Ordinance for closing the street.

Q Is that published for the property owner ?

A That had to be published by the person who was interested, the person who started the game had to do it at that time in order to get it started.

Q Where would that appear ; among what records of the City ; is there any record in which we could find that ; would it be in the City Librarian's office or the Commissioner's for Opening Streets or not ?

A That would be in Committee ; the Committees keep no records ; but the transactions and other proceedings in the First and Second Branch of the City Council for 1892 ought to show that.

Q Show at whose instance the Ordinance was introduced ?

A Who introduced it.

Q You don't know ?

A I do not ; there were hundreds of them ; those things made no impression as to their details on my mind ; I had so many of them at that time they came in in bucket fulls ; those that did not succeed came as often as those that did succeed ; but the interested party had to pay the bill.

Q The advertisement appears over his signature ?

A No, sir.

MR. BRYAN: Anonymous advertisement ?

A Yes.

MR. BARTON: What do you mean, that we could find out at whose instance the Ordinance was introduced ?

A I presume so.

Q This discussion originated in my asking you if you knew why it was introduced and who had it introduced and you said the records will show that.

A No ; if it had not been for the fire we would have been able to prove all these things, but now since the fire it is impossible to do so ; I have gone in again and again and found out from the newspapers who paid for it but the fire came in and things are harder now ; Baltimore is not a little village any more.

~~(Examination concluded)~~

~~JOHN F. WEILER, recalled by Plaintiff.~~

Q (BY MR. BARTON): Do you know who had Ordinance 111 introduced ?

(Objected to ; admitted subject to exception)

A I will answer it to the best of my recollection ; it

G. Libos in et al

v
Weyler

Bills of Exceptions

Exhibit B

Feb 17 Mch 1909