

GIBSON, et AL,)
-VS-) IN THE
JOHN F. NEWLER, Warden) SUPERIOR COURT
of the Maryland Peni-) (PART TWO)
tentiary.) BEFORE
JUDGE NILES.

Baltimore, February 17, 1909.

The Plaintiffs offer¹ in evidence the original Land Record of the Superior Court of Baltimore City, Liber W. B. 212, folio 52, containing the record of the deed from Thomas King Carroll and Juliana Carroll, his wife, to Robert J. Henry as follows:

THIS INSTRUMENT, Made this 19th day of May, in the year of Our Lord eighteen hundred and thirty-one, between Thomas K. Carroll and Juliana Carroll, his wife, of Somerset County, in the State of Maryland, of the one part, and Robert J. Henry of the same County and State, of the other part.

WITNESSETH: That the said Thomas K. Carroll and Juliana Carroll, his wife, for and in consideration of the sum of five dollars, to them in hand paid, before the execu-

189
1904

SUPERIOR COURT OF BALTIMORE
CITY.

Frank T. Gibson et al,

vs.

Directors of the Maryland
Penitentiary et al.

1646
Harr.

Please file and issue
for defendants to April R.I.
1904, sending copy of Harr etc.

James D. DeLoach
Walter Wilson
W. H. ...
W. H. ...

Feb 24 March 1904

BARTON, WILMER, ANSLER & STEWART
ATTORNEYS AT LAW
257 N. CALVERT ST.
BALTIMORE, MD.

Frank T. Gibson,
Julia Baxter,
Charles C. Carroll,
Victor C. Carroll,
Vivian Carroll,
Margaret H. Carroll,
Julia S. Carroll,
Nellie C. Carroll,
Margaret Hardy Carroll, widow,
Ada C. Bowditch,
Sally Carroll Craddock,

vs

The Directors of the Maryland
Penitentiary,
John P. Wayler,
its Warden

In the Superior Court
of
Baltimore City.

Frank T. Gibson, Julia Baxter, Charles C. Carroll, Victor C. Carroll, Vivian Carroll, Margaret H. Carroll, Julia S. Carroll, Nellie Carroll, Margaret Hardy Carroll, widow, Ada C. Bowditch and Sally Carroll Craddock, by Goldsborough & Fletcher and Barton, Wilmar, Ambler & Stewart, their attorneys, sue The Directors of the Maryland Penitentiary, a body corporate, duly incorporated under the laws of the State of Maryland, by Section 400 of Article 27 of the Code of Public General Laws, and John P. Wayler, its warden:

For that the plaintiffs were in possession of the following described property in the City of Baltimore and State of Maryland, to wit:

All that lot of ground constituting the bed of the Street formerly known as Great Constitution Street in said City of Baltimore, said lot of ground beginning on the south side of East Eager Street, at the distance of two hundred and forty-one feet west from the West side of Forrest (formerly Nelson) Street, at a point which was the South-west corner of said East Eager and Great Constitution Streets in the year 1890, and running thence West on the south side of East Eager Street _____ feet to a point which was the south-west corner of said East Eager and Great Constitution Streets in the year 1890, thence South, with the line of the west side of Great Constitution Street extended and with the west side of Great Constitution Street as the same existed in the year 1890, a distance of two hundred and thirty nine feet, more or less, to the north-west corner of said Great Constitution Street and Truxton Street as the same existed in the year 1890, thence in a north-east direction to a point, which is intersected by a line drawn from the place of beginning parallel with the second line in this description, at a distance of two hundred and twenty-nine feet from the place of beginning, and thence northerly reversing the line so drawn and bounding thence two hundred and twenty-nine feet to the beginning.

And the defendant ejected the plaintiffs therefrom and retaining possession thereof.

Wherefore the plaintiffs bring this suit and claim an amount of \$40,000.00.

John H. ...
Robert ...
Attorneys for Plaintiffs.

To the Defendant:

Take notice: That on the day of your appearance to this action in the Superior Court of Baltimore City, a rule will be entered against you, requiring you to plead to said declaration within fifteen days thereafter.

James M. Fletcher
Robert William Wright & Son

Attorneys for Plaintiffs.

The plaintiffs elect to have this case tried before a jury.

James M. Fletcher
Robert William Wright & Son

Attorneys for Plaintiffs.

GIBSON, et AL,)	IN THE
-VS-)	SUPERIOR COURT
JOHN E. WEYLER, Warden)	(PART TWO)
of the Maryland Peni-)	BEFORE
tentiary.)	JUDGE NILES.

Baltimore, February 17, 1909.

The Plaintiffs offer¹ in evidence the original Land Record of the Superior Court of Baltimore City, Liber W. G. 212, folio 52, containing the record of the deed from Thomas King Carroll and Juliana Carroll, his wife, to Robert J. Henry as follows:

THIS INSTRUMENT, Made this 19th day of May, in the year of Our Lord eighteen hundred and thirty-one, between Thomas K. Carroll and Juliana Carroll, his wife, of Somerset County, in the State of Maryland, of the one part, and Robert J. Henry of the same County and State, of the other part.

WITNESSETH: That the said Thomas J. Carroll and Juliana Carroll, his wife, for and in consideration of the sum of Five dollars, to them in hand paid, before the execu-

tion hereof, and in order to carry into effect an arrangement heretofore made, between the parties for the division and partition of certain lots of ground lying within the present limits of the City of Baltimore, they, the said Thomas K. Carroll and Juliana Carroll, his wife, have bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do sell, alien, release, enfeoff and confirm unto the said Robert J. Henry, his heirs and assigns, all that piece or parcel of ground near to the City of Baltimore, and within its present limits as aforesaid, contained within the following metes and bounds, viz:

Beginning for the same at the northeast corner of East Bager and Great Constitution Streets on the East side of Jones' Falls and running thence North on the East line of Great Constitution Street, one hundred and eighty-five feet, more or less, to the South line of Josias Pennington's property, formerly an apple orchard, thence eastwardly along said Pennington's line, fifty-four feet to the garden wall of the late Doctor Cosmo G. Stevenson, thence south twenty-one and a half degrees East along said wall, one hundred and sixty-five feet to the corner of a fence as now standing, thence eastwardly, with said fence, thirty feet, and thence

Southeasterly fifty-five feet to the North line of East Eager Street aforesaid, and thence West along the north line of said street, one hundred and sixty-five feet to the place of beginning.

Also all that lot or parcel of ground, beginning for the same at a stone placed at the southeast corner of Great Constitution and East Eager Streets, aforesaid, and running thence South two hundred and twenty-nine feet on the East side of Great Constitution Street ; thence easterly one hundred and thirty-four feet along a line which being extended to Forrest, formerly Nelson Street, would strike the West side of said street at a distance of sixty-four feet nine inches northwardly from the northwest intersection of Forrest and Truxton Streets as lately established by the Baltimore City Commissioners, thence northwardly, parallel to and at a distance of one hundred and forty feet from Forrest Street, one hundred and fifty-six feet to the northwest corner of Henry Ewing's lot, thence eastwardly on the North line of said Ewing's lot, one hundred and forty feet to Forrest Street, thence northwardly on the West side of Forrest Street, thirty-three feet and three inches, more or less, to its intersection with East Eager Street, and thence

on the south side of East Eager Street two hundred and forty-one feet to the place of beginning ;

Also all that lot or parcel of ground beginning for the same at the southeast corner of Forrest and East Eager Streets, and running thence southerly on the East side of Forrest Street, twenty-four feet, more or less, to the south line of a street formerly laid out by the residuary devisees of Doctor Henry Stevenson, called Parnassus Hill Street, it being also the North line of Property now, or lately belonging to the estate of Warter, and running thence easterly along said line to the York Road or Avenue, and thence northerly on said road or avenue, supposed to be a few inches, to the Southwest corner of East Eager Street and said road or avenue, thence on the south side of East Eager Street westwardly, to the beginning. (The said three several parcels of ground being laid down on a plat hereto subjoined and contained within the yellow shaded lines) ;

Together with the appurtenances and advantages to the same belonging or in anywise appertaining, and all the estate, right, title and claim, legal and equitable of the

said Thomas K. Carroll and Juliana Carroll, therein and thereto.

To Have and To Hold the said three several lots or parcels of ground and premises unto him, the said Robert J. Henry, his heirs and assigns forever to and for his and their use and behoof, and for no other intent or use or purpose whatsoever.

And the said Thomas K. Carroll and Juliana for themselves and their heirs, do hereby covenant and agree to and with the said Robert J. Henry, his heirs and assigns, that they, the said Thomas K. Carroll and Juliana Carroll and their heirs, the said several lots or parcels of ground and premises hereby bargained and sold or intended so to be unto the said Robert J. Henry and his heirs and assigns against themselves the said Thomas K. Carroll and Juliana Carroll, and their heirs and against all and every person or persons claiming or to claim by, from or under them, or either of them, their, or either of their heirs, shall and will warrant, and forever defend.

IN WITNESS WHEREOF, the said Thomas K. Carroll and Juliana Carroll, his wife, have hereunto set their hands and seals on the day and year first above written.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL).

Signed, sealed and delivered

in presence of

THOS. ROBERTSON,

WM. H. CURTIS.

STATE OF MARYLAND, SOMERSET COUNTY, TO WIT:

On the 19th day of May, in the year of Our Lord, one thousand eight hundred and thirty-one, personally appears ~~Thomas King Carroll~~ of Somerset County, being the grantor named in the above instrument, before us, two Justices of the Peace, and acknowledges the above instrument of writing to be his act and deed, and the lands and premises therein mentioned and thereby bargained and sold, to be the right and estate of the within named Robert J. Henry, party grantee, also therein named, his heirs and assigns forever, according to the purport and true intent and meaning of said instrument of writing and the Acts of Assembly therein made and provided, and at the same time also personally appears Juliana Carroll, wife of the said Thomas King Carroll, before

us as aforesaid, and acknowledges the said deed or instrument of writing to be her act and deed, and the lands and premises therein mentioned to be the right and estate of the within named Robert J. Henry, his heirs and assigns forever ; and the said Juliana Carroll being by us privately ^{examined} apart from and out of the hearing of her husband, acknowledges that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband, or fear of his displeasure. Taken and certified the day and year above written.

THOS. ROBERTSON,

WM. H. CURTIS.

MARYLAND, SOMERSET COUNTY, To WIT:

I HEREBY CERTIFY that Thomas Robertson and William H. Curtis, Esquires, before whom the foregoing acknowledgment appears to have been made, were at the time of taking said acknowledgment two of the Justices of the Peace of the said State in and for Somerset County aforesaid, duly commissioned and sworn.

IN TESTIMONY WHEREOF I hereto set my hand and affix the seal of said County this 20th day of May, Anno Domini

1831.

GEO. HANBY,

Clk. Sont. Coty. Court.

(SEAL'S)
(PLACE.)

Received to be recorded the 28th day of May, 1901,
at a quarter before eleven o'clock A. M. ; same day re-
corded and examined.

Pr. WM. GIBSON, Clk.

Annexed to this deed in the records of Baltimore
City, was a plat which had delineated upon it Great Con-
stitution Street which shows that the second parcel conveyed
by this deed, abutts on the whole of the East side of Con-
stitution Street, which is claimed in this case.)

The plaintiffs also offer^{ed} in evidence from the
original Land Records in the Office of the Clerk of the
Superior Court of Baltimore City, Liber W. G., No. 213,
folio 642, in which appears a record of the following deed
from Thomas K. Carroll and Juliana Carroll, to James Howard.

THIS INDENTURE made this 13th day of July, in the year of Our Lord Eighteen hundred and Thirty-one, between Thomas K. Carroll and Juliana Carroll, his wife, of Somerset County in the State of Maryland, of the one part, and James Howard of the City of Baltimore in the State aforesaid, of the other part.

WITNESSETH: That the said Thomas K. Carroll and Juliana Carroll for and in consideration of the sum of Eighteen Hundred Dollars, to them in hand paid by the said James at or before the sealing and delivery of these presents, the receipt whereof, they do hereby acknowledge, have bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do bargain, sell, alien, release, enfeoff and confirm unto the said James Howard, his heirs and assigns, forever, all those several lots or parcels of ground, being part of the real estate of Doctor Henry Stevenson, deceased, being within the present limits of the City of Baltimore on the East side of Jones' Falls, beginning for the whole of said lots on the South side of East Eager Street at a distance of twenty-eight feet from the Southwest corner of East Eager and Great Constitution Streets and running thence West one hundred and thirteen feet, more or

less to the West line of said Doctor Henry Stevenson's (deceased) ground, along the South line of East Eager Street, thence southerly along the said West line of the said Doctor Henry Stevenson's ground, two hundred and eighteen feet, more or less to a stone marked H. S. No. 6, thence southeasterly forty-three feet, more or less, to the North side of Truxton Street, thence Easterly, on the said North side of Truxton Street, twenty-two feet more or less, and thence Easterly to the West side of Great Constitution Street, at a point eleven feet North from the Northwest corner of Truxton Street and Great Constitution Street, thence North along the West side of Great Constitution Street one hundred and thirty-nine feet, thence West, parallel to East Eager Street, twenty-eight feet, and thence North by a straight line, to the beginning, agreeable to a small plat of said lots or parcels of ground hereunto annexed.

Together with all and singular the rights, privileges and appurtenances thereunto belonging, or in anywise appertaining.

To Have And To Hold the said Several lots and pieces or parcels of ground contained within the aforesaid metes and bounds, with all the rights and appurtenances thereof,

unto him, the said James Howard, his heirs and assigns, forever, to and for his and their only use and behoof and for no other intent or purpose whatsoever.

IN TESTIMONY WHEREOF the said Thomas K. Carroll and Juliana Carroll have hereunto set their hands and seals on the day and year aforesaid.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL)

Signed, Sealed and Delivered in

Presence of

THOS. ROBERTSON,

THEODORE G. DASHIELL.

STATE OF MARYLAND, SOMERSET COUNTY, SCT:

On this 13th day of July, 1831, personally appeared before us the subscribers, two Justices of the Peace for the County aforesaid, the above named Thomas K. Carroll and acknowledged the foregoing instrument of writing as his act and deed for the purposes therein mentioned, and at the same time also came Juliana Carroll, the other party grantor, wife of the said Thomas K. Carroll, and acknowledged the said in-

strument of writing to be her act and deed, for the purposes therein mentioned ; And the said Juliana Carroll being by us first privately examined, apart from and out of the hearing of her said husband, did declare that she made her said acknowledgment willingly and freely without being induced thereto by fear or threats of ill-usage by her said husband or through fear of his displeasure.

Acknowledged before Thos. Robertson and Theodore G. Dashiell.

MARYLAND, SOMERSET COUNTY, TO WIT:

I HEREBY CERTIFY that Thomas Robertson and Theodore G. Dashiell gentlemen before whom the above acknowledgments were made, and whose signatures appear thereto, were at the time of the making and signing the same, justices of the peace of the State of Maryland, in and for Somerset County, duly commissioned and sworn.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the Somerset County Court, this 19th day of July, 1831.

(Seal's Place)

GEO. HANDY,

Clk. Somt. Cty. Court

Received to be recorded the 30th day of August,
1831, at half past eleven o'clock A. M. Same day recorded
and examined.

p. Wm. Gibson,

Clk.

It is agreed that the exhibit and use
~~either party may get a copy of the plat referred to~~
in the Court of Appeals as fully as if the same were incorporated
in above deeds, ~~and put same in the record.~~

Plaintiff offers in evidence from the office of the
Clerk of the Superior Court of Baltimore City, original Land
Record, Liber W. G., No. 214, folio 95, wherein is recorded
Deed of Thomas K. Carroll and Juliana Carroll to Henry S.
Coulter.

THIS INSTRUMENT, made this 13th day of July, in the
year of Our Lord 1831, between Thomas K. Carroll and Juliana
Carroll, his wife, of Somerset County, in the State of Mary-
land of the one part, and Henry S. Coulter of the City of
Baltimore in said State, of the other part.

WHEREAS Doctor Henry Stevenson, late of Baltimore
County, deceased, by his last will and testament, did devise
a lot of ground of thirty feet front to the said Henry S.

Coulter if he should attain the age of twenty-one years, and did direct that the same should be laid off adjoining the lots devised to his said testator's grandsons ; and

WHEREAS, it has been ascertained that if the directions of the said will were strictly and literally pursued, the lot of ground so to be laid off for said Henry S. Coulter would fall within the lines of Great Constitution Street as the same has been laid off and established by the commissions appointed to lay off the streets, lanes and alleys within the extended limits of the City of Baltimore, and would thus become of little or no value to the said devisee ; and

WHEREAS, it has been agreed that the lot of ground hereinafter conveyed and described should be given and conveyed to the said Henry S. Coulter, and be received and taken by him in lieu of the lot contemplated by the will of the said testator.

NOW, THIS INDENTURE WITNESSETH: That the said Thomas K. Carroll and Julianna, his wife, for and in consideration of the premises, and of the sum of Five Dollars to them in hand paid by the said Henry S. Coulter, the receipt whereof they

hereby acknowledge, have bargained, sold, aliened, released, enfeoffed and confirmed and by these presents do bargain, sell, alien, release, enfeoff and confirm unto the said Henry S. Coulter, his heirs and assigns, forever, all that lot or parcel of ground lying within the present limits of the City of Baltimore, on the East side of Jones' Falls and contained within the following metes and bounds, to wit: Beginning for the same at the southwest corner or intersection of Great Constitution and East Eager Streets, and running thence south on the west side of Great Constitution Street one hundred feet, thence West, parallel to East Eager Street, twenty-eight feet, thence North parallel to Great Constitution Street, one hundred feet, to East Eager Street, and thence east on the south side of said last mentioned street, to the place of beginning.

Together with all the privileges, advantages and appurtenances to the said lot or parcel of ground belonging or in anywise appertaining.

To Have and To Hold the said lot or parcel of ground and premises unto the said Henry S. Coulter, his heirs and assigns forever, to and for his and their sole use and bene-

fit and for no other intent or purpose whatsoever.

IN WITNESS WHEREOF the said Thomas K. Carroll and
Juliana Carroll have hereunto set their hands and seals
on the day and year first above written.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL)

Signed, Sealed and Delivered

in presence of

THOS. ROBERTSON,

THEODORE G. DASHIELL.

STATE OF MARYLAND, SOMERSET COUNTY, TO WIT:

On the 13th day of July, 1831, personally appeared
before the subscribers, two justices of the peace for the
County aforesaid, the above named Thomas K. Carroll and
acknowledged the foregoing instrument of writing to be his
act and deed, for the purposes therein mentioned, and at the
same time also came Juliana Carroll, the other party grantor,
wife of said Thomas K. Carroll, and acknowledged the said
instrument of writing to be her act and deed for the purposes
therein mentioned, and the said Juliana Carroll being by us
privately examined, apart from and out of the hearing of her

said husband, did declare that she made her said acknowledgment willingly and freely without being induced thereto by fear or threats of or ill-usage by her said husband, or through fear of his displeasure.

Acknowledged before Thomas Robertson and Theodore G. Dashiell.

MARYLAND, SOMERSET COUNTY, TO WIT:

I HEREBY CERTIFY, that Thomas Robertson and Theodore G. Dashiell, gentlemen before whom the within acknowledgments were made, and whose signatures appear thereto, were at the time of the making and signing the same, justices of the peace of the State of Maryland, in and for Somerset County, duly commissioned and sworn.

IN TESTIMONY WHEREOF I have hereunto set my hand and
Court
affixed the seal of Somerset County, this 19th day of July,
1831.

GEO. HANLY

(Seal's Place).

Clk. Somt. Cty. Court.

Received to be recorded September 10th, 1831, at

fifteen minutes past twelve P. M.

The same day recorded and examined.

Pr. Wm. GIBSON, Clk.

(Here insert C)

C
~~NOTES AS TO CHANGES DESIRED IN
EXCEPTION.~~

On page 8 of "Exhibit A" is the statement
"Annexed to this deed in the records of Baltimore City,
was plat, etc." I think this should be cut out here.

On page 14 of "Exhibit A" there should be inserted
Annexed to the three deeds above mentioned in the afore-
said Records are plats which have delineated upon them Great Con-
stitution Street, or what is spoken of in this case as Constitution
Street or Clifton Place, and which shows that the second parcel of
the lands conveyed by the first of the three aforesaid deeds abuts
on the whole of the east side of that part of Great Constitution
Street, or Constitution Street or Clifton Place, which is claimed
in this case, and which plats also show that the lands conveyed by
the second and third of the three aforesaid deeds abuts on the whole
of the west side of that part of Great Constitution Street, or
Constitution Street or Clifton Place which is claimed in this case,
and it is agreed that either party may exhibit and use the aforesaid
plats or certified copies thereof, *and also all plats filed with the pleadings* in the Court of Appeals as fully
as if the same were incorporated in the above deeds and in the record

It is admitted by the parties hereto that the Directors of the Maryland Penitentiary acquired between the years 1891 and 1896 all the land and rights conveyed by Thomas King Carroll and Julianna Carroll, his wife, by the three deeds just offered in evidence so far as said lands and rights abut on or relate to the lands sought to be recovered in this case.

It is agreed that Ordinance 111 approved October 17, 1892, may be read in evidence from the printed volume, in this Court or in any other Court to which this cause may be taken by appropriate proceedings as fully as if the same were incorporated in the record.

The same agreement shall also apply to the following acts of the General Assembly of Maryland:
Act of 1890, Chapter 200 ; Act of 1890, Chapter 202 ;
Act of 1892, Chapter 391 ; Act of 1896, Chapter 166 ;
Act of 1898, Chapter 219.

Counsel for Plaintiffs offered in evidence Ordinance 111, approved Oct. 17, 1892, which was read.

Counsel for Plaintiffs also offered in evidence Act of the General Assembly of Maryland, 1890, Chapter 200, which was read.

Also Act of the General Assembly of Maryland of 1890, Chapter 202, which was read.

Also Act of the General Assembly of Maryland of 1892, Chapter 391, which was read.

Also Act of 1896, Chapter 166, which was read.

Also Act of 1898, Chapter 219, which was read.

- ~~W~~ JOHN F. WEYLER, called by Plaintiffs, sworn.
- Q (BY MR. BARTON): You are Warden of the Maryland Penitentiary, are you not ?
- A Yes, sir.
- Q How long have you been Warden of the Maryland Penitentiary ?
- A I was first appointed on the 9th of May, 1888, and assumed the duties of the wardenship on the first of June, 1888.
- Q Have you been Warden of the Penitentiary continuously ever since ?
- A Yes ; I have been Warden of the Penitentiary continuously ever since.
- Q The Penitentiary building was rebuilt and very much enlarged about 15 years ago ?
- ~~W~~

Gibson et al

Weyler

Bill of Exceptions

Exhibit A

Feb. 17. Mich 1909

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, stating 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. They stated.

Then Samuel F. Sherretts and Frederick W. Story called by the Defendant ^{being duly sworn} 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 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.

being duly sworn (subject to cross-examination)

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

~~B~~

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 ³ Prayers.

(Here insert them)

And the Defendant ⁶ 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*

Prayers of the Defendant, and in re-
jecting each of them, the Defendant excepted and prayed the
Court to sign this his Bill of Exceptions, which is accord-
ingly done this 17th day of March 1909.

Alfred S. King

Bill of Excipients

Feb. 17 Mch 1909

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

Granted

Plaintiffs' 1st Prayer

The Court rules as matter of law that under the pleadings in this case the plea of "not guilty" admits the possession of the plaintiffs of the lands in issue and their ejectment by the defendant, and puts in issue the title and right of possession to the premises and the damages sustained by the plaintiffs.

Refused

Plaintiffs' 2nd Prayer

That by the admission of facts offered in evidence in this case, it is admitted that Thomas King Carroll and Juliana Stevenson Carroll, his wife, were seized in fee simple of the lands sought to be recovered and described in the declaration in this case, on the 19th day of May, 1831; that if the Court shall find as matter of fact that said Carroll and wife executed the deeds to Coulter, Henry and Howard respectively offered in evidence herein, and that the "Constitution Street" referred to in said deeds was composed of the lands described in said ~~same~~ declaration, then the legal effect of said deeds was to dedicate said lands so therein called "Constitution Street" to the use of the public as a public street or highway, but that said deeds did not convey the ^{fee} ~~fee~~ of said "Constitution Street", but merely imposed upon said lands an easement as a public highway as aforesaid; and if the Court shall further find as matter of fact that said Constitution Street continued to be used as a public street or highway until after the year 1891, and that in the year 1890 the General Assembly of Maryland passed the Act offered in evidence entitled Acts of 1890 chapter 200, providing for the extension of the Maryland State Penitentiary, and that said Constitution Street comprising as aforesaid the lands described in the declaration, is embraced within the area prescribed in said Act; that thereafter, to wit on the 17th day of October, 1892, the Directors of the Maryland Penitentiary procured the passage by the Mayor and City Council of Baltimore ~~of the Ordinance~~ ~~of the~~ ~~Ordinance~~ ~~of the~~ ~~year~~ ~~1892~~ of the Ordinance offered in evidence, to wit, Ordinance No. 111, passed 1892; that the General Assembly of the State of Maryland also passed the Acts offered in evidence herein, to wit, Acts of 1890, Chapter 202, Acts of 1896, Chapter 166, and Acts of 1898, Chapter 219 ; that during the year 1896, the said Directors of the Maryland Penitentiary began the erection upon said lands, so termed herein "Constitution Street", of massive, costly and

permanent buildings, as an addition to and an essential part of the Maryland State Penitentiary, and continued the erection of said buildings up to some time in the year 1899, so that said Constitution Street was entirely and permanently occupied and enclosed thereby; that said buildings have ever since been maintained upon said lands and used as a part of said State Penitentiary, and that at no time since the commencement of the erection of said buildings have said lands been used or usable as a street or highway or for purposes of passage upon, under or across the same by the public; that at the time of the erection of said buildings the Directors of the Maryland Penitentiary were the owners of the property abutting on said lands, and that the erection and maintenance of said buildings on said lands were with the knowledge and acquiescence of the Municipal authorities of Baltimore, - then the Court rules as matter of ^{law} ~~fact~~ the aforesaid easement of the public in said lands as a street or highway, was prior to the institution of this suit abandoned ~~as a public highway~~ ^{admission} by the Mayor and City Council of Baltimore, notwithstanding the fact that the Court may find that a formal closing of said street in accordance with the provisions of said Ordinance No. 111 has not been consummated; and under the pleadings, and evidence in this case, the title to said lands, at the time of the institution of this suit was unincumbered by the easement previously existing as aforesaid in favor of the public or the Mayor and City Council of Baltimore for the use of said lands as a public street or highway.

In Superior Court

Yetsun
et al

John F. Greyler
warden &c

Prayer for Appeal

In Clerk

Filed this
J. L. Straus
att'y Genl
W. J. Ryan
For Defdt

gd 23"
19" Feb 1909

FRANK T. GIBSON ET AL

vs.

JOHN F. WEYLER.

Wardente

---o---

In The

SUPERIOR COURT of

BALTIMORE CITY.

MR. CLERK:-

Enter an appeal from the judgment of the Court here
to the Court of Appeals of Maryland.

Isaac Lohr Straus

Attorney General.

William Boyard

Attorneys for Plaintiffs.

(12)

Feb 17 march 1949

Gibson } In the Superior Court of Baltimore
v }
Weyler & c } at

It is agreed that in making up the transcript of the Record for the Court of Appeals the Clerk shall insert:

- 1 Docket Entries
- 2 Amended declaration filed March 26th 1907
The Plat attached to this Amended declaration shall be omitted from the transcript of the Record, and ~~that~~ either party may use such plat in the Court of Appeals.
- 3 Pleas & Amended declaration filed May 21st 1907
- 4 Replication and Demurrer filed Oct 28th 1907.
- 5 Additional Plea filed Nov. 2nd 1907
- 6 Court's Opinion filed January 11th 1908
- 7 Additional Pleas on behalf of John F. Weyler & Exhibit filed Feb. 15th 1909
- 8 Petition of Plaintiffs for leave to amend, ^{and order} filed Feb 16th 1909
- 9 Order to Strike out Director of the Penitentiary as defendant (filed Feb 16th 1909)

It is agreed that the declaration as thus amended need not be recopied; ~~but~~ it is further agreed that these said amendments were made as authorized.

- 10 Waiver of Jury trial
- 11 Prayer for appeal
- 12 This agreement
- 13 Bill of Exceptions

William B. Rogers
Esq. of the City of Baltimore
for John F. Weyler deft & appellant

Paragge R. Bartlett
for Plaintiffs & Appellee

Mar 17, 1909

Frank T. Gibson, et al

vs.

Directors of Maryland

Penitentiary,

and

John E. Weyler, Warden

Superior Court

of

Baltimore City

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* * * * *

Mr. Clerk:

Please strike out the Defendant, The Directors of the Maryland Penitentiary, as one of the parties defendant to this case.

Frank T. Gibson
Parsons & Parson

Attorneys for Plaintiff

(8)

Superior Court of
Balt. City

Frank J. Gibson

to
Directors of Mary.
and Pen. Railway &

Petition for leave to
amend and
over

For Clerk
Please file
H. H. Ketchum
Parsons Park
Ref. also

BARTON, WILMER, AMBLER & STEWART
ATTORNEYS AT LAW
207 N. CALVERT ST.

gd 16" Feb 1909

Frank T. Gibson, et al

vs.

Directors of Maryland
Penitentiary

and

John F. Weyler, Warden

Superior Court

of

Baltimore City

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To the Honorable the Judge of said Court:

The Plaintiffs respectfully ask leave to amend the declaration in this ^{by intercession} case by striking out the defendant, The Directors of the Maryland Penitentiary as a party defendant herein, and by changing the words "its Warden" after the name of the defendant, John F. Weyler, to the words "Warden of the Maryland State Penitentiary".

Frederick H. Hitchcock
Barry B. Roberts

Attorneys for Plaintiffs

Leave granted as Prayed, this February 16, 1909.

Oliver S. Hill

Frank S. Gibson &c

John S. Weyler &c

} Superior Court
} Calif. City

Agreement of Counsel

It is agreed that this case shall
be tried before his Honor Judge, who will
act as jury.

J. H. Flecken
Parsons & Bartlett

attys

Isaac Westons
attorney general

William Bryant
attys

July 16. 1909

IN THE SUPERIOR COURT OF
BALTIMORE CITY.

-GIBSON ET AL.-

-VS.-

DIRECTORS OF THE MARYLAND
PENITENTIARY ET AL.

-O P I N I O N.-

Feb 11th Jan. 1908

-GIBSON ET AL.-)	IN THE
)	
)	SUPERIOR COURT
-vs.-)	
)	of
DIRECTORS OF THE MARYLAND PENITENTIARY)	BALTIMORE CITY.
)	
ET AL.)	

- - - - -oOo- - - - -

-O P I N I O N.-

The main defense to this action of Ejectment which is raised by the pleas demurred to is that the land sought to be recovered is actually occupied by the State of Maryland for State purposes, to wit:- a penitentiary; that, should there be a recovery, it could only be made effective by dispossessing the State itself of one of the buildings actually used in the necessary work of carrying on its government; and consequently the action is really a suit against the State in its Sovereign capacity.

In the sense that the State has an interest which is directly affected and that the defendants have no personal interest but are only holding the land as officials of the State, the defendants' contention is palpably and unquestionably true; and it is also true that neither in this country nor England can the State be sued without its consent, and that the State of Maryland has not given such consent.

But it is also true that in Maryland, in other to an official of the government, acting as such, a different rule and a different measure of protection from what is applicable to non-official persons, and avowedly carries out the principle that administrative bodies must never be troubled in the exercise of their functions by any act whatever of the Judicial power.

Now it is obvious that if the State's agents could once get possession of the lands of a private individual, set up a penitentiary thereon, or use it for any other governmental purpose and then defend themselves against the rightful owner by saying "This land is occupied for governmental purposes, and any suit that you may bring to recover it is ~~practically a suit~~ against the State", the Constitutional protection would be a vain and delusive thing.

Upon the solemn declaration of the people that the State must not confiscate private property there would be engrafted the exception that should the agents of the State once succeed in unlawfully getting possession of private land and putting it to a public use, the rightful owner would have no redress, except by grace of the very power that would be reaping advantage of the wrong.

It is certainly true that there are serious inconveniences when Courts are allowed to interfere with, restrain, or punish public officers, acting without malice, in good faith, in the discharge of their official duties and in strict obedience to the orders of their superiors.

These inconveniences have been so apparent that there has grown up in certain countries - France, for instance - a body of what is there called "Droit Administratif", that applies to an official of the government, acting as such, a different rule and a different measure of protection from what is applicable to non-official persons, and avowedly carries out the principle that administrative bodies must never be troubled in the exercise of their functions by any act whatever of the Judicial power.

But it has been one of the features of the Common Law, in which English and American publicists have taken most pride, that it is no respecter of persons, and will punish an officer of State for a Tort committed by him, although in good faith and without malice, and in strict obedience to orders, exactly as it would punish the same tort committed by a private person.

It is true that in England an action of Ejectment, for premises in the actual occupation of the Crown, stands on a different footing from other actions of Tort in this respect, and cannot be maintained without consent of the Sovereign; although this consent seems to be given as a mere matter of course.

In this Country, however, the Supreme Court of the United States has flatly and repeatedly decided that Ejectment is to be treated in this regard like any action of Trespass and will lie against the persons actually in the wrongful possession of a plaintiff's lands, even though they hold these lands merely as officers of the government for the essential purposes of government, and in strict obedience to the orders of their superiors; as for instance the Commandant of a Navy Yard or a fort.

Although the question as to the liability of our State Officers to Ejectment suits in the State Courts is not one arising under the Federal Constitution, still, on such a subject, the opinion of the Supreme Court should be of the highest authority in the absence of a contrary holding by our own Court of Appeals.

There has certainly been no such direct holding in Maryland; nor do the rulings that the State as such cannot be liable for costs, and that in a suit by the State, Set off

cannot be pleaded against it appear to this Court, even indirectly, to indicate a different point of view on this question from that occupied by the Federal tribunals.

Furthermore, to this Court, the reason of the rule announced by the Supreme Court seems too plain for question.

Indeed were the matter an open one this Court would go further and question whether there is any real necessity for the fundamental rule which protects the State itself from suit.

Whatever some of our ancestors may have thought of the peculiar and sacred character of Kings and Magistrates we, here and now, recognize that when we actually come into contact with "The State" we generally find it, in the concrete, to be (in the expressive phrase sometimes used) "an ordinary clerk with a pen behind his ear"; while our abstract and theoretical conception is that "The State" is merely the body of those agents of the public who are carrying out the commands of the people as expressed in their Constitutional enactments.

If this body of men, or any one or more of them, instead of carrying out the command of the people as so expressed, fail in his or their duty and violate the instructions of his or their principal, it would seem to this Court, upon the whole, that the better reasoning would require that he or they should be liable to judicial process in every case, quite as much as the agent of a private person who fails to carry out his duty to his principal.

Various states have, in various degrees, allowed themselves to be sued in their Courts, and nothing of dignity, or Sovereignty, or ability to carry on the proper work of Government, seems to have been lost thereby.

But of course the rule of exemption of the State is now a part of our Law, and it matters little what might be the opinion of any Court, and particularly a Court of first instance, upon its merits as an abstract question.

Nevertheless, as the rule is fixed, so seem to this Court to be its limitations and exceptions. Among them is the limitation that if the agents of the State, deprive one unlawfully of his real property he may bring an action against them for its recovery, no matter whether or in what manner the State reaps an advantage from their tort. Justice is attained in such a case by the application of some such legal fiction as this, viz: It is impossible for that impeccable entity - the State - to wrongfully occupy land, and therefore, if land of which the plaintiff is rightful owner is wrongfully withheld from him, this cannot be the act of the State or its authorized agents, but must be the act of individual wrongdoers, even though they do it for the State's benefit.

Of course, as a consequence of this principle that such defendants cannot in law be its agents to commit a Tort, the State is not estopped by any judgment against them, but may file a bill in its own name to quiet title, or take such other action as may be fitting.

These being what the Court considers the true principles of decision, the demurrer to the defendants 4th plea will be sustained.

The Court is of opinion however that "The Directors of the Maryland penitentiary" is a quasi corporation or govern-

mental agency upon which liability to suit is not imposed by any Statute, and, if the point were raised, would sustain a demurrer to the declaration as to it. The demurrer now interposed is however to the pleas, and, although mounting up to the declaration, cannot be sustained as to the whole declaration when one of the two alleged tort feasons is held to be liable to the action.

There is also a demurrer to the 2nd and 3rd pleas, being pleas of limitations.

As the Court understands the changes made in the old law by our State legislation, the Action of Trespass for Mesne Profits is not made the main action into which the action of Ejectment is merged; nor is it - so to speak - merely federated with the action of Ejectment, so that both are now carried on concurrently in one suit. As the Court understands it, the old action of Trespass for Mesne Profits is completely merged and lost; and, to cover the need for which it was used, the old action of Ejectment is simply enlarged so as to include substantial as well as nominal damages. If this be so, nominal damages at least are recoverable with every successful Ejectment suit, and no plea can be good as against all pecuniary damages whatever unless it be good as against the whole action.

If the law as above stated be correct, it is evident that neither a plea that "the alleged cause of action" nor that the alleged cause of action "so far as it relates to pecuniary damages" "did not accrue within three years" would be a good plea.

The demurrer, therefore, as to the 2nd and 3rd pleas will be sustained.

It is not necessary to consider in this opinion whether, under the Code, any plea is allowed in Ejectment except

the general issue plea of "Not Guilty" or pleas "on equitable grounds" as counsel are understood to desire that the main question, as to whether Ejectment could be brought for ground covered by the State Penitentiary, should be decided by this Court.

It would be very ungracious not to acknowledge the indebtedness to the counsel on both sides which the Court feels for their able arguments and for their full citations of authorities, all of which have been carefully examined by the Court and have led to the above conclusions.

Alpha J. Miles

(7)
In the Superior Court
of Baltimore City

F. T. Gibson
et al

The Directors of the
Maryland Power
Company et al

Additional Pleas of
John F. Weyler Harder et al

In Clerk

File West
reas

L. L. Shaves
City Clerk

W. S. Bryan, Jr.

In behalf
of F. T. Gibson
Harder et al

7d Feb 15 1909.

WILLIAM S. BRYAN, JR.

ATTORNEY AT LAW,

308-11 MARYLAND TELEPHONE BLDG.

BALTIMORE, MD.

G I B S O N , et. al.

v.

The Directors of the Mary-
land Penitentiary,
et. al.

IN THE
SUPERIOR COURT
OF
BALTIMORE CITY.

A N D John F. Weyler, ^{Warden} one of the defendants herein, by Isaac Lobe Straus, Attorney General, and William S. Bryan, Jr., his Attorneys, for a first additional plea - leave of Court to file the same having been first had and obtained - says: That the land described in the declaration in this case is covered by a portion of the building of the Maryland Penitentiary, a prison of the State of Maryland; and that this defendant is Warden of the said Penitentiary, with the duties prescribed by law and by the By-Laws of the said Penitentiary; a copy of which By-Laws is herewith filed, marked Exhibit Warden, and prayed to be taken as part of this plea; and this defendant further says that other than performing his duties as Warden of the said Maryland Penitentiary, this defendant has no title to or interest in or connection with the land described in the declaration.

A N D for a second additional plea - leave of Court to file the same having been first had and obtained - the said John F. Weyler says; that the land as described in the declaration is a part of the bed of Constitution Street, one of the public highways of Baltimore City; and that an ordinance was duly and regularly passed by the Mayor and City Council of Baltimore, providing for closing said

Constitution Street, but that the proceedings for closing said street has not been completed by the Commissioners for Opening Streets and filed in the office of the City Registrar up to the time of filing this plea.

A N D for a third additional plea to the declaration in said cause, says that he is an employe of the Directors of the Penitentiary, and holds his employment under and at the will of said Directors and subject to the rules and regulations adopted by said Directors.

A N D for a fourth additional plea he says that he is an employe of the Directors of the Maryland Penitentiary and holds his employment under and at the will of said Directors and subject to the rules and regulations adopted by them and that neither by virtue of his said employment nor of the rules and regulations adopted by said Directors is he in possession or charge of the property mentioned in the declaration in this cause or of the management thereof.

Isaac Lobe Straus
attorney General

William S. Bryant

For defdt John F. Weyler Warden

(3)

Frank T. Gibson et al

vs

Directors of the Md
Penitentiary et. al.

Adm Plea

Ad 2" Nov 1907

Gibson et al
Directors and
Penitentiary et al

IN THE SUPERIOR COURT
OF
BALTIMORE CITY.

_____oO_____

AND THE DEFENDANTS, leave of Court first being had and obtained to the filing of this plea, for an additional plea, say that the premises in controversy are covered by a part of the Maryland Penitentiary Building.

W. S. Bryan
Attorney General.

(4)

Superior Court

Frank J. Gibson
et al

vs

Treasurers of Mary.
Land Penitentiary &c

Repleation &
Removers

Mr Clerk.

Please file
of Goldsborough Helston
Bart. W. Bart.

off attys

Service of copy ad
made this Oct 26th 1907

W. B. Stewart
off attys

BARTON, WILMER, AMBLER & STEWART

ATTORNEYS AT LAW

207 N. CALVERT ST.

BALTIMORE, MD.

Filed 28th Oct 1907

Gibson, et al

In the Superior Court

vs.

of

Directors of the

Baltimore City.

Maryland Penitentiary

(1904 189)

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And the said Plaintiffs herein, by Goldsborough and Fletcher and Barton, Wilmer, Ambler and Stewart, their attorneys, as to the defendant's pleas to the amended narr herein, say,

1. As to the first plea the Plaintiffs join issue,
2. As to the second plea so pleaded, the Plaintiffs demur thereto, and for ground of demurrer say that the said plea is not sufficient in law and is bad in substance.
3. And as to the third plea so pleaded, the plaintiffs demur thereto, and for ground of demurrer say that the said plea is not sufficient in law and is bad in substance.

Goldsborough & Fletcher
Barton Wilmer Ambler & Stewart

Attorneys for Plaintiffs.

Docket Entries.

22nd March 1904.

Ejectment Mem. Mar. Notice & Election for a
 Jury Trial fd. Writ issued. 2 copies writ & notice
 under seal with ² copies of Writ of Summons sent.
 (Great Constitution & Eager etc.)¹¹ Summored the
 Directors of the Maryland Penitentiary a body corporate
 by service on Francis E. Waters. President and a copy
 of the declaration with a copy of the Writ of Summons
 served on the Defendant on the 6th April 1904. also sum-
 mored John P. Meyler, Warden, and a copy of the
 declaration with a copy of the Writ of Summons served
 on the Defendant on 31st March 1904. 11th April 1904
 app. for Dfdts. rule plea 26th April 1904. Pleas 1. 2. 3.
 fd service admitted rule ref. 20th May 1904 Joinder
 issue to 1st plea & Demurrer to 2nd & 3rd pleas fd. issue joined
 short 26th March 1907. Amended Mar. fd. service admitted
 rule plea. 21st May 1907 Pleas 1st 2nd & 3rd to amended
 Mar. fd. (no service) 28th Oct. 1907 Joinder of issue
 to 1st plea & Demurrer to 2nd & 3rd pleas fd. service admitted
 & issue joined short on dem.
 2nd Nov. 1907 add^l 4th plea fd. rule ref.
 13th Jan. 1908 Dem. to 2nd & 3rd pleas sustained Opinion of
 Penitentiary withdrawn by leave of Court same day
 Demurrer to Mar. short on behalf of Directors of Md.
 Penitentiary & issue joined short. Same day Dem. sustained
 leave granted to Plff. to amend the Mar within 15
 days same day General issue plea of John P. M.
 Warden withdrawn by leave of Court same day

to Mar. short on behalf of John F. Meyler ~~short~~ issue
joined short on Demurrer. Same day Dem. overruled
Same day plea not guilty short on behalf of John
F. Meyler Warden and issue joined short. 30th Jan. 1908
Time for amending Mar. extended to April 15. 1908 order
of Court fd. ~~10th March~~ 10th March 1908 admission of
facts fd.

15th Feb. 1909. Leave asked by Defdt. the Directors of the
Mrd. Penitentiary to withdraw General issue plea & file
Demurrer to said Declaration same day leave granted
& plea withdrawn Order of Court fd. 15th Feb. 1909
Demurrer short to Mar. ^{and if joined}

15th Feb. 1909 Leave asked in open Court to file additional
pleas on behalf of Defdt. John F. Meyler Warden same
day leave granted pleas fd.

16th Feb. 1909 Demurrer ~~to said Declaration~~

16th Feb. 1909 Case dismissed as to Defdt. Directors of
Mrd. Penitentiary. Order fd.

16th Feb. 1909 Pltff asked leave to amend Mar. by in-
terlineation Same day leave granted Same day amendment
made Petition & Order of Court fd.

17th Feb. 1909 Demurrer to 1st 2nd 3rd 4th additional pleas sustained

17th Feb. 1909 Waiver of Jury trial Order of Pltffs & Defdt
fd.

19th Feb. 1909 Case tried before Hon. Alfred S. Miles without
the aid of a jury.

19th Feb. 1909 Verdict in favor of the Pltffs. for property
described in Declaration with one cent damages & costs.

19th Feb. 1909 Judgment of Verdict nisi.

23rd Feb. 1909. Judgment on verdict absolute in favor of the Plaintiff for the property described in the Declaration with one cent damages & costs of suit.

23rd Feb. 1909 Defdts. order of appeal fd.

9th March 1909 Time for signing & filing Bills of

Exceptions in this case extended for 30 days from

March 9th 1909 - 17th March 1909 Agreement ~~fd.~~

17th March 1909 Bills of Exceptions

Mr. J. P. ...

2

My dear ...

I have ...

Very ...

Yours ...

Ed 21 May 1917

Frank T. Gibson
et al

In the Superior
Court of

Baltimore City.

The Directors of the
Maryland Penitentiary

The defendants by George W. Upshur Lloyd
& Jackson J. and William S. Bryant their
attorneys by way of a first plea to the amended
war in this case say that they did not con-
mit the wrong alleged.

And in a second plea to the amended decla-
ration the defendants say that so far as the
plaintiff's claim relates to pecuniary damage,
the alleged cause of action did not accrue
within three years before this suit.

And in a third plea the defendants say
that the alleged cause of action did not accrue
within three years before this suit.

Geo. W. Upshur
Lloyd J. Jackson
William S. Bryant
Defendants Attorneys -

Action in Ejectment commenced on the 24th day of March 1904.

Docket Entries (1)

Amended declaration (2)
(fd. 26 March 1907)

rule plea

Pleas to amended declaration (3)
(fd. 21 May 1907)

rule resp.

Replication & demurrer (4)
(fd. 28 Dec 1907)

issue joined about

Additional Plea (5)
(fd. 2 Jan 1908)

rule replication

Court's opinion (6)
(fd. 11th Jan 1908)

Additional pleas of John F. Weyler & Exhibit (7)
(filed 15 July 1909)

Writs entry: 16th July 1909. Demurrer about to add pleas if issue joined about

Petition of Plaintiff for leave to amend (8)
Order of leave
(fd. 16 July 1909)

Order to settle note (9)
(fd. 16 July 1909)

~~Warrant of fieri facias (10)
(fd. 17 July 1909)~~

* Docket entry: 15 Jan 1908 Plea not guilty about in
Abstract of John F. Weyler & Exhibit

(2)

Waiver of Jury trial (10)
(fr 17th Feb 1909)

Docket Entry:

17th Feb 1909 Denial to 1. 2. 3. 4 additional
Pleas "Sustained"

19th Feb. 1909 case tried before the Hon. Jeph S.
Miles without the aid of a Jury

19th Feb 1909 Verdict in favor of the Plaintiffs
for the Property described in declaration, one cent
damages & costs

19th Feb 1909 Judgment on Verdict Nisi

23rd February 1909 Judgment on Verdict absolute in
favor of the Plaintiffs for the property described
in the declaration with one cent damages
& costs

Defendant's order for appeal (11)
(fr. 23 Feb 1909)

Agreement of course (12)
(fr. 17 March 1909)

Bill of Exceptions (13)
(fr. 17 March 1909)

Johnson et al
vs

Meyle.

Defects Special Exceptions

19th Feb 1909

Grant

And the defendant excepts to the evidence of the witness D. B. Marshall, admitted ~~subject to exception, as~~ to the fair rental annual value of the bed of Constitution Street, being the land described in the Declaration.

Carroll

And the defendant excepts to the evidence of the witness Vivian Carroll, admitted subject to exception, as to the reputation and family tradition as to the pedigree of the parties plaintiff herein; and as to the marriage of Thomas King Carroll and Juliana S. Carroll.

Superior Co

Frank J. Gelsen
et al

vs
Directors of the,
Pemberton;
et al

Over to enter
judgment of same
Demurrer

Clearly

Yours

W. A. S.

Att'y at L.

Filed 20 May 1904

Frank J. Nelson
et al

Super. Ct

vs
Directors of the Navy
and Penitentiary
et al

Per Clerk,

Please enter the names of
issue "short" as to defendants' first
~~plea~~, and enter a "summary" "short"
as to defendants' second and third
pleas.

John Strong & Fletcher
Barth Wilmer and the District
Plaintiffs' ally

SUBPOENA DOCKET—PAGE

Duces Tecum.

IN THE SUPERIOR COURT OF BALTIMORE CITY,

Jan
Term, 1909

SUMMON

3
Charles T. Crane, ^{not} Secretary of

Board of Directors of Maryland Penitentiary

at either Farmers and Merchants National Bank of Baltimore, or
at the Maryland Penitentiary Building,

and notify him to produce with him, all books, accounts and other
papers of the Penitentiary Board, showing the cost of the new
Penitentiary building, the amounts paid for the various lots on which
said new building is erected, and also the Minute Books of the Board
showing the appointment of John F. Weyler as warden of the Penitentiary
and the length of time which he has held this office.

Y. L. ...

IN THE SUPERIOR COURT OF BALTIMORE CITY,

Jan

Term, 1909

SUMMON

Please issue summons for John F. Weyler, Maryland State Penitentiary, to testify for the Plaintiffs herein, returnable before his Honor, Judge Niles, on February 15, 1909, at 10 o'clock, A. M.

to testify for *Pltff Gibson et al Md Penitentiary J F Weyler et al*
returnable on the *15* day of *Feb* 1909, at 10 o'clock A. M.

TO THE SHERIFF OF BALTIMORE CITY.

Barton Wilmer Ambler & Stewart

Stephen L Little

CLERK.

COUNSEL.

Issued *13* day of *Feb*, 1909

to testify for *Pltff.* *Gibson et al Vs Directors of Md Penitentiary et al*
returnable on the *15*" day of *Feb*, 190*9*, at 10 o'clock A. M.

TO THE SHERIFF OF BALTIMORE CITY.

Burton Nelson Asmbley & Stewart

Stephen L Little

CLERK.

COUNSEL.

Issued *11*" day of *Feb*, 190*9*

In Superior Court of
Baltimore City

Frank T. Gibson
et al

✓
The Directors of the
Maryland Penitentiary
(a body corporate)
et al

Order to Enter Verdict
Short

In Clerk

File this
L. Straus
atly General

W. S. Beary

In Defdt, the
Directors of the Mary
land Penitentiary

7^d Feb 15th 1909

FRANK T. GIBSON, et al,

v.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY,

A Body Corporate, et al.

IN THE
SUPERIOR COURT OF
BALTIMORE CITY.

Mr. Clerk:-

Please enter a demurrer "short" on behalf of the
defendant, The Directors of the Maryland Penitentiary, a
body corporate, to the Declaration in the above cause.

Isaac Lohr Stearns
attorney general.
William B. Bayne

Attorneys for the defendant
The Directors of the Maryland
Penitentiary.

IN THE
SUPERIOR COURT OF
BALTIMORE CITY.

FRANK T. GIBSON, ET AL

VS.

THE DIRECTORS OF THE
MARYLAND PENITENTIARY?
(a body corporate)

et al.

ORDER OF COURT TO WITHDRAW
GENERAL ISSUE PLEA FILED BY
DIRECTORS OF THE MARYLAND
PENITENTIARY.

Mr Clerk:-

Please file etc.

J. L. Evans
att. gen.
W. J. Bragg

Attorneys for defendant
THE DIRECTORS OF THE
MARYLAND PENITENTIARY.

fd 15" Feb 1909

FRANK T. GIBSON, et al.

vs.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY, (a body corporate)
et al.

IN THE
SUPERIOR COURT OF
BALTIMORE CITY.

#

Upon application of the defendant , The Directors of the Maryland Penitentiary, a body corporate, for leave to withdraw the general issue plea heretofore filed by it to the declaration in the above cause and to file a demurrer to said declaration, leave is hereby granted to said defendant to withdraw said plea and to file said demurrer.

Alfred S. Biles

Copy judgment, under seal.

sd
J. 8th June 1909.

COURT OF APPEALS OF MARYLAND.

April Term, 1909.

John F. Keyler, Warden of
The Maryland Penitentiary

vs
Frank T. Gibson et al

Appeal from the
Superior Court of Baltimore
City.

1909 June 1st Judgment affirmed
with Costs above and below.
Opinion filed. Op. Burke, J.
In reprinted.

Appellant's Costs in the Court of Appeals of Maryland,

Record,	\$ 121.50	
Brief,	102.00	
Docket Entries,	1.05	
Appearance Fee,	10.00	\$ 234.55

Appellee's Costs in the Court of Appeals of Maryland,

Brief,	\$ 45.00	
Docket Entries,	1.45	
Appearance Fee,	10.00	\$ 56.45

STATE OF MARYLAND, Sct.,

I, Caleb C. Magruder, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk, and affixed the seal

of the said Court of Appeals, this Seventh

day of June A. D., 1909.

Caleb C. Magruder, Clerk
of the Court of Appeals of Maryland.

Frank J. Gibson
et al.

M.

The Director of the Mary-
land Penitentiary et al

Press -

For one of copy ad-
mitted Apr 26/04

Patron Walter am
bles Stewart

M. Clerk: Pleasants
Geo. M. McQueen,

W. J. Bryan,

Filed *Alfred F. Johnson Jr.*
26th April 1904

FRANK T. GIBSON,
JULIA EASTER,
CHARLES C. CARROLL,
VIVIAN CARROLL,
MARGARET H. CARROLL,
NELLIE C. CARROLL,
MARGARET HARDY CARROLL, Widow,
ADA C. BOWDLE,
SALLIE CARROLL CRADDOCK

VS.

**THE DIRECTORS OF THE MARYLAND
PENITENTIARY,
JOHN F. WEYLER, Its Warden.**

In the

SUPERIOR COURT

of Baltimore City.

The defendants, by George M. Upshur, Lloyd L. Jackson, Jr., and William S. Bryan, Jr., their attorneys, say that they did not commit the wrong alleged.

And for a second plea the defendants say that so far as the plaintiff's claim relates to pecuniary damages, the alleged cause of action did not accrue within three years before this suit.

And for a third plea the Defendants say that the alleged cause of action did not accrue within three years before this suit.

*Geo. M. Upshur
Lloyd L. Jackson, Jr.
William S. Bryan, Jr.*

Defendants' Attorneys.

Superior Court
of Baltimore City
Mark Gibson
et al

vs
Wreston of Maryland
and Penitentiary
et al

Over and under
the same

(1584)

Vol. 30 January, 1910

Frank Gibson et al

)

In the

)

Superior Court

vs

)

of

~~Directors of Maryland~~

)

~~Baltimore City.~~

Penitentiary etc.

)

To the Honorable the Judge of said Court:

The plaintiffs pray an extension of time in which they have leave to amend their declaration, because they are about to present an act to the General Assembly of Maryland, which if passed will meet the objection raised by the demurrer to the declaration.

*Goldborough & Fletcher
Butler Wilmer Tubbs & Stewart*

Attorneys for Plaintiffs.

Upon the foregoing petition it is this 30th day of January 1908 ordered by the Superior Court of Baltimore City that the time for amending the narr in this case be and the same is hereby extended to and including *April 15th* 1908

Asaph S. Miles

No. 58

Su. Ct.

Frank J. Gibson
et al

vs.

Directors of the Maryland
Penitentiary,

John P. Keyler
Warden

in Custody

WRIT OF SUMMONS.

with 2 copies of Writ

+ 2 copies

Copy of Nar. and notice to plead within

to be served on ^{each} Defendant.

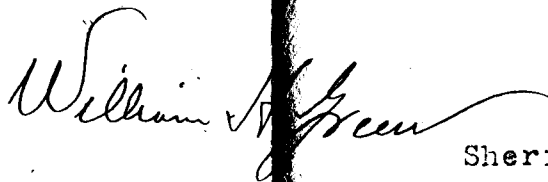
Barton, Wilmer A. + S.
Attorneys

Filed 11th day of April 1904

Summoned The Directors of the Maryland Penitentiary, a body corporate,
by service on Francis A. Waters, President, and a Copy of the Declaration
with a Copy of the Writ of Summons served on the defendant on the 6th
day of April 1904.

Also Summoned John F. Oyler, Warden, and a Copy of the Declaration with
a Copy of the Writ of Summons served on the defendant on the 31st day of
March 1904.

(Thompson & Kleinjohn)

A handwritten signature in cursive script, reading "William A. Green". The signature is written in dark ink and is positioned above the printed name "Sheriff.".

Sheriff.

STATE OF MARYLAND.

BALTIMORE CITY, to wit:

TO THE SHERIFF OF BALTIMORE CITY, GREETING:

You are hereby commanded to summon

The Directors of the Maryland Penitentiary, a body corporate and John F. Keyler its Warden

of Baltimore City, to appear before the Superior Court of Baltimore City, to be held at the Court House

in the same City, on the second Monday of *April* next, to answer ^{of Ejectment} an action at

the suit of *Frank T. Gibson, Julia Easter, Charles C. Carroll, Victor C. Carroll, Vivian Carroll, Margaret H. Carroll, Julia S. Carroll, Nellie C. Carroll, Margaret Hardy Carroll, Wida, Ada C. Bowdler & Sally Carroll Craddock*

and have you then and there this writ.

WITNESS, the Honorable HENRY D. HARLAN, Chief Judge of the Supreme Bench of Baltimore

City, the *11th* day of *January* 190*4*

ISSUED *24th* day of *March* 190*4*

Robt. Ogle Clerk.

Tibson et al

vs

Weyler, Warden

Petition to extend time for
filing Bill of Exceptions

7^d 8th March 1909

G I B S O N ,

v.

John F. Weyler,

Warden.

In the Superior Court

of

Baltimore City.

ORDERED this

8th

day of

March 1909, that the time for signing and filing the Bills

of Exceptions in this case, be and hereby is extended

for *thirty* days from this date.

Carroll S. Giles

Franks & Gibson et al

To

Hepler, Maiden
Miss State Penitentiary

Prayers of Defolt
Refused.

14th Feb. 1909

Refused

DEFENDANT'S FIRST PRAYER.

The Defendant prays the Court to rule as a matter of law that there is no legally sufficient evidence in this case to show that the Plaintiffs herein are at this time entitled to the possession of the land described in the declaration, and the verdict therefore must be for the Defendant.

Refused

DEFENDANT'S SECOND PRAYER.

The Defendant prays the Court to rule as a matter of law that there is no legally sufficient evidence in this case to show that the Plaintiffs herein were, at the time this suit was instituted, entitled to the possession of the land described in the declaration, and that therefore the verdict must be for the Defendant.

Refused

DEFENDANT'S THIRD PRAYER.

The Defendant prays the Court to rule as a matter of law that there is no legally sufficient evidence in this case to show that the Plaintiffs herein are entitled to the legal title to the land described in the declaration, and the verdict therefore must be for the Defendant.

Refused

DEFENDANT'S FOURTH PRAYER.

The Defendant prays the Court to rule as a matter of law that there is no legally sufficient evidence in this case to show that the Defendant herein is in possession of the land described in the declaration at this time, or that he was in such possession when this suit was instituted, and that therefore the verdict herein must be for the Defendant.

R. Jones

DEFENDANT'S FIFTH PRAYER.

The defendant prays the Court to rule as matter of law, that there is no evidence in the case legally sufficient to entitle the plaintiffs to recover, and that the verdict must be for the defendant.

Refused

DEFENDANT'S SIXTH PRAYER.

The defendant prays the Court to rule as matter of law that the defendant Weyler, Warden of the Directors of the Maryland Penitentiary is not liable to be sued in this cause, and that therefore the verdict must be for the defendant.

Gibson et al
vs
Heyler

Pliffs Prayers
Refused

Feb 19 1909

Plaintiffs' Prayer.

R. J. Gibson

That under the pleadings and admissions of facts filed in this case and offered in evidence, it stands admitted that Thomas King Carroll and Juliana Stevenson Carroll, his wife, on the 19th day of May, 1831 were seized in fee simple of the lands described in the declaration and the lands surrounding the same, and the Court rules as matter of law that if it finds as matter of fact the deaths of Thomas King Carroll and Juliana Stevenson Carroll, his wife, both of them intestate, in or about the years 1875 and 1849 respectively, and that Henry James Carroll, Dr. Thomas King Carroll, Mary H. Carroll, Anna Elia Carroll, Henrietta Gibson Ada C. Bowdler (one of the plaintiffs) and Sarah or Sally C. Craddock *except another daughter of Dr. Carroll who died without issue before her father* (one of the plaintiffs) were their only children and issue; that the said Henry James Carroll died unmarried and intestate in or about the year 1878; that the said Anna Elia Carroll and Mary H. Carroll each died intestate, without issue and unmarried in or about the years 1893 and 1898, respectively, that the said Henrietta Gibson died intestate and a widow in or about the year 1898, that the plaintiffs, Frank E. Gibson and Julia Foster were and are the *except a son Fayette who died about 1870 and was unmarried and intestate* only children and issue of the said Henrietta Gibson, that the said *was married to Margaret H. Carroll in 1852 and* Dr. Thomas King Carroll died intestate, in or about the year 1900, and that the plaintiffs Charles G. Carroll, Victor *William Carroll* Carroll, Margaret H. Carroll, Julia S. Carroll and Nellie C. Carroll were and are *except a son who died in or about 1876 before his said father* only children and issue; and that Margaret H. Carroll was his widow and that she died in 1907, then under the pleadings and evidence in the case, the plaintiffs are entitled to recover, even if the Court further finds as matter of fact that the lands sought to be recovered in this case were in the year 1831, by the certain deeds offered in evidence, to Coulter, Henry and Howard respectively, dedicated by said Carroll and Juliana his wife, to the public for use as a public street or highway under the name of Constitution Street, and that said lands were for many years subsequent to 1831, used as a public street of the City of Baltimore; provided the Court shall further find as matter of fact that

in the year 1890 the General Assembly of Maryland passed the Act offered in evidence entitled Acts of 1890, Chapter 200, providing for the extension of the Maryland State Penitentiary, and that said Constitution Street comprising as aforesaid the lands described in the declaration, is embraced within the area prescribed in said Act; that thereafter/ to wit on the 17th day of October, 1892, the Directors of the Maryland Penitentiary procured the passage by the Mayor and City Council of Baltimore of the Ordinance offered in evidence, to wit, Ordinance No. 111 passed 1892, that the General Assembly of the State of Maryland also passed the Acts offered in evidence herein, to wit, Acts of 1890, Chapter 202, Acts of 1896, Chapter 166 and Acts of 1898, Chapter 219 ; that during the year 1896, the said Directors of the Maryland Penitentiary began the erection upon said lands, as termed herein "Constitution Street", of massive, costly and permanent buildings, as an addition to and an essential part of the Maryland State Penitentiary and continued the erection of said buildings up to some time in the year 1899, so that said Constitution Street was entirely and permanently occupied and enclosed thereby, that said buildings have ever since been maintained upon said lands and used as a part of said State Penitentiary, and that at no time since the commencement of the erection of said buildings have said lands been used or usable as a street or highway or for purposes of passage upon, under or across the same by the public; that at the time of the erection of said buildings, the Directors of the Maryland Penitentiary were the owners of the property abutting on said lands, and that the erection and maintenance of said buildings on said lands were with the knowledge and acquiescence of the Municipal authority of Baltimore.

1742
Spencer Clark

FRANK T. STEWART, ET AL.

vs.

THE DIRECTOR OF THE
MARYLAND PENITENTIARY,
JOHN F. WELSH, THE WARDEN.

ADMINISTRATOR OF ESTATE.

*Charles
Rutledge
Fletcher*

GOLDSBOROUGH & FLETCHER,
ATTORNEYS AT LAW,
CANNONOCK, MARYLAND.

1742

FRANK T. GIBSON,
JULIA EASTER,
CHARLES C. CARROLL,
VICTOR C. CARROLL,
VIVIAN CARROLL,
MARGARET H. CARROLL,
JULIA S. CARROLL,
NELLIE C. CARROLL,
ADA C. BOWDLE,
SALLY CARROLL CRADDOCK

In the Superior Court
of
Baltimore City.

VS.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY, JOHN F. WEYLER,
ITS WARDEN.

=====

The parties to the above entitled cause hereby agree to, and admit to be true, that Thomas King Carroll and Juliana (Stevenson) Carroll, his wife, were seized in fee simple of the lands mentioned in the amended declaration, (filed in said cause), and the lands surrounding the same, on the 19th. day of May, 1831, and the parties to said cause also consent that this admission of facts may be used as evidence at the trial or trials of the above entitled cause, (subject, however, to any legal objections on the part of any party hereto, on the ground of relevancy), and for any other proper purpose in said case, subject to similar objection.

It is a condition of this admission of facts, however, that no objection is to be made by the plaintiffs, or any of them, to any of the pleas of limitations that are now filed in this case, on the ground that the said pleas, or any of them, were not filed in the time provided by law, which objection is waived by the parties plaintiff, but this agreement is not to affect the right of the plaintiffs to object to said pleas, or any of said pleas, on

any other grounds, nor to affect their right to object, on any ground whatsoever, to any plea or amended plea that may hereafter be filed in this case.

FRANK T. GIBSON, JULIA EASTER,
CHARLES C. CARROLL, VICTOR C.
CARROLL, VIVIAN CARROLL, MARGARET
H. CARROLL, JULIA S. CARROLL,
NELLIE C. CARROLL, ADA C. BOWDLE,
SALLY CARROLL CRADDOCK

by

Goldborough & Fletcher
.....
Baron Colman Corbin & Stewart
.....
their attorneys.

The Directors of the Maryland
Penitentiary and John F. Weyler,
its warden,

by

.....
.....
William S. ...
.....
their attorneys.

Spencer Cook

Bank of the
State

Branch of the
Bank of the State

Capital \$1,000,000

Reserve

Particulars

and the State

of the State

of the State

of the State

Frank T. Gibson, et al

vs.

The Directors of the
Maryland Penitentiary, et al.

In the Superior Court

of

Baltimore City.

* * * * *

The Plaintiffs elect to try the above entitled case before a
jury.

Franklin L. Ketchum
Robert W. ...

Attorneys for Plaintiffs.

Superior Court

FRANK T. GIBSON, JULIA EASTER,
CHARLES C. CARROLL, VICTOR C.
CARROLL, VIVIAN CARROLL,
MARGARET H. CARROLL, JULIA S.
CARROLL, NELLIE C. CARROLL,
ADA C. BOWDIE, SALLY CARROLL
CRADDOCK

vs.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY, JOHN F. WEYLER,
ITS WARDEN.

AMENDED DECLARATION.

The Clerk, Pleasfile
Goldsborough & Fletcher
Parton, Wilmer, Arthur &
Stewart

Source of copy admitted
Frank 26 1907
W. J. [unclear]

GOLDSBOROUGH & FLETCHER.

ATTORNEYS AT LAW.

CAMBRIDGE, MARYLAND.

File 26¹ Mar. 1907

Frank T. Gibson, et al
vs.
The Directors of the
Maryland Penitentiary, et al

*
*
*
*
*
*
*
*
*

In the Superior Court
of
Baltimore City.

To the Honorable the Judge of said Court:

The Plaintiffs respectfully ask leave to ~~withdraw the declara-~~
~~tion originally filed in this case, and to file in lieu thereof~~ the
annexed amended declaration.

Jacobson & Acker
Dart & Wetherill & Stewart
Attorneys for Plaintiffs.

Leave granted as prayed this 26 day of March, 1907.

Geo W Sharp

FRANK T. GIBSON, JULIA PASTER,
CHARLES C. CARROLL, VICTOR C.
CARROLL, VIVIAN CARROLL,
MARGARET H. CARROLL, JULIA S.
CARROLL, NELLIE C. CARROLL,
ADA C. BOWDLE, SALLY CARROLL
CRADDOCK

VS.

THE DIRECTORS OF THE
MARYLAND PENITENTIARY,
JOHN F. WYLER, ITS WARDEN.

In the Superior Court of
Baltimore City.

Amended Declaration

Frank T. Gibson, Julia Paster, Charles C. Carroll, Victor C. Carroll, Vivian Carroll, Margaret H. Carroll, Julia S. Carroll, Nellie C. Carroll, Ada C. Bowdle and Sally Carroll Craddock, by Goldsborough & Fletcher and Barton, Wilmer, Ambler & Stewart, their attorneys, sue The Directors of the Maryland Penitentiary, a body corporate, duly incorporated under the laws of the State of Maryland, by Section 400 of Article 27 of the Code of Public General Laws and John F. Weyler, its warden:

For that the plaintiffs, being the owners thereof, were in possession of the following described property in the City of Baltimore and State of Maryland, to wit:

LOT NO. 1. All that part of a certain parcel of land designated as Lot "55", (on a plat marked No. 142, now on file in the Record Office of the Superior Court of said Baltimore City), that lies to the South of the South side of East Eager Street, and to the East of the West side of Great Constitution Street as the said street formerly existed before that part of said Great Constitution Street to the South of said East Eager Street was abandoned as a street. (The plat above referred to is a plat of the lands of Dr. Henry Stevenson, passing on his death to Cosmo G. Stevenson and Juliana (Stevenson) Carroll, wife of Thomas K. Carroll, his residuary

devises, which plat was made under the direction and authority of the said residuary devisees, and by which they made partition of the said lands, which lands, passing unto them as residuary devisees as aforesaid, are a part of the tract of land called "Salisbury Plains" and a part of that part of "Salisbury Plains" that was conveyed unto the said Doctor Henry Stevenson by Thomas Rutter and wife, by deed dated the 14th day of March, 1770, and now recorded among the Land Records of Baltimore City aforesaid, in Liber A. L. No. B, Folio 444; the said plat is also the same plat referred to in the two following deeds, to wit: - (1) Deed to Wm. W. Donald and others, Directors of the Maryland Penitentiary, from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, dated the 26th day of May, 1828, and now recorded among the aforesaid Land Records in Liber W. G. No. 193, Folio 512, etc. (2) Deed to the said "The Directors of the Maryland Penitentiary" from Josias Pennington, Trustee, and Harriet G. Stevenson, dated the 7th day of November, 1828, and now recorded among the aforesaid Land Records in Liber W. G. No. 195, Folio 539). The lands above described as Lot "55" are a part of the same lands described in a conveyance, dated the 7th day of June, 1825, unto the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, from the said Cosmo H. Stevenson and wife, and now recorded among the Land Records aforesaid in Liber W. G. No. 176, Folio 239 etc.

LOT NO. 2. All that part of certain parcels of land designated as Lots "56", "57", "44", "30", "29", "45" and "46" on the aforesaid plat marked No. 142, that lies to the South of the South side of East Eager Street and to the North of a line joining the end of the fifth course, (of the second parcel of the lands conveyed by a deed dated the 18th day of May, 1850, to one John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc., et al, and now recorded among the aforesaid Land Records in Liber A. W. B. No. 438, Folio 106), and the end of the first course of the second parcel of the lands conveyed by a deed dated the 19th day of May, 1831, to one Robert J. Henry from the said

Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, and now recorded among the aforesaid Land Records in Liber W. G. No. 212, Folio 52, and to the West of the East side of said Great Constitution Street, and to the East of the West side of said Great Constitution Street, as the same formerly existed before that part of said Great Constitution Street to the South of said East Eager Street was abandoned as a street. The lands above particularly described as Lots "56", "57", "44", "30", "29", "45" and "46", are a part of the same lands described in a conveyance dated the 7th day of June, 1825, from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, unto the said Cosmo G. Stevenson, and now of record among the Land Records aforesaid in Liber W. G. No. 176, Folio 241, and are also a part of the same lands that were conveyed unto the said Robert J. Henry by Josias Pennington, Trustee, by deed dated the 29th day of December, 1830, and now of record among the aforesaid Land Records in Liber W. G. No. 212, Folio 48, and also a part of the same lands conveyed unto the said Thomas K. Carroll by the said Robert J. Henry by deed dated the 19th day of May, 1831, and now recorded among the aforesaid Land Records in Liber W. G. No. 212, folio 51.

NOT NO. 3. All that part of certain parcels of land designated as "Parnassus Hill Street" and "Alley", (said Alley binding on the East of a lot marked "A" on said plat), on the aforesaid plat marked No. 142, that lies to the North of a line joining the end of the fifth course, (of the second parcel of the lands conveyed by the aforesaid deed dated the 18th day of May, 1850, to John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc, et al, and now recorded among the aforesaid Land Records in Liber A. W. B. No. 438, Folio 106), and the end (of the first course of the second parcel of the lands conveyed by a deed dated the 19th. day of May, 1831, to the said Robert J. Henry from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, and now recorded among the aforesaid Land Records in Liber

W. G. No. 212, Folio 52, and to the East of the West side of Great Constitution Street, and to the West of the East side of said street, as the same formerly existed before that part of said Great Constitution Street to the South of East Eager Street was abandoned as a street. The lands above particularly described as "Parnassus Hill Street" and "Alley" are a part of the same lands, described in a deed dated the 19th day of May, 1831, from the said Robert J. Henry unto the said Thomas K. Carroll, and now recorded among the Land Records aforesaid in Liber W. G. No. 212, Folio 50, and thereby conveyed.

The lands above described as Lots Nos. 1, 2 and 3 are as a whole thus described. Beginning at the point of beginning of the second parcel of the lands conveyed by the aforesaid deed unto the said John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc., et al, and now recorded as aforesaid, and thence running Southerly 239 feet with the west side of said Great Constitution Street (as the same formerly existed) as aforesaid) and with the last course reversed of said second parcel in said deed to the beginning of said last course, thence Easterly, in a straight line, to the end of the first course of the second parcel of the lands conveyed by the aforesaid deed unto the said Robert J. Henry, dated the 19th. day of May, 1831, and now of record as aforesaid, thence Northerly, with the aforesaid first course reversed, 229 feet, with the West side of said Great Constitution Street (as the same formerly existed as aforesaid) to the beginning of said first course, and thence Westerly in a straight line to the place of beginning.

A plat of the lands shown on said plat No. 142 is herewith filed as part hereof, marked "Plaintiffs' Exhibit 1", showing the lands passing unto the said Cosmo G. Stevenson and Juliana (Stevenson) Carroll, as the residuary devisees of Dr. Henry Stevenson as aforesaid, and showing the same divisions into streets, alleys, and lots as shown on the aforesaid plat No. 142, (the lots being indicated in red figures, by the same numbers, as on the aforesaid plat No. 142)

and also showing the position of Great Constitution Street, (before the closing of a part of the same as aforesaid), and of East Wager Street.

And the defendants did wrongfully enter said parcels of land, Lots Nos. 1, 2 and 3, and eject them, the said Plaintiffs therefrom, and the said defendants ever since have retained and still retain possession of the said lots or parcels of land, and other wrongs to the said plaintiffs then and there did to their great damage

And the plaintiffs claim the recovery of the said parcels of land, and for their damages, \$40,000.00.

Patrick William Ambler & Stewart
Goldberg & Fletcher
Attorneys for Plaintiffs.

To the Defendants:

Take notice: That on the day of service of copy upon you or your attorneys of above declaration, and filing of same in the Superior Court of Baltimore City, a rule will be entered against you, requiring you to plead to said declaration in accordance with the rules in such cases made and provided.

Patrick William Ambler & Stewart
Goldberg & Fletcher
Plaintiffs' Attorneys.



Represent limits to be shown

Plaintiff's Exhibit I



Penitentiary

Superior Court

FRANK T. GIBSON, JULIA EASTER,
CHARLES C. CARROLL, VICTOR C.
CARROLL, VIVIAN CARROLL,
MARGARET H. CARROLL, JULIA S.
CARROLL, NELLIE C. CARROLL,
ADA C. BOWDIE, SALIY CARROLL
CRADDOCK

VS.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY, JOHN F. WEYLER,
ITS WARDEN.

AMENDED DECLARATION.

Mr. Clerk, Pleasants
Goldsborough & Fletcher
Part in Wilmer, another &
Stuart
off copy
Source of copy amended
March 26 1907
W. S. Pleasants
GOLDSBOROUGH & FLETCHER.
ATTORNEYS AT LAW,
CAMBRIDGE, MARYLAND.

Fr 26th Mar. 1907

FRANK T. GIBSON, JULIA EASTER,
 CHARLES C. CARROLL, VICTOR C.
 CARROLL, VIVIAN CARROLL,
 MARGARET H. CARROLL, JULIA S.
 CARROLL, NELLIE C. CARROLL,
 ADA C. BOWDLE, SALLY CARROLL
 CRADDOCK

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In the Superior Court of
 Baltimore City.

VS.

THE DIRECTORS OF THE
 MARYLAND PENITENTIARY,
 JOHN F. WEYLER, ITS WARDEN.

* * * * *

Amended Declaration

Frank T. Gibson, Julia Easter, Charles C. Carroll, Victor C. Carroll, Vivian Carroll, Margaret H. Carroll, Julia S. Carroll, Nellie C. Carroll, Ada C. Bowdle and Sally Carroll Craddock, by Goldsborough & Fletcher and Barton, Wilmer, Ambler & Stewart, their attorneys, sue The Directors of the Maryland Penitentiary, a body corporate, duly incorporated under the laws of the State of Maryland, by Section 400 of Article 27 of the Code of Public General Laws and John F. Weyler, its warden:

For that the plaintiffs, being the owners thereof, were in possession of the following described property in the City of Baltimore and State of Maryland, to wit:

LOT NO. 1. All that part of a certain parcel of land designated as Lot "55", (on a plat marked No. 142, now on file in the Record Office of the Superior Court of said Baltimore City), that lies to the South of the South side of East Eager Street, and to the East of the West side of Great Constitution Street as the said street formerly existed before that part of said Great Constitution Street to the South of said East Eager Street was abandoned as a street. (The plat above referred to is a plat of the lands of Dr. Henry Stevenson, passing on his death to Cosmo G. Stevenson and Juliana (Stevenson) Carroll, wife of Thomas K. Carroll, his residuary

Frank T. Gibson, et al

vs.

The Directors of the
Maryland Penitentiary, et al

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In the Superior Court
of
Baltimore City.

* * * * *

To the Honorable the Judge of said Court:

The Plaintiffs respectfully ask leave to ~~withdraw the declara-~~
~~tion originally filed in this case, and to file in lieu thereof~~ the
annexed amended declaration.

Jacobson & Acheson

Robert W. L. ...

Attorneys for Plaintiffs.

Leave granted as prayed this *26* day of March, 1907.

Geo W Sharp

devises, which plat was made under the direction and authority of the said residuary devisees, and by which they made partition of the said lands, which lands, passing unto them as residuary devisees as aforesaid, are a part of the tract of land called "Salisbury Plains" and a part of that part of "Salisbury Plains" that was conveyed unto the said Doctor Henry Stevenson by Thomas Rutter and wife, by deed dated the 14th day of March, 1770, and now recorded among the Land Records of Baltimore City aforesaid, in Liber A. L. No. B, Folio 444; the said plat is also the same plat referred to in the two following deeds, to wit: - (1) Deed to Wm. W. Donald and others, Directors of the Maryland Penitentiary, from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, dated the 26th day of May, 1828, and now recorded among the aforesaid Land Records in Liber W. G. No. 193, Folio 512, etc. (2) Deed to the said "The Directors of the Maryland Penitentiary" from Josias Pennington, Trustee, and Harriet G. Stevenson, dated the 7th day of November, 1828, and now recorded among the aforesaid Land Records in Liber W. G. No. 195, Folio 539). The lands above described as Lot "55" are a part of the same lands described in a conveyance, dated the 7th day of June, 1825, unto the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, from the said Cosmo H. Stevenson and wife, and now recorded among the Land Records aforesaid in Liber W. G. No. 176, Folio 239 etc.

LOT NO. 2. All that part of certain parcels of land designated as Lots "56", "57", "44", "30", "29", "45" and "46" on the aforesaid plat marked No. 142, that lies to the South of the South side of East Eager Street and to the North of a line joining the end of the fifth course, (of the second parcel of the lands conveyed by a deed dated the 13th day of May, 1850, to one John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc., et al, and now recorded among the aforesaid Land Records in Liber A. W. B. No. 438, Folio 106), and the end of the first course of the second parcel of the lands conveyed by a deed dated the 19th day of May, 1831, to one Robert J. Henry from the said

Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, and now recorded among the aforesaid Land Records in Liber W. G. No. 212, Folio 52, and to the West of the East side of said Great Constitution Street, and to the East of the West side of said Great Constitution Street, as the same formerly existed before that part of said Great Constitution Street to the South of said East Eager Street was abandoned as a street. The lands above particularly described as Lots "56", "57", "44", "30", "29", "45" and "46", are a part of the same lands described in a conveyance dated the 7th day of June, 1825, from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, unto the said Cosmo G. Stevenson, and now of record among the Land Records aforesaid in Liber W. G. No. 176, Folio 241, and are also a part of the same lands that were conveyed unto the said Robert J. Henry by Josias Pennington, Trustee, by deed dated the 29th day of December, 1830, and now of record among the aforesaid Land Records in Liber W. G. No. 212, Folio 48, and also a part of the same lands conveyed unto the said Thomas K. Carroll by the said Robert J. Henry by deed dated the 19th day of May, 1831, and now recorded among the aforesaid Land Records in Liber W. G. No. 212, folio 51.

NOT NO. 3. All that part of certain parcels of land designated as "Parnassus Hill Street" and "Alley", (said Alley binding on the East of a lot marked "A" on said plat), on the aforesaid plat marked No. 142, that lies to the North of a line joining the end of the fifth course, (of the second parcel of the lands conveyed by the aforesaid deed dated the 18th day of May, 1850, to John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc, et al, and now recorded among the aforesaid Land Records in Liber A. W. B. No. 438, Folio 106), and the end of the first course of the second parcel of the lands conveyed by a deed dated the 19th. day of May, 1831, to the said Robert J. Henry from the said Thomas K. Carroll and Juliana (Stevenson) Carroll, his wife, and now recorded among the aforesaid Land Records in Liber

W. G. No. 212, Folio 52, and to the East of the West side of Great Constitution Street, and to the West of the East side of said street, as the same formerly existed before that part of said Great Constitution Street to the South of East Eager Street was abandoned as a street. The lands above particularly described as "Parnassus Hill Street" and "Alley" are a part of the same lands, described in a deed dated the 19th day of May, 1831, from the said Robert J. Henry unto the said Thomas K. Carroll, and now recorded among the Land Records aforesaid in Liber W. G. No. 212, Folio 50, and thereby conveyed.

The lands above described as Lots Nos. 1, 2 and 3 are as a whole thus described. Beginning at the point of beginning of the second parcel of the lands conveyed by the aforesaid deed unto the said John Eager Howard from Josias Pennington and James Mason Campbell, Trustees, etc., et al, and now recorded as aforesaid, and thence running Southerly 239 feet with the west side of said Great Constitution Street (as the same formerly existed) as aforesaid) and with the last course reversed of said second parcel in said deed to the beginning of said last course, thence Easterly, in a straight line, to the end of the first course of the second parcel of the lands conveyed by the aforesaid deed unto the said Robert J. Henry, dated the 19th. day of May, 1831, and now of record as aforesaid, thence Northerly, with the aforesaid first course reversed, 229 feet, with the East side of said Great Constitution Street (as the same formerly existed as aforesaid) to the beginning of said first course, and thence Westerly in a straight line to the place of beginning.

A plat of the lands shown on said plat No. 142 is herewith filed as part hereof, marked "Plaintiffs' Exhibit 1", showing the lands passing unto the said Cosmo G. Stevenson and Juliana (Stevenson) Carroll, as the residuary devisees of Dr. Henry Stevenson as aforesaid, and showing the same divisions into streets, alleys, and lots as shown on the aforesaid plat No. 142, (the lots being indicated in red figures, by the same numbers, as on the aforesaid plat No. 142)

and also showing the position of Great Constitution Street, (before the closing of a part of the same as aforesaid), and of East Wager Street.

And the defendants did wrongfully enter said parcels of land, Lots Nos. 1, 2 and 3, and eject them, the said Plaintiffs therefrom, and the said defendants ever since have retained and still retain possession of the said lots or parcels of land, and other wrongs to the said plaintiffs then and there did to their great damage

And the plaintiffs claim the recovery of the said parcels of land, and for their damages, \$40,000.00.

James William Ambler & Stewart

John William & Stephen

Attorneys for Plaintiffs.

To the Defendants:

Take notice: That on the day of service of copy upon you or your attorneys of above declaration, and filing of same in the Superior Court of Baltimore City, a rule will be entered against you, requiring you to plead to said declaration in accordance with the rules in such cases made and provided.

James William Ambler & Stewart

John William & Stephen

Plaintiffs' Attorneys.

1904-189

Superior Bank

FRANK T. GIBSON, ET AL,

VS.

THE DIRECTORS OF THE
MARYLAND PENITENTIARY,
JOHN F. WEYLER, ITS WARDEN.

ADMISSION OF FACTS.

*Please file
Back W. at S.
for P. G. F.*

GOLDSBOROUGH & FLETCHER.
ATTORNEYS AT LAW,
CAMBRIDGE, MARYLAND.

Fr. 10th March 1908

FRANK T. GIBSON,
JULIA EASTER,
CHARLES C. CARROLL,
VICTOR C. CARROLL,
VIVIAN CARROLL,
MARGARET H. CARROLL,
JULIA S. CARROLL,
NELLIE C. CARROLL,
ADA C. BOWDLE,
SALLY CARROLL CRADDOCK

In the Superior Court
of
Baltimore City.

VS.

THE DIRECTORS OF THE MARYLAND
PENITENTIARY, JOHN F. WEYLER,
ITS WARDEN.

=====

The parties to the above entitled cause hereby agree to, and admit to be true, that Thomas King Carroll and Juliana (Stevenson) Carroll, his wife, were seized in fee simple of the lands mentioned in the amended declaration, (filed in said cause), and the lands surrounding the same, on the 19th. day of May, 1831, and the parties to said cause also consent that this admission of facts may be used as evidence at the trial or trials of the above entitled cause, (subject, however, to any legal objections on the part of any party hereto, on the ground of relevancy), and for any other proper purpose in said case, subject to similar objection.

It is a condition of this admission of facts, however, that no objection is to be made by the plaintiffs, or any of them, to any of the pleas of limitations that are now filed in this case, on the ground that the said pleas, or any of them, were not filed in the time provided by law, which objection is waived by the parties plaintiff, but this agreement is not to affect the right of the plaintiffs to object to said pleas, or any of said pleas, on

any other grounds, nor to affect their right to object, on any ground whatsoever, to any plea or amended plea that may hereafter be filed in this case.

FRANK T. GIBSON, JULIA EASTER,
CHARLES C. CARROLL, VICTOR C.
CARROLL, VIVIAN CARROLL, MARGARET
H. CARROLL, JULIA S. CARROLL,
NELLIE C. CARROLL, ADA C. BOWDIE,
SALLY CARROLL CRADDOCK

by

Goldborough & Fletcher
.....

Baron, Warner, Ambler & Stewart
.....

their attorneys.

The Directors of the Maryland
Penitentiary and John F. Weyler,
its warden,

by

.....

William S. Ryan
.....

their attorneys.

tion hereof, and in order to carry into effect an arrangement heretofore made, between the parties for the division and partition of certain lots of ground lying within the present limits of the City of Baltimore, they, the said Thomas K. Carroll and Juliana Carroll, his wife, have bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do sell, alien, release, enfeoff and confirm unto the said Robert J. Henry, his heirs and assigns, all that piece or parcel of ground near to the City of Baltimore, and within its present limits as aforesaid, contained within the following metes and bounds, viz:

Beginning for the same at the northeast corner of East Bager and Great Constitution Streets on the East side of Jones' Falls and running thence North on the East line of Great Constitution Street, one hundred and eighty-five feet, more or less, to the South line of Josias Pennington's property, formerly an apple orchard, thence eastwardly along said Pennington's line, fifty-four feet to the garden wall of the late Doctor Cosmo G. Stevenson, thence south twenty-one and a half degrees East along said wall, one hundred and sixty-five feet to the corner of a fence as now standing, thence eastwardly, with said fence, thirty feet, and thence

Southeasterly fifty-five feet to the North line of East Eager Street aforesaid, and thence West along the north line of said street, one hundred and sixty-five feet to the place of beginning.

Also all that lot or parcel of ground, beginning for the same at a stone placed at the southeast corner of Great Constitution and East Eager Streets, aforesaid, and running thence South two hundred and twenty-nine feet on the East side of Great Constitution Street ; thence easterly one hundred and thirty-four feet along a line which being extended to Forrest, formerly Nelson Street, would strike the West side of said street at a distance of sixty-four feet nine inches northwardly from the northwest intersection of Forrest and Truxton Streets as lately established by the Baltimore City Commissioners, thence northwardly, parallel to and at a distance of one hundred and forty feet from Forrest Street, one hundred and fifty-six feet to the northwest corner of Henry Ewing's lot, thence eastwardly on the North line of said Ewing's lot, one hundred and forty feet to Forrest Street, thence northwardly on the West side of Forrest Street, thirty-three feet and three inches, more or less, to its intersection with East Eager Street, and thence

on the south side of East Eager Street two hundred and forty-one feet to the place of beginning ;

Also all that lot or parcel of ground beginning for the same at the southeast corner of Forrest and East Eager Streets, and running thence southerly on the East side of Forrest Street, twenty-four feet, more or less, to the south line of a street formerly laid out by the residuary devisees of Doctor Henry Stevenson, called Parnassus Hill Street, it being also the North line of Property now, or lately belonging to the estate of Warter, and running thence easterly along said line to the York Road or Avenue, and thence northerly on said road or avenue, supposed to be a few inches, to the Southwest corner of East Eager Street and said road or avenue, thence on the south side of East Eager Street westwardly, to the beginning. (The said three several parcels of ground being laid down on a plat hereto subjoined and contained within the yellow shaded lines) ;

Together with the appurtenances and advantages to the same belonging or in anywise appertaining, and all the estate, right, title and claim, legal and equitable of the

said Thomas K. Carroll and Juliana Carroll, therein and thereto.

To Have and To Hold the said three several lots or parcels of ground and premises unto him, the said Robert J. Henry, his heirs and assigns forever to and for his and their use and behoof, and for no other intent or use or purpose whatsoever.

And the said Thomas K. Carroll and Juliana for themselves and their heirs, do hereby covenant and agree to and with the said Robert J. Henry, his heirs and assigns, that they, the said Thomas K. Carroll and Juliana Carroll and their heirs, the said several lots or parcels of ground and premises hereby bargained and sold or intended so to be unto the said Robert J. Henry and his heirs and assigns against themselves the said Thomas K. Carroll and Juliana Carroll, and their heirs and against all and every person or persons claiming or to claim by, from or under them, or either of them, their, or either of their heirs, shall and will warrant, and forever defend.

IN WITNESS WHEREOF, the said Thomas K. Carroll and Juliana Carroll, his wife, have hereunto set their hands and seals on the day and year first above written.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL).

Signed, sealed and delivered

in presence of

THOS. ROBERTSON,

WM. H. CURTIS.

STATE OF MARYLAND, SOMERSET COUNTY, TO WIT:

On the 19th day of May, in the year of Our Lord, one thousand eight hundred and thirty-one, personally appears ~~Thomas King Carroll~~ Thomas King Carroll of Somerset County, being the grantor named in the above instrument, before us, two Justices of the Peace, and acknowledges the above instrument of writing to be his act and deed, and the lands and premises therein mentioned and thereby bargained and sold, to be the right and estate of the within named Robert J. Henry, party grantee, also therein named, his heirs and assigns forever, according to the purport and true intent and meaning of said instrument of writing and the Acts of Assembly therein made and provided, and at the same time also personally appears Juliana Carroll, wife of the said Thomas King Carroll, before

us as aforesaid, and acknowledges the said deed or instrument of writing to be her act and deed, and the lands and premises therein mentioned to be the right and estate of the within named Robert J. Henry, his heirs and assigns forever ; and the said Juliana Carroll being by us privately ^{examined} apart from and out of the hearing of her husband, acknowledges that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband, or fear of his displeasure. Taken and certified the day and year above written.

THOS. ROBERTSON,

WM. H. CURTIS.

MARYLAND, SOMERSET COUNTY, To WIT:

I HEREBY CERTIFY that Thomas Robertson and William H. Curtis, Esquires, before whom the foregoing acknowledgment appears to have been made, were at the time of taking said acknowledgment two of the Justices of the Peace of the said State in and for Somerset County aforesaid, duly commissioned and sworn.

IN TESTIMONY WHEREOF I hereto set my hand and affix the seal of said County this 20th day of May, Anno Domini

1831.

GEO. HANBY,

Clk. Sont. Coty. Court.

(SEAL'S)
(PLACE.)

Received to be recorded the 28th day of May, 1901,
at a quarter before eleven o'clock A. M. ; same day re-
corded and examined.

Pr. WM. GIBSON, Clk.

Annexed to this deed in the records of Baltimore
City, was a plat which had delineated upon it Great Con-
stitution Street which shows that the second parcel conveyed
by this deed, abutts on the whole of the East side of Con-
stitution Street, which is claimed in this case.)

The plaintiffs also offer^{ed} in evidence from the
original Land Records in the Office of the Clerk of the
Superior Court of Baltimore City, Liber W. G., No. 213,
folio 642, in which appears a record of the following deed
from Thomas K. Carroll and Juliana Carroll, to James Howard.

THIS INDENTURE made this 13th day of July, in the year of Our Lord Eighteen hundred and Thirty-one, between Thomas K. Carroll and Juliana Carroll, his wife, of Somerset County in the State of Maryland, of the one part, and James Howard of the City of Baltimore in the State aforesaid, of the other part.

WITNESSETH: That the said Thomas K. Carroll and Juliana Carroll for and in consideration of the sum of Eighteen Hundred Dollars, to them in hand paid by the said James at or before the sealing and delivery of these presents, the receipt whereof, they do hereby acknowledge, have bargained, sold, aliened, released, enfeoffed and confirmed, and by these presents do bargain, sell, alien, release, enfeoff and confirm unto the said James Howard, his heirs and assigns, forever, all those several lots or parcels of ground, being part of the real estate of Doctor Henry Stevenson, deceased, being within the present limits of the City of Baltimore on the East side of Jones' Falls, beginning for the whole of said lots on the South side of East Eager Street at a distance of twenty-eight feet from the Southwest corner of East Eager and Great Constitution Streets and running thence West one hundred and thirteen feet, more or

less to the West line of said Doctor Henry Stevenson's (deceased) ground, along the South line of East Eager Street, thence southerly along the said West line of the said Doctor Henry Stevenson's ground, two hundred and eighteen feet, more or less to a stone marked H. S. No. 6, thence southeasterly forty-three feet, more or less, to the North side of Truxton Street, thence Easterly, on the said North side of Truxton Street, twenty-two feet more or less, and thence Easterly to the West side of Great Constitution Street, at a point eleven feet North from the Northwest corner of Truxton Street and Great Constitution Street, thence North along the West side of Great Constitution Street one hundred and thirty-nine feet, thence West, parallel to East Eager Street, twenty-eight feet, and thence North by a straight line, to the beginning, agreeable to a small plat of said lots or parcels of ground hereunto annexed.

Together with all and singular the rights, privileges and appurtenances thereunto belonging, or in anywise appertaining.

To Have And To Hold the said Several lots and pieces or parcels of ground contained within the aforesaid metes and bounds, with all the rights and appurtenances thereof,

unto him, the said James Howard, his heirs and assigns, forever, to and for his and their only use and behoof and for no other intent or purpose whatsoever.

IN TESTIMONY WHEREOF the said Thomas K. Carroll and Juliana Carroll have hereunto set their hands and seals on the day and year aforesaid.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL)

Signed, Sealed and Delivered in

Presence of

THOS. ROBERTSON,

THEODORE G. DASHIELL.

STATE OF MARYLAND, SOMERSET COUNTY, SCT:

On this 13th day of July, 1831, personally appeared before us the subscribers, two Justices of the Peace for the County aforesaid, the above named Thomas K. Carroll and acknowledged the foregoing instrument of writing as his act and deed for the purposes therein mentioned, and at the same time also came Juliana Carroll, the other party grantor, wife of the said Thomas K. Carroll, and acknowledged the said in-

strument of writing to be her act and deed, for the purposes therein mentioned ; And the said Juliana Carroll being by us first privately examined, apart from and out of the hearing of her said husband, did declare that she made her said acknowledgment willingly and freely without being induced thereto by fear or threats of ill-usage by her said husband or through fear of his displeasure.

Acknowledged before Thos. Robertson and Theodore G. Dashiell.

MARYLAND, SOMERSET COUNTY, TO WIT:

I HEREBY CERTIFY that Thomas Robertson and Theodore G. Dashiell gentlemen before whom the above acknowledgments were made, and whose signatures appear thereto, were at the time of the making and signing the same, justices of the peace of the State of Maryland, in and for Somerset County, duly commissioned and sworn.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the Somerset County Court, this 19th day of July, 1831.

(Seal's Place)

GEO. HANDY,

Clk. Somt. Cty. Court

Received to be recorded the 30th day of August,
1831, at half past eleven o'clock A. M. Same day recorded
and examined.

p. Wm. Gibson,

Clk.

It is agreed that the exhibit used
~~either party may get a copy of the plat referred to~~
in the Court of Appeals as fully as if the same were incorporated
in above deeds, ~~and put same in the record.~~

Plaintiff offers in evidence from the office of the
Clerk of the Superior Court of Baltimore City, original Land
Record, Liber W. G., No. 214, folio 95, wherein is recorded
Deed of Thomas K. Carroll and Juliana Carroll to Henry S.
Coulter.

THIS INSTRUMENT, made this 13th day of July, in the
year of Our Lord 1831, between Thomas K. Carroll and Juliana
Carroll, his wife, of Somerset County, in the State of Mary-
land of the one part, and Henry S. Coulter of the City of
Baltimore in said State, of the other part.

WHEREAS Doctor Henry Stevenson, late of Baltimore
County, deceased, by his last will and testament, did devise
a lot of ground of thirty feet front to the said Henry S.

Coulter if he should attain the age of twenty-one years, and did direct that the same should be laid off adjoining the lots devised to his said testator's grandsons ; and

WHEREAS, it has been ascertained that if the directions of the said will were strictly and literally pursued, the lot of ground so to be laid off for said Henry S. Coulter would fall within the lines of Great Constitution Street as the same has been laid off and established by the commissions appointed to lay off the streets, lanes and alleys within the extended limits of the City of Baltimore, and would thus become of little or no value to the said devisee ; and

WHEREAS, it has been agreed that the lot of ground hereinafter conveyed and described should be given and conveyed to the said Henry S. Coulter, and be received and taken by him in lieu of the lot contemplated by the will of the said testator.

NOW, THIS INDENTURE WITNESSETH: That the said Thomas K. Carroll and Julianna, his wife, for and in consideration of the premises, and of the sum of Five Dollars to them in hand paid by the said Henry S. Coulter, the receipt whereof they

hereby acknowledge, have bargained, sold, aliened, released, enfeoffed and confirmed and by these presents do bargain, sell, alien, release, enfeoff and confirm unto the said Henry S. Coulter, his heirs and assigns, forever, all that lot or parcel of ground lying within the present limits of the City of Baltimore, on the East side of Jones' Falls and contained within the following metes and bounds, to wit: Beginning for the same at the southwest corner or intersection of Great Constitution and East Eager Streets, and running thence south on the west side of Great Constitution Street one hundred feet, thence West, parallel to East Eager Street, twenty-eight feet, thence North parallel to Great Constitution Street, one hundred feet, to East Eager Street, and thence east on the south side of said last mentioned street, to the place of beginning.

Together with all the privileges, advantages and appurtenances to the said lot or parcel of ground belonging or in anywise appertaining.

To Have and To Hold the said lot or parcel of ground and premises unto the said Henry S. Coulter, his heirs and assigns forever, to and for his and their sole use and bene-

fit and for no other intent or purpose whatsoever.

IN WITNESS WHEREOF the said Thomas K. Carroll and
Juliana Carroll have hereunto set their hands and seals
on the day and year first above written.

THOMAS KING CARROLL (SEAL)

JULIANA CARROLL (SEAL)

Signed, Sealed and Delivered

in presence of

THOS. ROBERTSON,

THEODORE C. DASHIELL.

STATE OF MARYLAND, SOMERSET COUNTY, TO WIT:

On the 13th day of July, 1831, personally appeared
before the subscribers, two justices of the peace for the
County aforesaid, the above named Thomas K. Carroll and
acknowledged the foregoing instrument of writing to be his
act and deed, for the purposes therein mentioned, and at the
same time also came Juliana Carroll, the other party grantor,
wife of said Thomas K. Carroll, and acknowledged the said
instrument of writing to be her act and deed for the purposes
therein mentioned, and the said Juliana Carroll being by us
privately examined, apart from and out of the hearing of her

said husband, did declare that she made her said acknowledgment willingly and freely without being induced thereto by fear or threats of or ill-usage by her said husband, or through fear of his displeasure.

Acknowledged before Thomas Robertson and Theodore G. Dashiell.

MARYLAND, SOMERSET COUNTY, TO WIT:

I HEREBY CERTIFY, that Thomas Robertson and Theodore G. Dashiell, gentlemen before whom the within acknowledgments were made, and whose signatures appear thereto, were at the time of the making and signing the same, justices of the peace of the State of Maryland, in and for Somerset County, duly commissioned and sworn.

IN TESTIMONY WHEREOF I have hereunto set my hand and
Court
affixed the seal of Somerset County, this 19th day of July,
1831.

GEO. HANLY

(Seal's Place).

Clk. Somt. Cty. Court.

Received to be recorded September 10th, 1831, at

fifteen minutes past twelve P. M.

The same day recorded and examined.

Pr. Wm. GIBSON, Clk.

(Here insert C)

C

~~NOTES AS TO CHANGES DESIRED IN
EXCEPTION.~~

On page 8 of "Exhibit A" is the statement
"Annexed to this deed in the records of Baltimore City,
was plat, etc." I think this should be cut out here.

On page 14 of "Exhibit A" there should be inserted
Annexed to the three deeds above mentioned in the afore-
said Records are plats which have delineated upon them Great Con-
stitution Street, or what is spoken of in this case as Constitution
Street or Clifton Place, and which shows that the second parcel of
the lands conveyed by the first of the three aforesaid deeds abuts
on the whole of the east side of that part of Great Constitution
Street, or Constitution Street or Clifton Place, which is claimed
in this case, and which plats also show that the lands conveyed by
the second and third of the three aforesaid deeds abuts on the whole
of the west side of that part of Great Constitution Street, or
Constitution Street or Clifton Place which is claimed in this case,
and it is agreed that either party may exhibit and use the aforesaid
plats or certified copies thereof, *and also all plats filed with the pleadings* in the Court of Appeals as fully
as if the same were incorporated in the above deeds and in the record

It is admitted by the parties hereto that the Directors of the Maryland Penitentiary acquired between the years 1891 and 1896 all the land and rights conveyed by Thomas King Carroll and Julianna Carroll, his wife, by the three deeds just offered in evidence so far as said lands and rights abut on or relate to the lands sought to be recovered in this case.

It is agreed that Ordinance 111 approved October 17, 1892, may be read in evidence from the printed volume, in this Court or in any other Court to which this cause may be taken by appropriate proceedings as fully as if the same were incorporated in the record.

The same agreement shall also apply to the following acts of the General Assembly of Maryland:
Act of 1890, Chapter 200 ; Act of 1890, Chapter 202 ;
Act of 1892, Chapter 391 ; Act of 1896, Chapter 166 ;
Act of 1898, Chapter 219.

Counsel for Plaintiffs offered in evidence Ordinance 111, approved Oct. 17, 1892, which was read.

Counsel for Plaintiffs also offered in evidence Act of the general Assembly of Maryland, 1890, Chapter 200, which was read.

Also Act of the General Assembly of Maryland of 1890, Chapter 202, which was read.

Also Act of the General Assembly of Maryland of 1892, Chapter 391, which was read.

Also Act of 1896, Chapter 166, which was read.

Also Act of 1898, Chapter 219, which was read.

- ~~W~~ JOHN F. WEYLER, called by Plaintiffs, sworn.
- Q (BY MR. BARTON): You are Warden of the Maryland Penitentiary, are you not ?
- A Yes, sir.
- Q How long have you been Warden of the Maryland Penitentiary ?
- A I was first appointed on the 9th of May, 1888, and assumed the duties of the wardenship on the first of June, 1888.
- Q Have you been Warden of the Penitentiary continuously ever since ?
- A Yes ; I have been Warden of the Penitentiary continuously ever since.
- Q The Penitentiary building was rebuilt and very much enlarged about 15 years ago ?
- ~~W~~

Gibson et al

Weyler

Bill of Exceptions

Exhibit A

Feb. 17. Mich 1909