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Court of Appeals of Maryland.
MAYOR, ETC., OF **BALTIMORE CITY**
v.
ROWE.
ROWE et al.
v.
MAYOR, ETC., OF **BALTIMORE CITY**.

April 4, 1907.

Cross-Appeals from Circuit Court of Baltimore City; Alfred S. Niles, Judge.

West Headnotes

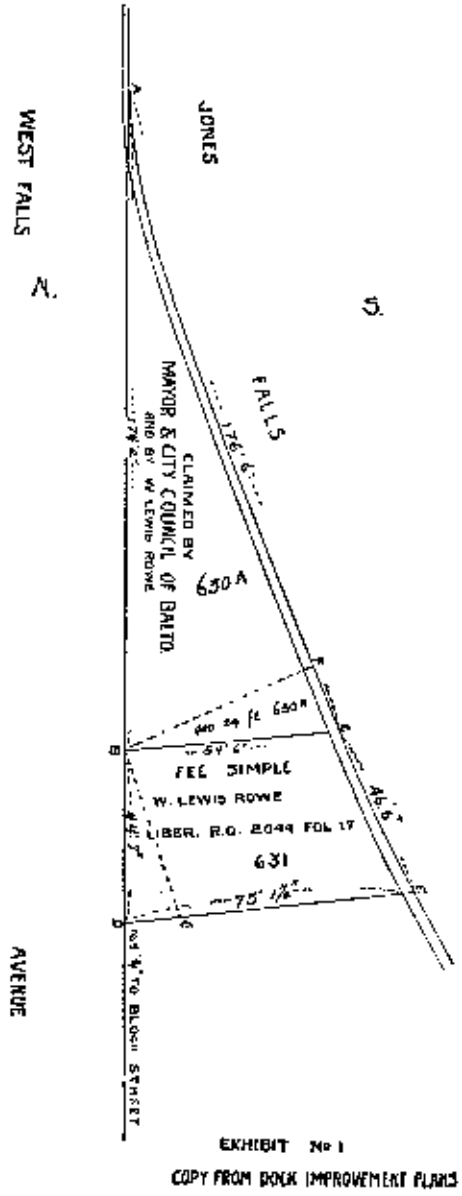
Adverse Possession 16(1)
20k16(1) Most Cited Cases
Defendant's predecessors took possession of a lot formerly belonging to a city, and maintained a stable thereon for more than 20 years. The lines of the lot were marked out by the city's officials as appurtenant to the stable, and then assessed to such occupants according to the square feet in the lot so marked out, after which the occupants paid the taxes thereon for six successive years. Held, that they thereby acquired a valid title to such lot by adverse possession.

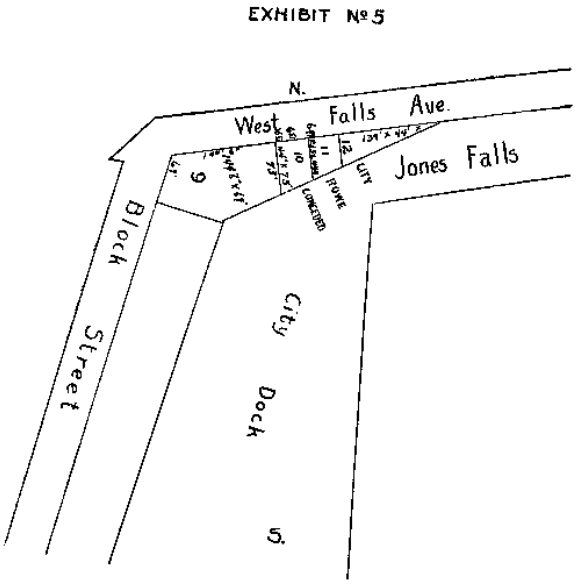
Adverse Possession 109
20k109 Most Cited Cases
Where defendant's predecessors disclaimed all title to a portion of the property in controversy in the return of their property for taxation under oath, such disclaimer operated as a waiver of any claim to such property by adverse possession as against the city.

Municipal Corporations 719(1)
268k719(1) Most Cited Cases
Baltimore City Charter, p. 272, § 7, providing that the title of the mayor and city council in and to the city's water front wharf property was inalienable, only applied to water front in the possession and use of the city at the passage of the act, and not to such as was never subject to public use, and was therefore subject to sale under section 13 (page 274), declaring that nothing contained in the article should prevent the city from disposing of any parcel of land no longer needed for any public use.
***93** Proceedings by the mayor and city council of Baltimore City against Lucia H. Rowe, administratrix, etc., for the condemnation of certain lands for the benefit of the city. From an order awarding distribution of the damages assessed for the land so taken, both parties prosecute cross-appeals.

The following is a copy of the plats referred to in the opinion:

***94**





Argued before BRISCOE, BOYD, PEARCE, SCHMUCKER, BURKE, and ROGERS, JJ.

Joseph S. Goldsmith, and Edgar Allan Poe, for Mayor and City Council of Baltimore.

W. Thomas Kemp and George Whitelock, for Rowe.

ROGERS, J.

These are cross-appeals arising out of proceedings instituted in the circuit court of Baltimore City on February 1, 1906, by the mayor and city council of Baltimore City under the provisions of section 827, c. 123 p. 555, of the Acts of 1898 (Baltimore City Charter), for the purpose of obtaining title to a lot of ground on West Falls avenue in said city, upon paying into court the sum of $6,932.64, the amount of damages finally awarded for said lot in certain condemnation proceedings theretofore had in Baltimore City court. The lot of ground in controversy is shown on a plat marked "Exhibit No. 1," whereon it is indicated by the letters A, B, C, A. In the bill of complaint the lot is described by metes and bounds, and reference is made and the lot is marked 630A. In the answer of W. Lewis Rowe and wife it is claimed that the lot in

question is a portion of a large tract of land described in these deeds to W. Lewis Rowe, copies of which appear in the record. The lower portion of said larger tract (to which title in W. Lewis Rowe was conceded by the city) is referred to as lot 631. Pending the hearing of the case W. Lewis Rowe died; but his administratrix, Lucia H. Rowe, and his three infant children and sole heirs at law, were made defendants. The cross-appeals now before this court were taken from the final decree of the circuit court of Baltimore City, passed January 2, 1907, whereby the said sum of $6,932.64 was apportioned among the parties hereto in such manner that Lucia H. Rowe, administratrix of the estate of W. Lewis Rowe, received the sum of $2,500, the conceded value of that portion of the lot, title to which the lower court found vested in W. Lewis Rowe in fee simple at the time of the condemnation aforesaid, and the mayor and city council of Baltimore received the remaining $4,432.64, the value of that portion of the lot which the lower court decided was owned by the city. The portion of the lot thus found to have been owned by Rowe is best indicated on a plat marked "Exhibit No. 5," ***95** as lot No. 11, and the portion awarded to the city as lot No. 12. The case was submitted for hearing upon the bill, answers, exhibits, and an agreed statement of facts, with exhibits and plats accompanying the same, the right of appeal being expressly reserved, both sides have appealed. The lower court has so clearly stated the facts and the law in its most lucid discussion of the same that we may be pardoned for using largely its opinion, in the affirmance. In 1818 the mayor and city council of Baltimore acquired in fee simple the bed of Liffy street (now West Falls avenue). This street then bordered upon the Falls, and was described as "bordering on with the water of said Falls and extended therefrom westwardly for breadth 40 feet" and southwardly "to the water of the basin." By this same deed the mayor and city council of Baltimore was granted "the exclusive right to charge and receive wharfage, tonnage, or other duties on said street," with the right also to widen said street or any part thereof by extending the same to the east side into the Falls. By accretion and artificial improvements there had been formed considerable land to the east side of Liffy street, and at the south end thereof. Out of such accretions the bed of what is now known as "Block street," to the present drawbridge, was formed, but the rest of the land so formed by accretion, etc., was not used either as street or wharf, but in or about 1856 it was subdivided into 10 lots and leased to various persons.

The lot on the extended north, triangular shape, with its apex to the north, was leased to one under whom the Rowes claim, and so was the ground reserved, so now the Rowes have a conceded title to that portion of the land so made, designated on the plat filed with the agreed statement of facts as Exhibit No. 1 by the letters B, D, E, C. and marked with the number 631. This lot is composed in part of land made between 1818 and 1856, and in part of land so made since 1856. Its northern boundary is 54 feet 6 inches wide, and its southern boundary is 73 feet and 1 1/2 inches, with a frontage of 44 feet 7 inches on West Falls avenue; but it is only a small wedge of this on the western side coming to a point at the northern end that the defendants have paper title under the lease before refered to; the balance being by accretion only. But the Rowes present fee-simple title in this lot is not disputed, or was not when it was taken by the city for dock improvements, and the money allowed therefor awarded them. While this lot, which will be designated hereafter as "lot 631," was being extended to the east, there was being formed by the very same process a triangle of land to the north, resembling in shape the southerly lot, as it was when conveyed in 1856. This last-mentioned triangle was formed in part by accretion, and in part by filling in incident to the erection of the improvements known as the "Jones Falls retaining wall." This lot, in 1904, which we will hereafter call lot 630A, had a

frontage of 174 feet 2 inches on West Falls avenue, a base line of 54 feet 6 inches, running to the retaining wall of the Falls, and a frontage on that retaining wall of 176 feet 6 inches to the beginning. Lot 630A was also taken by the city for dock improvements; but title to it is claimed by both the city and the Rowes, and is the subject of dispute in this case. The damages allowed have been paid into the circuit court of Baltimore as aforesaid. An agreed statement of facts was filed in this case, and it was agreed that the fund should be distributed according to the rights of the parties; and the question for this court to determine is, who was the owner of 630A, at the time of its condemnation?

The learned court below decided that the Rowes were entitled to lot No. 11, in Exhibit No. 5, 21 feet 3 inches on West Falls avenue, and running with an even width to the Falls by adversary possession, and we think that the judge correctly so decided; and, as to the balance of lot 630A, the court also decided that title thereto had never been lost to the city, by adversary possession or otherwise, and we think that also correct. The facts are as to lot No. 11, Exhibit No. 5, it being the southern portion of lot No. 630A. Exhibit No. 1: The Rowes and their predecessors in the title built a frame stable thereon prior to 1882, and substituted for it a brick stable of practically the same size, and for more than 20 years a brick or frame stable was maintained upon this lot No. 11, Exhibit 5. As to the remaining part of 630A, Exhibit No. 1, the Rowes and their predecessors in title used to stow sails, boats, anchors, dredge chains, lumber, etc., for more than 20 years. Up to 1896 no taxes were paid on any part of lot No. 630A. In that year Prendergast, one of the predecessors of the Rowes in title, made return of the real property under the new assessment law. He returns one double brick building 45 feet square, valued at $3,500, and one horse stable 25 feet square, valued at $250, known as 651 and 653 West Falls avenue, stable known as 649 West Falls avenue. To this he annexes the required oath that it was a full and complete list of all real estate owned by him in the state of Maryland, and affixed his signature. Upon that return the city officials made the following assessments: Lot No. 10, Exhibit 5, to P. F. Prendergast, lot 44 feet 6 inches by 73 feet at south end, irregular, at $45, $2,003. Improvements, $1,200. Lot No. 11, P. F. Prendergast, lot 21 feet and 3 inches by 44 feet and 4 inches at the north end, irregular, at $45, $956. Improvements, stable $250. Lot No. 12, city's lot, a triangular lot, 139 feet and 4 inches on the southern line to a point on northern, no assessment. Lot No. 11, upon which a stable had been built and ***96** maintained for at least 14 years prior to assessment, the ground between the stable and the water evidently being considered by the city officials as mere curtilage appurtenant to the stable, and upon that the predecessors in title of the Rowes paid taxes for 6 years after the assessment or to and including 1902. It would seem hard to imagine better evidence of adverse possession of the lot against any one than the building of a stable upon, and maintaining that stable, there continuously for more than 20 years; and as against the city it would seem as if the lines of the lot marked out by its own officials as appurtenant to the stable, and then assessed by its officials according to the square feet in the lot so marked out, ought to have conclusively settled the question as against it, especially after the claimant had paid taxes upon this assessment for six successive years. On the other hand, it is hard to conceive how it can be said that the predecessors in title of the Rowes held open and notorious and continuous possession against the city which was the real owner of a lot, which by his return under oath was practically disclaimed by him. Therefore the claim of the Rowes to lot No. 11, Exhibit 5, fronting 21 feet and 3 inches on West Falls avenue, and running with an even width to the Falls, is sustained; but the contention of the Rowes as to lot No. 12, Exhibit 5, by adversary possession, is not allowed, and we hold that the

city has a good and subsisting title thereto.

It has been urged upon us at the argument that section 7 (page 272) of the city charter, says that "the title of the mayor and city council in and to its water front wharf property, land under water, public landings, wharfs, docks, highways, avenues, streets, lanes, alleys and parks is hereby declared to be inalienable," and that therefore the land formed by the accretion cannot be lost by adverse possession, but that section must be construed to mean such water front as was in possession and use at the time of the passage of the law, not such as had never been subjected to public use, and is not now needed for such use, and never could be put to such use without great expense and inconvenience. Nothing contained in section 7 would be relevant to such property; and we think therefore that section 7 of the city charter, taken in connection with section 13 (page 274)--"Nothing contained in this article shall prevent the city from disposing of any building or parcel of land no longer needed for any public use"--is applicable here.

Situated as this property was, it, seems clear that, had the city owned it without dispute, it might have sold it as not needed for public use.

Decree affirmed; each party to pay one-half of costs.

END OF DOCUMENT