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130 Md. 506, 101 A. 142

Court of Appeals of Maryland.
 BRADY et al.
 v.
**MAYOR AND CITY COUNCIL OF
 BALTIMORE.**
No. 34.

May 9, 1917.

Appeal from Superior Court of Baltimore City;
 James P. Gorter, Judge.

Action by the Mayor and City Council of
 Baltimore against Lizzie J. Brady and others.
 From a judgment in favor of plaintiff, defendants
 appeal. Affirmed.

Argued before BOYD, C. J., and BRISCOE,
 THOMAS, STOCKBRIDGE, and CONSTABLE,
 JJ.

West Headnotes

Adverse Possession 20 ↪4

[20k4 Most Cited Cases](#)

Prescription will not run against the city or the
 public.

Municipal Corporations 268 ↪648

[268k648 Most Cited Cases](#)

Where city widened street and remained in
 possession for 40 years, under authority of Acts
 1836, c. 63, vesting in it title to street so widened
 provided that rights of individuals who owned fee
 in street were not interfered with, it acquired title
 to fee by adverse possession, since agreement
 whereby proprietors relinquished all interest in the
 street though not sufficient to convey fee, showed
 that city occupied street in the belief that fee
 vested in it.

R. E. Lee Marshall and Edgar Allan Poe, both of
 Baltimore, for appellants.
 Alexander Preston, Deputy City Sol., of Baltimore

(S. S. Field, City Sol., of Baltimore, on the brief),
 for appellee.

CONSTABLE, J.

This is an action of ejectment brought by the
 Mayor, etc., of Baltimore against the appellants,
 in which the appellee recovered a judgment for
 the land described in the declaration and damages.

The land in controversy is located at the northwest
 corner of Caroline and Dock streets, and forms a
 part of Dock street. In 1814, at which time the
 events began which gave rise to this controversy,
 all of this land was under the waters of the
 Patapsco river. Queen street runs in the same
 general direction as Dock street, east and west,
 and is south of that street. In 1814 John
 Cunyngham and John Briggs were the separate
 owners of two contiguous lots of land, both of
 which formed a lot designated on a plot as lot No.
 28. In 1823 Cunyngham purchased the lot of
 Briggs, and thus became the sole owner of the
 whole of lot No. 28. In 1843 John Cunyngham
 and wife, Margaret, conveyed in fee simple all of
 their title in lot 28 to their daughter, whose
 executors conveyed, in 1889, the same to E. S.
 Brady, who was the immediate predecessor in title
 of the appellants herein. Lot No. 28 was situated
 on the north side of Queen street with a frontage
 of 60 feet and a depth of 40 feet towards what is
 now Dock street.

All the land involved in this case was situated in a
 part of the city called Fells Point, and for the most
 part was covered by water. In 1814 the port
 wardens submitted to the city council a plan for
 improving that part called the Cove, by making a
 dock with streets and alleys leading thereto. That
 plan was delineated on a plat which was filed with
 the city librarian, and a copy of which is in the
 present record. The mayor, etc. passed on March
 25, 1814, an ordinance adopting the plan and
 appropriating \$6,000 to enable the port wardens to
 proceed with the work as soon as the proprietors
 of land adjacent to the water should signify their

assent thereto. The wardens proceeded with the work and built the city dock and the different streets, including Dock and Caroline streets. Dock street had a width of 50 feet, and its northern boundary was the southern boundary of the dock. And all the land under water between the fast land to the rear of the properties facing on Queen street and the dock was filled with earth and made fast land, and Dock street laid out. It does not certainly appear when this work was completed, but by the agreed statement of facts it was agreed that such was the fact prior to 1836, and prior to the act of assembly next to be mentioned. By chapter 63 of the Acts of 1836 it was enacted as follows:

“Section 1. Be it enacted by the General Assembly of Maryland, that the mayor and city council of Baltimore shall have full power and authority to increase the width of Dock street in said city, to eighty feet, and to fill up and make said street of the width aforesaid; and that the title thereto, when so made, shall be vested in the mayor and city council of Baltimore.

Sec. 2. And be it enacted, that the mayor and city council of Baltimore shall be and hereby are vested with the right and title to any land made, or to be made by them, out of the water, in making and completing the improvement of *143 the city dock, according to the plan heretofore adopted by them: Provided nevertheless, that nothing in this act contained, shall be construed to interfere with the vested rights of individuals.”

By Ordinance No. 56, approved March 29, 1837, the city commissioners were authorized and directed to widen Dock street 30 feet from its northern boundary line into the dock, thus making its width over all 80 feet, and appropriating over \$6,000 for the purpose, provided the proprietors should assent to a relinquishment of all rights they may have in Dock street. On April 25th following the proprietors executed an agreement whereby they signified their full assent to the improvements made under the Ordinance No. 12

of the year 1814, and, in the language of the agreement, “hereby absolutely renounce and relinquish, abandon, and make over to the corporation of the city of Baltimore forever all the right, title, and interest which we, or any of us, our or any of our heirs or assigns, may or can have in or to all the following streets, wharves, block or pier, etc., to wit: *** All Dock street.” They therein obligated themselves to execute a more formal assignment to the corporation upon its request or whenever required. This agreement was signed by all the proprietors; Margaret Cunyngham signing for John Cunyngham. The work of widening was then carried to completion in 1839. Numerous ordinances have been passed looking to the care and maintenance of the dock and Dock street. The first 50 feet of the street have been paved, it has been lighted, and water and sewer pipes have been installed. As we have seen, the lot in controversy is within the lines of lot No. 28 extended to the water, and is separated from the original extension of said lot by the original 50 feet of Dock street.

[1] The contention of the appellants is based upon the rights claimed to have been conferred upon their predecessors in title by chapter 9, § 10, of the Acts of 1745. This act, for the purpose of encouraging persons owning water front properties in Baltimore to make improvements in front of their properties, provided:

“That all improvements of what kind soever, either wharves, houses, or other buildings, that have or shall be made out of the water, or where it usually flows, shall (as an encouragement to such improvers) be forever deemed the right, title and inheritance of such improvers, their heirs and assigns forever.”

And reasoning from that act and the decisions thereon, they argue that the title to all improvements made by the city under the ordinance of 1814 became vested in their predecessors as the owners of the fast land as soon

as they were completed, and further argue that, such being the case, the further extension of the limits of their lot by the improvement by the city, under the act and ordinance of 1837, vested in them title to the land in question.

Many interesting and instructive cases are to be found in the decisions of this court as to the rights secured to property owners by virtue of this statute, such as that the riparian owner had no vested title to the land covered by water immediately in front of his property, nor to the improvements built out of the water, until the improvements had been actually completed ([Giraud v. Hughes, 1 Gill & J. 249](#)), and that, before the riparian owner had made any improvements in front of his property, the state could intercept his right to make them by a grant of the land covered by water ([Casey v. Inloes, 1 Gill, 430, 39 Am. Dec. 658; Linthicum v. Coan, 64 Md. 439, 2 Atl. 826, 54 Am. Rep. 775](#)). This right of the state was taken away by chapter 129 of the Acts of 1862, which forbade the issuance of any patent for land covered by navigable water, and that the rights given to a riparian owner under the act was a valuable one, of which he could not be deprived by another person without his consent. *Casey v. Inloes*, supra.

For the disposition of this case, we do not find it necessary to enter into a discussion of any but one point, for, in our opinion, the question of whether or not the appellee had secured title to the entire bed of Dock street, as it exists to-day, by adverse possession settles this case.

In the ordinance of 1814 it was made a condition precedent to the making of the improvements that the proprietors should signify their assent to the plan. This by its terms could be verbal as well as written. It does not appear from the record whether or not this assent was secured. But it does appear that the money appropriated for the work on the above condition was expended and the work done. Of course, at this far day, there is no

person who could testify as to that, but the presumption is that the public officials secured such assent in conformity with their expressed duties. From the plan drawn on the plat it appeared to any one interested in the improvement that the streets around the dock formed a very important feature of the improvement, and they must have known that the dock would be of very little use as a public improvement without these streets were opened to the public as public highways. When we consider that the plan provided for an extension of lot 28 of approximately 250 feet, thus converting a shallow lot into one of good depth, and making entrance possible from the front and rear, is it not an irresistible presumption that the then two owners of that lot gave their assent readily? After making this street, the city has treated it just as any other thoroughfare of the city. They have exercised complete control over it ever since until the present. They have lighted it, paved it, put in water mains and sewers, cared for it in the way of maintenance, and at all times has it been open to the public. Not since it was constructed until the present time has there been a claim made by any one that the *144 city had not acquired an easement in said 50-foot street for a public thoroughfare over it. In fact, such a concession was made by the counsel for the appellant during the taking of testimony.

The situation of Dock street prior to the passage of chapter 63 of the Acts of 1836, so far as the title to Dock street was concerned, was that the fee to the bed of that street was in John Cunyngham, subject to the right of travel by the public thereover; the fee in John Cunyngham having been acquired, of course, by virtue of the provisions of the act of 1745. It was during this situation of the title that the Legislature of 1837 passed the act just referred to, by which the city was given the authority to widen the street to the extent of 30 feet, and granted to it not only the fee in the same when it should be constructed, but

also the fee to the original 50 feet already constructed and then in use and occupancy, but nevertheless saving to any individuals any rights with which they might be vested under the act of 1745 or otherwise. It was after this that the ordinance of March 29, 1837, was passed directing that the improvement provided for under the act of 1836 should be carried into effect, provided that first the proprietors of ground bounding on the dock should execute a deed of conveyance of the right of wharfage and the bed of the street to the city. It was for the purpose of accomplishing that result that the city obtained on April 25, 1837, the paper which we have referred to above. While this paper is very informally drawn and could hardly be considered of such legal effect as to convey the rights which it purported to assign, yet nevertheless it does have the effect of showing that the city thought that it was carrying out the duty imposed upon it by the ordinance, and believed that it was obtaining a fee-simple title to the bed of the street already built and about to be built, in consideration of making the additional improvement. Acting on the belief that title had been obtained by it, the city proceeded with the work, and completed it in 1839, and entered into possession of it and continued in the possession of the original 50 feet.

[2] As we have said above, while this paper would have no legal effect to change the title to the street, yet it does have a great effect in showing that the appellee was occupying the street under the belief that the fee to the same was vested in it, and that therefore their occupancy was under claim of a supposed right, and therefore adverse. The city continued from 1839 to so occupy the whole of Dock street until the year 1880, a period of over 40 years, before claim was made by any one to any portion of the 30-foot strip. We are then of the opinion that there was abundance of evidence from which it could be found that the appellee had obtained a fee-simple title to the whole of Dock street through adverse possession.

Therefore the lower court was correct in refusing to rule as a matter of law that there was no evidence in the case legally sufficient to show that the plaintiff had acquired any title, interest, or estate in or to the strip of land in controversy. The ruling of the court in rejecting the prayers of the appellant dealing with their claim to the benefit of the law of adversary possession as applied to their occupancy, was correct, for the reason that this court has held that prescription will not run against the city or the public. [Cushwa v. Williamsport, 117 Md. 318, 319, 83 Atl. 389;](#) [Ulman's Case, 83 Md. 144, 145, 34 Atl. 366.](#)

Finding no error in the rulings of the learned court below, we will affirm the judgment.

Judgment affirmed, costs to the appellee.

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