

Van Witson et al. v. Gutman, 29 A. 608 (Md. 1894)

FACTS:

- In 1829, the trustees for the owners of a tract of land in Baltimore made a plat of the property and designated lots with an alley running north-south through the property.
- The first recorded deed was from October 31, 1829 from the trustees to Skipwith H. Coale for 99 years with the usual covenants for renewal. The deed described a public alley, called Jew Alley, laid out by the trustees.
- Jew Alley runs from Marion Street on the south to Lexington Street on the north.
- Plaintiffs own lots on the eastern side of Jew Alley.
- Defendant Mrs. Bertha Gutman is the owner of ten lots at the southern end, with five to the east of the Alley and the other five directly west of the Alley.
- Mrs. Gutman started construction on a permanent stone and brick wall across the southern part of Jew Alley pursuant to two ordinances passed by the mayor and city council of Baltimore that authorized the condemnation and closing of the portion of Jew Alley that lied between Mrs. Gutman's lots.

PROCEDURAL HISTORY:

- Plaintiffs brought suit against Mrs. Gutman in circuit court No. 2 of Baltimore City for depriving their right of way over a portion of Jew Alley. The relief sought was to permanently enjoin Mrs. Gutman from obstructing the Alley, and to require her to remove the wall that had already been constructed.
- The circuit court dismissed Plaintiffs' suit, and Plaintiffs appealed to the Court of Appeals of Maryland.

ISSUE:

- Whether the ordinances authorizing the condemnation and closing of a portion of Jew Alley was valid?

HOLDING:

- The ordinances authorizing the closing and widening (the portion north of Mrs. Gutman's property) of Jew Alley were invalid.

REASONING:

- The city of Baltimore had treated Jew Alley as a public passageway by maintaining and repairing it for over 20 years. Though the mayor and city council had the authority to close any street or alley, property owners harmed by such a closing had to be compensated.
- Before any street or alley could be lawfully closed, it had to be condemned by the mayor and city council for a public use. Closing Jew Alley did not serve a public necessity, interest, or welfare; instead, it deprived property owners north of Mrs. Gutman access to Marion Street. These owners lost their easement to the closed portion of Jew Alley, while Mrs. Gutman gained an extra lot where she could put up a building. The court held that this was a taking of private property for Mrs. Gutman's private use, and thus was invalid.
- Though the legislature had the power to determine when private property could be taken for public use, it was the judiciary that determined whether the use was private or public.