

No. 31 Eq. 6<sup>th</sup>

Sidney Turner Dyer  
et al

vs

The Mayor and City  
Council of Baltimore

et al

Appeal Bond

(17)

Filed 19 July 1905

Know all Men by these Presents, That we, Sidney Turner Dyer and Elisha Dyer, Jr., of the City of New York in the State of New York, as principals and The Fidelity and Deposit Company of Maryland, a body corporate as sureties, are held and firmly bound unto The Mayor and City Council of Baltimore, and E. Clay Timanna, Mayor, Sherlock Swann, Chairman, Charles K. Lord, John W. Snyder, and John T. Graham, Members of the Board District Commission of Baltimore City

in the full and just sum of two hundred and fifty (\$250) dollars to be paid to the said The Mayor and City Council of Baltimore, E. Clay Timanna, Sherlock Swann, Charles K. Lord, John W. Snyder and John T. Graham or Their <sup>successors</sup> certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, <sup>and successors</sup> jointly and severally, by these presents. Sealed with our seals and dated this fourteenth day of July in the year of our Lord one thousand <sup>nine</sup> ~~eight~~ hundred and ninety five.

WHEREAS, lately at a Circuit Court of the United States for the District of Maryland in a suit depending in said Court, between the said Sidney Turner Dyer and Elisha Dyer Jr. and the said Mayor and City Council of Baltimore, E. Clay Timanna, Mayor, Sherlock Swann, Chairman, Charles K. Lord, John W. Snyder and John T. Graham, Members of the Board District Commission of Baltimore City a decree was rendered against the said Sidney Turner Dyer and Elisha Dyer Jr.

and the said Sidney Turner Dyer and Elisha Dyer Jr.

having obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said Mayor and City Council of Baltimore, E. Clay Timanna, Mayor, Sherlock Swann, Chairman, Charles K. Lord, John W. Snyder and John T. Graham, Members of the Board District Commission of Baltimore City citing and admonishing them to be and appear at a <sup>Supreme Court of the United States</sup> ~~United States Circuit Court of Appeals for the Fourth Circuit~~, to be holden at <sup>Washington</sup> ~~Richmond~~ on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, That if the said Sidney Turner Dyer and Elisha Dyer Jr.

shall prosecute said appeal to effect, and <sup>pay</sup> ~~answer~~ all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—  
Reverend Father Beilard

Sidney Turner Dyer  
Elisha Dyer Jr.

Approved by—  
Thos. J. Morris  
Judge

Wm. Miller  
Wm. Beery  
Vice Pres.  
Aug. 1895

Sidney Turner Dyer et al. )  
 )  
 vs. )  
 )  
 The Mayor and City Council )  
 )  
 of Baltimore et al. )

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

Come now Sidney Turner Dyer by Elisha Dyer, Jr., her husband and next friend, and Elisha Dyer, Jr., the Complainants in this cause, and file the following assignment of errors upon which they and each of them will rely upon their appeal from the decree passed by this Honorable Court in this cause on the 10<sup>th</sup> day of July 1905.

I.

That the Circuit Court of the United States for the District of Maryland erred in sustaining the demurrer interposed by the defendants to the Bill of Complaint.

II.

That the said Court erred in dismissing the said suit and entering a final decree therein in favor of the said defendants for their costs against the complainants.

III.

That the said Court erred in holding that Chapter 87 of the Acts of the General Assembly of Maryland passed at January Session 1904 is not in conflict with that clause of

the Fourteenth Amendment to the Constitution of the United States which provides that no State shall deprive any person of life, liberty or property without due process of law, and therefore void.

IV.

That the Court erred in holding that the procedure for condemnation of private property provided by said Act of 1904 ch. 87 satisfies the requirement of due process of law prescribed by the Fourteenth Amendment to the Constitution of the United States.

V.

That the said Court erred in holding that said Fourteenth Amendment does not forbid the taking and condemnation of private property by the Mayor & City Council of Baltimore by the procedure provided by said Act.

VI.

That the said Court erred in holding that said Act of 1904 ch. 87 in so far as the same provides for condemnation of private property is valid under the Constitution of the State of Maryland, particularly under Section 40 of Article III of said Constitution and Article 23 of the Declaration of Rights.

VII.

That the said Court erred in holding that the procedure for condemnation of private property provided by said Act of 1904 ch. 87 satisfies the requirements of the Constitu-



tion of the State of Maryland.

VIII.

That the said Court erred in holding that Ordinance No. 149 of the Mayor and City Council of Baltimore, approved *November 10<sup>th</sup>*, 1904, is valid and constitutional and not in conflict with said clause of said Fourteenth Amendment.

IX.

That the Court erred in holding that the said Fourteenth Amendment does not prohibit the condemnation and taking of property of the Complainants lying in Baltimore City south of Pratt street and mentioned in the Bill, under said Ordinance No. 149 and said Act of 1904 ch. 87.

X.

That the said Court erred in refusing to hold said Act of 1904 ch. 87 and said Ordinance No. 149 to be unconstitutional, null and void, and in conflict with said Fourteenth Amendment and with the Constitution and Declaration of Rights of the State of Maryland in so far as said Act and Ordinance purport or attempt to authorize the condemnation of the property of the Complainants lying in Baltimore City south of Pratt street and mentioned in the Bill.

XI.

That the said Court erred in holding the purpose expressed in said Act and Ordinance for the taking and condemnation of the said property of the Complainants to be a public use and a use for which private property can con-

stitutionally be taken.

XII.

That the said Court erred in holding said Ordinance No. 149 and the scheme of improvements approved thereby to be authorized by said Act of 1904 ch. 87 and not ultra vires of the Mayor and City Council of Baltimore.

XIII.

That the said Court erred in holding that the scheme of new wharves and docks provided for in said Ordinance No. 149 and the map accompanying the same is within the powers of the Burnt District Commission as defined in the said Act of 1904 ch. 87.

XIV.

That said Court erred in holding that the power attempted to be conferred by said Act to lay out "additions and extensions to the public wharves and docks" authorises the laying out of entirely new wharves and docks.

XV.

That the said Court erred in holding that the said Act of 1904 ch. 87 and said Ordinance No. 149 sufficiently show what the use is for which the said property of the Complainants is proposed to be condemned and taken.

XVI.

That the said Court erred in holding that the Fourteenth Amendment to the Constitution of the United States, and the Constitution of Maryland do not forbid the condemnation

of private property for the purpose of leasing the same to private persons and corporations for the exclusive private use of the lessees.

XVII.

That the said Court erred in holding that the defendants should not be enjoined from condemning and taking the said property of the Complainants under colour of said Act of 1904 ch. 87 and said Ordinance No. 149 when the real intention of the defendants is to put said property to a use for which the said Act and Ordinance do not purport to authorise the condemnation of private property, and for which private property cannot constitutionally be taken under the power of eminent domain.

XVIII.

That the said Court erred in holding that the defendants should not be enjoined from condemning and taking the said property of the complainants under colour of said Act of 1904 and said Ordinance No. 149 for a purpose not contemplated by said Act, to-wit, for the purpose of leasing the same to other persons for their private and exclusive use.

XIX.

That the said Court erred in holding that said Act of 1904 authorises the condemnation and taking of said property of the complainants in pursuance of the scheme of improvements approved by said Ordinance No. 149.

XX.

That the said Court erred in holding that said Act of 1904 ch. 87 authorises or justifies the filling up or taking of private docks in whole or in part.

XXI.

That the said Court erred in deciding that the Mayor and City Council of Baltimore might consistently with the Fourteenth Amendment of the Constitution of the United States proceed to condemn the said lands of the complainants when its purpose in the proceeding as stated in the bill of complaint in this cause and admitted by the defendants' demurrer, is to have said property appropriated, upon such condemnation, to the private uses of individuals and corporations.

XXII.

That the said Court erred in deciding that the Mayor and City Council of Baltimore might consistently with the Constitution of the State of Maryland proceed to condemn the said lands of the Complainants, when its purpose in the proceeding, as stated in the bill of complaint in this cause and admitted by the demurrer of the defendants, is to have said property appropriated upon such condemnation to the private uses of individuals and corporations.

For each and all of which reasons the said Complainants pray that said decree of the Circuit Court of the United States for the District of Maryland may be reversed.

Arthur W. Machen  
Arthur W. Machen Jr  
Solicitors for Appellants

OFFICE OF THE  
BURNT DISTRICT COMMISSION,  
BALTIMORE, Md., Nov. 16, 1904.

The Burnt District Commission, in accordance with the provisions of Section 8 of Chapter 87 of the Acts of the General Assembly of Maryland of 1904, hereby gives notice that it will hold its FIRST MEETING on the TWELFTH DAY OF DECEMBER, 1904, at 10 o'clock A. M. at the Office of the Commission, in the COURTHOUSE, Baltimore City, Maryland, to exercise the powers and to perform the duties required of it under the provisions of said Act, and especially those relating to the award of damages in regard to condemning lands and property for additions or extensions to the basin or harbor and to the public wharves or docks of Baltimore city within the territory bounded as follows:

Beginning at a point where the new south line of Pratt street, one hundred and twenty feet wide, would be intersected if that portion of the pierhead line connecting points Nos. 1 and 2 be produced northerly, said pierhead line being the same as that established by Act of the Secretary of War of the United States, for Baltimore harbor, in the year 1800, and running thence easterly, binding on the said new south line of Pratt street, one hundred and twenty feet, until it intersects the west side of Jones' Falls; and running thence southeasterly, binding on the said west side of Jones' Falls and including the space occupied by the Bleek street drawbridge, until it intersects that portion of the above-mentioned pierhead line between points Nos. 7 and 8; and running thence northwesterly, binding on the said pierhead line, to point No. 1 of the said pierhead line; thence northerly, binding on that portion of the said pierhead line connecting points Nos. 1 and 2, produced northerly to the point of beginning.

Including all wharf and riparian rights appurtenant thereto, or to any part or parts thereof, and all private property, rights and interests in the beds of streets, wharves, docks, lanes, alleys and ways within said territory, and the present bulkhead of the United Railways and Electric Company along the west side or line of the street now known as O'Donnell's wharf, between the said new south line of Pratt street on the north and the present north line of Wood street (if extended westerly) on the south, and the right of the said United Railways and Electric Company to maintain said bulkhead; excepting, however, out of the tract above described by metes and bounds all that lot of ground belonging to the said United Railways and Electric Company lying between the said new south line of Pratt street on the north, the present west line of the street now known as Dugan's wharf on the east; the present north line of Wood (or Dugan street) on the south, and the present east line of the street now known as O'Donnell's wharf on the west, and bounded as follows:

Beginning for the same excepted parcel at the corner formed by the intersection of the said new south line of Pratt street with the present east line of the street now known as O'Donnell's wharf; and running thence southerly, binding on the present east line of the street now known as O'Donnell's wharf, 524 feet and 8 1/4 inches, more or less, to the northeast corner of O'Donnell's wharf and Wood street; thence easterly, binding on the present north line of Wood street 132 feet, more or less, to the northwest corner of Dugan's wharf and Wood street; thence northerly, binding on the present west line of the street now known as Dugan's wharf, 225 feet and 9 1/4 inches, more or less, to the corner formed by the intersection of the said new south line of Pratt street with the present west line of the street now known as Dugan's wharf; and thence westerly, binding on the said new south line of Pratt street 132 feet, more or less, to the place of beginning.

And excepting also the improvements thereon and the wharf rights, water and riparian rights of every kind of the said United Railways and Electric Company appurtenant thereto, save only the present bulkhead of the said United Railways and Electric Company, and the right of the said company to maintain the same above mentioned. It being a special part of the proposal of the Burnt District Commission in including the present bulkhead of the said United Railways and Electric Company along the west side or line of the street now known as O'Donnell's wharf, and the right of the said company to maintain the same, in the statement above of what it proposes to acquire, to acquire for and in the name of the Mayor and City Council of Baltimore the absolute right to relocate and rebuild the said O'Donnell's wharf and to adjust said wharf rights, water and riparian rights of every kind of the said United Railways and Electric Company so as to conform to the other and general purposes hereinbefore set forth, without depriving the said United Railways and Electric Company of the substantial use and benefit either of the lot of ground and improvements or of the wharf and wharf rights, water and riparian rights of every kind excepted as aforesaid.

All in accordance with Ordinance No. 94 of the Mayor and City Council of Baltimore approved June 16, 1904, and the map therein mentioned, designated "Burnt District Commission, Map Showing Property To Be Acquired for Dock Improvements," as the same were amended by Ordinance No. 149 of the Mayor and City Council of Baltimore approved November 16, 1904, and the map therein mentioned, designated "Burnt District Commission, Amended Map Showing Property To Be Acquired for Dock Improvements," now on file in the Office of the City Register.

SHERLOCK SWANN (Chairman),  
E. CLAY TIMANUS,  
C. K. LORD,  
JNO. T. GRAHAM,  
JNO. W. SNYDER,

*Burnt District Commission.*

JAMES K. BREWER, JR.,  
*Secretary and Clerk.*



No. 31 Sep 6

in the  
Commission of the United States  
for the District of Maryland.

William J. Dykes  
et al

Mayor of City Council  
of Baltimore  
et al.

Complaints, Exhibit  
No. 6.

(7)

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

AMERICAN BANK NOTE CO., LITH. PRINTERS, 4 N. 37TH ST., PHILADELPHIA, PA.

Filed 10 March 1905

No. 31 Ex. B<sup>12</sup>

Seahy, J. Dyer, et al.

Morgan & City Councils  
of Baltimore, et al.

Opinion

(12)

for record

Filed 26 June 1905

It is contended that the words "to lay out additions and alterations to the public wharves and docks of Baltimore City," mean that there must be in existence a public wharf or dock and that all that the Commission is given power to do is to make an addition or extension to the physical structure of that existing public wharf or dock.

Looking to the actual situation, <sup>to which</sup> ~~while~~ it was obviously the intention of the Legislature that the Burnt District Act should be applied, <sup>this</sup> ~~it~~ seems too limited a meaning to give to the words. To add to or extend the public wharves and docks of a port does not necessarily import a dealing with existing structures. <sup>Power is very frequently given to a municipality</sup> ~~It is part of the public duty of a municipality, the propriety and importance of which arises in part from the shipping and commerce and the facilities of its harbor and its wharves and docks~~ <sup>to enable it to fulfill the public duty of</sup> ~~providing~~ <sup>for</sup> ~~that~~ commerce. To add to its wharves and docks may well mean in a comprehensive act such as the one in question, to make new ones; to extend its wharves and docks may well mean to carry the system into new areas, and to make additions and extensions to the harbor or basin may well mean in such an act the widening of the docks appurtenant to the basin in order to give more room <sup>of the size which are</sup> ~~using~~ the port to more safely navigate.

United States of America, ss:

The President of the United States of America,

To the Honorable the Judges of the Circuit  
Court of the United States for the \_\_\_\_\_  
District of Maryland

GREETING:

Whereas, lately in the Circuit Court of the United States for the \_\_\_\_\_ District of Maryland before you or some of you, in a cause between Sidney Turner Dyer, by Elisha Dyer, Jr., her next friend, and Elisha Dyer, Jr., complainants, and The Mayor and City Council of Baltimore City and E. Clay Timanus, Mayor, and Sherlock Swann, Chairman, and Charles H. Lord, John W. Snyder, and John T. Graham, members of the Board District Commission of Baltimore City, defendants, wherein the decree of the said Circuit Court, entered in said cause on the 10<sup>th</sup> day of July, A. D. 1905, was in favor of the said defendants, The Mayor and City Council of Baltimore City et al., and against the said complainants.

as by the inspection of the transcript of the record \_\_\_\_\_

\_\_\_\_\_ of the said Circuit \_\_\_\_\_

Court, which was brought into the SUPREME COURT OF THE UNITED STATES

by virtue of an appeal \_\_\_\_\_

\_\_\_\_\_ agreeably to the act of Congress, \_\_\_\_\_

\_\_\_\_\_ in such case made and provided, fully and at large appears.



And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and Five —, the said cause came on to be heard before the said SUPREME COURT, ~~on the said transcript of record, and was argued by counsel:~~

~~On consideration whereof. It is now here ordered~~ ~~adjudged~~  
~~by this Court that the~~ ~~of the~~  
~~said~~ ~~Court in this cause be, and the same is hereby,~~  
and it appearing to the Court that a stipulation of counsel for the respective parties to dismiss this appeal has been filed, Therefore, in pursuance of said stipulation, It is now here ordered, adjudged and decreed by this Court that this appeal be, and the same is hereby, dismissed at the costs of the appellees.

March 5, 1906.

You, therefore, are hereby commanded that such execution and  
proceedings be had in said cause, \_\_\_\_\_  
\_\_\_\_\_ as according to right and justice, and the laws  
of the United States, ought to be had, the said *appeal* \_\_\_\_\_  
notwithstanding.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the  
United States, the *10th* day of *August*, in the year  
of our Lord one thousand nine hundred and *six*.

COSTS OF \_\_\_\_\_  
Clerk \_\_\_\_\_ \$ \_\_\_\_\_  
Printing Record \_\_\_\_\_ \$ \_\_\_\_\_  
Attorney \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

*James H. W. Kenney*  
Clerk of the Supreme Court of the United States.

*No. 31 E. 18*

*File No. 19,879.*

SUPREME COURT OF THE UNITED STATES,

No. *377*, October Term, 190*5*.

*Sidney Turner Dyer*

*vs.*

*vs.*

*The Mayor & City Council  
of Baltimore City et al.*

MANDATE.

*Filed 10 August 1906*

No. 31 Ept. 8

In the Circuit Court of the  
U.S. for the District of Md.

Sidney Turner Dyer

and

Elisha Dyer, Junior,

-vs-

The Mayor and City

Council of Baltimore,  
et al.

BILL OF COMPLAINT,  
with Exhibits

Mr. Clerk:-

①

Please file do.

*Arthur W. Machen*  
*Arthur W. Machen Jr*

Solicitors for Complaints.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ALLEN BISHOP & CO., LAW STENOGRAPHERS, 4 N. JEFFERSON ST., BALTIMORE, MD.

*Filed 10 March 1905*

Sidney Turner Dyer  
by Elisha Dyer Jr. her  
next friend and  
Elisha Dyer Jr.

Complainants

-vs-

The Mayor and City Council  
of Baltimore and  
E. Clay Timanus, Mayor,  
Sherlock Swann, Chairman,  
Charles K. Lord,  
John W. Snyder, and  
John T. Graham,  
Members of the Burnt District  
Commission of Baltimore City.  
Defendants.)

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

IN EQUITY.

To the Honorable the Judges of the Circuit Court of the  
United States for the District of Maryland:

Sidney Turner Dyer by Elisha Dyer, Jr., her next friend,  
and Elisha Dyer, Junior, of the City of New York, and citizens  
of the State of New York, bring this their Bill. against the  
Mayor & City Council of Baltimore and E. Clay Timanus, Mayor,  
Sherlock Swann, Chairman, Charles K. Lord, John W. Snyder,  
and John T. Graham, members of the Burnt District Commission  
of Baltimore City, of Baltimore City and citizens of the  
State of Maryland; and thereupon your orators complain and say:

1. That your oratrix, Sidney Turner Dyer is the wife  
of your orator Elisha Dyer, Junior; and your orator and oratrix  
are citizens of the State of New York; and that the defendant,  
the Mayor and City Council of Baltimore, is a corporation of,  
and incorporated by, the State of Maryland, and that the  
defendant, E. Clay Timanus,

111-30  
STATE OF MARYLAND  
IN SENATE  
JANUARY 12, 1904  
COMMISSIONERS OF THE LAND OFFICE

111-30

is a citizen and resident of the State of Maryland and Mayor of the City of Baltimore, and that the defendants, Sherlock Swann, Charles K. Lord, John W. Snyder and John T. Graham are all citizens and residents of the State of Maryland, and have been appointed members of and together with the Mayor constitute the Commission or Board known as the Burnt District Commission whose appointment is provided for by Chapter 87 of the Laws of Maryland passed at January Session 1904.

2. That William Patterson who died in the year 1833 was at, and for many years before, his death seised in fee of a parcel of ground lying in the City of Baltimore, bounded on the west by Commerce Street (sometimes called Holliday street), on the north by the north side of Cable street, on the west by Patterson street and on the south by the body of Water known as the basin of Baltimore; that within and upon the said ground lay a certain private dock, the property of him the said William Patterson, known by the name of Patterson's Dock, the water whereof at the southern end connected with the water of said Basin; that the said William Patterson, so being solely and exclusively seised in fee of the said parcel of ground with the said private dock so contained therein, did by his last will made and executed in manner and form to pass real estate and after his death duly proved in the Orphans Court of Baltimore County devise all that portion of said parcel of ground lying at the head of said dock improved at the time of his death by four brick warehouses or stores fronting on Cable street and extending from Commerce to Patterson streets together with the ground on which the same were erected and which was appurtenant thereto or used in connection therewith, to his son Edward Patterson for life and from and after his decease to all and



every the child and children of said Edward in equal proportions and equally to be divided between them and to the heirs of such child or children of the blood of their father forever; that by his said will the said testator devised the other portions of the said parcel of ground to other sons of the said testator; that the said Edward Patterson under and by virtue of his father's said will entered into possession of the said ground so devised to him together with the said brick warehouses thereon which said lots are the same now designated as No. 401, No. 403, No. 405 & No. 407 Cable street, and also went into possession and enjoyment of the upper end of the said dock belonging to the same and had and enjoyed the use of all the rest of the said dock with free ingress and egress to and from the same into the said Basin; that the said Edward Patterson died on the 24th day of September 1865 leaving surviving him five children, namely, Margaret Turner, Laura Patterson, Edward Patterson, Jr., Samuel Smith Patterson and Robert Patterson and one granddaughter, your oratrix, Sidney T. Dyer, then Sidney Smith Turner, only child of his daughter Sidney Turner who died intestate in his lifetime; that the said Robert Patterson died intestate on or about June 14th 1866 unmarried and without issue; that the said Margaret Turner died on or about May 10th 1873 and by her last will testament duly executed so as to pass real estate devised one equal undivided fourth part of her residuary estate (including her interest in the said lots at the head of the said private dock known as Patterson's Dock) to the said Edward Patterson, Jr., and Laura Patterson and their heirs as joint tenants in trust for the sole and separate use of your oratrix the said Sidney T. Dyer, and one other equal undivided fourth part thereof to the said Samuel Smith Patterson and his heirs,

and one other equal undivided fourth part thereof to said Edward Patterson, Jr., and his heirs, and the remaining undivided fourth part thereof to the said Laura Patterson and her heirs; that the said Edward Patterson, Jr., died intestate, unmarried and without issue on Sept. 5th 1886; that the said Samuel Smith Patterson died on February 5th 1887, also intestate, unmarried and without issue; so that your oratrix

Sidney T. Dyer is now seised in fee simple of a twenty-seven sixtieths undivided interest in said lots at the head of said dock with the appurtenances.

3. Your oratrix, Sidney T. Dyer, is also seised in fee of an undivided seventeen-sixtieths interest in a lot of ground on Smith's Wharf in Baltimore City, fronting twenty five feet on said Smith's Wharf and extending easterly sixty five feet more or less to an alley being the lot now known as No. 221 Smith's Wharf, with the right and privilege of using in connection therewith the private dock in front thereof known as Smith's Dock or Gay Street Dock. Your oratrix, Sidney T. Dyer, is also seised of an undivided 34-one hundred and twentieths interest in a lot of ground lying on the west side of Commerce street fronting on Commerce street and extending westerly to a private dock known as McLure's Dock and known as No. 234 Commerce street, with the right and privilege of using said dock in connection with the property aforesaid. Your said oratrix, Sidney T. Dyer, is also the owner of a twenty-seven sixtieths interest in an irredeemable ground-rent of \$420 a year issuing out of a lot of ground in Baltimore City beginning for the same on the east side of South street about sixty feet southerly from Pratt street and running thence southerly bounding on South street thirty-

feet thence easterly parallel to Pratt street fifty-four feet more or less to a certain private dock known as McLure's Dock, thence northerly binding on said Dock thirty feet thence west by a straight line to the beginning, together with the appurtenances and especially with the right of using said private dock in common with the owners and occupiers of the other ground bounding thereon and with the right and privilege of free access thereby to the Basin or Harbor.

4. Said lots of ground so belonging in part to your oratrix are designed by *colored* lines on a plat <sup>filed</sup> herewith marked Complainants' Exhibit No. 1, which is prayed to be read as a part of this bill; and the value of the said legal estate and interest of your said oratrix, Sidney T. Dyer, in the said lots of ground exceeds the sum of twenty-five thousand dollars.

5. Your said oratrix, Sidney T. Dyer, is also an owner of other land lying in Baltimore City north of Pratt street but within the "Burnt District" as defined in said Act of 1904, and also of other lands and improvements lying in other portions of Baltimore City outside of said "Burnt District." Upon all of which said lands and improvements your oratrix is assessed for and annually pays taxes to the Mayor and City Council of Baltimore.

6. In the month of February 1904, the City of Baltimore was visited by a destructive conflagration which swept over the business section of the city and completely destroyed almost all buildings in the territory bounded on the west by Liberty Street on the north by Fayette street, on the east by Jones' Falls and on the south by Pratt street and a body of water known as the Basin or Harbor of Baltimore, and, more particularly, totally destroyed the warehouses

and improvements erected on theaforesaid lots of ground belonging in part to your oratrix, on Cable street, Commerce street, Smith's Wharf and South street.

7. By Act of 1904 ch. 87, the General Assembly of Maryland purported to authorize the Mayor and City Council of Baltimore to appoint in manner prescribed in Section 25 Article IV of the Public Local Laws of Maryland four capable and upright citizens of Baltimore who together with the Mayor himself ex officio should constitute a Special Commission to be known as the Burnt District Commission. And the said defendants Sherlock Swann, Charles K. Lord, John T. Graham, John W. Snyder and W. Clay Timanus, Mayor, constitute and are acting as such Burnt District Commission and assuming to exercise the powers conferred, or claimed to be conferred upon it, by said Act of 1904.

8. That in the said Act of 1904 chapter 87 certain powers, stated to be therein given to the said Burnt District Commission, were defined and distinguished, in the second section of said Act, as follows:

"1. To lay out, open, extend, widen, straighten or close any street, lane or alley or any part thereof, in said burnt district.

2. To establish and fix the building line, and the width of the sidewalks on any street, lane or alley, now existing or to be laid out, opened, extended, widened or straightened, in said burnt district.

3. To open public squares or market places in said burnt district.

4. To lay out additions and extensions to be made to the public wharves and docks of Baltimore City, and to be made to the basin or harbor of the City of Baltimore, and to acquire for and in the names of the Mayor and City Council of Baltimore the lands and property within said burnt district which may be requisite to make such additions and extensions, and to define the extent to which said harbor or basin is to be filled in in said burnt district."

And the said Commission have proceeded to exercise said first, second and third powers in that part of the said burnt district which lies north of Pratt street in the said City of Baltimore, and also have proposed to widen said Pratt street on the south side thereof so as to make the entire width



of said street 120 feet, instead of about 66 feet, as it was previously. And the said Commission now propose to exercise the power fourthly above specified.

9. The said Commission as agents for and on behalf of the Mayor and City Council of Baltimore were by said Act (Secs. 5 & 6) authorized to acquire by purchase any such property so needed for said proposed improvements, and were expressly, fully and absolutely authorized as such agents for the Mayor and City Council of Baltimore to agree with any owner or owners of any such property upon all the terms of such purchase, <sup>no ordinance</sup> to be requisite to the validity of such purchase.

10. That the said Burnt District Commission purporting to proceed under said Act of Assembly did on or about the 18th day of May, 1904, make a certain report accompanied by a map to the Board of Estimates and the Board of Public Improvements. Said Report is recited verbatim in the Ordinance No. 94 hereinafter mentioned, and a copy of said map is herewith filed marked Complainant's Exhibit, No. 2 and is prayed to be read as part of this bill. The Board of Estimates and the Board of Public Improvements acting as a joint body thereupon approved the said report and map, <sup>and</sup> transmitted the same to the City Council; and thereupon the same were approved by an ordinance of the Mayor and City Council of Baltimore approved by the Mayor on the 16th day of June 1904, and known as Ordinance No. 94, a copy of which ordinance is herewith filed marked Complainant's Exhibit No. 3 and prayed to be read as part of this bill.

11. That the said Burnt District Commission further purporting to proceed under said Act of Assembly did on or



about the 28th day of September 1904 make and transmit to the Board of Estimates and the Board of Public Improvements acting as a joint body a certain amended report (which said report is recited and set forth verbatim in the ordinance No. 149 hereinafter referred to) and a map designated as "Burnt District Commission, Amended map showing property to be acquired for dock improvements", a copy of which map is filed herewith marked Complainants' Exhibit No. 4 and prayed to be read as a part of this Bill. That the Board of Estimates and the Board of Public Improvements acting as a joint body thereupon approved the said report and map and transmitted the same to the First Branch of the City Council, and thereupon the same were approved by Ordinance of the Mayor and City Council of Baltimore approved by the Mayor on the 10th day of November 1904 known as Ordinance No. 149, a copy of which ordinance is herewith filed marked Complainant's Exhibit No. 5 and is prayed to be read as a part of this Bill. The said Burnt District Commission have also caused to be published in two daily newspapers published in the City of Baltimore an advertisement a copy whereof is herewith filed marked Complainants' Exhibit No. 6.

12. That the defendants, under color of exercise of authority given by the said Act of the General Assembly of Maryland 1904, chapter 87, design and intend that the Mayor and City Council of Baltimore shall become owner in fee simple of the entire tract of land lying south of said Pratt street, as proposed to be widened as aforesaid, and bounded westwardly by Bowly's Wharf, southerly by the said Basin, and eastwardly by Jones' Falls, (with the exception of a certain parcel of ground occupied by the United Railways and Electric Company), which said plan and purpose was not contemplated

by the said Act of Assembly, and cannot be constitutionally accomplished through the power of Eminent Domain. That it is the purpose of the defendants in their said plan or scheme that the said Mayor & City Council of Baltimore shall farm out much the larger portion of the lands so to be acquired, including all of the said lands of your oratrix and then take to itself the rentals to be reserved upon such lettings. And the effect of the said proceeding, if accomplished, will be to transfer, indirectly through the said municipal corporation, to its lessees, private individuals or private corporations the use and enjoyment of land which previously to the creation of said Commission was enjoyed by the various original owners, including your oratrix, Sidney T. Dyer, substantially in the same manner as such lessees of the City are to be entitled to use it.

13. The said Act of 1904 chapter 87 purports to confer certain powers of Condemnation, but, (not here to mention objections which may be urged against the exercise of them on certain other grounds, hereafter particularly referred to,) your orators aver that it is not competent to the Legislature to authorize the Mayor and City Council of Baltimore to appropriate private property by such means for a use such as is here contemplated, that is to say, for the purpose of leasing it, for the private gain of the municipality to corporations and natural persons, to be used by such lessees for their own purposes. And in this connection your orators charge that not only is it the design and object of the Dock Scheme in question that the use of the land to be acquired, and of the wharves to be constructed adjacent to existing land, shall be given over for money considerations to persons corporate or natural who may apply for the same, but applica-

tions for such lettings or grants have been already invited by the said Mayor and City Council of Baltimore, acting by its Board of Estimates, from all persons, firms and corporations "desiring exclusive rights in the proposed City Docks and Piers", as may more particularly appear by reference to a Notice to said effect, published by authority of the said Mayor and City Council of Baltimore in the newspapers of the said City, a copy whereof taken from the Daily Record, marked complainants' Exhibit ~~B-#~~<sup>no. 7</sup>, is herewith filed as a part hereof. And numerous corporations and other persons, in response thereto, have <sup>made</sup> applications accordingly, which have been so far accepted or recognized by the City authorities as to constitute <sup>inchoate</sup> ~~contracts~~ contracts for the use by said applicants respectively for long terms of years of parcels of land and wharf privileges so applied for; and your orators further charge that if formal contracts for the said objects have not as yet been actually entered into, such provisional agreements and understandings looking thereto have been made with certain private corporations and natural persons as to leave no room for doubt as to the real object for which the said Burnt District Commission and the Mayor and City Council of Baltimore are seeking, to acquire the said properties of your oratrix. And your orators aver that the area of the land, wharves and piers so proposed to be given by the City (for rent or other valuable considerations to be received by it therefor) to private corporations and individuals constitutes a very large portion of the entire area south of Pratt street and west of Bowly's Wharf and west of Jones' Falls, and that no part of the said lots of ground and adjacent wharves in which your oratrix Sidney T. Dyer is interested as aforesaid, is

according to the said plan of the said Burnt District Commission and the Mayor and City Council of Baltimore, to be used for public wharves or in connection with public wharves.

14. That the said Burnt District Commission and the Mayor and City Council of Baltimore are wholly without legal power to take or interfere with any private Dock, and particularly the said Patterson's Dock, McClure's Dock and Smith's Dock, lying adjacent to which are the said lots of ground of which your said oratrix is part owner as aforesaid.

15. That the Defendants are threatening to condemn the aforesaid lots of ground in Baltimore City belonging in part to your oratrix, Sidney T. Dyer, together with the waters, easements and privileges appurtenant thereto, and to enter upon and take the same and wholly deprive your orators of the use and benefit thereof to the irreparable injury of your orators. And in said threatened condemnation, the said Burnt District Commission intend and threaten to pursue the course of procedure provided by said Act of Assembly, to-wit, by sections 8 and 10 of said Act.

16. That the procedure so provided for by said Act of Assembly does not require that any notice shall be given to your orators or either of them of the time and place for the determination by said Burnt District Commission of the amount of damages to be awarded to your oratrix, Sidney T. Dyer, for the taking of her interest or estate in said lands, easements, rents, hereditaments and appurtenances; nor does said Act require that any sufficient notice shall be given to your oratrix of any damages which shall have been awarded in her favor by said Burnt District Commission for the condemnation of her said property, so as to enable her in due time to appeal therefrom. On the contrary, Section 11 of said



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##### Act expressly provides that the service of notice upon a person in whose favor damages shall be awarded shall not be deemed a prerequisite to the taking or condemnation of his or her property. That the said Act of Assembly under color of which the said Burnt District Commission intend and threaten to condemn and take your oratrix's said property fails to prescribe or provide any notice to be given to females covert and non-residents of the condemnation of their property. That in particular the said statute wholly fails to provide for service of any notice upon the land itself proposed to be condemned or upon tenants or bailiffs in possession thereof. Furthermore, the purpose for which the said property of your oratrix is threatened to be taken as aforesaid is not a public purpose, or a purpose for which private property can be taken under the power of eminent domain. Moreover the said Burnt District Commission, are by said Act constituted agents of the Mayor and City Council of Baltimore to bargain with and purchase from your orators the property aforesaid, and therefore cannot constitutionally be entrusted with the function, judicial in nature, of valuing the said property for purposes of condemnation. ##### And in point of fact the said Burnt District Commission have not acted and are not acting in a fair and impartial and judicial manner, but in the exercise of their office have had regard solely to the interest of the Municipal corporation, and seek to acquire the desired lands as cheaply as possible without reference to the just rights of the owners in the premises, and solely as agents for the said Municipal corporation to effect the acquisition of property with as small an outlay to the municipality as possible. For each and all of which reasons, as well as for other reasons, your orators are

advised and charge that the said Act of Assembly and the said Ordinance No. 149 of the Mayor and City Council of Baltimore in so far as the same may purport or attempt to authorize the taking or condemnation of your oratrix's said property are unconstitutional and in conflict with those clauses of the Fourteenth Amendment to the Constitution of the United States which provide that no State shall deprive any person of life, liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the laws, as well as with other provisions of the Constitution of the United States.

17. Your orators are further advised and charge that for the same reasons the said Act of Assembly and the said ordinance are in conflict with Articles 19 and 23 of the Declaration of Rights of the State of Maryland and with Section 40 of Article 3 of the Constitution of Maryland. And your orators are further advised and charge that the said Act of Assembly and said Ordinance are in conflict with the said Section 40 of Article 3 of the Constitution of Maryland for the following additional reasons, that is to say: the said Act and Ordinance provide that the amount of compensation to be paid to your oratrix for the taking and condemnation of her said property shall not be determined upon by a jury unless an appeal shall be taken by your oratrix from the award or determination of the said Burnt District Commission which said appeal, as will appear from Section 12 of said Act, cannot be taken by your oratrix except at the risk of being required to pay the costs of such appeal and jury trial; and because Section 17 of said Act expressly provides that the property of your oratrix and of other persons in like situation may be entered upon and taken without



first paying or tendering the compensation awarded therefor provided the amount thereof be invested in city stock for the use of the persons or person entitled thereto.

18. That, as will particularly appear from Complainants' Exhibit No. the said plan of improvements adopted by said Ordinance No. 149 and in pursuance of which the defendants intend and threaten to condemn and take the said property of your oratrix provides for the construction of an entirely new system of wharves and docks, and not merely for "additions or extensions" to existing wharves or docks, as authorized by said Act of Assembly. Moreover, from said plat marked Complainants' Exhibit No. 4, it will appear that the said property of your oratrix is according to said plan or scheme, to be taken and used not for the purpose of making additions or extensions to the Basin or Harbor or to the Public wharves or docks, but for other purposes. More particularly the defendants plan and intend to fill up said private dock known as Patterson's Dock, belonging in part to your orators, although neither by said Act of Assembly nor by any other statute or law of the State of Maryland is any power or authority conferred upon the Mayor and City Council of Baltimore or the said Burnt District Commission to fill up any private dock. Similarly, the defendants plan <sup>and</sup> intend to fill up the eastern half of said private dock known as Smith's Dock, over which said private Dock your oratrix, Sidney T. Dyer, has as aforesaid an easement or right of free passage with vessels and barges in connection with and appurtenant to her said lot known as No. 221 Smith's Wharf. Your orators further aver and charge that the wharves and docks proposed to be constructed in accordance with the plan exhibited and shown by said Complainants' Exhibit No. 4,

(with the single exception of the wharves on the Pier designated on said plat as Pier No. 4) are not to be public wharves and docks, but that the defendants plan and intend as aforesaid to lease out the other wharves designed to be constructed as aforesaid, for terms of years to private persons, firms and corporations; for which purpose your orators are advised### and charge that no power to condemn private property is conferred upon the Mayor and City Council of Baltimore or the said Burnt District Commission either by said Act of Assembly or by any other statute or law of the State of Maryland or of the United States. And your orators further aver, as will from said Exhibit No. 4 more certainly appear, that the said Patterson's Dock and your oratrix's property at the head thereof are to be taken or used not for the construction of any wharves or docks whatsoever, but for the purpose of leasing and renting the same to private persons as a source of revenue to the Defendant, the Mayor and City Council of Baltimore; and that the said City has no more power to condemn or take your oratrix's property for that purpose without her consent than it has to condemn any other land in the City of Baltimore for the purpose of improving and leasing the same as an investment. And if any Act of the General Assembly of Maryland purporting to confer power of condemnation for such purpose were enacted such act would be in violation of the Constitution of the State of Maryland and also in violation of the Fourteenth Amendment to the Constitution of the United States.

19. Your orators further aver and charge that the use to which your oratrix's said property south of Pratt street is intended when condemned to be put, does not sufficiently appear from the said Plat and Ordinance No. 149

to justify an exercise of the power of eminent domain; and they further charge that in order that private property may be condemned or taken by a municipality, it is necessary that it appear affirmatively and clearly what the use is to which the same is to be put, and that such use is a public use.

20. That the said scheme of Dock Improvement, as adopted by the Mayor and City Council of Baltimore, at the instance of the said Burnt District Commission, and now being attempted to be carried into effect by the latter, has for its basis the theory, plan and purpose and the Mayor and City Council of Baltimore shall, by means of the agency of the said Commission, acquire the ownership of the whole territory in question for such an aggregate sum of money as will enable the said Mayor and City Council to lease out the land and wharf-rights in parcels to individuals, corporate or natural, under <sup>rents</sup> which will yield to the Municipality a profit out of the entire transaction, at the cost of the original owners.

21. That the said proceedings for the condemnation of the lands of your oratrix will if not arrested constitute a cloud upon her title, render the property unmarketable, and cause your oratrix irreparable injury: and the taking of the said lands of the said Mayor and City Council of Baltimore thereunder in the manner threatened would be a gross wrong to your oratrix and orator and plain violation of the Constitution of Maryland and of the Constitution of the United States, and that your oratrix and orator are entitled to ask the intervention of this honorable Court to restrain the said Mayor and City Council of Baltimore from the proposed abuse of its corporate powers and unlawful appropriation of the lands of your oratrix. And that the matter in dispute

exclusive of interest and costs largely exceeds the sum or value of two thousand dollars.

To the end therefore that the defendants may answer the premises; your oratrix and orator hereby expressly waiving answer under oath or affirmation: and

1. That the said chapter 87 of the laws of the State of Maryland passed at January session, 1904, of the General Assembly, and Ordinance No. 149 of the Mayor and City Council of Baltimore, approved by the Mayor on the 10th day of Nov. 1904, in so far as the same purport to authorize the taking or condemnation of the said lands, waters, easements or other property of your oratrix, Sidney Turner Dyer, in the said Burnt District of Baltimore City, south of Pratt street in said City, may be declared and decreed to be in conflict with the Constitution of the United States, and in conflict with the Constitution of Maryland, and therefore null and void.

2. That the scheme of improvements which is shown in and by said ordinance No. 149 and the map or plat accompanying the same, and which defendants, as aforesaid, are intending and threatening to execute and carry out by condemning the said properties of your oratrix, may be declared and decreed to be ultra vires of the Mayor and City Council of Baltimore and of the said Burnt District Commission, and not authorized by the said Act of 1904, chapter 87, or by any other statute or law of the State of Maryland or of the United States.

3. That the defendants may be enjoined and restrained from condemning or attempting to condemn the estate or interest of your oratrix Sidney Turner Dyer in the said lots of ground known as Nos. 401, 403, 405 and 407 Cable street, No. 221 Smith's Wharf, No. 234 Commerce street and the said lot on South street, beginning <sup>21</sup> sixty feet southerly from Pratt street, bounding 30 feet on South street and extending



eastwardly of the same width to McClure's Dock or her rights or interests in the said Docks respectively.

And that the defendants may be enjoined and prohibited from impeding, hindering, obstructing or interfering with the rights of your orators to free access and egress to and from the said above mentioned lots of ground of your oratrix and each and every ~~###~~ of them, through, upon and by means of the waters of the said Patterson's Dock, McClure's Dock and Smith's Dock from and to the Basin of Baltimore City, and access and egress to and from said lots of ground, through, upon and by means of said Commerce street, Cable street, Patterson street and Smith's Wharf or Gay street under color of said Act of the General Assembly of Maryland of 1904 chapter 87 or said Ordinance No. 149 of the ordinances of the Mayor and City Council of Baltimore of 1904, or any other statute, law or ordinance of the State of Maryland or of the Mayor and City Council of Baltimore.

And that the defendants may be enjoined and prohibited from filling up, in whole or in part, the said private docks known as Patterson's Dock, McClure's Dock and Smith's Dock or any or either of them, and from institutive, prosecuting or conducting any condemnation, proceedings, looking or tending to or towards, or purporting or intended to effect said purpose.

And that the defendants may be enjoined and prohibited from entering upon or taking or holding possession of, or using the said lands of your oratrix situated in the said Burnt District of Baltimore City, south of Pratt street, or any of them, or any part of them, or any of them, under color of any condemnation, proceedings which may be had under the said Act of the General Assembly of Maryland, dated at January Session 1904, Chapter 87 and said Ordinance of the

Mayor and City Council of Baltimore Number 149, approved by the Mayor on the 10th day of November 1904..

4. And that your orators may have such further <sup>and other</sup> relief in the premises as to your Honors may seem meet and the circumstances of their ~~case~~ may require:

May it please your Honors to grant unto your orators the Writ of Injunction to be directed to the Mayor and City Council of Baltimore, and to Sherlock Swann, Chairman, E. Clay Timanus, Mayor, Charles K. Lord, John W. Snyder and John T. Graham, members of the Burnt District Commission of Baltimore City, enjoining and strictly prohibiting them, and each and every of them, from condemning or attempting to condemn the estate or interest of your oratrix, Sidney Turner Dyer, in the said lots of ground known as Nos. 401, 403, 405 and 407 Cable street, No. 221 Smith's Wharf, and No. 234 Commerce street, and the said lot of ground on South street, begining sixty feet southerly from Pratt street, bounding 30 feet on South street and extending Easterly of the same width to McClure's Dock ; and enjoining and strictly prohibiting the said defendants and each and every of them from impeding, hindering, obstructing or interfering with the right of your orators to free access and egress to and from the said above mentioned lots of ground of your oratrix and each and every of them, through, upon and by means of the waters of the said Patterson's Dock, McClure's Dock and Smith's Dock, from and to the Basin of Baltimore City, and access and egress to and from said lots of ground through, upon and by means of said Commerce street, Cable street, Patterson street and Smith's Wharf or Gay street, under color of said Act of the General Assembly of Maryland of 1904 chapter 87 or said Ordinance <sup>No.</sup> 149 of the Ordinance of



Mayor and City Council of Baltimore 1904, or any other statute, law or ordinance of the State of Maryland or of the Mayor and City Council of Baltimore: and enjoining and strictly prohibiting the said defendants, and each and every of them from filling up, in whole or in part, the said private Docks known as Patterson's Dock, McClure's Dock and Smith's Dock, or any or either of them, and from instituting, prosecuting or conducting any condemnation proceeding looking or tending to or towards, or purporting or intended to effect, said purpose; and enjoining and strictly prohibiting the said defendants, and each and every of them, from entering upon or taking, or holding, possession of, or using the said lands of your oratrix, situated in the said Burnt District of Baltimore City south of Pratt street, or any of them, or any part of them, <sup>or</sup> any of them, under color of any condemnation proceeding, which may be had under the said Act of the General Assembly of Maryland, passed at January Session 1904, chapter 87 and said Ordinance of the Mayor and City Council Number 149, approved by the Mayor on the 10th day of November, 1904; and do the Writ of Subpoena against the said Defendants commanding them to be and appear in this Honorable Court upon some day next therein named to answer the premises and abide by and perform such decree as may be passed herein.

And as in duty etc.

Putney Turner Dyer

Elisha Dyer Jr.

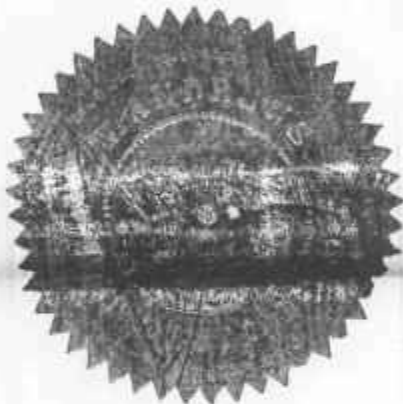
Arthur W. Machen  
Arthur W. Machen Jr.

Solvs for Complainants

STATE OF NEWYORK,

COUNTY OF NEW YORK, to wit:

Be it remembered that on this <sup>14<sup>th</sup></sup> day of March 1905, before the subscriber a Notary Public of the State of New York in and for the County aforesaid personally appeared Sidney Turner Dyer and Elisha Dyer, Junior, who being first sworn in due form of law did each depose and say that they are the complainants in the foregoing Bill of Complaint and that the facts therein stated are true as therein set forth. As witness my hand and Notarial Seal.



*J. Andrews* (39)  
*Notary Public*  
*N.Y.C.*

In the Circuit Court of the  
U.S. for the District of Md.

Sidney Turner Dyer

and

Elisha Dyer, Junior,

-vs-

The Mayor and City

Council of Baltimore,  
et al.

BILL OF COMPLAINT.

*with 7 Exhibits*

Mr. Clerk:-

Please file &c.

*Arthur W. Machen*  
*Arthur W. Machen Jr*

Solicitors for Complots.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ALVAN EISENELL CO., LAW STATIONERS, 6 N. 14TH ST., PHILADELPHIA, PA.

*Filed 10 March 1905*

These

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Papers  
not to  
go in the  
Record

*Corrected*

IN THE  
**Circuit Court of the United States,**  
For the District of Maryland.

—  
*IN EQUITY.*  
—

SIDNEY T. DYER ET AL.

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE  
Et AL.

—  
**Brief for Plaintiffs on Demurrer to Bill.**  
—

I.

The scheme of new wharves provided for in the Ordinance No. 149 and the map accompanying the same appears upon its face to be beyond the powers of the Burnt District Commission as defined in the Act of 1904, ch. 87.

That statute purporting, as it does, to authorize an exercise of the power of eminent domain must be strictly construed.

Binney's Case, 2 Bland, Ch. 99, 129.

Cooley, Constitutional Lim., 7th Ed., pp. 762  
and 763.

Ligare vs. City of Chicago, 139 Illinois, 46, 64.

C. & N. W. Ry. Co. vs. Guilford, 133 Illinois, 657.

Niagara Falls, etc., R. R. Co., 108 N. Y. 375.

Belcher Sugar Ref. Co. vs. St. Louis Grain Ele-  
vator Co., 82 Mo. 121.

question simply is, "is the erection in question a proper use of the street as a public highway—that is to say, within the purpose for which it was dedicated or condemned?"

## V.

The machinery of condemnation provided in the Act of 1904, ch. 87, does not afford the landowner due process of law, as required by the Fourteenth Amendment, and violates the Maryland Constitution, for the following reasons:

A. Due process of law requires that the Commissioners entrusted with the duty of valuing property for purposes of condemnation be *impartial*; and an agent of the corporation which is condemning is not deemed an impartial judge within this rule.

*Powers vs. Bears*, 12 Wisc. 213.

*Re Woodland Ave.*, 178 Pa. St. 325.

*House vs. City of Rochester*, 15 Barb. 517.

Here the Burnt District Commissioners are expressly constituted agents of the city, and, to make matters even worse, are constituted agents for the purchase of the very land the value of which they are to adjudicate for purposes of condemnation. How can they be impartial? Must they not have all the animus of a buyer? How can they separate their two capacities? If they are loyal agents, they are bound to be partial judges; and the bill alleges, and the demurrer admits, that they are in point of fact acting solely in the interest of the city, their principal, as indeed the provisions of the Act of Assembly shows must be the case.

In this connection, significance attaches to the omission of the requirement—found in all the ordinances for opening streets which have come before the Court of Appeals (City Code of 1869, pp. 828-9; City Code of 1893, Art. 48, Sec. 2)—that the Commissioners shall before acting in any case take an *oath* to exercise their duties *impartially*. This omis-

See Act of 1904  
Ch. 87 Secs. 5 & 6  
& 7.



sion alone would according to at least one case (*Lumsden vs. Milwaukee City*, 8 Wisc. 485) be sufficient to vitiate the Act. At all events, it is a significant circumstance, and goes to strengthen the objections to the procedure.

But, it will be said, the landowner can appeal to an impartial tribunal. It is submitted that this would not be a sufficient answer to the objection founded upon the Commission's partiality, even if the right of appeal were absolute and unfettered. Thus, the statutes held unconstitutional in *Re Woodland Ave.*, 178 Pa. St. 325, and in *House vs. City of Rochester*, 15 Barb. 517, respectively, gave a right of appeal to an impartial Court (Pa. Pub. Laws, 1870, ch. 692, sections 1-4, page 751, and N. Y. Laws of 1850, ch. 262, sections 193 *et seq.*, particularly sections 199 and 201), yet that fact was not thought sufficient to support their constitutionality. And upon principle, is it reasonable, is it fair, is it due process of law, to put upon one litigant the burden of appealing from a partial judge—a judge who is acting as attorney or agent for the opposite party in the very litigation in question? The appellant must incur heavy expenses which are not taxable as costs and for which he cannot be reimbursed even if the costs of the appeal are eventually put upon the other side. Moreover, some weight is bound to be given by the jury to the judgment of the Commission. To be sure, no jury is likely to be so unfair as to award the inadequate sum which the Commission offers, but nevertheless they would inevitably be influenced somewhat by the Commission's determination.

Besides, the Act carefully provides (sec. 19) that no commissioner shall act in any case in which he has an interest that might perhaps lead him to favor the property owners. If a bias adverse to the city is a disqualification, should not the same thing be true of the necessary bias in its favor?

At all events, even if the right of appeal would under any circumstances be sufficient to sustain the constitutionality of an Act which provides for a trial of fact before biased Judges

who are acting as attorneys or agents for one of the litigants in the subject-matter of the litigation, certainly the right of appeal, in order to have that effect, must be exceptionally free, clear, and efficacious. Instead of this, the appeal allowed by the Act of 1904 is more limited and circumscribed than any Maryland precedent warrants. We shall point out two particulars in which it is so unreasonably circumscribed as, we submit, clearly to bring this Act within the ban of the Fourteenth Amendment.

B. The Fourteenth Amendment, in eminent domain cases, requires reasonable notice and a fair opportunity to be heard before an impartial tribunal.

*Burns vs. Multnomah R. Co.*, 15 Fed. 177, 183.

It is true that personal notice in condemnation cases is not indispensable, at least as to non-residents, because the proceeding partakes of the nature of a suit *in rem*. As in other actions *in rem*, however, some service of notice or process upon the *res* itself is necessary in addition to publication in the newspapers, at the outset of the proceeding.

*Pennoyer vs. Neff*, 95 U. S. 714, 727.

*Scott v. McNeal*, 134 W. S. 34, 45 et seq.

This is a most just constitutional requirement. Notice by publication is at best very uncertain; but every landowner can keep some reliable tenant or bailiff in possession of his property, who will either forward to him any notices served upon the land, or in other ways will see that the steps necessary for the protection of his interests are duly taken. If therefore, as the Federal Constitution requires, his land cannot be taken without service upon the land itself, the owner is reasonably sure of actual notice of the proceedings. The requirement of service of notice upon the land to be taken is the more reasonable inasmuch as it can always be observed without impeding the public improvement.

Yet the Act of 1904 not only wholly fails to provide for notice served on the land itself, but by implication negatives the necessity for such service.

Moreover, any notice, whether by publication or otherwise, must be reasonable with respect to length; this is required by the Fourteenth Amendment.

Roller vs. Holly, 176 U. S. 398.

There, five days after actual receipt of the notice was held insufficient in the case of a non-resident. Here, the time allowed for appeal is only fifteen days after the publication of the first notice. The publication may be in any two of the numerous newspapers printed in Baltimore, and is repeated only once. There is no reasonable endeavor to give the plaintiffs, who, while residents of New York, spend much of their time in Europe, a fair opportunity of defending their interests. Can it be said that the complainants will probably receive notice of the proceeding in time to repair to Baltimore, consult counsel, and have the necessary legal papers prepared and filed, all before the expiration of fifteen days from the first of the two publications?

So far as our researches have gone, no previous statute in Maryland have ever provided so short a period of publication. Under the Act of 1838, ch. 226, the time limited for appeal (30 days) was not to begin to run until the expiration of 30 days after the first publication in *three* newspapers. Later ordinances provided, in street cases, that the appeal might be taken within thirty days after the first of four weekly publications in two newspapers. The question of the sufficiency of the notice prescribed by the various statutes and ordinances in street cases has never been argued in the Court of Appeals, still less in the Supreme Court of the United States; and no Maryland statute or ordinance has, we believe, ever prescribed so short and inadequate a notice as the Act of 1904.

If, in 1838, when there were only one or two newspapers in the city, and they small affairs of not more than a few pages, sixty days' publication in three newspapers was deemed essential, what shall be said of a statute which

No. 31 Eq. '8'

Sidney Linnis Days  
Total

nd

Mayor & City  
Council of Baltimore

Costs Total

7.25  
12.00  
19.25

102.10  
10.90





# Transcript of Record

United States of America  
District of Maryland, to-wit:

At a Circuit Court of the United States  
for the District of Maryland, begun  
and held at the Court house in  
the City of Baltimore, on the first  
Monday of April, being the third  
day of the same month, in the year  
of Our Lord one thousand nine  
hundred and five.

Present:

The Honorable Thomas J. Morris  
Judge of the Maryland District.  
John C. Rose, Esq., Attorney  
John F. Langhammer, Esq., Marshal  
James W. Clew, Clerk

Among other, were the following  
proceedings, to-wit:

Sidney Turner Dyer  
by Elisha Dyer Jr. her  
next friend and  
Elisha Dyer Jr.  
Complainant,  
versus

The Mayor and City Council  
of Baltimore and  
E. Clay Timanus, Mayor,  
Sherlock Swann, Chairman,  
Charles K. Lord,  
John W. Snyder, and  
John T. Graham,  
Members of the Board  
District Commission of  
Baltimore City.  
Defendants  
In Equity

Bill of Complaint  
Filed March 10th. 1905  
① ✓

Complainants' Exhibit No. 1  
(Filed with the Bill of Complaint)  
Part in hand — ② ✓

Complainants' Exhibit No. 2  
(Filed with the Bill of Complaint)  
Not in hand — ③ ✓

Complainants' Exhibit No. 3  
Filed with the Bill of Complaint  
✓ ④ ✓

Complainants' Exhibit No. 4 ✓  
Filed with the Bill of Complaint

✓  
Copy on hand - (5) ✓

Complainants' Exhibit No. 5  
Filed with the Bill of Complaint  
(6) ✓

✓

Complainants' Exhibit No. 6  
Filed with the Bill of Complaint  
(7) ✓

✓

Complainants' Exhibit No. 7  
Filed with the Bill of Complaint  
(8) ✓

✓

Subpoena  
Marshal's return: - (9) ✓  
(Copy return on back of writ)

✓

Appearance for defendants  
Filed April 5th 1905  
(10) ✓

✓

Demurrer  
Filed April 27th 1905 ✓  
(11) ✓

✓

Opinion on Demurrer  
Filed ~~16~~ June <sup>26<sup>th</sup></sup> 1905  
(12) ✓

Decree  
Filed July 10<sup>th</sup> 1905  
(13) ✓

Petition of Plaintiffs for an  
Appeal to Supreme Court of the  
United States; ~~Assignment of Errors~~  
and Order of Court allowing <sup>same</sup> ~~an appeal~~  
Filed July 14<sup>th</sup> 1905  
(14) ✓

Assignment of Errors  
Filed July 14<sup>th</sup> 1905  
(15) ✓

Citation  
Issued July 14<sup>th</sup> 1905  
Dont copy - ~~to appear in case~~  
(16) ✓

Appeal Bond  
Filed July 19<sup>th</sup> 1905  
(17) ✓

Order to Transmitt Record

And thereupon, it is ordered by the court here that a transcript of the record and proceedings of the cause aforesaid, together with all things thereto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Test:

Clark

(Relate's Copy)

United States of America,  
District of Maryland, to-wit:  
J. James W. Chew, Clerk of the  
Circuit Court of the United States  
for the Fourth Circuit, in and for  
the District of Maryland, do  
hereby certify that the foregoing  
is a true transcript of the record  
and proceedings of the said Circuit  
Court, together with all things  
thereto relating, in the therein

exhibit

cause. — In Testimony Whereof

I herewith set my hand and  
affix the seal of  
said Circuit Court,  
this \_\_\_\_\_ day of August  
1905. —

Clerk

Face Cover



Face Cover

~~Copy~~ Transcript of Record

In the Supreme Court  
of the United States

vs

Copy title of case  
as on front & 2<sup>nd</sup> page of this draft

Complainants & Appellants

—

Defendants & Appellees

Appeal from the Circuit Court  
of the United States for the  
District of Maryland

dollars (\$500,000) made by ordinance No. 94, approved June 17, 1904, and the appropriation of three million dollars (\$3,000,000) made by ordinance No. 117 approved August 18, 1904, for the expense to be incurred in carrying out the plan of the improvement approved by said ordinance No. 94 approved June 17, 1904, be and the same hereby are confirmed for the purpose of said amended report and map, and the proposed plan of improvements specified and shown therein.

Approved Nov. 10th, 1905  
 Mayor,  
 R. Gray Thomas,  
 President First Branch City Council.  
 George H. Walker,  
 President Second Branch City Council.  
 Ivan H. Wilson

No. 31 Expts  
 1905

Complainant's Exhibit

No. 5.

Sidney T. Dyer  
 et al.

vs.  
 Mayor & City Council of  
 Baltimore  
 et al.

(6)

Filed 10th Dec 1905

Sidney Lermon Depo 31 Eq  
 The Mayor & City Council of Baltimore "E"

Bill of complaint	21 Pages 350)	7350
Exhibit A 1 Plat		
" 2 "		
" 3		1000
" 4 Plat		
" 5		1300
" 6		1200
" 7		500
Subpoenas	360	2500
Witnesses		500
Deputies		5000
<del>Opinion</del>	<del>20 Pages</del>	<del>112000</del>
Process		1000
Retention for ...		2500
Retention of ...	1500	15000
Deputies		1500
Appearance Bond		500

18400  
 9200  
 27600

18400  
 4510  
 10050  
 380  
 68400  
 71300

Draft, Indes; for case  
 expressing, enforcing blue  
 points to exist around the  
 California re.

450  
 3210

Sidney Turner Deputee } 31 Eq  
 The Mayor & City Council of Baltimore } "8"

Bill of Complaint	21 Pages	350	7.35-00
Exhibit A	1 Plat		
"	" 2 "		
"	" 3 "		10.00
"	" 4 Plat		1
"	" 5 "		13.00
"	" 6 "		12.00
"	" 7 "		5.00
Subpoena		300	2.50
Witness			50
Declarations			5.00
Inland	Opinions (20 Pages)	<del>225</del> 245	42.00
	Duces		1.00
	Retainer for 20 Opinions		2.50
	Assignment of 20 Opinions	15.00	15.00
Inland	Costs		15.00
	Appeal Bond		5.00

184.00  
 45.10  
 100.50  
 3.80  
 184.00  
 92.00  
 27.600

Draft, Indor, for case  
 opposing, in favor of the  
 funds to be in hand etc  
 certify re

4.50  
 32.10

184.00  
 45.10  
 100.50  
 3.80  
 184.00  
 92.00

CITY NOTICES.

**B**OARD OF ESTIMATES, AUGUST 1, 1904.  
All persons, firms or corporations desiring exclusive rights in the proposed new City Docks and Piers are hereby invited to file their applications therefor with this Board, BEFORE 11 A. M. on SEPTEMBER 6, 1904. Applications should clearly state the location and quantity of space desired.

GEO. H. HEFFNER, Comptroller.

Secretary.

23,5,10,12,17,20,21,23,5





Baltimore, Aug. 5-1905

Mr. Jas. W. Chew

Clerk of the P. Court

To S. J. MARTENET & CO., DR.

SURVEYORS AND CIVIL ENGINEERS,

← No. 18 E. Lexington Street.

SEPTIMUS P. TUSTIN.  
J. HOWARD BUTTON.  
WM. C. ATWOOD.

To 80 Blue Prints & 40 White Prints;  
one negative and coloring same,  
showing near dock plans & —  
A la. machan art

\$ 46<sup>00</sup>

Paid  
S. J. Martenet & Co.  
Per Dallenberg

Approved June 18th, 1905.  
and shown by said report and map.  
carrying out the proposed plan of improvements specified

No. 31 Copy

Siding J. Dyers  
et al.

vs.  
Mayor & City Council  
of Baltimore

—

Compliments Exhibit

No. 2

(4)

Filed 10 March 1905

Approved June 18th, 1904.  
and shown by said report and map.  
carrying out the proposed plan of improvements specified

No. 31 Exp. E

Sidney T. Dyer  
of al.

Mayor of City Council  
of Baltimore

Compliments Exhibit  
No. 2.

(K)

Filed 10 March 1905

No. 31 *Ep. 2*

IN THE CIRCUIT COURT  
OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND.

Sidney Turner Dyer

et al.

vs.

Mayor & City Council

of Baltimore et al.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ALSO BERNELL CO. LAW FIRM, 4 N. 17th ST., PHILADELPHIA, PA.

No. 31 *Exp. 12*

IN THE CIRCUIT COURT  
OF THE UNITED STATES FOR  
THE DISTRICT OF MARYLAND.

Sidney Turner Dyer

et al.

vs.

Mayor & City Council

of Baltimore et al.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ALVIN HORNELL, JR., LAW STENOGRAPHER, 4 N. 17TH ST., BALTIMORE, MD.



No. 31 Eq. Ct.

In the  
Circuit Court of the United  
States for the District of  
Maryland. In Equity.

Sidney Turner Dyer, et al.,

vs.

Mayor and City Council of  
Baltimore, et al.

DEMURRER

Mr. Clerk:-  
Please file.

W. Calver Brown  
City Solicitor

(11)

Filed 27 April 1905



12  
Sidney Turner Dyer, et al

vs.

Mayor and City Council of Baltimore

In the Circuit Court of the  
United States,

in and for the District of  
Maryland.

This case coming on to be heard upon Bill and Demurrer thereto,  
the arguments of the respective counsel were heard and considered, and  
it is hereby ADJUDGED, ORDERED AND DECREED by the Circuit Court of the  
United States in and for the District of Maryland, this *tenth*

day of July 1905, that the demurrer be and it is hereby sustained, and  
*the complainants not desiring to amend but standing on their said Bill*  
the Bill is accordingly dismissed with costs to the Defendants.

*Thos. G. Morris*  
*July,*

REFERENCE SERVICE SLIP				DATE	NO.	
NAME OF REQUESTOR <i>Alvin P. ...</i>			AGENCY OR ADDRESS			
UNITS OF SERVICE				SOURCE OF REQUEST (Check)		
INFORMATION SERVICE (Number of replies)		RECORDS FURNISHED (Number of items)	TEXTUAL, STILL PICTURES, ETC. (Number of pages)	MOTION PICTURES (Number of feet)	SOUND RECORDINGS (Number of feet)	<input type="checkbox"/> NA Administrative Use
WRITTEN	ORAL					<input type="checkbox"/> Agency of Origin
						<input type="checkbox"/> Other Government
						<input type="checkbox"/> Nongovernment
REQUEST HANDLED BY <i>[Signature]</i>						
RG NO. <i>21</i>	STACK AREA <i>A</i>	ROW <i>10</i>	COMPARTMENT <i>2</i>	SHELF <i>4/10</i>	OUTCARD NO.	
RECORD IDENTIFICATION <i>...</i>				8 DEC '06 AM 10:48		
				8 DEC '06 AM 10:48		
RECEIVED BY		DATE	RETURNED TO	DATE		

No. 171  
Darius Sauer Dyer  
and Olivia Dyer Jr.

22

The Mayor and City  
Council of Baltimore  
a body corporate.

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Deamant of Bonds

Filed 8 August 1905



STATE OF MARYLAND,

CITY OF BALTIMORE, SCT:

At a Session of the Baltimore City Court, in the Eighth Judicial Circuit of the State of Maryland, begun and held at the Court House in the City of Baltimore, in and for the City aforesaid, on the Second Monday of May (being the eighth day of the same month) in the year of our Lord one thousand nine hundred and five,

WERE PRESENT:

The Honorable John J. Dobler, Associate Judge of the Supreme Bench of Baltimore City, assigned to and presiding in the Baltimore City Court.

William H. Green, Sheriff. Henry A. Schultz, Clerk.

Among other were the following proceedings, to wit:

SIDNEY TURNER DYER and	:	BE IT REMEMBERED, that
ELISHA DYER, JR.,	:	heretofore, to wit, on the
VS.	:	29th day of July, in the
THE MAYOR AND CITY COUNCIL	:	year of our Lord one thous-
OF BALTIMORE	:	and nine hundred and five,

the said Sidney Turner Dyer and Elisha Dyer, Jr., the Appellants, by Arthur W. Machen and Arthur W. Machen, Jr., their attorneys, file in the Baltimore City Court here in said cause the following Petition, to wit:

Sidney Turner Dyer and	:	In the
Elisha Dyer, Jr.,	:	
Defendant Appellants	:	
vs.	:	Baltimore City Court.
The Mayor and City Council	:	
of Baltimore	:	
Plaintiff Appellee	:	



her husband, for the removal of this cause to the Circuit Court of the United States for the District of Maryland, be and it is hereby granted, and that the removal bond filed with said petition and the surety thereon be and it is hereby accepted and approved, and the Clerk be and he is hereby directed to make and transmit to the Circuit Court of the United States for the District of Maryland a copy of the record in this case.

Thomas S. Baer.

And thereupon the Transcript of Record is transmitted accordingly.

Appellants' Costs \$ 17.50 Paid  
Appellee's Costs \$ 6.25 Paid  
TEST: HENRY A. SCHULTZ, *Geo. Leary Ludwig, Clerk Baltimore City Court*

STATE OF MARYLAND,

CITY OF BALTIMORE, SCT:

I, HENRY A. SCHULTZ, Clerk of the Baltimore City Court, DO HEREBY CERTIFY, that the aforesaid, is a full, true and entire transcript, taken from the record and proceedings of the said Court in the therein entitled cause,

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Baltimore City Court aforesaid, on this 31st day of July, nineteen hundred and five.

*Henry A. Schultz*  
Clerk Baltimore City Court.

No. 171 David L.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND. No. 171.

Sidney Turner Dyer and Elisha Dyer, Jr., her husband.

vs.

The Mayor and City Council of Baltimore.

MOTION TO QUASH.

Mr. Clerk:

Please file

Arthur W. Mochen

Arthur W. Mochen Jr.

*Arthur W. Mochen*

*Atty for Sidney Dyer & Elisha Dyer Jr., Applicants*

ARTHUR W. MACHEN, JR.  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ALAN RICHMOND, CO., LAW FIRM, 4 N. THE ST. BALTIMORE, MD.

Full of forensic 1905

Council of Baltimore to buy the property involved in this case so that they are not an impartial tribunal for the purpose of valuing the same in condemnation.

(c) Because the said Act does not provide for any sufficient notice to property holders of proceedings for the condemnation of their property.

(d) Because the said Act provides that the property holder may be required to pay the costs of a jury trial on appeal from the Burnt District Commission.

*Arthur W. Macker*  
*Arthur W. Macker Jr.*

*Attys for Petitioners*  
*Sidney Lunt & Charles*  
*Byer Jr.*

*The foregoing motion is overruled and the petition dismissed.*

*Thos. J. Morris*  
*Judge*



No 171 Carl G.

IN THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE DIS-  
TRICT OF MARYLAND.

Sidney Turner Dyer and  
Elisha Dyer, Jr.,  
her husband.

vs.

Mayor and City Council of  
Baltimore.

BILL OF EXCEPTIONS.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

ARTHUR W. MACHEN, JR., LAW OFFICES, 4 N. 17TH ST., BALTIMORE, MD.

Filed 9 November 1908

Sidney Turner Dyer and  
Elisha Dyer, Jr.,  
her husband.  
vs.

The Mayor & City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

BILL OF EXCEPTIONS.

At the hearing upon the said Petition of Sidney Turner Dyer and Elisha Dyer, Jr., her husband, filed on the *ninth* day of *November* 1905 praying this Court to quash the proceedings of the Burnt District Commission in the matter of the lots of ground mentioned in these proceedings, the record of the proceedings of the said Commission in the case, and the maps, plats, documents and papers connected with such record, being produced and delivered to the Court pursuant to Section 12 of the Act of the General Assembly of Maryland, Laws of 1904 chapter 87, the material parts whereof in relation to the said lots or parcels of ground are as follows:

Office of the Burnt District Commission,  
Baltimore, Md., December 12th 1904.

The Burnt District Commission met this day at 10 o'clock A.M. at their office in the Court House pursuant to notice given by publication twice a week for two weeks in the "Sun" and "Baltimore American", two daily newspapers

published in the City of Baltimore, for the purpose of exercising the powers and performing the duties required of it in regard to condemning lands and property for additions and extensions to the basin or harbor and to the public wharves and docks of Baltimore City under ordinance No. 94 of the Mayor and City Council of Baltimore approved June 16, 1904, as the same was amended by ordinance No. 149 of the Mayor and City Council of Baltimore, approved November 10th 1904.

Present: Sherlock Swann, Chairman; Charles K. Lord; John T. Graham and John W. Snyder.

James R. Brewer,  
Secretary and Clerk.

**Estimate of Damages and Expenses for condemning lands and property for additions or extensions to the basin or harbor and to the public wharves and docks of Baltimore City under Ordinance No. 94 of the Mayor and City Council of Baltimore, approved June 16, 1904, as the same was amended by Ordinance No. 149 of the Mayor and City Council of Baltimore approved November 10th, 1904.**

**Damages:**

Damages estimated and awarded by the Burnt District Commission to such person or persons as may be legally entitled thereto, as their several interests may appear, and amounts paid or agreed to be paid for all those pieces or parcels of ground and the improvements or debris thereon, designated on maps or plats marked Nos. 27, 27A, 27B, 27C, 27D, 27E and 27 F and which are intended to be and constitute a part hereof.

Office of The Burnt District Commission,

Court House,

Baltimore, Md., April 4, 1905.

In accordance with the provisions of Section 10 of Chapter 87 of the Acts of 1904, the Burnt District Commission hereby gives notice that it has caused to be made out a detailed statement of all damages awarded and expenses incurred, together with explanatory maps, in connection with the condemning of lands and property for additions and extensions to the public wharves and docks of Baltimore City and to the Basin or Harbor of the City of Baltimore, under Ordinance No. 94 of the Mayor and City Council of Baltimore, approved June 16, 1904, as the same was amended by Ordinance No. 149 of the Mayor and City Council of Baltimore, approved November 10th, 1904.

And it hereby gives notice that the aforesaid statement, together with said explanatory maps, is ready for the inspection of all persons interested therein, and that the said Commission will meet in its office in the Courthouse on Monday, the 10th day of April, 1905, at 10 o'clock A.M., for the purpose of reviewing any of the matters set forth in the said statement, to which any person claiming to be interested may make objection.

Sherlock Swann  
E. Clay Timanus,  
C. K. Lord,  
Jno. T. Graham,  
Jno. W. Snyder,

Burnt District Commission.

James R. Brewer, Jr.,  
Secretary and Clerk.

To Reverdy Johnson, Jr., Laura Patterson, Sidney  
Turner Dyer and Laura Patterson Trustee for  
the fee-simple interest in the lot &c.  
marked 210, thirty-eight hundred and fifty  
dollars. - - - - - \$3850.00

\* \* \* \* \*

To Laura Patterson for the fee-simple interest  
in lot&c. marked "221" sixteen thousand  
and sixty-six dollars. - - - - - \$16066.00

\* \* \* \* \*

To Sidney T. Dyer and Laura Patterson for the  
fee-simple interest in lot etc. marked "306"  
twenty-eight hundred and thirty-six dollars. \$2836.00

The Burnt District Commission having corrected its  
statement of damages and expenses in the matter of condem-  
ning lands and property for ~~##~~ additions or extensions to  
the Basin or Harbor and to the Public Wharves or Docks of  
Baltimore City, as provided in Ordinance No. 94 of the Mayor  
and City Council of Baltimore, approved June 16th, 1904, as  
the same was amended by Ordinance Number 149 of the Mayor  
and City Council of Baltimore, approved November 10th, 1904,  
and having caused its corrected statement to be recorded  
herein and also having corrected its explanatory maps marked  
and numbered "27", "27A", "27B", "27C", "27D", "27E" and "27F"  
as mentioned in its first return (said explanatory maps being  
intended to be, and being hereby returned as and for one entire  
map in seven sections or maps marked or numbered as aforesaid)  
does hereby certify and return to the office of the City

Register the said statement as corrected and recorded, and the said map or maps as finally corrected by it, all certified under the hands and seals of a majority of the members of the said Commission and their clerk.

Witness our hands and seals this 19th day of July, 1905.

Sherlock Swann, (SEAL)  
Chairman,  
E. Clay Timanus, (SEAL)  
Charles K. Lord, (SEAL)  
Jno. T. Graham, (SEAL)  
Jno. W. Snyder (SEAL)

Office of the City Register,

Baltimore, Md., July 19, 1905.

The Burnt District Commission having deposited with me in the manner required by law their final and corrected statement assessing the damages and expenses in the matter of condemning lands and property for additions or extensions to the Basin or Harbor and to the Public Wharves or Docks of Baltimore City, with the final and corrected explanatory map or maps relating thereto, in accordance with the provision of Section 10 of Chapter 87 of the Acts of the General Assembly of Maryland of 1904, and Ordinance No. 94 of the Mayor and City Council of Baltimore, approved November 10, 1904.

Notice is hereby given that said statement and map or maps have been so deposited in this office and that the Mayor and City Council of Baltimore, or any person, persons or corporations who may be dissatisfied with the award of damages assessed as hereinbefore mentioned may within 15 days of the 20th day of July in the year 1905, being the date of



the first publication of this notice by me, appeal therefrom by petition in writing to the Baltimore City Court, praying <sup>said</sup> the Court to review the same.

Harry F. Hooper,  
Register of the City of Baltimore.

The said record book contained descriptions of divers other lots and awards of damages to persons mentioned or described as owners thereof, or of interests or estates therein.

And the said Ordinances of the Mayor and City Council of Baltimore were read in evidence to the Court from the printed ordinances of the Mayor and City Council of Baltimore, and it is agreed by and between the parties to this cause that the said ordinances may be referred to and read from such printed volume and a copy of the map designated "Burnt District Commission Map showing property to be acquired for Dock Improvements" referred to in the said first above mentioned Ordinances, and a copy of the map designated "Burnt District Commission, Amended Map showing property to be acquired for Dock Improvements", referred to in the said secondly above mentioned Ordinance, may be exhibited by either party in ~~the~~ any appellate Court to have the same effect as if said ordinances and maps were herein set forth.

It is also agreed by and between the parties to this cause that a copy or copies of each or all of the said plats 27, 27A, 27B, 27C, 27D, 27E and 27F may be exhibited by either party in any appellate Court with as full effect as if said plats were copied and shown herein.

And the Court thereupon refused to quash or set aside the said proceedings and adjudged and ordered that the last mentioned petition of the said Sidney Turner Dyer, Elisha Dyer, Jr., her husband, and Laura Patterson in her own right and as surviving trustee as aforesaid be dismissed; to which said ruling of the Court and <sup>to</sup> the dismissal of the said petition, the said appellants, Sidney Turner Dyer, Elisha Dyer, Jr., her husband, Laura Patterson in her own right and as surviving trustee under the last will of Margaret Turner deceased and as surviving trustee under the last will of Sidney Patterson deceased thereupon prayed leave to except, and that the Court would sign and seal this their bill of Exceptions, which is done accordingly this *Ninth* day of *November* 1905.

*Thos. J. Morris*  
*Judge*



No. 171 Civil C

IN THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE DIS-  
TRICT OF MARYLAND. No. 171.

Sidney Turner Dyer and  
Elisha Dyer, Jr., her  
husband.

vs.

The Mayor and City Council  
of Baltimore.

MOTION TO QUASH.

Mr. Clerk:

Please file

*Arthur W. Machen*

*Arthur W. Machen Jr.*

*Arthur W. Machen*  
*atty for Sidney T. Dyer*  
*& Elisha Dyer Jr., Appellants.*

ARTHUR W. MACHEN,

ARTHUR W. MACHEN, JR.,

ATTORNEYS AND COUNSELLORS AT LAW,

CENTRAL SAVINGS BANK BUILDING,

BALTIMORE, MD.

ALLEN BURNELL CO., LAW STATIONERS, 6 N. 10TH ST., PHILADELPHIA, PA.

*Filed 9-10-1905*



powers; to regulate its methods of procedure; to define the extent of said district; to provide for opening, extending, widening, straightening and closing streets, lanes and alleys; for establishing public squares and market spaces, building lines and width of sidewalks in said district; for adding to, extending and partly filling the harbors or basin of Baltimore City; and for establishing public wharves and docks; and to provide for appropriating a portion of the general sinking fund of Baltimore City and other moneys for the purposes of this Act," approved March 11, 1904, (Laws of Maryland, 1904, chapter 87,) nor by any other act or statute of the State of Maryland; and that all the said proceedings of the said Burnt District Commission and Mayor and City Council of Baltimore looking or tending to the condemnation of the said lots of ground or any or either of them were and are therefore unwarranted by law and void, for the following reasons, to-wit:-

(a) Because the said Act does not authorize the scheme of new wharves and docks approved by Ordinance No. 149 of the Mayor and City Council of Baltimore, approved Nov. 10th 1904, under which this condemnation purports to be instituted.

(b) Because the said Ordinance No. 149 of the Mayor and City Council of Baltimore provides for a new system of wharves and docks and not for additions and extensions to the public wharves and docks and is therefore null and void.

(c) Because the Act of 1904 Ch. 87 provides that in closing any streets, lanes or alleys in the Burnt District the said Burnt District Commission shall proceed in the manner prescribed by the laws and ordinances relating to the closing of streets in Baltimore City whereas the said

Commission in condemning the property involved in this case although the said scheme involves the closing of streets, lanes and alleys have not proceeded in the manner so prescribed but have proceeded in a wholly different manner.

(d) Because the said Act requires that the said Burnt District Commission shall act separately on each public wharf or dock proposed to be added to or extended, which course has not been pursued.

(e) And for other reasons apparent on the face of the proceedings.

2. And for that all the said proceedings of the said Burnt District Commission in relation to the said lots of ground and the condemnation thereof as aforesaid are null and void, because the said Act of the General Assembly of Maryland, Laws of Maryland of 1904 chapter 87, by virtue of under color whereof the said proceedings have been taken, and all ordinances of the Mayor and City Council of Baltimore passed thereunder, in so far as the said Act of Assembly and ordinances provide for or purport to authorize the condemnation of land south of Pratt street in the City of Baltimore of which the said lot of ground of your petitioner is a part as aforesaid, in the manner which has been pursued by the said Burnt District Commission for such condemnation, are unlawful and void, because the said provisions of the said Act of Assembly are in conflict with the Constitution of the State of Maryland and more particularly with section 40 of Article 3 of the said Constitution.

(a) Because the purpose for which the said property of the appellants is being condemned is not shown to be a public use.



(b) Because the said Act constitutes the Burnt District Commission purchasing agents of the Mayor and City Council of Baltimore to buy the property involved in this case so that they are not an impartial tribunal for the purpose of valuing the same in condemnation.

(c) Because the said Act does not provide for any sufficient notice to property holders of proceedings for the condemnation of their property.

(d) Because the said Act provides that the property holder may be required to pay the costs of a jury trial on appeal from the Burnt District Commission.

3. And for that the said Act of the General Assembly of Maryland, Laws of Maryland of 1904 chapter 87, in so far as it provides for taking by condemnation land required for laying out additions or extensions to be made to the public wharves and docks of Baltimore in manner in said Act of Assembly described and provided is contrary to and in conflict with the Constitution of the United States and more particularly is in conflict with that clause of the Fourteenth Amendment thereof which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law.

(a) Because the purpose for which the said property of the appellants is being condemned is not shown to be a public use.

(b) Because the said Act constitutes the Burnt District Commission purchasing agents of the Mayor and City

Council of Baltimore to buy the property involved in this case so that they are not an impartial tribunal for the purpose of valuing the same in condemnation.

(c) Because the said Act does not provide for any sufficient notice to property holders of proceedings for the condemnation of their property.

(d) Because the said Act provides that the property holder may be required to pay the costs of a jury trial on appeal from the Burnt District Commission.

*Arthur W. Macheu*  
*Arthur W. Macheu Jr*

*Attorneys for Petitioners*  
*Sidney Hunt Dyer & Charles*  
*Dyer Jr*

*The foregoing motion is overruled and*  
*the petition dismissed.*

*Thos. J. Morris*  
*Judge*

No. 141 Cont. C<sup>n</sup>

In the Circuit Court of the  
United States for the Dis-  
trict of Maryland.  
Civil Docket Case No. 150.

Sidney Turner Dyer, et al.

vs.

Mayor and City Council of

Baltimore.

ORDER OF DISMISSAL.

Mr. Clerk:

Please file  
with the Clerk  
of the District  
Court for the  
District of  
Columbia  
the following  
City Solicitor.

Filed in February 1904

Sidney Turner Dyer, et al.,  
vs.  
Mayor and City Council of  
Baltimore.

In the Circuit Court of  
the United States for the  
District of Maryland.  
Civil Docket C Folio 190.

Mr. Clerk:

Please enter the above entitled case  
"dismissed", the Mayor and City Council of Baltimore to pay  
the costs.

*Arthur W. Macheu*  
*Arthur W. Macheu Jr*

Attorneys for plaintiffs.

*W. Conrad P. Barnes*  
City Solicitor.

S. J. Dyer  
 vs  
 Mayor & City Council  
 of Baltimore -

No.  
 171  
 Civil C.

<u>Plaintiff</u>		<u>Defendant</u>	
No. 15 Quash -	.10	Transcript of Record -	10
" overruled	.25	do	
Bill of Exception	.10		
To Dec 21 05	<u>.35</u>	To Dec 21 05	<u>.10</u>

<del>Agreement</del>	<del>.10</del>
<del>Let &amp; Order</del>	
<del>Memorandum</del>	<del>.40</del>
Final Entry	.25
Master Docket	<u>2.25</u>

.35  
 2.40  
 2.75

Atty	5.-	Atty	5.-
Clk & sh	2.60	Clk & sh	.10
	<u>7.60</u>		<u>5.10</u>
Appellate		Appellate	
in before	17.50	in before	6.25

25.60  
 11.25  
 36.75

W

10, 1902  
Nicholas Thomas Dyer  
& Elizabeth Dyer Jr  
her husband

Lawrence Patterson  
Appellants

-05-

Mayor City Council  
of Baltimore  
Appellee

Transcript of Record

Frid 8 August 1905



SIDNEY TURNER DYER and : APPEAL  
ELISHA DYER, JR., her husband, :  
LAURA PATTERSON, in her own : TO THE CIRCUIT COURT  
right and as surviving Trus- :  
tee under the last Will of :  
Margaret Turner, deceased, &c. : OF THE UNITED STATES

Defendant Appellants, :

VS. :

THE MAYOR AND CITY COUNCIL :

OF BALTIMORE :

Plaintiff, Appellee. :

FOR THE

DISTRICT OF MARYLAND.

Arthur W. Machen,

Arthur W. Machen, Jr.,

For Appellants.

W. Cabell Bruce,

For Appellee.

STATE OF MARYLAND,

CITY OF BALTIMORE, SCT:

At a Session of the Baltimore City Court, in the Eighth Judicial Circuit of the State of Maryland, begun and held at the Court House in the City of Baltimore in and for the City aforesaid, on the second Monday of May (being the Eighth day of the same month) in the year of our Lord one thousand nine hundred and five,

WERE PRESENT:

The Honorable John J. Dobler, Associate Judge of the Supreme Bench of Baltimore City, assigned to and presiding in the Baltimore City Court.

William H. Green, Sheriff. Henry A. Schultz, Clerk.

Among other were the following proceedings, to wit:

Sidney Turner Dyer and	:	BE IT REMEMBERED
Elisha Dyer, Jr., her husband,	:	that heretofore, to
Laura Patterson, in her own right	:	wit, on the 3rd day
and as surviving Trustee under the	:	of August, in the
last Will of Margaret Turner,	:	year one thousand nine
deceased, &c.	:	hundred and five, the
vs.	:	said Sidney Turner
The Mayor and City Council	:	Dyer, Elisha Dyer, Jr., and Laura Patterson, the Appellants,
of Baltimore	:	by Arthur W. Machen and Arthur W. Machen, Jr., their
	:	Attorneys, file in the Baltimore City Court here in said
	:	cause the following Petition, to wit:

Sidney Turner Dyer and	:	
Elisha Dyer, Jr., her husband,	:	
Laura Patterson, in her own	:	In the
right and as surviving Trustee	:	
under the last Will of Margaret	:	
Turner, deceased, &c.	:	
	:	
Defendant Appellants,	:	
	:	
vs.	:	
	:	
The Mayor and City Council	:	
of Baltimore	:	Baltimore City Court.
	:	
Plaintiff, Appellee.	:	

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To the Honorable the Baltimore City Court:

The petition of Sidney Turner Dyer and Elisha Dyer, Jr., her husband, of the City of New York and the State of New York, Laura Patterson, in her own right, as surviving Trustee under the last Will of Margaret Turner, deceased, as surviving Trustee for Sidney Turner Dyer and her heirs under the last Will of Sidney Smith Patterson, deceased, and as surviving Trustee for Sidney Turner Dyer and her heirs under the last Will of Edward Patterson, deceased, appearing in this Court for the purpose of perfecting an appeal from and proper exceptions to certain proceedings and awards of the Burnt District Commission in the matter of certain proposed condemnations for and on behalf of the Mayor and City Council of Baltimore, a corporation created by and existing under the laws of the State of Maryland and reserving all rights of said Petitioners or any of them to have this case removed to the Circuit Court of the United States for the District of Maryland, respectfully shows:

1. That your Petitioner, Laura Patterson, owns in fee simple in her own right an undivided half interest, and as surviving Trustee under the last Will of Margaret Turner, deceased, a further three sixtieths undivided interest in a lot or parcel of ground in the City of Baltimore at the head of a certain private dock known as Patterson's Dock, fronting upon Commerce Street, Cable Street and Patterson Street, and extending from Commerce Street to Patterson Street, formerly improved by four brick warehouses known as Nos. 401, 403, 405 and 407 Cable Street, together with the right of user of said Patterson's Dock and other rights, easements, waters, privileges and appurtenances thereto appertaining or belonging. Your Petitioner, Sidney Turner, owns in fee simple in her own right the remaining undivided twenty-seven sixtieths interest in said lot of ground, together with the appurtenances aforesaid and especially the right of user of said Patterson's Dock.

Your Petitioner Laura Patterson owns in fee simple in her own right an undivided one-half interest in a lot of ground on the east side of Smith's Wharf known as No. 221 Smith's Wharf with the wharf rights and appurtenances thereto belonging; that a further three sixtieths interest in said lot on Smith's Wharf and the appurtenances is held by said Laura Patterson as surviving Trustee under the last Will of Margaret Turner, deceased, subject to certain trusts in said Will declared; and that a further one-sixth interest in said lot on Smith's Wharf with the appurtenances is held by said Laura Patterson as surviving

STATE OF MARYLAND,

CITY OF BALTIMORE, SCT:

I, HENRY A. SCHULTZ, Clerk of the Baltimore City Court, DO HEREBY CERTIFY, that the aforesaid is a full, true and entire transcript, taken from the record and proceedings of the said Court in the therein entitled cause,

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Baltimore City Court aforesaid, on this *5<sup>th</sup>* day of August, nineteen hundred and five.

*Henry A. Schultz*  
Clerk Baltimore City Court.

No. 192 Cont'd 2<sup>nd</sup>

Anthony Turner Dept  
of the

re

Mayor and City  
Council of Baltimore.

AGREEMENT.

Filed 9 November, 1903



IN THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MARYLAND.

In the Matter of Sidney Turner Dyer and Elisha Dyer, Jr., her husband. ) NO. 171.

vs. )  
The Mayor and City Council of Baltimore.)

and of

Sidney Turner Dyer and Elisha Dyer, Jr., )  
her husband, Laura Patterson in her own )  
right and as Surviving Trustee under the )  
last Will of Margaret Turner, deceased, )  
and as Surviving Trustee for Sidney Tu )  
Turner Dyer and her heirs under the last )  
Will of Sidney Smith Patterson, deceased, )  
and as Surviving Trustee for Sidney )  
Turner and her heirs under the last Will )  
of Edward Patterson, deceased. ) NO. 172.

vs.

The Mayor and City Council of Baltimore.)

and of

The Mayor and City Council of Baltimore )

vs.

Sidney T. Dyer et al. ) NO. 175.

It is mutually agreed that in the trial of the Dock appeals in the Circuit Court of the United States that separate inquisitions be taken and separate trials had for Lot No. 306 and Lot No. 210 on the plats of the Burnt District Commission and that the trial for the ascertainment of the values of the beds of streets and docks within the Burnt District south of Pratt street as widened in which the said Sidney T. Dyer and Elisha Dyer, Jr., her husband and Laura Patterson in her own right and as trustee are interested be had hereafter separately.

*Eugene Allen, Jr.  
Solicitor General*

*This shall be taken up in the record*

No. 192 Cont'd

Anthony James Dyer  
vs

Mayor and City  
Council of Baltimore

---

AGREEMENT.

---

Filed 9 November 1903

No. 172 Erie St

Siding Turna Dyer  
et al

no

Marys City  
Council of  
Baltimore

Bills of Exchange  
as set out 210

Filed 3 January 1911



sold real estate in the business portion of the said city, had been student of values of such property, had followed sales and developments in said city very closely, so that his experience in such matters had been pretty broad and quite general; and that in particular he was interested in the West India Trading Company, which operated a line of steamers between Baltimore and Jamaica and Cuba, that his said company had a great deal of trouble at Bowly's Wharf, and wanted to get facilities owing to the overcrowded conditions, and, in that connection, he had made a thorough study of the harbor, in order to find some other wharfage place where their cargoes of fruit could be handled with less expense. Asked by counsel of the Appellants whether he knew the said lot of ground fronting on Commerce street in question, now distinguished as Lot No. 210, the witness said he had long known it and latterly had made a particular examination of it. He then further testified as follows: "I have no hesitation in saying that if these people were allowed to put this in the market in view of the demand that there is unquestionably for property of this character, \$190 a foot could be had for it without any difficulty. I would put it at \$200 a front foot were it not that it is a little too shallow for the \$200 basis. It has plenty of depth for most purposes, but still I do not think it is quite deep enough for the \$200 a foot basis. But unquestionably it could be handled at \$190 a front foot, and there is a very great demand for it entirely independent of the dock improvements. The natural demand outside of the dock scheme for that property would undoubtedly be such that it could be handled without much difficulty at the price I have named. It has two fronts; it has the dock front and it has the street front. It has the facility of your being

able to go right through there, you can have the cars come up on one side and you have the dock facilities on the other. It has that advantage which ships and dock people so readily appreciate, that you can get out your freight and get out your goods without much expense. The great thing in locations of that kind is to be able to get the cars on the one side and get right out on the dock on the other side, and this property has those requirements. Furthermore it is much more valuable than property further up because it is nearer the water. That to my mind adds a very considerable element to its value. It is down near the harbor proper, the deeper water. Q. I presume you are familiar with the wharfage rules of Baltimore. A. Yes. Q. Some are public wharves and others are wharves where tolls are paid? A. Yes, at Bowly's wharf we paid a very large wharfage in tolls: not very high, but they amounted to considerable altogether. We had to hire an extra wharf and paid \$8,000 alone, for wharfage on oranges we imported. Of course that amounted to a great deal. Q. Do you know whether or not there are any wharfage fees on this wharf? A. I understand there are no wharfage fees, and I am basing my testimony on that theory. Counsel of Appellants addressing the counsel of the Mayor and City Council of Baltimore: That is so, is it not? Counsel of the Mayor and City Council of Baltimore: I do not think there are any fees there. A. (by the witness) Yes, and the people have the absolute right of usage of that wharf unencumbered by any charges that go to the City. At BowlMy's Wharf we have had to keep a man for twenty-four hours at a time sometimes, in order to get a berth for a ship coming in." Upon cross-examination, <sup>by</sup> the Appellee's counsel, ~~interrogated him as to a lot of ground on Duchamps's Wharf where there was a ground~~ the said Hurst testified



as follows: "Q. You say you did make an investment on Buchanan's Wharf, and gave it a reasonable amount of study at that time; did you not say that? A. I think so. Q. Tell the jury whether Buchanan's Wharf is better than McClure's Dock or inferior? A. I do not consider that portion of Buchanan's Wharf as good as this; it is much further up. Q. I mean as a dock. There is Frederick Dock; is <sup>not</sup> that as valuable as McClure's Dock? A. Frederick Dock? Q. Yes. A. Frederick Dock as a dock is wider and probably better, yes. Q. Is property on Buchanan's Wharf similarly situated to property on McClure's Dock or superior to property on McClure's Dock? A. The same location -- you see McClure's Dock is closer to the harbor by being smaller, the furthest point on McClure's Dock is further from the harbor than the greatest portion of Frederick Dock; the harbor cuts in in that way, but I would say that Frederick Dock and Smith's Dock are very much the same. Q. Frederick Dock and Smith's Dock? A. And they are perhaps slightly better than McClure's Dock. Taking the docks as such, the relative positions on the dock are of course better. Q. Than this property on Frederick Dock is only 65 feet in depth. It has not the depth of property on Spear's Wharf. That is worth about how much -- \$200 a front foot? A. Yes, it is worth close to \$200 a front foot. Q. That purchase you made on

~~part located out of the city, which had been purchased by the~~  
~~estate of the deceased, and in regard thereto~~  
~~the following follows: Q. What purchase was made on~~

Buchanan's Wharf was a purchase of a redeemable ground-rent, was it not? A. Yes. Q. What was the date? A. Sometime after the condemnation proceeding had been instituted. I rather think the return had been made." The counsel of the Appellants then objected to the further examination of the said witness as to the said Buchanan's Wharf transaction, both because the property there in question differed in location and character from the Commerce street and McLure's dock in question in this case, and also because it involved a dealing between the owners and the Burnt District Commission in relation to the property and that such deals could not be competent evidence in the present case, and also because the proposed testimony was irrelevant. But the Court overruled the said objection and ruled that the said matter might be fully gone into and proved and the Appellee allowed to show through the testimony of the witness all the particulars touching the said Buchanan's Wharf lot ground-rent, including the price accepted therefor by the owners. And the witness under the said examination by the Appellee's counsel further testified as follows: "The first return was \$9,000, and I talked with them about it and they had a change of heart and increased it very materially, as they were undoubtedly too low. I was confident -- of course we had to take in view the fact that these condemnation proceedings might all be thrown out, that the act might be declared unconstitutional, or some such question as that might arise. So we could not depend entirely upon the fact that the city would take it, and we had to look to the value of the property. We were

certain there was value in it far in excess of any interest we had in it. Q. That ground-rent was redeemable at \$10,000, was it not? A. Yes, it was almost the same as a mortgage, it was redeemable at pleasure. Q. It would have taken \$10000 to redeem it? A. Yes. Q. And you were able to buy it at how much? A. I think I paid \$9,250 for it. I might explain; the conditions there were peculiar, in that the insurance company had taken the rent; they had a contract -- which is customary in ground-rents all over Baltimore, we constantly use the same contracts ourselves -- to take it at a certain valuation, whatever is agreed upon; that was the contract there, the insurance companies stipulate when ground rents are insured that they will take it at a certain valuation -- whatever that is that is agreed upon in the policy. The Court: If the improvements are burned off? A. (by the witness) The insurance company will ~~not~~ take it absolutely, there is no proof of loss or anything of the kind, the insurance company takes it. This insurance company did not want to employ counsel to protect them in these condemnation proceedings and they did not want any interest in that, and that is the reason they sold at what they considered a discount, which was \$750 less than the base value. Q. (Appellee's counsel) Tell us the dimensions of that lot on Buchanan's Wharf. Was it the Blake lot? A. That is the Blake lot. Q. 65 feet by 100 feet, was it not? A. I think so. I might state that I think it was the Burnt District Commission, not the assessors, that changed it from \$9,000 to \$10000. I do not want to do the assessors an injustice. ~~##~~ I am rather under the impression that it was the Burnt District Commission that added the \$1000." And to the said ruling of the Court in overruling the said objection of the Appellants, and to the

the admission of the said testimony so received under the  
said line of examination by the Appellee's counsel as evidence  
in this cause, the Appellants then and there excepted, and  
prayed the Court to sign and seal this their First Bill of  
exceptions in the particular ~~##~~ matter of the said lot No.  
210, which is done accordingly this 13th day of November A.D.  
1905.

*Wm. J. Morris*  
*Judge*







Wharf you put at \$200 a front foot. A. Yes. Q. I will have to ask you the same question I asked you before. You said Buchanan's Wharf, in your opinion, is better by \$25 than McClure's Dock. What sales that you know of took place on Buchanan's Wharf since 1900? Mr. Woods' sale I have special reference to. A. I know Mr. Woods' sale. Q. Tell us whether there was a sale by Mr. Woods of property along side of yours on Buchanan's Wharf? A. Yes, Rufus Wood purchased a piece of property there, 130 odd feet, 65 feet deep. Counsel for Appellants: Does your Honor think that Buchanan's Wharf is admissible in this case, when you will remember that that property has no water front? It is not wharf property, because Long Dock is a public dock. The Court: Of course allowance will have to be made for that. We have to get sales as near as we can to this. There seems to be but few sales. Appellants' counsel: We note an exception to the admission of the testimony your Honor. Q. (By Appellee's counsel) That Woods' sale took place when and what did it show a front foot? In 1902, was it? A. I am not positive, but I think so. Q. What did that sale show a front foot?" The Appellants' counsel objected to the said last mentioned question; but the Court overruled the objection and permitted the said question to be put and answered. The said witness answered the said question as follows: "Between \$80 and \$90 a front foot." And to the said ruling of the Court and to the overruling by the said Court of the said objection to said <sup>last mentioned</sup> question, and admission in evidence of the said answer, the Appellants then and there excepted and prayed the Court to sign and seal this their Second Bill of Exceptions in relation particularly to said Lot Number 210, which is done accordingly this 13th day of November A.D. 1905.

*Thos. J. Mowry*  
*Judge*







25 feet and some inches by 106 feet, and had a street in front of it on Smith's Wharf, and then the water in front of that. This has a street in front of it, a railroad track down there, and the wharf at the back of it. It is as dissimilar as anything in the world could be. This property would be excellent for one purpose and the Smith's Wharf property for another purpose." And the Appellee then offered to prove by De Wilton Barnes, collecting agent of the Appellants, that for the twelve or fourteen years previous to the fire in this case the warehouse on the lot in question, had been continuously in occupation of tenants at the rent of \$480 a year. To the admission of the said offered testimony, the counsel of the Appellants then and there objected, but the Court overruled ~~ghe said objection and allowed the said testimony to be~~ admitted, and it was accordingly given to the jury. And to the said ruling of the Court and the admission of the said testimony of De Wilton Barnes, the appellants then and there excepted and prayed the Court to sign and seal this their Third Bill of Exceptions in the matter of the said lot No. 210, which is done, <sup>accordingly</sup> this 13th day of November A.D. 1905.

*Wm. J. Morris*  
*Judge*





lot ? A. \$4,000. Q. How much is that, about, a front foot ? A. About \$116. Q. What in your judgment is the better dock, Spear's Dock or McClure's Dock ? The counsel of the Appellants objected to the said question, but the Court overruled the said objection and permitted the answer of the said witness to come in as evidence in this case: The said answer was as follows: "The Smith's and Spear's dock is a very much superior dock. It is considerably wider, allowing much better berth room for vessels coming up. There is a difference of nearly 40 per cent then in the width as between Smith's ~~Dock~~ Dock and McClure's Dock. That I look upon as the permanent advantage. Another advantage is Smith's Dock and Spear's Wharf have independent wharves. What I mean by that, a large bulk, I think largely the greater per cent of merchandise coming here is consigned directly very much like the first shipments on Bowly's Wharf, are taken from the vessels by teams and are carried off, and a very small percentage is stored. In this case the advantage of Smith's Dock is that the teams can go on the Wharf and unload there, and where any portion of a cargo is to be stored it is a matter of ~~xx~~ carrying it accross the street. This advantage McClure's Dock does not have at all, everything that comes to this warehouse, is subject to be stored, no wagons can go there, it must go through the warehouse to load up. That I look upon as a considerable advantage to the Smith Dock property. Another advantage is the Smith's Wharf lot is 65 feet deep and the McClure's Dock warehouse is 47 and a fraction deep. I make it 47 feet 7 inches average. I am not quite certain, but that is the average. There is a difference between the front and the rear. 34 feet 5 inches

is the average on the front." And to the said ruling of the Court, and to the overruling by the Court of the Appellants' objection to the said last mentioned question and to the admission in evidence of the said answer of the witness thereto, the Appellants then and there excepted and prayed the Court to sign and seal this their Fourth Bill of Exceptions, in the matter of the said lot No. 210, which is done accordingly this 13th day of November A. D. 1905.

*Thos. J. Mowry*  
*Judge*

SEAL







would act impartially and fairly. Now, I understand that the witness is about to state what he has stated before. Appellants' Counsel: We understand this is the same sort of question, and we make the same objection, and your Honor overrules it. The Court: Yes. The Witness: We were simply told to report on the value of this property for condemnation purposes. There were no restrictions put upon us at all. We were not told how to do it or what to put upon it, or anything like that; what they told us to do was to make a liberal estimate of what we considered that dock property worth for condemnation purposes." And to the overruling by the Court of the said last mentioned question of the Appellee's counsel to the said witness, and to the admission of the said answer of the witness thereto, the Appellants then and there excepted, and prayed the Court to sign and seal this their Fifth Bill of Exceptions in the matter of the said lot Number 210, ~~xxxx~~ which is done accordingly this 13th day of November A.D. 1905..

*Wm. J. Morris*  
*Judge*

SEAL

Sidney Turner Dyer  
et al.  
vs.  
The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.  
AS TO LOT NO. 210.

Sixth Bill of Exceptions of the Appellants  
as to the said Lot Number 210.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants, and the introduction of the testimony stated in the said first, second, third, fourth and fifth bills of exceptions of the Appellants as to the said lot Number 210, Frank J. Caughy, an expert witness produced on the part of the Appellee, having testified that in his opinion \$110 a front foot was the fair market value of the property in question, the Appellee's counsel asked the said witness the following questions, all whereof were severally objected to by the Appellants' counsel but allowed by the Court: Q. Do rentals throw any light upon the value of property. A. Yes. That is an element to take into consideration in arriving at the value of a piece of property. Q. The testimony in this case shows that the rental was \$480, and that improvements were insured for \$2000. What deduction do you make? A. Am I to assume that \$2000 was the actual value of the improvements on the property? Q. Yes. Appellants' counsel: We object to that. There is no proof of what the improvements were. The Court: It is admitted that they were insured for \$2000. Appellants counsel: But that does not show what they were worth: \$1990 was the exact amount gotten in insurance. The Court: But they would not be worth less than that. Appellants counsel: My idea of the insurance is, what it would cost to rebuild. The Court: I

think the question is proper. Appellants' counsel: We note an exception. A. (Witness) Figuring on the highest capitalization of rentals, it would show \$4000 ~~tax~~ valuation for the land, and figuring on 8 and 10 it would show \$3500." And to the said several rulings of the Court, and to the overruling by the Court of the said objections by the counsel of the Appellants to the said abovementioned questions of the Appellee's counsel, and to the admission in evidence of the said testimony of the witness in answer thereto, the Appellants then and there excepted ~~xxxxxx~~ and prayed the Court to sign and seal this their Sixth Bill of Exceptions in the matter of the said Lot Number 210, which is done accordingly this 13th day of November A.D. 1905.

*Thos. J. Morris*  
Judge





1908-1909

Sidney Turner Dyer  
vs.  
The Mayor and City Council  
of Baltimore.

et al.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND

AS TO LOT NO. 210.

Eighth Bill of Exceptions of the Appellants as  
to said Lot Number 210.

After the proceedings mentioned in the preceding bills of Exceptions of the Appellants and the introduction of the testimony stated in the said first, second, third, fourth, fifth, sixth and seventh bills of exceptions of the Appellants as to said Lot Number 210, which said bills of exceptions and said statements of evidence are hereby, by reference, made part of this bill of exceptions, Thomas J. Lindsay, an expert witness, called ~~and~~ and examined by the Appellee, testified in chief as follows: "Q. What is your business? A. Real Estate business. Q. How long have you been in that business? A. Twenty odd years. Q. What has been the character of your operations? A. We have managed property all over the City and have charge of property all over the City. Q. Are you familiar with the property being condemned in this case? A. Yes. Q. What is your opinion is the fair market value of this property at the present time. A. I value it at \$120 a front foot. Q. Do you use rentals as an aid in arriving at the value of property? A. Yes, I use rentals as well as anything else I can gather to help me along. Q. The testimony in this case shows that the rent has been \$480 and that the improvements were insured for \$2000, that that sum was received from the insurance company <sup>these</sup> What deductions do you make from ~~xxx~~ facts? And the counsel of the Appellants objected to the said last mentioned question,



AB  
OF THE  
EIGHTH BILL

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NOV 13 1905  
IN THE CIRCUIT COURT

but the Court overruled the said objection, and notwithstanding objection by the Appellants to the admission of the testimony of the witness in response thereto, permitted the said testimony to go to the jury. His said answer was: "On the ten and eight per cent basis, you can value the land at 8 per cent, and the improvements at 10 per cent, or at the highest capitalization you could possibly give to it would be eight ~~xxx~~ and eight. The very highest would be \$4000 for the land." And to the said ruling of the Court, in overruling the said objection of the Appellants to the said question and admitting the said answer of the witness as evidence in this case, the Appellants then and there excepted, and prayed the Court to sign and seal this their Eighth Bill of Exceptions as to said Lot number 210; which is done accordingly this 13th day of November A. D. 1905.

*Thos. J. Morris*  
*Judge*

SEAL





it has not averaged as much on Commerce street as anywhere else ? A. No, I do not know any reason; but I also wanted to say that I know there have been some places where it has depreciated."

James S. Morrow a real estate expert who was in the employ of the Burnt District Commission and assisted them in their valuations of property in the Dock district, testified that in his opinion the market value of the lot of ground in question in this case is \$4,000, or \$116 a front foot, agreeing with the valuation put upon the said lot by the Burnt District Commission. In cross-examination of this witness, the counsel of the Appellants examined him as follows: "Q. You have done a good deal of valuing for the Burnt District Commission ? A. A very considerable amount. Q. Have not you been one of those who has done a great deal of that ? A. Not to any appreciable extent in the dock ~~#####~~ property, except where there was a difference between the Commission -- what they called a re-cast, that was brought up to me quite a number of times. Q. Does your testimony as to the value of the lot, \$4000 or \$116 a front foot, apply to all the lots along McClure's Dock on Commerce street, I mean ? A. I think there is one advantage, <sup>possibly</sup> in this lot over lots further north, not up to Pratt street, but a medium as between this lot and lots possibly 100 feet from Pratt street. I think this lot is a little better, ~~#####~~ a little advantage to it on account of approaching the bulkhead line. In other words the foot of Commerce street. Q. Well how does this lot compare in value with lot 209 above it, 30 feet front, say ? A. I think 209 is the better lot, if you are referring to the Webb lot, I say that is a very much better lot. Q. I

do not know whether it is the Webb lot or not, but I mean the one adjoining on the north. A. I think that is 209 or 208 as I recall it. I think the even numbers are on that side. Q. I am talking about your numbers on the plat. A. The Webb lot, as I recall it, 208 and 210 Commerce street. Q. I am speaking of the lot immediately adjoining ours. I do not know whether this is the Webb lot or not. Take 30 feet and 1 1/2 inches on Commerce street, and 29 feet and 9 inches on McClure's Dock, which is a few inches less in width than our lot. Now can you tell me why you think that is a more valuable lot? A. What is the number? Q. Our lot is 210. I am now asking about 209. A. 209? No, I have a sale on 209. If you will allow me to put it in --

The Court: Since the fire? The witness: No, not since the fire. ## I do not recall that there has been any sale since the fire. It was in 1898, the sale that I refer to.

Q. Now then I want to ask you if there is in your judgment any appreciable difference between the value of Number 210 per front foot and Number 211 per front foot, the lots being almost exactly the same also. A. I would say there is a difference. What is the number you gave me? Q. The next one, 211. A. Well there is a slight advantage. Q. How much do you suppose? A. Well, 211 is part of the holdings belonging to the Weems estate. Taking the three lots that run down to the bulkhead, that gives it an increased value.

Q. But I understood you in your testimony in the Cable street lot case, where we had only 115 feet, that you gave the extra value only to <sup>the</sup> corners of the property and cut the middle 50 feet down considerably. A. That is right. The Appellants' counsel addressing the jury: The lots I am talking about are here, gentlemen, number 210 here and this lot No. 209



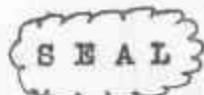


-Laid Laid on at right hand

Q. These lots on this plat are separately returned and are separately valued. A. I do not doubt that. At the <sup>same</sup> time number 212 is a part of the Weems holdings which takes them down to the bulkhead line. Q. Then let me get at it. If our lot belonged to a man named Weems instead of a lady named Dyer our lot would be worth 20 per cent more than it did; is that true, Mr. Expert? A. I say regardless of the different interests that this lot 220 has the influence of the bulkhead line. Q. Then you say that the fact that it ## all belongs to Weems has nothing to do with it. A. Very little. Q. Very little. Then we do get to the point that this jump of 20 per cent occurred between 130 and 103 feet. Is that right? A. As you measure it, yes. I have known 10 feet to make a difference. Q. Yes, 6 feet makes a difference sometimes on a corner of a plaza, but I want you to tell me why 30 feet makes so much difference? A. It is one of a series of lots that controls the water front. Q? Is there anything in all this except that the Burnt District Commission or you experts have through some mistake or something assessed the lot next to us at \$5109 or \$1109 more than our lot is assessed at? A. I have kept away from the Burnt District Commission's figures. Q. I say is there any difference in these except in the fact that by some mistake they have assessed the lot next to us at \$1100 more than ours? Counsel for the appellee: Your Honor, we have no objection except that we want to understand their position clearly. If they are going to bring <sup>in</sup> Burnt District assessments we have no ~~objection~~ objection, but if they bring in some of them we want to bring in all of them. Discussion between counsel of the respective parties ensued. The Court: If he

has an explanation to make of it he is entitled to give it to the jury. He says it has to do with the ownership of the corner, as I understand it. Counsel for Appellants: I have been trying to get why the expert's line stops at 103 feet. I am simply asking as to the two adjoining lots, one on the north and one on the south of our lots. The Court: <sup>can</sup> I see no objection to his going in that neighborhood, say 200 feet or 300 feet down that street. Counsel for Appellants: We will note an exception, your Honor. The Court: "Yes, as I understand, you asked this question and thereupon the counsel for the City asked that the Court submit to the jury the adjoining assessments for a couple of hundred feet, as I have suggested, and the Court grants that. I have explained the way in which it <sup>comes out</sup>. The question is asked the witness, and thereupon the counsel for the City asked that if that is asked with regard to adjoining property on one side the assessments on both sides shall be known to the jury, by the exhibition of such paper as will make it known sufficiently up and down the dock to be able to draw a comparison of the relative values, a couple of hundred feet I suggested. Counsel for the Appellants: Yes, your Honor, and we except to the City being allowed to offer any portion of them. The Court: And the objection is overruled, and the exception is noted. And the Appellants, then and there excepted to the said ruling of the Court, and prayed the Court to sign and seal this their Ninth Bill of Exceptions, as to said Lot number 210, which is done accordingly this 13th day of November A. D. 1905.

*Wm. J. Morris*  
*Judge*









said Commission, following the said valuation of their experts, offered \$100,000 for the property; that the Board of Public Works demanded \$225,000; and that thereupon in the sequence of the negotiation the sum of \$186,000 was mutually agreed upon between the said parties, the State, represented by the Board of Public Works, and the Burnt District Commission on behalf of the Mayor and City Council of Baltimore, as the price to be paid for the said property. The counsel of the Appellee objected to the admission in evidence of the said offered testimony as to the said sale, or any of it, and the Court sustained the said objection; and the Appellants then and there excepted to the said ruling of the Court and refusal to admit the said offered testimony or any of it as evidence in this case, and then and there prayed the Court to sign and seal this their Tenth Bill of Exceptions as to said Lot number 210, which is done accordingly this 14th day of November A. D. 1905.

*Thos. J. Morris*  
*Judge*

SEAL

Sidney Turner Dyer  
et al.  
vs.  
The Mayor and City Council  
of Baltimore City.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.  
AS TO LOT NO. 210.

Eleventh Bill of Exceptions of the Appellants as to  
Lot Number 210.

After the proceedings mentioned in the said preceding  
bills of exceptions of the appellants and the introduction  
of the evidence stated in the said first, second, third, fourth,  
fifth, sixth, seventh, eighth, ~~ninth~~ <sup>and tenth</sup> bills of exceptions  
of the Appellants as to said Lot Number 210, which said  
bills of exceptions and statements of evidence are hereby by  
reference made part of this bill of exceptions, the appellants  
presented the seven prayers, following, and asked the Court  
to instruct the jury in accordance therewith and with each  
of them.

APPELLANTS' PRAYERS.

1st Prayer.

The property-owners are entitled to such sum as  
their property would be worth at the present time if this  
condemnation by the City for new wharves and docks had never  
been instituted or projected; and if the jury believe that  
said property has increased in value after the fire, they  
must give the property owners the benefit of that increase.

2nd Prayer.

In arriving at the market value of the property in  
question, the jury must consider what a reasonable person

owning the same and though willing to sell if a fair price could be obtained, yet having no particular reason to sell, would be willing to take for the same, and must not award any less sum.

3rd Prayer.

The valuation put upon the said property by the Burnt District Commission is not to be regarded by the jury as any evidence whatever of the real value of the property or the damage the owners will sustain by the taking thereof by the Mayor and City Council of Baltimore, and the jury should not allow themselves to be influenced thereby in any degree.

4th Prayer.

The jury must not consider as tending to show the value of the lot being condemned in this case any sales made by property-owners to the Burnt District Commission of which the jury may have knowledge either from the testimony in this case or from any other source; but must not allow themselves to be influenced thereby in any degree. They should decide this case as if no such sales had ever been made.

5th Prayer.

If the minds of the jury are evenly balanced between the two valuations of property being condemned in this case, they must give the property-owners the benefit of that doubt and award the highest of said valuations.

6th Prayer.

The jury must decide this case according to the evidence presented to them in Court, and must not allow



themselves to be influenced by any facts of which they may have private knowledge or information.

7th Prayer.

If the jury find that the property being condemned in this case, by reason of its location or other circumstances, is adapted for use in connection with other property for the construction of enlarged or improved wharves, piers or docks and that a person or corporation desiring to acquire said property for that purpose would be willing to pay for the same more than a person or corporation desiring to acquire it for other purposes, such as ordinary warehouse purposes, then the jury must award such sum as the jury may find that a person desiring said property for use in connection with other property for the construction of enlarged or improved wharves, piers or docks would be willing to pay for the same.

And the Court thereupon granted the said first, second, third and fourth prayers of the Appellants, and rejected their said fifth, sixth and seventh prayers and refused to instruct the jury in accordance with said 5th, 6th and 7th prayers or with either of them; and to said rejection by the Court of their said 5th, 6th and 7th prayers, and refusal to instruct the jury in accordance therewith or with either of them, the Appellants then and there excepted and prayed the Court to sign and seal this their <sup>as to said Lot number 210,</sup> seventh Bill of Exceptions, which is done accordingly this 14th day of November A. D. 1905.

*Wm. J. Morris*  
*Judge*





Sidney Turner Dyer et al } No.  
 vs } 172  
 Mayor & City Council } Civil C.  
 of Baltimore.

Costs taxed

<u>Appellants' Costs</u>		<u>Appellee's Costs</u>
	Transcript of Record - .10	swearing of witnesses
	Mo. to Grand - .25	for in 1st case .70
	Bill of exceptions - .25	swearing witnesses
	Agreement of Counsel - .25	2nd trial - .50
6	6 Jury Petition Prayers - .60	
	Oath of sworn - .10	
	Inquisition - .25	
	Motion for new trial - .10	
14 hrs.	3 Plaintiff Prayers - .30	
" "	Oath of sworn - .10	
" "	Inquisition for - .25	
	Swearing of witnesses 1st trial .50	
	" " " 2nd " .90	
	Passing 1 subpoena etc. .50	
	" 2 subpoena .25	
	Making Dockets etc - 3.00	
	<u>7.70</u>	<u>1.20</u>

Atty	20.00	Atty	20.00
Clerk as above	7.70	Clerk as above	1.20
Marshal	.62	Marshal	.00
	<u>28.32</u>		<u>21.20</u>
In Dallas City Court	17.65	In Dallas City Ct	6.25
	<u>45.97 (over)</u>		<u>27.45</u>

No. 192 Cont. 8'

Dyer

no

Wm. B. Coyne

Costs Target

~~~~~

Sidney Turner Dyer  
et al.

v.

Mayor & City Council  
of Baltimore

In the  
Circuit Court  
of the  
United States  
for the  
Dist of Md.

Mr Clerk:

Please enter the appellants'  
motion for a new trial in this case in  
the matter of Lot No 306 "Dismissed"

Arthur W. Machum  
Arthur W. Machum  
Solicitor for Appellants

In the Case of *W. P. H. W. S.*  
for the District of Columbia

No. 172 Civil "C"

---

Sir,  
Anthony Turner Rogers  
of said

is  
Mayor of the District  
of Columbia.

Order for Dismissal  
of Motion for  
New Trial

Mr. Clark:

Please file the  
affidavit of *W. S. Macken*  
for the *U. S. Marshal*

filed on February 1906



| REFERENCE SERVICE SLIP                                                                                                                                                                                     |                        |                                        |                                                    |                                     | DATE                                 | NO.                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------------------------|----------------------------------------------------|-------------------------------------|--------------------------------------|-----------------------|
| NAME OF REQUESTOR<br><i>Clara P. Pagan</i>                                                                                                                                                                 |                        |                                        |                                                    | AGENCY OR ADDRESS                   |                                      |                       |
| UNITS OF SERVICE                                                                                                                                                                                           |                        |                                        |                                                    | SOURCE OF REQUEST (Check)           |                                      |                       |
| INFORMATION SERVICE<br>(Number of replies)                                                                                                                                                                 |                        | RECORDS FURNISHED<br>(Number of items) | TEXTUAL, STILL PICTURES, ETC.<br>(Number of pages) | MOTION PICTURES<br>(Number of feet) | SOUND RECORDINGS<br>(Number of feet) | NA Administrative Use |
| WRITTEN                                                                                                                                                                                                    | ORAL                   |                                        |                                                    |                                     |                                      | Agency of Origin      |
|                                                                                                                                                                                                            |                        |                                        |                                                    |                                     |                                      | Other Government      |
|                                                                                                                                                                                                            |                        |                                        |                                                    |                                     |                                      | Nongovernment         |
|                                                                                                                                                                                                            |                        |                                        |                                                    |                                     |                                      | REQUEST HANDLED BY    |
| RG NO.<br><i>31</i>                                                                                                                                                                                        | STACK AREA<br><i>H</i> | ROW<br><i>10</i>                       | COMPARTMENT<br><i>9</i>                            | SHELF<br><i>6/6</i>                 |                                      | OUTCARD NO.           |
| RECORD IDENTIFICATION                                                                                                                                                                                      |                        |                                        |                                                    |                                     |                                      |                       |
| <p><i>U.S. Circuit Court for the District of Columbia</i></p> <p><i>243 11th Floor</i></p> <p><i># 11-176</i></p> <p><i>Box 1114</i></p> <p><i>8 DEC '06 AM 10:48</i></p> <p><i>8 DEC '06 AM 10:48</i></p> |                        |                                        |                                                    |                                     |                                      |                       |
| RECEIVED BY                                                                                                                                                                                                |                        |                                        | DATE                                               | RETURNED TO                         |                                      | DATE                  |

No. 192 Bond 'B'

Anthony James Dyer  
of the

no

Mayor & City  
Council of Baltimore

Office of Corporation

on to Lot 306

Filed 3 January 1901



Sidney Turner Dyer,  
Elisha Dyer, Jr., her husband,  
and Laura Patterson

vs.

The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

As to Lot No. 306.

APPELLANTS' SECOND BILL OF EXCEPTIONS.

After the proceedings mentioned in the Appellants' First Bill of Exceptions which previous bill of exceptions is hereby, by reference, made part of this bill of exceptions, a jury was impanelled and sworn to well and truly inquire into and ascertain and assess the damages to Sidney Turner Dyer and Elisha Dyer, Jr., her husband, Laura Patterson in her own right and as surviving Trustee under the last will of Margaret Turner deceased as to Lot No. 306 on the Plat of the Burnt District Commission, and a true inquisition make according to the evidence. And after the opening statements of counsel of the respective parties had been made and before the examination of any of the witnesses produced by the parties respectively the Court gave to the jury the following charge, viz:

"I think there is another thing that might be said to the jury, and that is that if any of the members of the jury feel conscientiously that they have personal knowledge and experience upon which they can rely as to values of property in that part of the City that they are not expected under this oath to disregard that, they have a right to test the weight of the testimony of the witnesses by any such personal knowledge and experience that they have themselves."

To the observations or charge so made to the jury by the Court the Appellants by their counsel in due form and

THE COURT OF COMMONS  
IN THE CIRCUIT COURT

OF THE  
IN THE CIRCUIT COURT

manner then and there excepted, and prayed the Court to sign  
and seal this their Second Bill of Exceptions in this cause,  
which is done accordingly this 10th day of November A.D.1905.

*Wm. J. Morris*  
*Judge*



Sidney Turner Dyer

et al.

vs.

The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

AS TO LOT. NO. 306.

APPELLANTS' THIRD BILL OF EXCEPTIONS.

After the proceedings mentioned in the said first and second bills of exceptions of the Appellants which previous bills of exceptions are hereby by reference made part of this bill of exceptions, a map or plat of the Dock District part of the Burnt District of Baltimore City, ~~being~~ plat No. 27 of the Burnt District Commission, was produced by the Mayor and City Council of Baltimore and exhibited to the Jury, A copy of which said plat is hereto annexed as part hereof.

And Sigmund Goodman, a witness called, sworn and examined on the part of the Appellants, testified that he was a sales agent of Fleischman and Company, wholesale dealers in whiskey in the City of Baltimore; that the said Fleischman and Company had occupied as tenants of Mr. Charles J. Bonaparte a lot of ground in the said City improved by a brick warehouse, which lot is of about the same dimensions as the lot of ground belonging to the Appellants, now in question, and, like it, situated on Smith's Wharf, being designated as Lot number 303 on the said Plat. That their lease of said property being about to expire on the first day of May 1904, the said Fleischman and Company sometime before the time of the occurrence of the Fire of February 7th and 8th which destroyed all the buildings in that section of the City treated with their said landlord for a renewal of the said lease for a further term

of about three years; and it was mutually agreed between the said parties that a new lease, at an increased rent, should be executed on a day agreed upon (which day happened to be the Wednesday next following the Sunday and Monday on which the said fire occurred; that immediately after the fire the said Fleischman and Company made a proposal to Mr. Bonaparte for the purchase of the said lot of ground now designated as No. 303 on the said Burnt District Commission Plat, in fee, in lieu of the lease so previously agreed upon; that after some negotiation, lasting about three weeks, the transaction was closed by the purchase of the said lot of ground in fee by the said Fleischman and Company from Mr. Bonaparte for the sum of five thousand dollars which sum ~~after~~ the said Fleischman and Company, after inquiring around and taking into consideration what they thought the property in its then condition was worth, taking into consideration the docks and the facilities there to be had, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ regarded as a fair price for the property. The said price was a little over two hundred dollars per front foot. "On Monday morning, the day after the fire," said the witness, "I called Mr. Bonaparte up and asked him if it was any use to come up ~~and~~ to sign a lease, that I didn't think the house was standing, and he agreed that it was not worth while to come up. So the next thing we thought of was to try to purchase the property so as to build on it." "Q. (By Appellants' counsel), Will you tell the jury what advantages that property had for you in your business? A. We are distributors. We sell to the wholesale trade. The advantage that property had was the same advantage it would have had for anybody who shipped in cars, the same as to anybody else on the dock. In this way: our cars were brought to us on barges, and we could unload

No. 10000

a car at very little cost with the assistance of one man; we could unload a car in about twenty minutes. The scow would bring the cars to our door. We had the advantage of all the railroads that came to Baltimore, because all railroads deliver their cars on scows that way, where you have the place for them to come up. If we had been on one railroad alone we would have been at the mercy of that road, unless we wanted to pay the trackage-what the other roads would charge us. On cross-examination, the Appellee's counsel proposed to ask this witness what rent Fleischman and Company paid to Mr. Bonaparte under their said original lease, which began in about the year 1900. The Appellants' counsel objected to the question, but the Court overruled the said objection and permitted the question to be put to the witness, who answered, \$500 per annum. And to the said overruling of the said objection, and admission of the said answer as evidence in this case, the Appellants then and there excepted, and prayed the Court to sign and seal this their Third Bill of Exceptions which is done accordingly this 10th day of November A.D. 1905.

*Thos. J. Murray*  
*Judge*





Sidney Turner Dyer  
et al.  
vs.  
The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.  
AS TO LOT NO. 306.

APPELLANTS' FOURTH BILL OF EXCEPTIONS.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants and the introduction of the testimony stated in their third bill of exceptions, all which said bills of exceptions and statements of evidence are hereby, by reference, made part of this bill of exceptions, Talfair W. Marriott, a witness called, sworn and examined on the part of the Appellants testified that he had 19 years experience as a real estate broker in the City of Baltimore, and that in his opinion the market value of the lot of ground of the Appellants now in question is \$200 per front foot, or \$5000 altogether. Upon cross-examination, by the Appellee's counsel, the said Marriott testified as follows: "Q. You follow the sales a good deal, do you not? A. I try to. Q. You keep everything in a book? A. Every sale that I can. Q. You keep every sale that is made, you keep a record of them, do you not? A. I try to. Q. Do you fix your values from one sale or do you take the different sales or do you take different sales from time to time? A. I figured from different sales from time to time in the conditions of affairs, how they change." And the Appellee's counsel then offered to prove by the said Marriott that a sale of a parcel of ground on McElderry's Wharf, comprising No. 331 and No. 333 McElderry's Wharf, and having a front of 60 feet on said Wharf, was made very soon after the fire by one Eckle to the Merchants



STUART, JUDGE, DIST.

OFFICE OF THE  
CLERK OF THE  
COURT

and Miners' Transportation Company for the price of \$8500, of \$141 a front foot. The Appellants' counsel objected to the admission of the said evidence on the ground that said McElderry's Wharf lot was too remote in situation and too different in character, McElderry's Dock being a public dock, while the dock connected with Smith's Wharf is a private dock; but the Court overruled the said objection and permitted the said sale to be given in evidence by the Appellee by the testimony of the said witness. To which said ruling of the Court and the admission in evidence of the said last mentioned sale of said property on McElderry's Wharf, the Appellants then and there excepted, and prayed the Court to sign and seal this their Fourth Bill of Exceptions which is done accordingly this 10th day of November A.D. 1905.

Thos. J. Morris  
Judge

SEAL

of \$1000 per front foot. The value of the lot is \$8000.  
The value of the lot is \$8000.

vs.  
The Mayor and City Council  
of Baltimore.

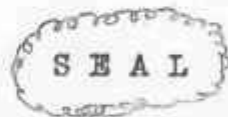
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OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.  
AS TO LOT NO. 306.

APPELLANTS' FIFTH BILL OF EXCEPTIONS.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants and the introduction of the testimony stated in the Appellants Third and Fourth bills of exceptions, all which said bills of exceptions and statements of testimony are hereby, by reference, made part of this bill of exceptions, Septimus P. Tustin, an engineer and surveyor, and a member of the firm of S.J.Martenet and Company, called on the part of the Appellants, testified that by actual survey, the frontage on said lot No. 306 sought to be condemned in this case is 25 feet and 7 inches. And Eugene Blake, a witness called, sworn and examined on the part of the Appellants, testified that he had had experience in buying and selling property in the said dock district of Baltimore City and was well acquainted with the property now in question, designated Lot No. 306 on the Burnt District Commission's plat; and further testified, in chief, as follows:  
"Q. Will you tell us in your opinion what is the fair value of that lot, 25 feet 7 inches, we will assume? A. I place the same value on that as I did upon my property just back of it, mine fronting on Buchanan's Wharf and this on Smith's Wharf. Both run back to Allison's alley. I place a value of \$200 a front foot on it." He further testified that Smith's Wharf in his judgment has a value above McElderry's Wharf, in that the former adjoins a private dock the use of which goes free to owners of property bounding thereon, while McElderry's dock is a public dock, and users of it are liable to pay wharfage to the City; and that the Lot No. 303 on the Burnt District Commission's plat is similar to Lot 306 now in question, and that in his opinion the said sale to Fleischman

and Company, made since the fire, fairly indicated the market value of the said lot now in question. And the Appellee's counsel, in cross-examination of the witness, offered to prove by him that a sale was made in the year 1902 or 1903 to a Mr. Woods of a lot of ground fronting 130 feet or 132 feet on Buchanan's Wharf with a depth of 65 feet or 67 feet, with a wood-shed of little value upon it, for the price of \$100 per front foot. The Appellants' counsel objected to the admission of the said testimony, but the Court overruled the said objection and the appellee was allowed to prove the fact of the said sale, by the said Blake. And the Appellants then and there excepted to the said last mentioned ruling of the Court and the admission of the said last mentioned sale in evidence to the jury, and prayed the Court to sign and seal this their Fifth Bill of Exceptions, which is done accordingly this 10th day of November A.D. 1905.

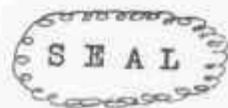
*Thos. J. Morris*  
*Judge*





said testimony as evidence in this case, the Appellants then  
and there excepted and prayed the Court to sign and seal  
this their Sixth Bill of Exceptions, which is done accordingly  
this 10th day of November A.D. 1905.

Thos J. Morris  
Judge



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and said testimony of



and there excepted and prayed the Court to sign and seal this their Seventh Bill of Exceptions, which is done accordingly this 10th day of November A.D. 1905.

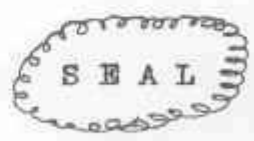
Sidney Turner Dyer  
et al.  
vs.  
The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.  
AS TO LOT NO. 306.

APPELLANTS' SEVENTH BILL OF EXCEPTIONS.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants and the introduction of the evidence stated in their third, fourth, fifth and sixth bills of exceptions and all which said <sup>bills of exceptions and</sup> statements of evidence are hereby, by reference, made part of this bill of exceptions, the Appellee's counsel, in further examination of the said Blake, proposed to ask him what rent he got before the fire for his said property on Buchanan's wharf which, as mentioned in the Sixth bill of exceptions of the Appellants, the said Blake purchased in the year 1890. To which proposed inquiry the Appellants' counsel objected; but the Court overruled the said objection and permitted the said Blake to be so interrogated as to said rental, and the said witness answered that he got a rent of \$2400 per annum for the said property before the fire. And to the overruling of the said objection of the appellants' counsel and the admission as evidence in this case of the said testimony as to rent received by the said Blake for his property the Appellants then and there excepted and prayed the Court to sign and seal this their Seventh Bill of Exceptions, which is done accordingly this 10th day of November A.D. 1905.

*Thos J. Murray*  
*Judge*





OF BALTIMORE  
THE MAYOR AND CITY COUNCIL

AS

BY

DISTRICT OF MARYLAND  
FOR THE  
CIRCUIT COURT  
OF THE  
DISTRICT OF MARYLAND

Sidney Turner Dyer  
et al.

vs.

The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

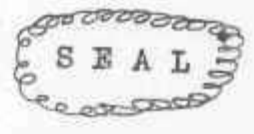
AS TO LOT NO. 306.

APPELLANTS' EIGHTH BILL OF EXCEPTIONS.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants and the introduction of the evidence stated in their third, fourth, fifth, sixth and seventh bills of exceptions all which bills of exceptions and all which statements of evidence are hereby, by reference, made part of this bill of exceptions, De Wilton Barnes, called, sworn and examined on the part of the Appellee, testified, under examination by the Appellee's counsel, that, as agent of the Appellants, he had had the three-story brick warehouse which, before the fire of February 7th and 8th 1904, stood upon the said Lot No. 306, and collected the rent, and that it was an old warehouse, but in good condition and had been continuously in occupation of ~~###~~ rent-paying tenants during the period of the witness's charge of the property, which was nineteen years, and the Appellee's counsel then proposed to ask the said witness "what insurance was gotten for said building after the said fire?" The counsel of the Appellants objected to the said question, but the Court overruled the said objection and allowed the Appellee's counsel to put the said question to the witness, who answered "My recollection is we had \$3000 on that building in the Baltimore Fire Insurance Company." The Appellants then and there excepted to the overruling of the said objection to said question and to the

admission in evidence of the said answer and prayed the Court to sign and seal this their Eighth Bill of Exceptions, which is done accordingly this 10th day of November A.D. 1905.

*Thos J. Morry*  
*Judge*





evidence to the jury of the said answer of the said witness,  
the Appellants then and there excepted and prayed the Court  
to sign and seal this their Ninth Bill of Exceptions, which  
is done accordingly this 10th day of November A.D. 1905.

*Wm. J. Murray*  
*Judge*



...and all  
...reference, made part





CLERK OF THE DISTRICT COURT OF MARYLAND

AR.

SIGNED AND SEALED

DISTRICT OF MARYLAND  
FOR THE  
UNITED STATES  
OF THE  
IN THE CIRCUIT COURT

Sidney Turner Dyer  
et al.

vs.

The Mayor and City Council  
of Baltimore.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES

FOR THE  
DISTRICT OF MARYLAND.

AS TO LOT NO. 306.

APPELLANTS' ELEVENTH BILL OF EXCEPTIONS.

After the proceedings mentioned in the preceding bills of exceptions of the Appellants and introduction of the evidence stated in their said third, fourth, fifth, sixth, seventh, eighth, ninth and tenth bills of exceptions, all which bills of exceptions and statements of evidence are hereby by reference, made part of this bill of exceptions, the said John J. Kelly, a witness produced, sworn and examined on the part of the Appellee testified that his said Smith's Wharf property referred to in his testimony stated in the ninth and tenth bills of exceptions of the Appellants, was situated about 20 houses off from the lot of the Appellants in question in this case. The Appellee's counsel asked the said Kelly, ~~###~~ what insurance on the said witness's said Smith's wharf ground, he got after the fire. The Appellants counsel objected to the said inquiry being made of the said witness, but the Court overruled the said objection and permitted the Appellee's counsel to ask the said witness to state to the jury what insurance money he had received upon the improvements on his said property upon their destruction in the said fire, and the witness answered that he received for insurance upon his said smaller lot \$1100 and for insurance on his said larger lot \$2000. And to the said last mentioned ruling of the Court



and to the admission in evidence in this case of the said testimony of the said witness Kelly as to insurance moneys received, the Appellants then and there excepted and prayed the Court to sign and seal this their Eleventh Bill of Exceptions, which is done accordingly this 10th day of November A.D. 1905.

Wm. J. Morris  
Judge





of the

and submit it to the Burnt District Commission. We got that report up about the middle of August, I think. We worked on it for about six weeks, and a number of nights we worked until midnight to get it up. Do you want to know the method we used? Q. Yes, tell us how you informed yourselves as to values? A. We secured the services of Mr. Norman. He gave us a report of the sales in the dock district made since 1880, for twenty-four years, and we subsequently verified each of those sales. We took all the information we could get in the way of leases, rents and all information we could absorb from the different people that came in from time to time in the Burnt District Commission to negotiate for lots, and we fixed the value from those sales and from our personal experience, and put out figures together; and where we differed we came together, and in some places where we were too far apart we submitted our individual opinions to the Burnt District Commission. Q. You are then familiar with this lot Number 221 Smith's Wharf? (Lot No. 306 on Plat of the Burnt District Commission.) A. Yes, I know the lot very well. Q. What, in your opinion, is the fair market value of that lot today?" The counsel of the Appellants objected to the said question and contended that the opinion of the witness arrived at or formed in the manner so stated by him was not competent or proper evidence to be given to the jury. But the Court overruled the said objection, and permitted the Appellee's counsel to put the said question to the said witness who answered: "I valued the lot at \$115 a foot." And to the overruling by the Court of the said objection to the said question, and to the admission in evidence of the said answer thereto

REPORT UPON THE PROCEEDINGS OF THE DISTRICT COMMISSIONERS OF THE DISTRICT OF COLUMBIA

of the said witness, the Appellants then and there excepted,  
and prayed the Court to sign and seal this their Twelfth Bill  
of Exceptions, which is done accordingly this 11th day of  
November A.D. 1905.

*Wm. J. Morris*  
*Judge*







having a total front of 90 feet by a depth of 104 feet, and improved; which sale was made to the National Building Supply Company by Mr. Rowland, Trustee, for the consideration of \$17,500. And the Appellee's counsel then asked the said witness Bernard the following question: "What in your opinion is the fair market value of the said lot of ground, 304 and 308 (or 314) Spear's Wharf, without the improvements?" The Appellants' counsel objected to the said question; but the Court overruled the said objection and permitted the said question to be put to the witness, and permitted his answer thereto to be given to the jury as evidence in this case: the said answer of the witness was, "Eighty-five dollars a front foot at the time it was bought in 1895; property is worth a good deal more now." And to the said ruling of the Court in allowing the said question, and permitting the said answer of the witness thereto to go to the jury as evidence in this case, the Appellants then and there excepted, and prayed the Court to sign and seal this their Thirteenth Bill of Exceptions, which is done accordingly this 11<sup>th</sup> day of November A.D. 1905.

*Wm J. Morris*  
*Judge*







where you three experts -- A. (The witness interrupting,) Where we agreed the Burnt District Commission adopted our figures. Appellants' Counsel: That is rather interesting public information. As I understand it then, the Burnt District Commission was not Mr. Swann, Mr. Graham and the other gentlemen who comprise that board, but as a matter of fact consisted of Mr. Bernard, Mr. Caughy and Mr. Payne, for all practical purposes. A. I would not like to state that. The Court: He has stated the facts. Q. (by Appellants' counsel) And it also appears that you are now testifying in defence of your own work. A. Yes, I am testifying in defence of my own work."

And Thomas J. Lindsay, was called, sworn and examined on the part of the Appellee and testified that he was in the real estate business as a member of the firm of George W: Lindsay and Son, and had been in it for more than twenty years; that his firm had done a general real estate business, had bought and sold and managed property and estates; and that he had not been employed by the Burnt District Commission to value any property for that commission. He then further gave testimony under the examination of the Appellee's counsel as follows: "Q. Are you familiar with this property on Smith's Wharf number 221, (the property in question in this case). A. I am familiar with all the property around there. Q. What in your judgment is the fair market value of that property to-day? A. I think the fair market value of that property to-day would be \$125 a foot; that is \$3196 or \$3200 in round numbers. Q. How do you arrive at that valuation? A. Well, that is my judgment. We have had property down in the dock district on Spear's Wharf and I

THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA  
(The Appellants' Counsel)

along  
know of sales in the neighborhood, and I base it on the  
general conditions and my general knowledge and the sales.

Q. Have you any personal knowledge of sales in that district?

A. The one on Spear's Wharf immediately opposite, Number  
204 Spear's Wharf, a lot 25 by 104 running through from  
Spear's Wharf to Patterson street." The Appellants' counsel,  
objecting to the introduction of testimony as to the sale  
referred to, said: "This sale was the one which was struck  
out from the testimony in the other case on the ground that  
it was made after the passage of the dock loan and in view  
of speculation. The Court: We can take it subject to ex-  
ception, and you can move to strike it out, Q. (By Appellee's

Counsel) When was the sale consummated? A. The sale was  
at the rate of \$200 a front foot. The lot was 25 feet by 104  
feet. That sold for \$5000, or \$200 a front foot. That was  
after the fire, just vacant land: it was sold by a client of  
ours, Thomas P. Ellicott, before the Dock loan ordinance was  
passed. Q. Cannot you tell us the exact date? A. No, my

client was in my office consulting me about it, and I told him  
I was positive that the ordinance was going to pass, I felt posi-  
tively it would pass. The Court: I will hear all the testimony  
he has to give in regard to the sale, and then I can judge  
more about it as to whether the jury ought to consider it at  
all. Of course I do not say to the jury that any sale is  
to be taken as conclusive, but they are to judge of the weight,  
and a sale made in the apprehension, or expectation of a  
condemnation would be a sale which the jury would have to  
weigh and they would have to weigh all the circumstances  
connected with it. I will hear what he has to say. The

witness: My client came to my office. I might say we attend  
to other property for him, but not this particular property,  
we did not attend to this because he occupied it himself,  
it was his place of business. He came to see me and said he

Q. The one on Spear's Wharf, is that the property of the City?  
A. Yes, that is the property of the City.  
Q. Was it the property of the City at the time of the sale?  
A. Yes, it was the property of the City at the time of the sale.

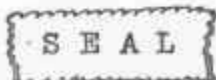
had an offer on that property on Spear's Wharf, and I said to him -- The Court: You think this was about what date?  
A. It was after the Emergency Committee had recommended certain improvements throughout the City. The Court: And the new dock scheme? The Witness: The whole thing, the emergency committee recommended the whole thing. I said to him, I do not think there is any question but what the City is going to take all that property, and why not wait until the City comes along: I think the City will be willing to give you more than any one else, because I cannot imagine why anyone would want to buy it now: 'Well' he said, 'I have got the offer and I want to know what you think about the price'. I said, 'I would not sell it unless I got a good deal more than I consider it is worth'. He said, That is exactly -- No, he said 'what do you think would be a good deal more than it is worth?' Objection by the counsel of the Appellants was made, and discussion by counsel followed. The Court: The peculiar situation of this property makes it quite difficult to apply intelligently the ordinary rules with regard to property not affected by the great variety of circumstances and conditions that this was affected by. Here is a sale made quite near in proximity of time to the condemnation, and the witness is speaking of that sale, and with a view of enabling the jury to determine whether it was a sale at less than a proper market value of the property or not, he undertakes to tell what advice he gave and how the vendor, the owner of the property, was influenced in making the sale. As I understand it, he was about to say that his advice to the owner was that he should not sell unless he got a full price. That is as far as he has gone. I think



he is entitled to go that far. I do not think he ought to go into the conversation, but I think he has a right to say what he has already said with regard to the attitude of the owner towards the property and the sale. Q. (By Appellee's counsel) At what rate is warehouse real estate capitalized for the purpose of arriving at some estimate of the valuation? The Court: You mean the rent. The counsel: Yes, sir. A. (of witness) In arriving at values? Appellee's counsel: Yes. A. I do not tie conclusively to rental values, but the rate used in approximating values varies. On some property it is ten per cent straight through: ten per cent on land and ten per cent on improvements; and on a better class it would be ten per cent on ~~land~~ improvements and eight per cent on land. Then the very highest valuation on rentals and on the very best of property would be eight per cent straight through, eight per cent on land and eight per cent on improvements. Q. Do you know when the agitation for the docks commenced? A. No, you mean the date? Q. Yes, about when? A. No, but it seems to me the emergency<sup>committee</sup> was called immediately after the fire. Q. I want to recur for one moment to your testimony as to the advice you gave your client. Will you kindly tell us what your advice to your client was? My object in asking this is because there is some conflict as to whether we understood exactly what he said. Appellants' counsel: I think the conversation between himself and his client are inadmissible. The Court: I sustain the objection to the conversation. Appellee's counsel: It was not the object, your Honor, to give the conversation in detail, but he was stopped at a point when he said he had told his client that he would not sell unless he got a price

above the value of the property, that is where he was stopped:  
now I want to find out whether the sale actually made was  
at a price a good deal above the price mentioned in the advice.  
The Court: You can bring that out. Counsel of the Appellants:  
Please put your question so we will get in our objection  
and exception. Q (By Appelles's counsel) Was the ~~XXXX~~ sum  
received for the Ellicott sale full market value, or was it  
in excess of the market value. Appellants' counsel:  
Question objected to. The Court: Objection overruled. Ex-  
ceptionby Appellants noted. A. I considered it in excess  
of the value of anything that had been shown along there.  
I told him -- Counsel of Appellants: We do not want what you  
told him. The Court: I think he can say that. Counsel of  
Appellants: Then we will move to strike it out. The Court:  
Very well. A. I told him I would not sell unless I got  
about \$200 a front foot in view of the fact, as I stated  
before, of this contemplated improvement. The Appellants,  
by their counsel thereupon moved the Court to strike out  
the said lastmentioned answer of said witness, but the Court  
overruled the said motion and refused to strike out the said  
lastmentioned testimony of the said witness. To which said  
ruling of the Court and refusal to order the <sup>said</sup> testimony  
to be stricken out, the Appellants then and there excepted,  
and prayed the Court to sign and seal this their Fourteenth  
Bill of Exceptions , which is done accordingly this 11th day  
of November A.D. 1905.

*Wm. J. Morris*  
*Judge*









owning the same, and though willing to sell if a fair price could be obtained, yet having no particular reason to sell, would be willing to take for the same, and must not award any less sum.

Third Prayer.

The valuation put upon the said property by the Burnt District Commission is not to be regarded by the jury as any evidence whatever of the real value of the property or of the damages the owners will sustain by the taking thereof by the Mayor and City Council of Baltimore, and the jury should not allow themselves to be influenced thereby in any degree.

Fourth Prayer.

The jury must not consider as tending to show value of the lot being condemned in this case any sales made by property owners to the Burnt District Commission of which the jury may have knowledge ~~#####~~ either from the testimony in this case or from any other source, and must not allow themselves to be influenced thereby in any degree. They should decide this case as if no such sales had ever been made.

Fifth Prayer.

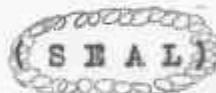
If the minds of the jury are evenly balanced between two valuations of the property being condemned in this case, they must give the property-owners the benefit of the doubt and award the higher of said valuations.

Sixth Prayer.

The jury must decide this case according to the evidence presented to them in Court, and must not allow themselves to be influenced by any facts of which they may have private knowledge or information.

And the Court thereupon granted the said first, second, third and fourth prayers of the Appellants, and rejected their said fifth and sixth prayers, and refused to instruct the jury in accordance with ~~said~~ said rejected prayers, or in accordance with either of them. And to the said rejection of the said fifth and sixth prayers of the Appellants and said refusal by the Court to instruct the jury in accordance therewith, and with either of them, the Appellants then and there excepted and prayed the Court to sign and seal this their Sixteenth Bill of Exceptions which is done accordingly this 11th day of November A.D. 1905.

*Wm. J. Morris*  
*Judge*



Oath to Jury

In the presence of Almighty God, you and each of you do solemnly promise and declare that you shall well and truly inquire into ascertain and Assess the Damages to Sidney Furness Dyer and Elisha Dyer Jr. her husband, Laura Patterson, in her own right and as surviving Trustee under the last Will of Margaret Furness, do as, &c. Plaintiff, and the Mayor and City Council of Baltimore Defendants as to Lot No. 306 on the Plat of Burnt District Commission and a true Inquisition make according to the Evidence and so you do swear

( Same Oath as to Lot No 210. )

No. 172 Level "6"

Page

Petition Docket.

Circuit Court U.S.  
In Baltimore City Court.

Sidney Turner Dyer  
et al

vs.

Mayor & City  
Council of  
Baltimore

In the matter of the Condemning, Open-  
ing and Extending of ~~Property~~ <sup>Street</sup>  
for additions to Wharves  
& Docks

INQUISITION

as to lot No. 306

Filed 19<sup>th</sup> day of Nov 1905



# This Inquisition,

Made and taken at Bar in Baltimore City Court, in the  
matter of the Appeal of Circuit Court of the United States for the District of  
Maryland in the matter of the appeals of Laura Patterson, Laura Patterson,  
trustee, Sidney Turner Dyer and Elisha Dyer, Jr., her husband  
from the decision of "The Burnt District Commission," in the City of Baltimore, ~~as to the condemning, opening and~~  
~~extending of~~ in the matter of the condemnation of lands and property for ad-  
ditions and extensions to be made to the Public Wharves and Docks of Bal-  
timore City and the basin or harbor of the City of Baltimore.

**Witnesseth,** That we, the Jurors, whose names are hereunto subscribed and seals affixed, being  
duly empanelled, sworn and charged to inquire into, ascertain and assess the Damages ~~and Benefit~~ to the said  
Appellant, accrued by reasons of the action of The Burnt District Commission in the City of Baltimore in relation  
to the condemning, ~~opening and extending of~~ the lot of ground designated in the aforesaid  
proceedings of the "Burnt District Commission" and on the Map marked Num-  
ber 27 B filed with the return of the said Commission by the Number 306,

having heard the evidence and duly considered the same, do find and determine the Damages ~~and Benefit~~ as follows,  
to wit:—

## DAMAGES.

We ascertain and determine the whole value of the aforesaid lot of  
ground Number 306 in fee-simple, and assess the damages for taking the same  
to be the sum of

*Thirty eight hundred  
and thirty seven + 50/100 Dollars*  
\$3837<sup>50</sup>

*William H. Boggs  
Frederick Mehr  
Emmett Robinson  
Chas St. Clason*

*Thos. S. Clark  
John A. McCafferty  
George W. D. Jeffery  
Louis C. Melis  
John H. Schlicht  
Charles Alexander  
Winfield M. Calverton  
John E. Beahan*

In Witness Whereof, We, the said Jurors, have hereunto set our hands and seals

this Tenth day of November in the year nineteen hundred

and Four

Wm H Dugg [SEAL.]  
Frederick Wahn [SEAL.]  
Everett Robinson [SEAL.]  
Chaas Clasen [SEAL.]  
W. S. Clark [SEAL.]  
John A. Cofferty [SEAL.]  
George H. Heffer [SEAL.]  
Louis C. Nelson [SEAL.]  
John H. Feltz [SEAL.]  
Charles Alexander [SEAL.]  
Winfield McComb [SEAL.]  
John E. Deahan [SEAL.]

BENEFITS

*None.*

# This Inquisition,

Made and taken at Bar in ~~Baltimore City Court~~, in the

~~matter of the Appeal of Circuit Court of the United States for the District of Maryland in the matter of the appeal of Laura Patterson, Laura Patterson, Trustee, Sidney Turner Dyer and Elisha Dyer, Jr., her husband and the Mayor~~

~~and City Council of Baltimore vs. George Johnson~~

from the decision of "The Burnt District Commission," in the City of Baltimore, ~~as to the condemning, opening and extending of~~ in the matter of the condemnation of lands and property for additions and extensions to be made to the Public Wharves and Docks of Baltimore City and to the basin or harbor of the City of Baltimore.

**Witnesseth,** That we, the Jurors, whose names are hereunto subscribed and seals affixed, being duly empanelled, sworn and charged to inquire into, ascertain and assess the Damages ~~and Benefit~~ to the said Appellant, accrued by reasons of the action of The Burnt District Commission in the City of Baltimore in relation to the condemning, ~~opening and extending of~~ of a lot of ground designated in the aforesaid proceedings of the "Burnt District Commission" and on the map marked No. 27 A filed with the return of said Commission by the No. 210,

having heard the evidence and duly considered the same, do find and determine the Damages ~~and Benefit~~ as follows, to wit:—

## DAMAGES.

We ascertain and determine the whole value of the aforesaid lot of ground Number 210 in fee-simple and assess the damages for taking the same to be the sum of

*Forty four hundred and Sixty two & 50/100 Dollars*  
*\$ 4462.<sup>50</sup>*

In Witness Whereof, We, the said Jurors, have hereunto set our hands and seals

this 14<sup>th</sup> day of November in the year nineteen hundred  
and five

Chas. H. Classen [SEAL]

Edward Litch [SEAL]

Frederick Mel [SEAL]

Chas Alexander [SEAL]

Wm H Boggs [SEAL]

John A Schlitt [SEAL]

James C. Melis [SEAL]

George H. Defferer [SEAL]

John E. Rehan [SEAL]

Thomas J. Zimmerman [SEAL]

James Walter Jenkins [SEAL]

J. Walker [SEAL]

No. 172 Level 2  
Page \_\_\_\_\_  
Petition Docket.

In Baltimore City Court.

John J. Turner Esq  
et al

vs.

The Mayor and City  
Commissioners of Baltimore

In the matter of the Condemning, Opening  
of lot of ground street  
extending of lot No. 210 for admission  
of Dr. J. M. Adams  
**INQUISITION**  
as to lot No. 210

Filed 14 day of April, 1903



Sidney Turner Dyer &  
Elijah Dyer Jr her husband  
Laura Patterson in her own right & as surviving Trustee  
under the last will of  
Margaret Turner Dyer &c  
Plaintiff  
vs  
The Mayor and City  
Council of Baltimore  
Defendant

Jury sworn Lot 306

1. William H. Boggs
2. Frederick Wehr
3. Everett Robinson
4. Charles H. Claassen
5. Thomas P. Clark
6. John Mc Cafferty
7. George W. Pfeffer
8. Louis E. Melis
9. John M. Schlitt
10. Charles Alexander
11. Winfield Mc Clintock
12. John E. Bohann

Pidney Turner Dyer &  
Elijah Dyer J<sup>r</sup> her  
husband. Laura Patterson  
and her own right vs. suc-  
cessors. Justice under the last  
will of Margaret Turner  
Deceased. Plaintiff

No.  
~~127~~  
172  
Civil  
"6"

The Mayor & City Council  
of Baltimore

Defendants

Luz Scurry Lot No 210

1. Charles H. Glassier
2. Edward Quirk
3. Frederick Wehr
4. Charles Alexander
5. William H. Boggs
6. John M. Schmitt
7. Louis E. Mohr
8. George W. Pfyffer
9. John E. Beahm
10. Thomas J. Zimmerman
11. James Walter Jenkins
12. Joseph L. Walker

Levy as Stuck No. 172  
Lot 306

Dist "C"

- 1 Frederick Wehr
- 2 Everett Robinson
- 3 Charles H. Classon
- 4 Thomas S. Clark
- 5 John W. Dodson
- 6 John M. Cofferty
- 7 ~~John J. Kelly~~
- 8 George W. Pfeffer
- 9 Louis E. Meles
- 10 John M. Schlitt
- 11 Charles Alexander
- 12 ~~Daniel Ross~~
- 13 William H. Boggs X
- 14 ~~J. Henry Boggs~~
- 15 Winfield M. Clintock
- 16 John E. Beaham
- 17 ~~Albert E. Oho~~
- 18 ~~Joseph S. Walker~~

No. 172 bond "B"

Levy as Stuck  
— — —  
Lot No 210.

- 1 ~~Daniel Ross~~
- 2 Edward Quirk
- 3 Frederick Wehr
- 4 Charles Alexander
- 5 William H. Boggs
- 6 John M. Schlitt
- 7 ~~F. Henry Boggs~~
- 8 Louis E. Meles
- 9 ~~Winfield M. Clintock~~
- 10 George W. Pfeffer
- 11 John E. Beaham
- 12 Thomas J. Zimmerman
- 13 ~~Everett Robinson~~
- 14 James Walter Jenkins
- 15 Charles H. Classon
- 16 ~~John M. Cofferty~~
- 17 Joseph S. Walker
- 18 John W. Dodson

No 1922 Civil 2<sup>nd</sup>

IN THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE DIS-  
TRICT OF MARYLAND.

Sidney Turner Dyer and  
Elisha Dyer, Jr., her  
husband, Laura Patterson  
in her own right and as  
Surviving Trustee &c.

VS.

The Mayor and City Council  
of Baltimore.

MOTION TO QUASH.

*Mr Clerk  
Please file  
Arthur W. Machen  
Arthur W. Machen Jr*

*Atty for Ludwig Dyer  
Dyer & others, appellants.*

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

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*Filed 9 November 1905*

No 172 Bond 6

IN THE CIRCUIT COURT OF THE  
UNITED STATES FOR THE DISTRICT  
OF MARYLAND.

Sidney Turner Dyer and  
Elisha Dyer, Jr., her  
husband, Laura Patterson  
in her own right and as  
Surviving Trustee &c.

VS.

The Mayor and City Council  
of Baltimore.

BILL OF EXCEPTIONS.

ARTHUR W. MACHEN,  
ARTHUR W. MACHEN, JR.,  
ATTORNEYS AND COUNSELLORS AT LAW,  
CENTRAL SAVINGS BANK BUILDING,  
BALTIMORE, MD.

WYOM BONDING CO., LAW PROVIDERS, 4 N. 10TH ST., BALTIMORE, MD.

Filed 9 January 1905

Sidney Turner Dyer and

Elisha Dyer, Jr., her husband

*Laura Patterson in her own right and as surviving trustee under the last will of Margaret Turner deceased and as surviving trustee for Sidney Turner Dyer and her heirs under the last will of Sidney Smith Patterson deceased and as surviving trustee under the last will of Edward Patterson deceased.*

*The Mayor and City Council of Baltimore.*

BILL OF EXCEPTIONS.

IN THE CIRCUIT COURT  
OF THE  
UNITED STATES  
FOR THE  
DISTRICT OF MARYLAND.

At the hearing upon the said Petition of Sidney Turner Dyer and Elisha Dyer, Jr., her husband, filed on the *ninth* day of *November* 1905 praying this Court to quash the proceedings of the Burnt District Commission in the matter of the lots of ground mentioned in these proceedings, the record of the proceedings of the said Commission in the case, and the maps, plats, documents and papers connected with such record, being produced and delivered to the Court pursuant to Section 12 of the Act of the General Assembly of Maryland, Laws of 1904 chapter 87, the material parts whereof in relation to the said lots or parcels of ground are as follows:

Office of the Burnt District Commission,  
Baltimore, Md., December 12th 1904.

The Burnt District Commission met this day at 10 o'clock A.M. at their office in the Court House pursuant to notice given by publication twice a week for two weeks in the "Sun" and "Baltimore American", two daily newspapers



No. 1

Date taken November 10, 1905.

# Stenographers' Transcript.

First Day's Proceedings.

vs. to Lot No 306, Plot of Rural District  
Commission

Dyer & Patterson

VS.

Mayor & City Council.

~~JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerks' Office, Criminal Court,  
BALTIMORE, MD.~~

Peckin & Johnson,  
Stenographers.

T= 180 pages of transcript

Date taken November 10, 1905.

# Stenographers' Transcript.

SECOND DAY'S PROCEEDINGS.

In the United States Court for the District  
of Maryland, in the matter of Appeal from  
the award of the Burnt District Commission,  
as to Lot 306. Laura Patterson, et al.

VS.

The Mayor & City Council of Baltimore.

Pechin & Johnson,  
Shorthand Reporters,  
Equitable Building, Baltimore.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerk's Office, Criminal Court,  
BALTIMORE, MD.

Used in No. 173

Sidney Turner Dyer &  
Elijah Dyer J<sup>r</sup>'s husband  
Laura Patterson in her own  
right as surviving Trustee  
under the last Will of  
Margaret Turner Deceased &c

Civil  
by agreement  
instead of  
No. 172  
Civil  
"C"

The Mayor and City  
Council of Baltimore

Jury

1. F. Henry Boggs
2. Daniel Boss
3. William R. Constable
4. William H. Boggs
5. Winfield M<sup>c</sup>Clinton
6. John E. Beahan
7. Albert E. Orr
8. Joseph S. Walker
9. William M. Pogram
10. George H. Wilson
11. Kohlman Gerber
12. James Walter Jenkins

Used as such & to  
apply to No. 173 instead of  
No. 172 by  
agreement  
of counsel

- 1 Daniel Boss
- 2 William R. Constable
- ~~3 Frederick Weber~~
- 4 William H. Boggs
- 5 F. Henry Boggs
- 6 Winfield M<sup>c</sup>Clinton
- 7 John E. Beahan
- 8 Albert E. Orr
- 9 Joseph S. Walker
- 10 William M. Pogram
- 11 George H. Wilson
- 12 Kohlman Gerber
- ~~13 Thomas S. Clark~~
- 14 James Walter Jenkins
- ~~15 John W. Dodson~~
- ~~16 John McCafferty~~
- ~~17 John J. Kelly~~
- ~~18 Arthur E. Hungerford~~

Sidney Turner Dyer &  
Elijah Dyer J<sup>r</sup>'s husband  
Laura Patterson in her own  
right as surviving Trustee under the last  
Will of Margaret Turner Deceased &c

No. 172  
Civil "C"

The Mayor and City Council  
of Baltimore

By inadvertence the counsel supposed that 172 was the case which related to cable street alone, when in point of fact 173 was that case. The motion to quash was entitled as of 172 when in point of fact it should have been entitled as of 173, and the bill of exceptions was entitled as of the motion and the Clerk has entered the jury as sworn in 172 when in point of fact the case actually tried was 173 and all the motions and proceedings related to it.

It is agreed therefore by counsel that the titling of the motion to quash and the bill of exceptions be changed from 172 to 173 and that the Clerk enter the swearing of the jury in 173 instead of 172.

Eugene Allan. To  
Att. for Mayor  
& C. C. of Board  
Arthur W. Hildeman  
Arthur W. Macken



# This Inquisition,

Made and taken at ~~Bar~~ in Baltimore City Court, in the  
~~matter of the Appeal of~~ in the Circuit Court of the United States for the District of  
Maryland in the matter of the appeals of Laura Patterson, Laura Patterson,  
Trustee, Sidney Turner Dyer and Elisha Dyer, Jr., her husband  
from the decision of "The Burnt District Commission," in the City of Baltimore, as to the condemning, opening and  
extending of in the matter of the condemnation of lands and property for ad-  
ditions and extensions to be made to the Public Wharves and Docks of Bal-  
timore City and to the basin or harbor of the City of Baltimore

**Witnesseth,** That we, the Jurors, whose names are hereunto subscribed and seals affixed, being  
duly empanelled, sworn and charged to inquire into, ascertain and assess the Damages ~~and Benefit~~ to the said  
Appellants accrued by reasons of the action of The Burnt District Commission in the City of Baltimore in relation  
to the condemning, ~~opening and extending~~ of the lot of ground designated in the aforesaid  
proceedings of the "Burnt District Commission", and on the map marked  
number 27 A filed with the return of the said Commission by the Number 221,

having heard the evidence and duly considered the same, do find and determine the Damages ~~and Benefit~~ as follows,  
to wit:—

## DAMAGES.

We ascertain and determine the whole value of the aforesaid lot of ground,  
Number 221 in fee-simple and assess the damages for taking the same to be  
the sum of *Seventeen thousand and thirty*  
*four dollars*

*\$17,034 —*

In Witness Whereof, We, the said Jurors, have hereunto set our hands and seals  
this Eighth day of Nov: 2 in the year nineteen hundred  
and six

J. Henry Rogers [SEAL.]

David Ross [SEAL.]

Wm. H. Rogers [SEAL.]

W. H. Columbus [SEAL.]

John E. Deagan [SEAL.]

J. B. [unclear] [SEAL.]

J. Walker [SEAL.]

Wm. M. Pagnans [SEAL.]

Edw. Wilson [SEAL.]

Kabner Barber [SEAL.]

James Walter Jenkins [SEAL.]

[SEAL.]



No. 173. Sub "6"

Page

Petition Docket.

Circuit Court of the U. S.  
In ~~Baltimore City~~ Court.  
Oct of '06.

Laura Patterson et al

vs.

Mayor City  
Council of Balto

In the matter of the Condemning, ~~Open~~  
~~of lands and property for~~  
~~ing and Extending of~~ street

Additional regulations to  
whenever such

INQUISITION

Filed 8 day of Nov 1905

No. 173 Civil "C"

Page \_\_\_\_\_

Petition Docket.

Circuit Court of the United States  
In ~~Baltimore City Court~~  
for the District of Maryland

Laura Patterson  
et al

vs.

Mayor & City Council  
of Baltimore

In the matter of the ~~Condemning, Open-~~  
~~ing and Extending of~~ \_\_\_\_\_ ~~street~~

**INQUISITION**

Filed 20 day of February, 1906

# This Inquisition,

Made and taken at Bar in ~~Baltimore City Court~~, in the  
~~matter of the Appeal of the Circuit Court of the United States for the District of~~  
Maryland in the matter of the appeal of Laura Patterson, Sidney Turner  
Dyer and Laura Patterson, trustees,  
from the decision of "The Burnt District Commission," in the City of Baltimore, ~~as to the condemning, opening and~~  
~~extending of~~ in the matter of the condemnation of lands and property for addi-  
tions and extensions to be made to the Public Wharves and Docks of Balti-  
more city and to the Basin or Harbor of the city of Baltimore.

**Witnesseth,** That we, ~~the Jurors, whose names are hereunto subscribed and seals affixed, being~~  
~~duly empanelled, sworn and charged to inquire into, ascertain and assess the Damages and Benefit to the said~~  
~~Appellant, accrued by reasons of the action of The Burnt District Commission in the City of Baltimore in relation~~  
~~to the condemning, opening and extending of~~ this case having been submitted to the court  
without the intervention of a jury, and by agreement of counsel,

having heard the evidence and duly considered the same, do find and determine the Damages and Benefit as follows,  
to wit:—

## DAMAGES.

For the fee-simple interest in all that lot of ground situate on the  
south side of Cable street and designated by the Number 221 in the return  
of the "Burnt District Commission" and shown on Map Number 27-A showing  
property to be acquired for Public Wharves and Docks the sum of twenty-seven  
thousand four hundred and thirty-one dollars & twenty-five cents (\$27,431.25).

In testimony whereof, I, Thomas J. Morris, Judge of the Circuit  
Court of the United States for the District of Maryland, have hereunto set  
my hand and seal this 20th day of February, 1906.

Thos. J. Morris (SEAL)  
Judge

No. 2

Date taken November 4, 1905.

# Stenographers' Transcript.

Laura Patterson, et al. )  
vs. ) In the United States Court  
Mayor & City Council. ) for the District of Maryland

SECOND DAY'S PROCEEDINGS.

VS.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerks' Office, Criminal Court,  
BALTIMORE, MD.

PECHIN & JOHNSON  
Stenographers.  
Equitable Building, Baltimore.

No. 3

Date taken

# Stenographers' Transcript.

November 6, 1905.

LAURA PATTERSON, et al.

VS.

The MAYOR & CITY COUNCIL OF BALTIMORE.

PECHIN & JOHNSON,  
Shorthand Reporters,  
112 Equitable Building.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerks' Office, Criminal Court,  
BALTIMORE, MD.



No. 1

Date taken November 3, 1905.

# Stenographers' Transcript.

LAURA PATTERSON )  
SIDNEY TURNER DYER ) In the  
ELISHA DYER JR., Appellants ) United States Court  
VS. ) for the  
The MAYOR and CITY COUNCIL ) District of MD.

FIRST DAY'S PROCEEDINGS.

VS.

Testimony of Eugene Blake.

Also all other testimony of First Day  
(subsequently written up)

Pechin & Johnson,  
Stenographers;

Equitable Building, Baltimore.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerk's Office, Criminal Court,  
BALTIMORE, MD.



No. 194  
Mayor's City  
Council of Baltimore

05

Louisa Patterson

---

Manuscript of Record

Filed 14 August 1905

THE MAYOR AND CITY COUNCIL : APPEAL TO THE  
OF BALTIMORE : CIRCUIT COURT  
VS. : OF THE UNITED STATES  
LAURA PATTERSON &c. : FOR THE DISTRICT OF MARYLAND

-----  
APPEAL FROM AN AWARD OF THE BURNT DISTRICT COMMISSION  
-----

W. Cabell Bruce Esq.

For Appellant

Arthur W. Machen Esq.

Arthur W. Machen Jr. Esq.

For Appellees.  
-----

No. 195 Civil 2<sup>nd</sup>

In the Circuit Court of the  
United States for the District  
of Maryland.

Civil Docket C Folio 194.

.....

Mayor and City Council of Bal-

timore,

vs.

Sidney Turner Dyer, et al.

.....

Mr. Clerk:

Please file.

*W. Cecil Jones*  
City Solicitor.

Filed 30 February 1906

Mayor and City Council  
of Baltimore,

vs.

Sidney Turner Dyer, et al.

) In the Circuit Court of the  
)  
) United States for the Dis-  
) trict of Maryland.  
)  
) Civil Docket C Folio 194.

Mr. Clerk:

Please enter the above entitled case  
"dismissed", the Mayor and City Council of Baltimore to pay  
the costs.

W. Cabell Bunge  
City Solicitor.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

I N D E X of the F I R S T D A Y.

|                   | Direct | Gross |
|-------------------|--------|-------|
| Stewart Goddard,  | 2      | 7     |
| W. W. Harriott,   | 18     | 20    |
| S. P. Franklin,   | 43     | 44    |
| Eugene Blake,     | 45     | 49    |
| W. D. Poul'ney,   | 69     | 77    |
| De Wilton Barnes, | 90     |       |
| Jas. F. Morrow,   | 98     | 102   |
| Jas. F. Kelly,    | 115    | 120   |
| C. F. Manning,    | 123    | 126   |

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

I N D E X of the F I R S T D A Y.

---

|                   | Direct | Cross |
|-------------------|--------|-------|
| Sigmond Goodman,  | 2      | 7     |
| T.W. Marriett,    | 18     | 20    |
| J.T. Martin,      | 43     | 44    |
| Eugene Blake,     | 45     | 49    |
| Wm.D. Foulisney,  | 59     | 77    |
| <br>              |        |       |
| De Wilton Barnes, | 90     |       |
| Jas. F. Morrow,   | 98     | 102   |
| Jno. J. Kelly,    | 115    | 120   |
| C.P. Manning,     | 123    | 126   |

---



IN THE UNITED STATES COURT FOR THE DISTRICT OF MARYLAND

Sidney Turner Dyer, and )  
Elisha Dyer, Jr., )  
her husband, )  
and )  
Laura Patterson, *in her own* )  
*right and as surviving Trustee under* )  
*will of Margaret Turner.* )  
- VS - )  
The Mayor and City Council )

of Baltimore.

Baltimore, Maryland, November 9, 1905.

The Court met at 10 o'clock a. m.

Present in behalf of the plaintiffs, Messrs. Machen  
and Machen, Mr. Rose and Mr. Bryan.

Present in behalf of the defendants, Messrs. Poe  
and Lauchheimer.

Mr. Machen, Junior, made the opening statement in  
behalf of the plaintiffs.

Mr. Poe made the opening statement to the jury in  
behalf of the defendants.

The COURT: (Referring to opening statement made by Mr.  
Poe) I think there is another thing that might be said  
to the jury, and that is that if any of the members of the

jury feel conscientiously that they have personal knowledge and experience upon which they can rely as to values of property in that part of the city that they are not expected under their oath to disregard that, that they have a right to test the weight of the testimony of the witnesses by any such personal knowledge and experience that they have themselves.

Mr. ROSE: We would like, your Honor, to reserve an exception to that statement.

The COURT: Very well.

Whereupon ---

SIGMUND GOODEFUND,

a witness produced in behalf of the plaintiffs, having been duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Machen, Jr.

Q. What is your residence and occupation?

A. Baltimore; sales agent for Fleischmann & Company.

Q.Q. Will you kindly tell the jury in your own way all that you know about the circumstances of the sale of lot Number 303 on the burnt district plat made by Mr. Charles J. Bonaparte to your company?

A. We purchased this lot, I think it was, in February,

1904, just after the fire.

Q. That was, of course, before the dock system was thought of?

A. Yes, sir.

The COURT: The fire was February 7 and 8, 1904?

The WITNESS: Yes, sir. We commenced negotiating for it I think the second day after the fire.

Q. (Mr. Poe) Now will you tell the jury the course of negotiations and the price, and so on?

A. In the first place we had agreed to sign a lease with Mr. Bonaparte on Wednesday after the fire for a renewal, I think it was for three years, at an increased rent, and after the fire we tried to buy it so we could build on it. I think we closed the transaction about two or three weeks afterwards, for five thousand dollars, after inquiring around and taking into consideration what we thought it was worth; we came to the conclusion we were getting it at a fair price, taking into consideration the docks and the facilities that we were having there.

Q. What was the price you purchased for from Mr. Bonaparte?

A. Five thousand dollars.

Q. That is a little over two hundred dollars a front

foot. Was this lease agreed upon before or after the fire?

A. It was agreed upon before the fire.

Q. Just before the fire?

A. Yes, sir.

Q. But was, to take effect, I understood you to say, after the fire?

A. The lease was made before the fire with no expectation of a fire.

Q. Of course. It was to take effect ---

A. On the 1st of May, 1904.

Q. Yes. I understood you to say ---

The COURT: Were you already tenants of the property?

The WITNESS: Yes, we were tenants from 1900.

Q. (Mr. Machen, Jr.) I understood you to say that you approached Mr. Bonaparte immediately after the fire in regard to purchasing the property?

A. Yes. I think it was on Tuesday morning I called on Mr. Bonaparte up and asked him if it was any use to come up to sign a lease, that I did n't think the house was standing, and he agreed that it was not worth while to come up. So the next best thing we thought was to try

to purchase the property, so as to build on it, and in three or four weeks, I think we agreed on a price.

Q. What was the original price asked you?

A. The price originally asked us was \$6000.

Q. You did not agree to that?

A. No, sir. The price we paid was \$5000.

Q. I suppose there must have been some discussion between you and Mr. Bonaparte?

A. We were about three weeks, and then Mr. Rowe, our general manager, came on, and after inquiring among a great many people he concluded that \$5000 was a fair price.

A. After inquiring around he concluded that was a fair price?

A. Yes.

Q. Will you tell the jury what advantages that property has for you in your business? First, I will ask you what is your business?

A. We are distributors, we sell to the wholesale trade. The advantage that property had was the same advantage that it would have for anybody who shipped in cars, the same as to anybody else on the dock. In this way:

Our cars were brought to us on barges and we could unload a car at very little cost, with the assistance of one man; we could unload a car in about twenty minutes. The scow would bring the cars to our door. We had the advantage of all the railroads that came into Baltimore, because all railroads deliver their cars on scows that way where you have the place for them to come up. If we had been on a single track road we would have been at the mercy of that road, unless we wanted to pay the trackage of what the other roads would charge us. And then again, we were right in the heart of the city; it was the only dock within a stone's throw of the wholesale district of the city, the post-office and the banks.

Q. The only large dock at all events. You said if you were on a single track road and so forth. I do not know that the jury understood that exactly.

A. I guess I made a mistake; I meant to say on one road alone, if we were on the B. & O. alone or the Pennsylvania Road alone; I did not mean a single track.

Q. I wanted to make that clear, that you meant that if you were on only one road.

A. I should have said that, yes.



Q. But here you had an advantage?

A. On any road that ran into Baltimore at the present time, or any road that would come in here hereafter.

Q. Because they must all get to the water?

A. Yes, sir, they get to the water.

Q. You propose, I suppose, to build on that property?

A. We had our plans drawn and submitted to the building inspector.

Q. What is the business of Fleischmann & Company?

A. My department is wholesale whiskey. We are distributors to the trade.

#### CROSS EXAMINATION

By Mr. Poe.

Q. Fleischmann & Company is a wealthy concern, is it not?

A. They always have paid me my salary ---

Q. I understand that, but you testified in another case in the City Court and you did not have any hesitancy there in saying whether they were rich or not.

A. You asked me what they were worth and I said that I had never counted their money, that I only knew it from hearsay, from Dun and from Bradstreet.

Q. And they are rated at what?

Mr. BRYAN: We object to that.

(Argument on the objection followed.)

Mr. POE: We expected to show that here was a wealthy firm that owned the adjoining lot and they wanted this lot for the purpose of extending their business of re-building

(Further argument followed).

The COURT: I do not know that you have the right to go into the individual wealth of the firm. You may ask the firm's business.

Q. (Mr. Poe) The firm that purchased this lot was known as what?

A. As Fleischmann & Company at that time.

Q. They do a large business?

A. Well, we did a fair business here, I don't know how large it was.

Q. How many branches has the concern?

A. The whiskey department has got about six branches.

Q. Does it do a large business in the different branches?

A. We do, I guess, about fourth largest in the United States, but there are plenty of others larger than we are.

Q. Is it a rich concern?

Mr. BRYAN: The same objection is made to that question, as it is the same question that he asked before.

The COURT: The objection is sustained. You can, however, go into the extent of their business.

Q. (Mr. Poe) What is the volume of their business here in Baltimore?

The COURT: I think Mr. Goodman said they were fourth.

The WITNESS: I said, sir, I thought we did about <sup>the</sup> fourth volume of business in the United States.

Q. (Mr. Bryan) You mean the fourth leading house?

A. The fourth leading house.

Q. (Mr. Poe) What is the volume of your business?

A. I should judge about \$500,000 or \$600,000 that we do in Baltimore.

Q. How about the whole volume of business you do in all of the branches?

A. I don't know anything about that, I cannot answer that.

Q. The firm ~~that~~ occupied <sup>particular</sup> this property since 1900, I think you said?

A. I think it was 1900.

Q. Will you tell us what rent the firm paid?

Mr. BRYAN: If your Honor please I do not know --- to be perfectly frank with the Court --- whether this would throw any light on it or not. If it does it ought to come in and if it does not it ought not to come in. What we are dealing with is the value of vacant ground. Does the rent that is paid for improved property throw any light on it?

The COURT: I think you stated in the opening statement that it was very difficult to establish a market value for property down here, in the sense that it was not something that was traded in every day.

Mr. BRYAN: Yes, sir, that is undoubtedly so.

The COURT: And therefore it seems to be proper to go into all the elements, use, occupation and rent, which would tend to throw light upon the property, either improved or unimproved.

Mr. ROBE: Your Honor will allow us to note an exception.

The COURT: Yes.

Q. (Mr. Poe) Now, what was the rent?

A. \$500 a year, I think; \$41.25 a month, or something like that.

Q. You paid \$500 for this property from 1900 down to May, 1904, or at least the lease would have expired then?

A. Yes, sir.

Q. That was, of course, the property improved as it was by a warehouse?

A. Yes, sir.

Q. Will you tell the jury what was the character of the warehouse that was on that property that you paid \$500 a year for.

Mr. BRYAN: The same objection, and I suppose your Honor makes the same ruling, <sup>and</sup> we note an exception?

The COURT: Yes.

A. It was a four-story building.

Q. (Mr. Poe) A brick building?

A. Yes, sir.

Q. Was it in good repair?

A. Yes, sir.

Q. The landlord was Mr. Bonaparte?

A. Yes, and then we had a wharf, you know, which we considered very valuable.

Q. I will come to that in a minute, but referring to the improvements, it was a four-story brick warehouse in good repair?

A. Yes, sir.

Q. Was that warehouse adapted to the purposes of your

business, Mr. Goodman?

A. Yes, sir. I think our going there shows that.

Q. I think so too, but I do not want to have any matter of argument, I want your positive statement about it.

A. Yes, sir.

Q. You occupied the adjoining property too, did you not?

A. Yes, sir.

Q. The Fleischmann Company owned a leasehold interest in the adjoining property, did it not?

A. I think so, the Fleischmann Company or Julius Fleischmann, one or the other, I don't know which.

Q. A leasehold interest in the adjoining property?

A. Yes, sir.

Q. How long had you occupied the adjoining property?

A. I think two years.

Q. Did you occupy the Bonaparte lot before you occupied the lot adjoining it?

A. Yes.

Q. And you occupied the other lot two years?

A. Yes, sir.

Q. How was that lot improved?

A. That has <sup>it</sup> the same style of a house on it.



Q. Was that warehouse adapted to the purposes of your business too?

A. I should judge so; we were there.

Q. Were the two buildings used in conjunction or were they used separately?

A. In conjunction, with fireproof doors between.

Q. They actually communicated, did they?

A. Yes.

Q. And you had fireproof doors?

A. Yes, so we could get insurance; otherwise they would not give us any.

Q. You occupied two houses. Why did you occupy two, was not one enough for you?

A. I think if we had two it is conclusive that we needed them.

Mr. ROSE: Our exception applies to all this testimony, your Honor.

The COURT: Yes, sir.

The WITNESS: I will answer this question this way.

in our business we needed a certain <sup>number</sup> lot of square feet of <sup>space</sup> ground which we could have had on two lots, or we could have had a six-story building on one lot, which would have

for the same price that we could put up a four-story building on a lot twice as wide.

Q. But you did as a matter of fact occupy the two lots for the purposes of your business?

A. Yes, we did, but we needed it and we did not want to build on our lot at that time.

Q. At that time. How were those lots situated for the purposes of your business as compared to any other property in the city?

A. I consider them the best in the city of Baltimore for our business, or any other business that receives cars the way we did.

Q. So, they were the best lots in the city of Baltimore for your business and also for any other business of the same general character?

A. For anybody who received goods by cars.

Q. How long had these lots been especially adapted for the purpose of your business, from the beginning, or since the fire?

A. I think the city of Baltimore only woke up to the fact in the last three years.

Q. These lots, therefore, were peculiarly adapted for

the purposes of your business, and they were improved by these warehouses which were adapted for the purposes of your business. Is that true?

A. At that time, yes, sir.

Q. And after the fire did you make any effort to locate anywhere else?

A. Yes, sir.

Q. What luck did you have, could you get a place that suited you as well?

A. We tried to get lots on Pratt street or streets where there were cars, but prices had increased so much after the fire that we could not buy, and we met Mr. Bonaparte's terms, and we thought we were getting a lot at a fair price, and we gave up the idea of building a six-story building after we saw we could get this lot at this price. We thought it better to put up a four-story building on two lots rather than a six-story building on our one lot, although the latter would have answered us equally as well, because the improvements they have now in elevators and so on are very cheap.

Q. Do you know anything of your own knowledge about the purchase of the leasehold interest of the lot ---

A. I think so.

Q. Tell the jury about that.

A. We purchased the leasehold interest for \$2500, and \$3500 in the ground rent, which we will redeem in cash, making \$6,000 for the lot. We considered that a fair price in 1902.

The COURT: What is he speaking about?

Mr. POE: The lot adjoining the Bonaparte lot.

The WITNESS: Which we purchased in 1902.

Q. (Mr. Poe). Was that lot immediately south or immediately north of the Bonaparte lot?

A. To the north. You see at that time we were leasing from Mr. Bonaparte one house, and we purchased this. We could have purchased somewhere else at that time, but we thought that was a fair price.

Q. So in 1902 you purchased the leasehold interest from Mr. Grane. *Brane(?)*

A. Yes, sir.

Q. And you purchased a leasehold interest for \$2500?

A. And redeem the ground rent in 1907 for \$3500.

Q. So you paid how much in the way of ground rent?

A. 6 per cent. I think it was \$210 a year.

Q. And you paid \$2500 for the leasehold interest with

the right to redeem the ground rent in 1907 <sup>for</sup> ~~of~~ \$3500?

A. For \$3500.

Q. There was a warehouse on that property at the time you purchased it?

A. Yes.

Q. It was suitable for your purposes?

A. We put in \$2000 after we purchased it.

Q. You put in \$2000 there?

A. Yes.

Q. Mr. Goodman, the warehouse on the lot applied to the leasehold interest in 1902; what was its condition at the time of the purchase, was it in a reasonable state of repair?

A. It had been used for an oil house and we changed it for a whiskey house. We did not want any of the oil for our whiskey.

Q. How about the building itself, was it in good condition?

A. I just answered that question.

Q. If you have done so I would like you to answer it again.

A. I said we fixed it up and put it in condition for us to use as a whiskey house.

Q. You mean you had to put down new floors?

A. Yes.

Q. How about the walls, were they in good condition?

A. I think they were in good condition. That has been two years ago ---

Q. I understand, but we want your best recollection on the subject.

(Testimony of witness concluded).

Whereupon -

TELFAIR W. MARRIOTT,

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Rose.

Q. You are a real estate agent in Baltimore?

A. Yes.

Q. And have been in business how long sir?

A. Some eighteen years for myself.

Q. Have you had much familiarity in that time with dock and wharf property, especially in the neighborhood of this dock?

A. Yes, I have handled it.



Q. Have you had a good deal of business in that direction or not?

A. In that locality, yes. I was one of the experts appointed by the Board of Estimates after the fire to value the widening of the streets and so forth.

Q. Do you know this property that is in controversy now, Number 221 Smith's dock?

A. Yes, sir.

Q. Will you say what, in your judgment, is its reasonable value, in its present unimproved condition as of today.

A. I think the lot is valued at \$200 per front foot. That would be \$5000 --- 25 feet.

Q. Can you you state any reasons you have for the judgment you have expressed?

A. The lot is well situated on Smith's wharf and the sales of adjacent property in that neighborhood, on Pratt street, and Number 213 Smith's wharf, Mr. Fleischmann's property --- in which I was dealing at the time, I was negotiating for him --- I consider that \$200 per front foot is a reasonable price for it.

CROSS EXAMINATION

By Mr. Poe.

Q. You follow the sales a good deal, do you not?

A. I try to.

Q. You keep everything in a book?

A. Every sale that I can.

Q. You keep every sale that is made, you keep a record of them, do you not?

A. I try to.

Q. Do you fix your values from one sale or do you take the different sales or do you take different sales from time to time?

A. I figured from different sales from time to time in the conditions of affairs, how they change.

Q. Now I want you to tell the jury whether prices were high or not after the fire, or were they about the same?

A. In what locality?

Q. In this locality.

Mr. MACHEN, Jr.: I object to that because it is perfectly evident that there cannot be any sales to-day.

(Discussion followed).

Mr. POE: I will put it this way:

Q. Is there any difference in values as of to-day and

two or three weeks after the fire?

A. In the wharf property?

Q. Yes.

Mr. BRYAN: We object to that.

The COURT: What is the purpose of the question?

Mr. POE: The purpose of the question is to see whether, in his opinion, property is as valuable to-day as it was right after the fire.

Mr. BRYAN: But that was not the question.

Mr. POE: I ask him if the dock and pier property in the neighborhood of this property is as valuable to-day as it was two or three days after the fire --- the market price.

The COURT: I overrule the objection. What the jury have to determine is the value of the property. Of course they are not to consider a depreciation that has come from the knowledge that this property has to be taken by the city.

A. Property along the wharves has not depreciated since the fire.

Q. (Mr. Poe) Values appreciated very rapidly right after the fire, did they not?

Yes,

A. there was a great demand there all of a sudden, everybody wanted it.

Q. Did not that cause it to suddenly go up?

A. No, sir. It increased because corporations were grabbing that property along there, trying to get hold of it; commercial corporations were trying to get there. The great difficulty was to get 100 feet or 50 feet along there.

Q. How about 25 feet?

A. Well, 25 feet, if a man got 25 feet he would want more if possible. Commercial corporations need more than 25 feet.

Q. There was a great demand, then, for property in the dock district immediately after the fire?

A. There is a demand there now. Everybody wants to get on the wharf, or at least a lot of corporations want to get there, commercial corporations and railroads and others.

Q. You know the Merchants' and Miners' Transportation Company?

A. You mean their wharf property?

Q. Yes.

A. Yes.

Q. You know they made a purchase right after the fire down on McElderry's Wharf?

A. Yes.

Q. Do you know how much they paid for that property?

A. If you will give me the number ---

Q. I am asking you as an expert, do you not know, you having kept account of the sales, how much they paid for the lot they purchased, how much it was a front foot?

Mr. MACHEN, JR.: Whereabouts on McElderry's Wharf is this?

The WITNESS: You mean the transfer from Graham. Eckle to the Merchants' and Miners' Transportation Company, east side of McElderry's Wharf, 60 feet by 60 feet, \$8500?

Q. (Mr. Poe) Yes, that is it. What is the property?

A. Near Mill street.

Q. Number 331 and 33 McElderry's Wharf, is it not?

A. I am not positive about the number, but it is in that locality. Then a transfer of Mason ---

Q. (Interrupting) Wait a minute ---

Mr. BRYAN: Let us see where that is first. And let his Honor see where it is.

Mr. MACHEN, JR.: Long Dock is a public dock, is it not?

Mr. POE: I think I ought to be able to finish my cross examination without interruption, your Honor.

Mr. MACHEN: What we want to show is that this property has no wharf rights, and it is so remote as to be of no value at all in this case.

Mr. BRYAN: Show his Honor where it is. We think it is too remote to throw any light on this.

(The COURT examined the map).

The COURT: (After examination) I think it is admissible.

Mr. MACHEN, JR.: We respectfully note an exception.

The COURT: Yes, sir.

Q. (Mr. Poe) You know of that sale?

A. Yes, sir.

Q. That was a purchase by the Merchants' and Miners' Transportation Company?

A. Yes.

Q. That was one of the big corporations anxious to get property down there?

A. Yes.

Q. And it was 60 feet?

A. Yes.

Q. And what those corporations were after were big lots, is not that so?

A. A steamboat company would naturally want a big lot.

Q. And the bigger the lot the more valuable it would be for their purposes. Is not that so?

A. No doubt.



Q. Is that so?

A. Yes.

Q. How much does that show a front foot?

A. \$141.

Q. And that was made when?

A. I have n;t got the date.

Q. That was made after the fire?

A. After the fire, yes.

Q. How long after the fire, if you know?

A. No, I did n't make the sale or have anything to do with it and I don't know. It is a matter of record.

Mr. BRYAN: Do you know anything about the sale of your own knowledge?

The WITNESS: No, sir.

Mr. BRYAN: Of course he cannot tell about that, then.

Mr. POE: I think he can on cross examination.

Mr. BRYAN: O no. I did not know that fact before.

The COURT: I think Mr. Marriott said that he valued this lot from his knowledge of property and sales in that neighborhood. Now, this is one of the sales that entered into his judgment, presumably.

Mr. BRYAN: He did not say so.

The COURT: He has been examined as to other sales,

and he has said that a general knowledge of sales there influenced his judgment.

Mr. BRYAN: You will allow us our exception, your Honor?

The COURT: Yes.

Q. (Mr. Poe) This lot we are speaking of has a railroad in the rear, down Mill street?

A. Yes.

Q. Is that an element of value in your opinion, does that add value to the lot?

A. Yes.

Q. It is a great element of value, is it not?

A. Yes; but these people may have sold this property at a low value directly after the fire. They may not have known who wanted it. For instance, I sell property very often in my own name, or I may buy or sell property in the name of my clerk, and we make deposits and make forfeits, and these people in this case may have sold it not knowing to whom it was to go.

Q. Suppose it was sold two months after the fire, would that make any difference in your opinion?

A. That carries out my opinion. The dock loan had not been voted on two months after the fire, and the people did not know the state of affairs and did not know about the

increase For instance, an individual outside the city would not know that corporations were grabbing all the land along there.

Q. Let me ask you about Long Dock as compared to Smith's dock. How would you say they compared?

The COURT: You mean as to comparative values?

Mr. POE: Yes.

Mr. MACHEN, Jr.: We object to that. We do not think that a comparison of values is admissible.

The COURT: I think you can ask him which property is better situated.

Mr. MACHEN, JR.: We reserve an exception, Your Honor.

A. You mean per square foot ---

Q. (Mr. Poe) No ---

A. A foot on Smith's wharf and a foot on Long Dock?

Q. Yes.

A. There is little difference except Smith's wharf is nearer up town and would probably be a little more valuable.

Q. How about this property on Smith's wharf running back to Allison alley ---it has no railroad in the rear?

A. No.

Q. This other property runs back to Mill street, and it has a railroad. Which is the more valuable, property ad-

jaacent to an alley or to a street?

A. Property adjacent to a street.

Q. Is this property better than the other because it is on a street and the other is on an alley or because it has a railroad on it?

A. Because it has a railroad and because Mill street is 40 or 50 feet and Allison alley is only 20 feet.

Q. Then, all things being equal, the lot on McElderry's wharf purchased by the Merchants' and Miners' Transportation Company ought to bring as much as the lot we are condemning, ought it not?

Mr. BRYAN: We object to that for the simple reason that all things never are equal and it is causing an uneven comparison.

Mr. POE: I will put the question in a different form.

The COURT: The jury must be supposed to have intelligence enough to weigh the circumstances which distinguish one lot from another as to value.

Mr. BRYAN: But he wanted the witness to assume that they were equal.

Mr. POE: I will ask him this question.

Q. Take this lot we are condemning on Smith's wharf, 221 Smith's wharf, and compare it with the lot purchased by

the Merchants' and Miners' Company, and I will ask which is the more valuable lot in your opinion per front foot?

A. I admit that I prefer the lot with the railroad in the back of it on a wider street, rather than property with an alley.

Q. How much more valuable, 25 per cent better?

A. No.

Q. What would you say as to the percentage?

A. But Smith's wharf is nearer up town and you have a shorter haul. It is a great advantage to have a railroad in the back of it with a switch to it.

Q. How much superior is the lot purchased by the Merchants' and Miners' Company than the lot we are condemning, per front foot?

A. In degree of percentage?

Q. Yes.

A. It is worth more money than the Smith's wharf lot for the reason that there is a railroad and Mill street in the back of it.

Q. And it is a large lot, too, 60 feet as against 25?

A. A larger lot. I do not think you have a right to bring in that value, when that property was grabbed up by Mr. Martien quickly after the fire. I bought some snaps

myself. Mr. Martiendid <sup>did</sup> that trick and he did it quickly.

Q. Tell us some of the snaps that you purchased after the fire in that district?

A. I did n't buy any in that district after the fire, I could not get them.

Q. Why --- the demand was right after the fire, was it not?

A. No, the demand is right along there now.

Q. Did you not say that there was a sudden demand right after the fire?

A. Naturally people who were not on the wharves before wanted to get there and tenants who were burnt out wanted to get permanent quarters, wanted to locate there permanently. I am telling you frankly ---

Q. I know you are. I only want the facts. You also know about the purchase of Mr. Rufus Woods' on Buchanan's Wharf in 1902 or 1903?

Mr. MACHEN, JR.: May it please your Honor, we think think that the witness ought to be asked first whether he bases his judgment upon these sales, and if he says he does then he canbe interrogated about them. But it is purely hearsay to ask him about sales upon which he does not j base his judgment at all.

The COURT: I think they all tend to throw some light



on values down there.

Mr. MACHEN, Jr.: But he does not know of the sales.

Mr. POE: Let us see.

Q. (Mr. Poe) You keep a record of all sales?

A. I try to.

Q. What do you keep that record for?

A. To be posted, to know who owns property and what it sells for. If I want to find out quick I turn to the books.

Q. Do you not keep the record for the purpose of throwing some light on the value of property, so far as your judgment is concerned?

A. Undoubtedly.

Q. You do not always accept one sale as fixing the value, do you?

A. No, sir.

Q. Do you not look at all the sales as they are reported and as you can find them out from time to time as to what they show as to individual properties?

A. Yes, I do.

Q. Did you not do that in this case?

A. I did.

Q. Therefore, have you not a record of the Woods sale,

232 --- 240 Buchanan's Wharf?

A. 136 feet, 6 inches by 65 feet?

Q. Yes.

A. I have no record of it, I have no reference to it, whether it has been sold or not or who bought it.

Mr. BRYAN: Let him see the book.

The WITNESS: Surely. (Handing Mr. Poe the book from which he was refreshing his memory).

Q. (Mr. Poe) You have Rufus Wood, 1314 Madison Avenue?

A. That is his address.

Q. 136 feet, 7 inches by 65 feet, \$9,225. What does that mean?

A. That is an old assessment. This is a copy of the city assessor's books, and I tried to keep it up to date when sales were made.

Q. You do not know about that sale?

A. No, I do not. You see it is blank there.

Q. Do you remember the sale to Mr. Kelly, of 243 and 301 Smith's wharf?

A. No --- Know of it in what way?

Q. Have you not a record of it?

A. He sold it to the Mayor and City Council; I have a

record of that.

Q. I do not mean that.

A. No, I have no other record of it. Mr. Kelly owned it before the fire.

Q. Have you a record in your books of any sales before the fire?

A. Yes.

Q. Have you not a record of sales in this immediate vicinity before the fire, in that neighborhood, Buchanan's wharf or Smith's wharf?

A. Take the lot on South Street ---

Q. No, I want to keep you on the docks.

A. What was your question?

Q. Whether you have a record of any sales on Buchanan's wharf before the fire?

Mr. MACHEN, Jr.: You mean unimproved property?

Mr. POE: Yes.

Mr. MACHEN, Jr.: Of course, your Honor understands that we object to all sales of improved property?

The COURT: I understand and the objection is overruled.

You must get at the values here the best you can.

Mr. MACHEN, Jr.: I understand that your Honor has passed

upon it, but I wanted it understood that we reserve an exception to all questions about improved property.

The COURT: You have your exception.

A. They were very few sales on Buchanan's wharf before the fire.

Q. (Mr. Poe) Have you any sales of property on Buchanan's wharf in the last five years prior to the fire?

A. None at all.

Q. Very well, I will take your word for it. Have you 230 Buchanan's wharf?

A. Yes, J. Southgate Lemon, 26 feet 9 inches by 65 feet.

Q. You have got that, have you?

A. Yes.

Q. What is the date of that sale?

A. No sale.

Q. You have n't any sale there?

A. This is the amount of the assessment.

Q. I don't want the amount of the assessment. I thought you had the sale there.

A. Take the sale of 204 Spear's wharf to the Baltimore and Ohio Railroad, at \$200 a foot.

Q. ~~That~~ Let us have that. When was that?

A. After the fire.

Q. To the Baltimore and Ohio Railroad?

A. Yes. Thomas B. Ellicott to Sparks, and Sparks to the Baltimore and Ohio, I think. That was on the west side of Spear's wharf.

Q. That was after the fire?

A. That was after the fire.

Q. That shows how much?

A. \$200 a front foot.

Q. What was the depth of that lot?

A. 104 feet.

Q. And what is the depth of this lot we are talking about?

A. 65 feet.

Q. Does that confirm your valuation of \$200 a front foot on this 65 feet lot or not?

Mr. BRYAN: Is it understood, your Honor, that all this is objected to and that your Honor overrules the objections and we have exceptions?

The COURT: Yes, sir.

A. Is that the one? (Indicating on map).

Q. (Mr. Poe) Yes.

A. Yes, it confirms it.

Q. This B. and O. sale was made just when?

A. I don't know the date.

Q. After the fire?

A. After the fire.

Q. This property runs back to Patterson street, Mr.

Marriott, does it?

A. Yes.

Q. And Patterson street has a railroad on it?

A. Yes.

Q. Would that affect the value of this Baltimore and Ohio property?

A. The railroad increases the value of the property.

Q. Is Patterson street a better street than Allison alley?

A. Yes.

Q. How much better?

A. ~~The~~ A street is always better than an alley, especially a forty foot street.

Q. A street is always better than an alley, and then if you have a railroad on the street it makes it still better?

A. Yes.

Q. Which is the better, Spear's wharf or Smith's wharf?

A. I will not say that there is any difference between



them, because the depth of the lot is to be taken into consideration. You would prefer 100 feet in a lot to 65 feet. The same way with the Baltimore and Ohio buying that lot quickly. They would send Mr. Howard <sup>White</sup> Wright quickly there to get the lot, or Mr. Merrick to buy land quick ---

Q. But I understood you to say a little while ago that Smith's wharf being nearer the city is a little more valuable than Long Dock?

A. There is a shorter haul and so the merchants would prefer it.

Q. Smith's wharf is a little closer than Spear's wharf, is it not?

A. No, not 150 feet.

Q. I know it is not much but a little bit.

A. We will take the lot 316 Spear's wharf sold by Mr. Bonaparte.

Q. When was that?

A. After the fire.

Q. Let us have that.

A. 30 feet 6 inches by 106. I do not know this to my personal knowledge.

Q. Have you a record of it?

A. Yes.

Q. Did it enter into your calculation in arriving at the valuation you have given?

A. Yes. I understood it sold for \$350 a front foot. I did not make the sale, but I understood so. If that is not true they can rebut it. I have reason to believe it was true, that that was the figure.

Q. Is that a reasonable figure?

A. The said Smith's wharf is worth only \$200 a front foot. The Baltimore and Ohio wanted that and had to have it quick.

Q. And paid a big price for it?

A. Paid a fair price for it, probably.

Q. Do you tell the jury it was a fair price or a big price?

A. I think it was a large price.

Q. Does it reflect the fair value of the property?

A. Yes, it reflects the value of the property. If you take the different sales and average them, take the other B. and O. lot which they picked up, and nobody knew about it ---

Q. This lot you have just talked about had an improvement on it, did it not?

A. No, that was after the fire, I think.

Q. You do not know whether it had an improvement on it or not, do you?

A. No, but I think it was vacant.

Q. That would tend to show that the Spear's wharf property was a little more valuable than Smith's wharf property, would it not?

A. Spear's wharf is more valuable than Smith's wharf, for the reason that it has a railroad in the rear on Patterson street and it requires no argument for that.

Mr. ROSE: It is a deeper lot?

The WITNESS: No --- as a wharf other than the depth of the lot.

Q. (Mr. Poe) Do you know anything about rentals down there in the neighborhood of Smith's wharf?

A. No. I have had nothing on Smith's wharf.

RE-DIRECT EXAMINATION

By Mr. Rose.

Q. I understand you to say that you had two sales and the same purchaser, the B. and O. Railroad, on Spear's wharf. Is that correct?

A. Yes, sir.

Q. For one of them was paid \$200 a front foot and for the other \$350 a front foot, as reported to you, as you un-

derstand it?

A. Yes, sir.

Q. The average, then, of those two values, would be \$275 a front foot?

A. Yes, sir.

Q. Do you know whether the Long Dock down there, McElderry's wharf, is a public wharf?

A. I don't know whether it is or not.

Q. You don't know whether they have to pay wharfage down there on that dock?

A. I do not know.

Q. Of course if a purchaser owning property had to pay wharfage it would reduce the value of the lot?

A. Of course, undoubtedly.

RE-CROSS EXAMINATION

By Mr. Poe.

Q. Go back to 316 Spear's wharf.

The COURT: Which is that?

Mr. POE: The B. and O. lot.

The WITNESS: Sold by Mr. Bonaparte, you mean?

Mr. POE: Yes.

Q. Do you mean to tell the jury that you are sure that sale took place after the fire?

A. I think it took place after the fire.

Q. Have you the date of the sale in your book?

A. No, I have n't any the date of any of these record sales, but I know about when they were made.

Q. You do not know whether there was any improvement on the property or not, and you assume that there was not any, that is you assume that it took place after the fire and that there was no improvement on it?

A. Yes.

Q. And if it took place before the fire there was an improvement on it?

A. Yes.

Q. You do not know of your own knowledge whether it took place after the fire or before the fire?

A. No, but I have reason to believe that it was after the fire.

Q. I understand, but of course if it took place before the fire that would not show the value of the land, if it had an improvement on it, would it?

A. I was trying to recollect that time.

Q. I say if it took place before the fire, if it had an improvement on it it would not show the value of the land?

A. If the B. and O. were going to tear down the <sup>it</sup> build-  
ings would be of very little value. ^

Q. Of course if they did not tear it down, no, after  
they purchased it ---

A. (Interrupting) It would be of some value. I do  
not recollect the buildings.

Q. Will you not refresh your recollection about the  
date of the sale if you can?

A. I really can not.

Q. Can you not go to the Record Office and find out  
about it?

A. I can call up Mr. Bonaparte and Mr. Manning and  
find out probably.

Q. Will you not do that?

A. With pleasure.

Mr. BRYAN: Your Honor, we object to that. Your Honor  
let in the testimony of these other sales because it was  
one of those things that affected his judgment, but what  
he finds out over the telephone certainly is not proper  
testimony. Mr. Manning is accessible here and all they  
have to do is to ask him to come down and testify.

The COURT: I think that is so, the objection is sustained .

(Testimony of witness concluded).



Whereupon ---

SEPTIMUS P. TUSTIN,

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Machen, Sr.

Q. You are a member of the firm of S J. Martenet Company, I believe?

A. I am.

Q. Will you please look at this map and state whether or not that was made in your office, giving 221 Smith's wharf, and then say whether or not that was ~~expressed~~ made by actual survey by your office?

A. (After examination). It was.

Q. What is the width of the lot?

A. The width of the lot is 25 feet 7 inches.

The COURT: The lot to be condemned?

Mr. MACHEN: Yes, sir, the lot to be condemned. It was marked on the condemnation plat as 25 feet.

Mr. BRYAN: To be just to the city authorities, however, I would like to say that it was 25 feet and then corrected to 25 feet and 4 inches on the revised map.

The COURT: The possession is a little greater.

The WITNESS: The possession is greater than the title.  
He took what was included in the walls.

CROSS EXAMINATION

By Mr. Poe.

Q. How did you arrive at it?

A. That includes an 18 inch wall on the north and one-half of an 18 inch party wall on the south.

Q. I mean where did you get your dimensions from?

A. We located the building down from Pratt street, we measured the distance down from Pratt street to the lot, and then measured the lot as we found it, the actual foundations.

Q. You found the foundations?

A. Yes.

Q. And did not take the width of the walls?

A. The north wall was 18 inches and the south wall was 18 inches; the entire north wall belonged to this lot and half of the wall on the south.

Q. How do you know the north wall was not a party wall

A. From former surveys we had made in that locality we knew it was not.

Q. You only knew counting from the extreme northern end of a wall ---

A. We had frequently made surveys on Smith's wharf be-

fore the fire and knew the location of the lot.

Q. I understand that, but you do not know whether that is a party wall or not, as a matter of fact, you only know that there was a wall of 18 inches there and you took it for granted it belonged entirely to this lot. Is not that so?

A. No, it was built with this house, and as I said before we had measured down to that lot in former years and had said it did not belong to any one else but this one particular lot.

Q. Was there any other wall standing north of this wall at the time you made this measurement?

A. I could not answer that without looking at my field notes.

Q. Have you got them with you?

A. No.

Q. You do not know as a matter of fact whether there were two walls standing there or not?

A. No, I cannot answer that.

Mr. POE: We would like you to verify that.

(Testimony of witness concluded).

Whereupon ---

EUGENE BLAKE,

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Bryan.

Q. You are the same gentleman who testified before some of these same jurors in the other case?

A. I do not think there has been any change, sir.

Q. This property that we are condemning is Number 221 Smith's wharf. Are you familiar with that property?

A. I am.

Q. Are you familiar with that neighborhood?

A. I have been there since 1866.

Q. Are you familiar with values of property in that neighborhood?

A. Not as a real estate expert but from buying and selling and renting property there.

Q. From experience?

A. Yes. From actual experience.

Q. In your own business?

A. Yes, in my own business.

Q. Will you tell us in your opinion what is the fair value of that lot, 25 feet 7 inches, we will assume?

A. I ~~suppose~~ place the same value on that as I did

upon my property just back of it, mine fronting on Buchanan's wharf and this on Smith's wharf. Both run back to Allison's alley. I placed a value of \$200 a front foot on it.

Q. It is a matter of arithmetic, then, to find out what 25 feet 7 inches would amount to?

A. A very simply matter, yes.

Q. What sort of a wharf is there in front of that, is it a public wharf?

A. No, sir. The wharf goes with the property.

Q. Is McElderry's wharf a public wharf or not?

A. It is a public wharf, that wharf is owned by the city.

Q. Please tell us what the practical difference is in buying property between buying a wharf property that is a private wharf and one that is a public wharf?

A. If you owned a property there you would very soon find out the difference from the cost of carrying goods over your wharf.

Q. Explain it to the jury?

A. Every piece of goods that passes over the wharf has to pay a toll to the city.

Q. Like a turnpike, all traffic that goes over it pays something?

A. Yes.

Q. And does that reflect itself in the value of the property?

A. Yes, sir.

Q. State whether or not you bore that fact in mind when you put this valuation on the property?

A. Most undoubtedly I did.

Q. You are familiar with all the sales in that neighborhood?

A. I don't know that I am familiar with all of them, I know of some of them.

Q. Do you know anything about the Fleischmann sale?

A. What I have heard.

Q. If you did not make it you could not know anything except what you had heard. You heard testimony about it in court this morning?

A. Yes, sir.

Q. From your knowledge of the property down there and the land down there could you tell whether or not the Fleischmann sale was a fair and conservative sale or not?

A. It being a similar lot to the one I have just valued, I think it was.



Q. Could you tell the jury whether Mr. Bonaparte did any extraordinary thing from a business standpoint when he got that price for the property, \$5000?

Mr. POE: I object to that.

The COURT: You may ask the question.

A. Whether I think ---

Q. (Mr. Poe) Whether he did something unusual when he was able to get \$5000 for that lot?

A. I do not, sir.

Q. And that was, in your opinion, a fair, reasonable price for that property?

A. Yes, as I think it is for this property.

Q. And the properties are similar in availability and market value?

A. Yes, sir.

#### CROSS EXAMINATION

By Mr. Poe.

Q. You spoke about this public wharfage having a great effect on the value of property. Take a lot of 25 feet, for instance, on McElderry's wharf; what would it amount to in a year in dollars and cents, as far as the tribute it would have to pay to the city is concerned?

A. It depends on the business done there.

Q. Answer the question, then, in reference to different businesses.

A. Take Mr. Classen's business. If he had a cargo of cement that cargo might have 3000 barrels in it, and that would take three days to be discharged, probably. The city's charge is 2 cents a barrel, although they sometimes cut it to one cent. That would be \$30 alone to get that cement in his warehouse. And that would be going on 365 days in the year. So you see it would amount to considerable money. The rent would cut a very small figure ---

Q. Would that be a fair comparison for a 25-foot lot?

A. I do not see why not. I have a 25-foot house that I frequently put cement in, and I always aim to get my houses where the wharf privileges go with the house; when a man rents a house there he always tries to get the wharf with it if he can.

Q. Take this lot of yours, 25 feet, and tell us what it amounts to per year in the way of tolls, what it would amount to if you had to pay the toll to the city?

A. I have n't paid anything to the city because, as I have remarked, my houses always carry the wharf rights.

Q. Then, tell us what you have saved on a 25-foot lot by not having to pay toll?

A. As I said, that would depend on the amount of business.

Q. But I ask you to take your particular lot and tell us what you ~~would~~ have saved on that?

A. I consider that I save at least 50 per cent of my rent.

Q. Tell the jury what that property of the Merchants' and Miners' Company is worth, the property that has been testified to, 331 and 333 (indicating on map), what ~~is~~ in your opinion is it worth to-day?

A. What is the depth of it?

Q. It is 81 feet 6 inches running back to Mill street, Mill street having a railroad on it.

A. That not having wharf privileges I would not consider that as valuable as Smith's wharf.

Q. It is not worth \$200 a front foot?

A. I don't think so.

Q. Is it worth \$140?

A. It is worth \$150.

Q. That is full value for it?

A. Yes, sir.

Q. The advantage of the railroad in the rear does not offset the value of wharf facilities?

A. I don't think so. As a ~~gentleman~~ gentleman testified here, your water front gives you the advantage of every railroad entering Baltimore, while this one railroad in the rear only gives you the advantage of that one railroad line.

Q. (Mr. Poe) You save on your lot you say 50 per cent of your rent. Without that privilege of free wharf rights your lot would be worth how much?

A. Which lot do you mean?

Q. Your lot on Buchanan's wharf, how much would that tend to depreciate the value?

A. If the city owned it?

Q. If you had to pay wharfage.

A. It would depreciate it to the extent of 50 per cent.

Q. What do you mean by that in dollars and cents?

A. I mean if you rented a house for \$600 on a wharf which did not have wharf privileges with it it would cost you \$300 additional to pay to the city, in other words your rental would be \$900 instead of \$600 on account of what you would have to pay to pass over the wharf.

Q. How would that be reflected in the market price of the property?

A. The fact that you did not own the wharf would certainly depreciate the value of the property.

Q. That is what I want to get at. Suppose it is worth \$200 to-day, what would it be worth if you had to pay wharfage?

A. As I said before it would depend upon the volume of business done.

Q. That is what I want to get at.

A. That no one can tell.

Q. It depends on the particular business?

A. Yes. If he had no use for the wharf it might be that it would not cut any figure with a man.

Q. And therefore it depends upon the character of business that the tenant is transacting?

A. To a large extent.

Q. How about the rents before the fire on Buchanan's wharf as compared with rents on McElderry's wharf. You are familiar with all that?

A. My experience is that the houses rent much better on Smith's or Buchanan's wharf than on McElderry's Wharf.

Q. How much better, give us an illustration if you know.

A. I don't know positively. But I know that there was always more vacant property on McElderry's wharf than

on any of the other docks. There was some there that you could not rent at all, the property was kept in very bad condition, and some of it was handicapped by enormous ground rents, and as a consequence they were idle for a long time.

Q. Did you have any property on McElderry's wharf?

A. No, sir.

Q. Did you rent any on McElderry's wharf?

A. Not a piece, sir.

Q. You said you knew of some sales. Do you know of a sale by Mr. Woods in 1902 or 1903 alongside of your property?

A. Naturally, sir.

Q. What was that sale?

Mr. BRYAN: Objected to.

(Discussion followed).

The COURT: I think the soundness of his judgment can be tested by calling his attention to matters in the neighborhood.

Mr. BRYAN: You will allow us an exception?

The COURT: Yes.

Q. (Mr. Poe) You know the sale of Mr. Woods alongside your property. That showed how much a front foot



for the land.

A. Something less than \$100 I think.

Q. What was the date of that sale?

A. Somewhere about 1902, I think.

Q. Tell us the size of the lot?

A. The front of that lot is about 130 to 132 feet, I don't know exactly, and it runs back 65 feet or 67 feet. Some of those lots are 67 and some 65. They run back to Allison alley.

Q. That was improved at the time it was purchased?

A. By a wood shed.

Q. This showed probably the value of the land then, did it not, as far as value can be told by a sale of property?

A. The improvements were not very much.

Q. That was a good tract, too, that was 100 feet?

A. Over 100 feet.

Q. Was property going up in value at that time down on that wharf, Mr. Blake?

A. I don't think it was, from that sale.

Q. But how about your opinion apart from that sale?

A. If you want my opinion, I advised Mr. Woods to buy it, because I thought it was a good purchase, and I would

have bought it myself at the time if I had had the money.

Q. You did not have the money.

A. No, I did not have the money.

Q. And you advised him to buy it?

A. Yes.

Q. You bought property right alongside of that?

A. Just south of it.

Q. You bought it a great many years ago?

A. Not a great many years ago. It was about 1890, I think.

Q. How much a front foot did your property stand you?

Mr. ROSE: I do not know the answer, but I think fifteen years is rather remote. I object on that ground.

The COURT: I admit it.

Mr. ROSE: We note an exception.

A. I paid \$10,000 for the leasehold of that property, subject to \$600 a year ground rent, redeemable at \$10,000.

Q. (Mr. Poe) And it had an improvement on it, did it not?

A. Yes, sir.

Q. What was the improvement? worth?

A. I considered the improvement worth every dollar I paid for it.

Q. That was \$10,000.

A. Yes.

Q. So it made the land worth \$10,000, did it not?

A. Necessarily, yes.

Q. AS a matter of fact, you got a great deal more than \$10,000 in insurance from that property ten years afterwards, did you not?

A. No ---

Mr. BRYAN: That has got nothing to do with it.

The COURT: I am not so sure.

Mr. BRYAN: How could it have anything to do with it? Suppose he under-insured it or over-insured it?

The COURT: That would seem to tend to throw some light on it.

Mr. BRYAN: We note an exception.

Q. (Mr. Poe) What insurance did you get on that building?

A. I think it was \$10,700.

Q. That was not, in your opinion, the full value of the building?

A. Yes, I think that was about the full value of it.

Q. Did you not testify in your own case that those

buildings were worth \$13,000 or \$14,000?

A. I do n't know that I did.

Q. Will you say you did not?

A. I will not say positively that I did not; if I said so it was my impression at the time.

Q. We want your impression now.

A. My impression now is that those buildings could be duplicated for \$13,000 or \$15,000.

So far as

Q. ~~Examine~~ your opinion ~~is~~ of the land went, then, it showed it to be worth not more than \$100 a front foot?

A. Of course <sup>from</sup> those figures. When a man sees an opportunity to make a cheap purchase he generally embraces it.

Q. I understand that. You spoke of the ground rent being on the property at the time you purchased it. Had not that rent been reduced from \$600 to \$450 at the time you purchased it?

A. For a short time, and afterwards it was raised to \$600.

Q. Yes, but at the time of your purchase the ground rent did not make the leasehold amount up to \$450?

A. That is right, sir.

Q. At the time you purchased it it only showed the land

to be worth \$100, and Mr. Woods purchased it ten years afterwards and it showed the land to be worth \$78 or \$80 a front foot, did it not?

A. I don't know exactly, but less than \$100.

Q. Tell us any other transaction from the time you purchased down to the time of the fire that show any increase in value?

A. The only ones I know of were the sales I made on Buchanan's wharf to the United Railways.

Q. That was on the other side?

A. The same dock, though.

Q. On the other side though?

A. O'Donnell's wharf is on <sup>one</sup> side of the dock and Buchanan's wharf on the other. If that is directly in the vicinity.

Q. All right, go ahead. That was the sale when you purchased the leasehold --- When did you purchase the leasehold there?

A. The sale must have been made about the time I moved over into this Buchanan's wharf property.

Q. You <sup>had</sup> have the leasehold interest of that lot, did you not?

A. Yes, sir.

Q. And you bought it for about \$2500?

A. I bought it for \$2000.

Q. And it was improved at the time you purchased it?

A. Yes, sir.

Q. And the ground rent was what?

A. \$1536.

Q. And you had it how long before you sold it to the United Railways?

A. Five or six years.

Q. And you sold it in 1892 to the United Railways, did you?

A. Somewhere along in 1892 or 1893, I am not sure.

Q. They wanted the property for a power house, did they not?

A. Yes.

Q. And they paid you \$25,000 for what you had paid \$2000 for?

A. Within a fraction of that.

Q. And you testified ~~that~~ you had squeezed them up to a good big price?

A. Well, I got as much out of it as I thought it was worth.

Q. What is that?



A. I say I got as much as I thought it would bear.

Q. Do you tell the jury that that throws any light on the value of property on Buchanan's wharf?

A. That is for them to decide.

Q. I asked you?

A. I think it does throw some light.

Q. What light?

A. When people want property they are willing to pay a good price for it.

Q. What fair value does that sale show the Buchanan's wharf property to be worth?

A. My Buchanan's wharf property?

Q. Yes.

A. I think that would be over \$300.

Q. But you do not put your value that high?

A. No, I could not put it that high.

Q. Why not?

A. ~~I xxx xxx~~ If the city had come to me as the United Railways did probably I would have asked them \$400 a front foot.

Q. You put this property at \$200 because you put your property at \$200, you say?

A. It being similar property.

Q. And the two wharves are practically of the same value?

A. Practically the same, yes; if anything Smith's wharf property has a little advantage, the dock is a little wider. They do not have the same inconvenience there of getting vessels up and down.

Q. You have 100 feet there and they only have 25 feet. Is not that a great element of value, having 100 feet instead of 25?

A. For certain purposes.

Q. For what purposes, for purposes of condemnation?

A. The person who wants a large lot —

Q. When we condemned your property did you not lay special stress on the fact that you had 100 feet?

A. I do still, if any one wants a large lot.

Q. Therefore, if your 100 feet is worth \$200 a front foot is ~~not~~ that 25 feet ~~is~~ worth \$200 or not?

A. I think so, sir.

Q. Why?

A. Because there are plenty of people that would want 25 feet that could not take 100 feet.

Q. Why was it when we ~~affix~~ tried your case that your 100 feet gave an additional value to your property?

A. I still say that if any one wants a large lot 100 feet is a great deal better than 25 feet.

Q. Did you not tell the jury in your case that if you only had 25 feet instead of 100 feet your property would not be so valuable, that it was because you had 100 feet that you thought it was worth as much as it was?

A. I still say so, for certain purposes.

RE-DIRECT EXAMINATION

By Mr. Bryan.

Q. Mr. Poe asked you a number of questions about various sales there ---

Mr. POE: One minute. I want to ask what rental he got for this property.

Mr. BRYAN: We object to the question; not on account of its being too late, he having finished his examination, but because it has nothing to do with the case.

The COURT: It seems to me that both sides are entitled to all those questions.

Mr. BRYAN: We note an exception.

Q. (Mr. Poe) What rent did you get for your property?

A. \$2400, sir.

Q. <sup>And</sup> If your property was improved in the substantial manner you speak of?

A. Yes, sir.

Q. Are you familiar with the character of the improvement on the Patterson property, on Smith's wharf?

A. I have never been inside the house.

Q. Was there any difference between the character of your improvements and the character of the improvements on the Patterson lot?

Mr. BRYAN: A man cannot tell much about a house that he has never been inside of.

The COURT: You can tell pretty nearly about a plain warehouse, if you know how much land it covers.

Mr. MACHEN, JR.: Our exception goes to all of this?

The COURT: Yes.

Q. (Mr. Poe) Was there any substantial difference between the character of the improvements on your lot and the character of the improvements on the Patterson lot?

A. Mine were four stories.

Q. And how about the other?

A. I am not positive about whether this house was four stories or three stories, I am not positive about that.

The COURT: An old-fashioned, substantial warehouse?

The WITNESS: Yes, sir; I would say it was a substantial old house.

RE-DIRECT EXAMINATION

By Mr. Bryan.

Q. You said you got \$2400 a year rent for your place?

A. Yes, sir.

Q. Does that in any way affect the opinion you have expressed that this lot was worth \$200 a front foot?

A. No, sir.

Q. Is there anything in it to controvert ---

A. I don't know what this house or lot rented for.

Q. ~~■~~ You do not know anything about that?

A. No.

Q. And sometimes a lot which would sell for the same price might have a different rental on account of the ~~im-~~ ~~proved~~ improvement on the property?

A. Yes.

Q. And on account of the adaptability of the improvement to a particular tenant?

A. Yes.

Q. And the skill of the man who negotiated the lease, sometimes?

A. Yes.

Q. Just like in the case of the sale to the United Railways, the skill of the man who got the price for the prop-

erty had something to do with it?

A. And the conditions that surrounded it, and everything of that kind, they have all something to do with it.

Q. And sometimes mere negligence, mere unwillingness to move might affect it, a tenant will pay more for a piece of property than it is worth sometimes because he does not want to move?

A. Yes.

Q. And sometimes mere <sup>because of</sup> neglect and timidity in not wanting to take the trouble ~~to hunt up another tenant~~ to hunt up another tenant, a landlord will receive less rent for his property?

A. Yes.

Q. So it depends on what sort of a man a tenant is and what sort of a man the landlord is?

A. Yes, sir.

Q. Now, to come back to Mr. Wood's lot, did that sale to Mr. Rufus Wood you speak of throw any light in your opinion on the value of this lot we are condemning now?

A. The only light I think Mr. Wood's sale throws is that he got a very cheap bargain when he bought this lot.

Q. And because a man sometimes buys a house for \$200



and it is worth \$250, it does not show that another house just as good is not worth \$250?

A. No.

Q. And this transaction was some time ago?

A. 1902 or 1903.

Q. You think that was an excessively cheap piece of property?

A. Yes.

Q. And you advised him to take it?

A. ~~Not~~ Yes.

Q. And the reason you did not take it yourself was that you did not have the cash?

A. I did not have the cash.

Q. But it is a fact that this Mr. Wood, acting on your advice, was fortunate enough to get this cheap piece of property, and has it in any way modified your opinion as to what is the fair value of the property we are now condemning?

A. It has not, sir.

RE-CROSS EXAMINATION

By Mr. Poe.

Q. (Mr. Poe) You yourself purchased this property from Mr. Wood?

A. From the firm of which Mr. Wood was a member. They were closing up an estate and that was the reason he sold it for the price he did.

Q. Mr. Wood testified that he had charged that purchase to himself on the books, did he not?

A. No ---

Mr. BRYAN: Wait a minute, that does not throw any light on it.

The COURT: We will take a recess here, if you have finished.

(Thereupon at 12:45 the Court took a recess until 1:30 p. m.)

AFTER RECESS

Whereupon ---

WILLIAM D. POULTNEY,

a witness produced in behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bryan

Q. What is your business?

A. Real estate officer of the Title Guarantee and Trust Company.

Q. Tell the gentlemen of the jury what your duties are?

A. My duties are going all over the city and the suburbs, and so forth and appraising property and <sup>submitting it to</sup> ~~passing it through~~ the Title Guarantee and Trust Company for the purposes of mortgage loans. I also ~~have~~ <sup>have</sup> operated real estate, ground rents, houses and so forth, on my own account. I have been doing so for five years.

Q. What do you mean by "operate"?

A. Buying and selling.

Q. Do you mean you buy for the purpose of selling again?

A. Yes, sir.

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BALTIMORE, MD.

William D. Poultney

Q. You mean you speculate?

A. I speculate in real estate and so on.

Q. Tell whether or not your private operations and your duties to the Title Company have caused you to familiarize yourself with the value of property all over the city?

A. I consider it has done so.

Q. Are you familiar with property in the burnt district?

A. Generally speaking, yes.

Q. Do you know this piece of property on Smith's wharf belonging to Mrs. Dyer and Miss Patterson, have you looked at it for the purpose of valuing it?

A. Yes, sir.

Q. Tell us what is your opinion is the fair market value that of ~~the~~ property between a purchaser ready ~~and~~ ~~not~~ compelled to buy and a seller ready but not compelled to sell, it being a voluntary matter on both sides?

A. I think between two parties under those conditions the party who held that property would consider <sup>the</sup> ~~your~~ figure of \$200 a front foot for <sup>fair</sup> it, and I think a party who wanted it for his own business purposes would be willing to pay \$200 for it.

Q. Suppose the city of Baltimore tomorrow, with the aid

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of the Legislature of Maryland, were to abandon this dock improvement scheme, so that that property would be available to the owners for private purposes, will you tell the gentlemen of the jury whether, from your experience in dealing with property and your experience in the Baltimore market in real estate, you believe you would be able with reasonable diligence to sell this property at \$200 per front foot?

A. I think it would be possible.

Q. You say you think it would be possible?

A. I mean to say I think there would be people in the market who would want to locate on Smith's dock who would be willing to pay \$200 a front foot for it for the purpose of erecting a warehouse there to suit their business.

Q. Are you familiar with the Fleischman sale in that neighborhood?

A. Generally speaking I am.

Q. You were in court this morning when the representative of Fleischman and Company testified?

A. Yes.

Q: Will you tell the gentlemen of the jury whether, from your experience <sup>in</sup> ~~this~~ property in that neighborhood, you con-

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sider that an extraordinary sale in any way?

A. I do not; I consider that a fair sale as between a party willing but not compelled to sell and a party willing but not compelled to buy.

Q. Tell the gentlemen of the jury whether or not in your opinion that sale was a fair indication of the conservative value of that property down there?

A. I consider that a fair indication of the value of property down there.

Q. My friend, Mr. Poe, cross examining Mr. Blake asked him some questions about renting property. I want to ask you something about rents in the burnt district neighborhood. Can you tell the gentlemen of the jury, ~~that~~ and if you do tell them give your reasons for it ---whether or not the rental is always an indication of value of the property, the rent obtained or the rent obtainable?

A. No, I do not think the rent is always an indication of the value of the property by any means.

Q. Give us your reasons for thinking so?

A. My reasons would be, in that particular locality the amount of wharf property is limited, it is not dwelling house property where there is an unlimited amount and where



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people are buying all the time for the purpose of procur-  
ing an investment. And I think a merchant who located down  
there would prefer to own the property so as to fit it up  
so as to suit his particular business. I don't think the  
rental value there would reflect by any means the value of  
the property. I think it is an incident to take into con-  
sideration.

Q. In connection with other things?

A. Yes. I think there would be more merchants who would  
want to buy down there than people who would want to buy  
down there for the purpose of speculation, I mean <sup>more</sup> ~~some~~ peo-  
ple who would want to buy for their own particular business.

Q. The rental value of property would only show what it  
was worth to an investor?

A. Yes, sir.

Q. What he could get out of it?

A. Yes, sir.

Q. And what I want to get plain before the jury, without  
leading you at all, is <sup>whether</sup> ~~whether~~ or not in your opinion the  
most available demand, the demand that would control the  
price, would come from an investor who wanted to buy it  
to get an income out of it or from parties who might want

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to buy it for their own use, to use it themselves.

A. Undoubtedly it would come from parties who would want the property to use themselves. It would be pretty much like property on Mount Vernon Place. Nobody could afford to buy a house there as an investment, houses there are owned by people who live in them, and it is the same way with this property down there, people want it to occupy.

Q. One is warehouse property and the other is residence property.

A. But the same general rule applies to both of them. Men who locate down on Smith's wharf do not go there for one year or two years or three years. They establish a business there and the fact that they have established a business there makes the property particularly valuable to them. They have a good name and so forth.

Q. Tell us how Mount Vernon Place, which is one of the residence choice ~~resistant~~ portions of Baltimore City, is it not?----

A. I consider it the most choice.

Q. (continuing) Tell us how Mount Vernon Place illustrates the same principle? Of course that is residence property and the other is business property.

A. In this way. Mount Vernon Place is occupied by very

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wealthy men. They do not want to be subject to the annoyance of moving all the time, and in order to secure a permanent residence there, they would be willing to pay a price in excess of a price they would be willing to pay for property if they were buying it for an investment. They do not consider the investment feature of it at all.

where

Q. Do you know whether Mr. Jacobs lives?

A. Yes, sir.

Q. And where Mr. Garrett's property is?

A. Yes, sir.

Q. And Mr. Theodore Marburg's is?

A. Yes, sir.

Q. Those places are not rented for such a figure as would make a fair percentage on the money invested, money put in for the purpose of investment?

A. I do not think so, no, sir.

Q. Yes, these houses would sell for prices far above what the rent would indicate?

A. It would, yes.

Q. Tell whether or not this property would sell to some person who wanted it far above any rent would indicate it to be worth?

A. I think it would. A merchant would buy it with the

idea of securing a permanent location and I do not think the rent would influence him very greatly.

Q. Tell the gentlemen of the jury what are the circumstances about this property which, in your opinion, justify in you believing that \$200 per front foot is the fair market value of the property?

A. The circumstances are that it is located on one of the best docks in the city, and ~~where~~ <sup>while</sup> dock property ~~was~~ some years ago was very much depreciated, it was gradually being absorbed, gradually being held at a high price, and ~~maximality~~ as I said Smith's dock is a particularly desirable location.

Q. Is Smith's dock a public dock?

A. I understand it is a public dock, where there is no wharfage to pay.

Q. There is no wharfage to pay there?

A. It is a free dock.

Mr. ~~MAGHEW~~, Sr.: You mean a private dock?

Mr. ~~BRYAN~~: He says it is a free dock. You mean it is not a toll dock?

The WITNESS: I have so understood.

Q (Mr. Bryan) Can you tell the gentlemen of the jury whether or not property on the dock which has to pay tolls,

wharfage charges, is less desirable than property on a dock that does not have to pay such fees?

A. One is like having a ground rent on property that you don't have to pay ---

Q. One would be like having an office with a telephone in it where you would have to pay according to the number of times you rang the telephone, and the other would be like having a free telephone?

A. Yes. Undoubtedly it depreciates the value of property if you have to pay wharfage charges.

Q. State whether or not that is a fair illustration, to the value of a place of business with a telephone in it for which there was no charge whatever, and another place of business where you charge<sup>an</sup> every time you use the telephone?

A. I think that would be a very good illustration of it.

CROSS EXAMINATION

By Mr. Poe

Q. From your standpoint, then, the property on Spith's wharf and similar wharfs ought to show the highest value from sales, not from rentals? Is that so?

A. Yes, sir.

Q. That is it, is it not?

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BALTIMORE, MD.

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A. Yes.

Q. Tell us some sales that show that high valuation?

A. I base that valuation on the Fleischman sale as an indication.

Q. Is not that the only sale you have to tie to?

A. No, I have a sale on Smith's wharf back in 1895, when that property was very much depreciating and we could hardly do anything with it.

Q. A mortgage sale?

A. I don't know that.

Q. Is this one of the sales that influenced you in arriving at your figure of \$200 per front foot?

A. Yes, to a certain extent.

Q. Did it influence you at the time?

A. All those conditions, taken together ~~was~~ influenced me.

Q. You have considered this as one of the <sup>elements</sup> ~~elements~~ that helped you to arrive at the valuation you put upon this property?

A. Yes, this reflects lower than \$200 but you have to take into consideration the appreciation in values.

Q. Go on.

A. In 1895 there were two lots sold at public auction



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Number 301 Smith's wharf, 25 by 65, subject to a ground rent of \$204.

Q. Go ahead.

A. And Number 243 Smith's wharf, 16 feet, four inches, by 83 feet, subject to a ground rent of \$96. I do not know what improvements there were but I imagine they were very poor. The leasehold on those two lots sold for \$900, subject to a \$300 ground rent.

Q. On those two lots?

A. Yes.

Q. What value did that show for the land?

A. Putting those ground rents even at five per cent., they shows \$6900; about \$170 or \$175 a foot.

Q. You allow nothing at all for the improvements?

A. No.

Q. They were improved, were they not, as a matter of fact?

A. I am under that impression.

Q. That is the property that Mr. Kelly bought, is it not?

A. I don't know the purchaser. As I remember that location it was all improved at that time.

Q. That is one of the sales that influenced you. You say

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that was of the sales you used in enabling you to arrive at this valuation of \$200 a front foot?

A. Yes, sir.

Q. And you have not taken the trouble to find out whether there were any improvements on there or not; is that the fact?

A. I am sure that there were improvements there, because I was down there a great deal at that time, being in the grain business, and I am sure the whole dock was improved.

Q. But you <sup>have</sup> ~~were~~ not allowed any value for the improvements?

A. No. If there were any improvements there I think there were just two walls or four walls.

Q. How about the lot we are condemning, were there any improvements on that lot before the fire?

A. Yes, sir.

Q. Were they of any value at all?

Mr. BRYAN: I do not object to it, if Your Honor please, if it throws any light on the matter.

The COURT: I think he is examining himself as to the soundness of his judgment.

A. I do not remember those improvements in detail but I

think if the dock scheme was abandoned that land would be worth as much today vacant as it was with the improvements on it before the fire.

Q. (Mr. Poe) Those ground rents you capitalize at five per cent.

A. Yes, \$6000.

Q. That would absorb all the value of the land, would it not?

A. No, sir. It might have done so at that time.

Q. Then is what I am talking about--- at that time.

A. It would come pretty close to it, yes.

Q. Do you think it is fair to capitalize ground rent at five per cent. when it more than absorbs the value of the land?

A. Yes. I am sure those ground rents were worth five per cent. at that time---irredeemable ground rents. If I had been in the business I would have been glad to have gotten it at that price.

Q. Notwithstanding they absorbed the entire value of the land?

A. Yes.

Q. And the improvements there were worthless according to you?

William D. Poultney

A. Not altogether.

Q. What were they worth?

A. I do not say that that did absorb the <sup>entire</sup> ~~part~~ value of the ground. It came pretty close to it, I will admit, but I don't know what they were worth?

Q. And if the improvements were worth \$900 then he did not pay anything for the leasehold interest in the land.

A. I do not understand exactly what you mean.

Q. Suppose he paid \$900 for the leasehold interest. That carried the improvements, did it not?

A. Yes.

Q. If the improvements were worth \$900 then he did not pay anything for the leasehold interest in the land, he only paid the value of the improvements.

A. I think even at that time he got a very cheap piece of property.

Q. That is coming back to your opinion as to the value of land irrespective of the sale. I thought you were working on the theory of that sale as showing value.

A. I do. That sale was at a time when that property, according to my best recollection, was ~~high~~ ~~at~~ at its lowest ebb. People owned ~~property~~ <sup>who</sup> <sup>properties</sup> of that kind there then

William D. Poultney

thought they were unfortunate.

Q. But I want you to take this sale as a sale reflecting the fair value of the land, irrespective of what at that time was the value of the land, and what it showed the land to be worth.

A. Well, I should say it showed the land to be worth somewhere about \$150 or \$160 a foot.

Q. Somewhere about \$150 or \$160?

A. Yes, somewhere along there, I would not like to say in dollars and cents.

Q. That was at a time when the property was at its lowest ebb?

A. That is my impression. I may be mistaken ----  
when

Q. Therefore in 1895, the property was at its lowest ebb this particular sale showed it to be worth \$150 a front foot?

A. Yes.

Q. Now, there has been a rise ever since then?

A. Yes.

Q. How much increase in value?

A. I don't know exactly how long that period of depreciation lasted, but there has been a decided rise in all property.

William D. Poultney

Q. When there has only been an increase of \$40 a front foot from that time to the present day. Is that not so?

A. On those figures, yes.

Q. I mean as a matter of fact.

A. Yes, that would indicate that.

Q. Is that the impression you mean to convey to the jury?

A. I mean to convey the impression that that property, if the dock scheme were abandoned today, would be worth \$200 a front foot. But <sup>at the</sup> ~~after~~ this sale, it was an auction sale and it might have been below the value.

Q. Did you not just say that that sale taken by itself showed the land to be worth from \$150 to \$160 a front foot?

A. Yes.

Q. Did you not just say that?

A. Yes.

Q. Now, the land is only worth \$200 a front foot?

A. Yes.

Q. Therefore there has been an increase of only \$40 a front foot, taking that sale as the basis and giving the land the full benefit of its value <sup>as</sup> today?

A. If you take that sale as the basis, <sup>but</sup> I would not take that sale altogether as the basis. It was an auction sale, and I do not know how many bidders there were there, or



William D. Poultney

the circumstances under which it was sold.

Q. Then the sale might have reflected more than \$160, the land might have been worth \$175?

A. Yes.

Q. Then it would have been only \$25 increase in value since 1895?

A. Yes.

Q. Do you tell the jury that?

A. Yes, I tell the jury that. I was not in the real estate business at that time, and I do not know the conditions

Q. I will ask you what in your opinion was the value of the land down there in 1895?

A. I don't know.

I was not in the real estate business then and I don't know about that, but I know it <sup>was</sup> ~~is~~ very much lower than it is today, I know that from hearsay.

Q. Has it increased more than \$25 a front foot since then?

A. I think so.

Q. Has it increased more than \$40 a front foot?

A. I would not like to say because I don't know.

William D. Poultney

Q. How much was it worth immediately before the fire?

A. There were no sales down there to indicate its value immediately before the fire, but probably, from my observation with knowledge, there was a decided appreciation in value immediately before the fire.

Q. What is the difference in your opinion in dollars and cents per front foot of the value of this property immediately before the fire and as of today?

A. I would not like to say because I did not make the same study of conditions down there before the fire as I have made since.

Q. Will you tell the jury that it has increased \$10 a front foot since the fire?

A. Since the fire?

Q. Yes.

A. I think probably that it has.

Q. Has it increased more than that?

A. I would not like to say.

Q. You would not like to say that it has increased more than \$10 a foot?

A. No.

Q. Is this property on Smith's wharf more valuable than

William D. Poultney

the property immediately across the way--on Spear's wharf.

A. Spear's wharf property --- those lots over ~~that~~ <sup>there</sup> have more depth to them and have a railroad track. I think if anybody offered me a lot on Spear's wharf and a lot on Smith's wharf I would take the lot on Spear's wharf.

Q. Would you hesitate for a moment?

A. No, I don't think I would.

Q. How much better do you think a lot across the street on Spear's wharf is than a lot on Smith's wharf, would you say 50 per cent. better?

A. No.

Q. Here is the lot we are condemning, number 306, 25 feet with a depth of 65 feet, running back to Allison Alley.

A. Yes, sir.

Q. I want you to compare that with the lot purchased by the Baltimore and Ohio after the fire known as number 204 Spear's wharf. This lot of the B & O Railroad is a 25 foot lot and ~~it~~ runs back 105 feet 6 inches to Patterson Street, Patterson Street having a railroad on it. Now, do you think the B & O Railroad lot is better than the lot we are condemning or not?

William D. Poultaey

Mr. BRYAN: I would like to get the formal objection to that and the exception.

The COURT: The objection is overruled and the exception noted.

A. Yes, I think it is a better lot.

Q (Mr. Poe) How much better?

A. I am not prepared to say.

Q. What in your opinion is the value per front ~~lot~~ foot of that B & O lot?

A. I should say, generally speaking, it is worth about \$200 a front foot.

Q. And this lot generally speaking is worth \$200?

A. That lot might suit a man better <sup>than</sup> the lot on Spear's wharf, a man might not want such a deep lot. Technically speaking the Spear's wharf <sup>lot</sup> is more valuable, but practically you might not be able to get any more for the Spear's wharf lot than the Smith's wharf lot, because the narrow depth <sup>lot</sup> might suit a man better.

Q. Then, you mean to say practically speaking the market value of the B & O lot is no greater than the lot we are condemning?

A. I do not consider it so, no.

William D. Poultney

Q. Then, the B & O lot has a difference of 40 feet in depth from the lot we are condemning, and in addition to that runs to Patterson Street, and you say, that does not make a particular difference in its value?

A. It would make a difference to some purchasers but some people might not want that depth, they would not need such a deep lot for the purposes of their business.

## REDIRECT EXAMINATION

By Mr. Bryan:

Q. Our friends have asked you about a sale that took place in 1895. You were grown in 1895?

A. Yes, I am sorry to say.

Q. Do you remember 1893?

A. Yes.

Q. Do you remember whether there was a panic and everything was depressed in 1893?

A. Yes, sir, I remember that very well.

Q. Do you remember about the Silver Bill in Congress and the stringency of the currency and all that?

A. Yes.

Q. Was not 1895 sort of a middle ages for the value of property in Baltimore?

A. It was pretty low.

Q. Was it not a phenomenal depression?

A. Yes, I think it was. I think especially dock property was low. There were a great many people who derived very large revenues from dock property, or was supposed to a great many years ago, and I think about the time I was born dock property was supposed to be about the best kind of property, the most productive. And then a great depreciation came and people who had dock property were sorry they owned it.

Q. Could you tell the gentlemen of the jury whether or not in your observation and experience the price that property sold for <sup>at</sup> an auction sale in 1895 was a fair criterion of what a man wanting to do justice in valuing property would value it at today?

A. No, I do not think so.

Mr. BRYAN: I think that is our case.

(Testimony of witness concluded).

Whereupon ---

De WILTON BARWES,

a witness produced in behalf of the defendants ~~and~~ <sup>and</sup> after first being duly sworn was examined and testified as follows:



DIRECT EXAMINATION

By Mr. Poe:

Q. Did you ever have charge of this property before the fire?

A. Yes, sir.

Q. How was this property improved?

A. By a three-story brick warehouse.

Q. You were an agent of the Patterson's, were you not?

A. Yes.

Q. How long have you been their agent?

A. Nineteen years the first of this month.

Q. And as agent you have had charge of the collecting of their rents?

A. Yes.

Q. And the repairs of their buildings and looking after their property generally?

A. Yes, sir.

The COURT: Was this four stories or three stories?

The WITNESS: Three stories.

Q. (Mr. Poe) Was it an old warehouse?

A. Yes, sir, it was a pretty old warehouse but in good order, in good condition.

Q. It was in good condition?

A. Yes, for the purpose for which it was used.

Q. What was the purpose for which it was used?

A. Most of the time since I have been there for storage purposes. At the time it was burned down it was used by the H. B. Davis Paint Company.

Q. Just before the fire it was used by them?

A. No, at the time it was burned down.

Q. What insurance was gotten?

Mr. BRYAN: We object to that.

(Argument upon the objection followed)

The COURT: The objection is overruled.

Mr. BRYAN: And we note an exception, your Honor.

Q (Mr. Poe) What was the insurance?

A. My recollection is we had \$3000 on that building, in the Old Baltimore Fire Insurance Company.

Q. What was the building worth, in your opinion?

A. I don't know, I am not an expert in that line.

Q. Sir?

A. I think it was worth more than it was insured for.

Q. How much more? a thousand dollars more?

Mr. BRYAN: We object to that, I don't think that is proper. He is not competent to say that. If he is competent

De Wilton Barnes

of course we do not object. Ought he not to prove that he  
~~Mr. BRYAN~~ is competent first?

The COURT: Yes, I think he should. You were about to do  
that, I suppose?

Mr. POE: I ~~asked~~ assumed that he was thoroughly compe-  
tent.

Q (Mr. Poe) Did you have charge of the placing of the in-  
surance?

A. Well, that insurance was placed there when I took  
charge, it had been on it for years. It was placed by  
Mr. Edward Patterson, Junior, in his life time, and by my  
father. And then we carried the same rate.

Q. What were you engaged in before you were engaged in  
this business?

A. I was engaged in the live stock business, at the  
Calverton stockyards.

Q. Have you had any experience at all in arriving at value  
of buildings?

A. I have not more than a fairly intelligent man knows.

Q. You had charge of this particular building for how  
long?

A. Nineteen years, but not all of that time. My father

had charge part of it.

Q. How many other buildings did you have in connection with the estate?

A. 20 or 25, I think.

Q. Did you fix the insurance the same way?

A. In the same way, yes.

The COURT: You continued the insurance on them?

The WITNES:: ~~There~~ About the same / I found. Sometimes when improvements were made I added something to it.

Q. (Mr. Poe) Did you have anything to do with the improving ~~part~~ of the buildings?

A. I had to order repairs when repairs were to be made.

Q. Did you have to superintend the repairs?

A. No, sir. Mr. John H. Marshall did all of our building. I simply told them what was to be done and it was done.

Q. Was any building done while you were in charge of any of this property? Any rebuilding done of any character?

A. Some little on a house on Gay Street, we had a back building put up there.

Q. Did you have much of that?

A. It was done in the same manner as all repairs were done, it was done under a percentage, the same as the others.

Re Wilton Barnes

Q. Do you feel competent to pass an opinion on the value of this building?

A. No, sir, I do not think it is my place to do so.

Q. You do not feel competent to do so?

A. I do not say that I am not competent, I do not say anything about it that.

Mr. MACHES, JR: That is a matter of law.

Mr. BRYAN: He said a few minutes ago that he had no other knowledge than what any ordinary intelligent man <sup>would</sup> have

The COURT: I do not think that he <sup>been</sup> has shown to have any expert knowledge.

The WITNESS: I do not claim to be an expert.

The COURT: It was 25 feet; did it cover the whole lot?

The WITNESS: Yes.

The COURT: Three stories high?

The WITNESS: Yes, sir.

Q. (Mr. Poe) What was the rental you got?

Mr. BRYAN: We object to that.

The COURT: The objection is overruled.

Mr. BRYAN: An exception is noted.

A. \$350 a year at the time of the fire.

Q. (Mr. Poe) \$350 at the time of the fire?

De Wilton Barnes

A. Yes, for the house and wharf in front.

Q. How long had you been receiving that rental?

Mr. BRYAN: We object to that.

The COURT: Same ruling and an exception noted.

A. The wharf had been rented separately before, \$300  
for the house and \$50 for the wharf before the last <sup>lease</sup> was  
made.

Q. (Mr. Poe) When was the last lease made?

A. About 2 months and a half before the fire.

Q. You got \$300; how long was the lease to run?  
is

A. My recollection ~~was~~ that it was for 3 years. Mr. Machen

Q. drew up the lease.

Q. Was it one year or three years?

A. I do not remember now.

Mr. BRYAN: There is no objection to telling him.

Mr. MACHEN: I do not remember any lease made of that.

The WITNESS: My recollection is that it was for 3 years.

Q. (Mr. Poe) With privilege of renewal?

A. I think so.

Q. For many years?

A. It does not say how many years.

Mr. BRYAN: Let us have the lease?

Mr. POE: I haven't got the lease.



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SHORTHAND REPORTER,  
BALTIMORE, MD.

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Mr. BRYAN: Then you must give notice.

The WITNESS: I haven't got it either, it is burned up.

Mr. MACHEN:SR: Call the lessee and let him produce the lease.

The COURT: I do not imagine that is very important.

Mr. MACHEN, JR: No, sir, it is not

Q (Mr. Poe) How long had the property been idle before you made the lease?

A. It was not idle at all, it was taken from one party and given to another.

Q. In the last ~~few~~ three years ---

A. I do not think that it has been idle three months in the last 19 years.

Q. It was ~~that~~ this rent, then, for \$350 for the lot and wharf?

A. Yes, and once it rented for \$400, as I found by looking on my books.

Q. It went down then, and never came back?

A. Well, there was more demand in the last 3 or 4 years.

Q. Did you avail yourself of that by getting an increased rent?

A. All I could.

De Wilton Barnes

Q. You did not succeed in getting any increased rent, did you?

A. No, I tried to.

Mr. BRYAN: We are much obliged to you, Mr. Barnes.

(Testimony of witness concluded and witness excused).

Whereupon ---

JAMES F. MORROW,

a witness produced in behalf of the defendants, having first been duly sworn was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Lauchheimer:

Q. Have you had any experience in real estate transactions, and if you <sup>have</sup> had, give us some account of it.

A. I was engaged in municipal service for 10 years as commissioner for opening streets; subsequently I was 4 years in the Appeal Tax Court. That brings me up in point of time to about 1886. Since that time I have been transacting real estate matters. I represented the Hopkins University in the purchase of Clifton; I represented the Johnson heirs in the acquisition of the City Hall and the widening of Fayette Street; the Baltimore and Ohio, the Northern Central, the Pennsylvania and the Wabash system in pretty much

all their securing rights of way, and quite a number of transactions.

Q. Have you been employed by the Burnt District Commission, and if so, in what capacity?

A. Shortly after the organization of the Commission I was appointed as general appraiser, and I advised with them in a great many cases, general work in connection with the valuation of property and the laying of benefit assessments. That has been since shortly after their organization, in April 1904.

Q. Are you familiar with the property in this case, 221 Smith's wharf?

A. Yes.

Q. What, in your opinion, is the fair market value of that property today?

A. I have investigated very closely. I think all the property from Bowley's wharf down to the Merchants and Miners, at the foot of West Falls Avenue, from sales and rentals, and the impression that it has made on my mind, in my investigations has been a figure of \$3000 for this lot.

Q. How do you arrive at that valuation?

A. By the general sales throughout that district and by the rentals. This property rented for \$350 a year. I re-

James F. Morrow

gard 8 per cent. capitalization is just on warehouse property for ~~assessment~~ <sup>investment</sup>, and it appears to be pretty well established among the real estate people as a just capitalization. That would give a value of \$4375 for the lot and improvements. Deducting the \$3000 for the warehouse would only leave \$1375, which is not more than one-half, less than one-half of my valuation. I also take the Fleischman lot in the near neighborhood, which rented for \$500 a year. That would be a capitalization of about \$6250. Deducting the warehouse value would leave it about \$3000. That is the Fleischman lot. I place <sup>a</sup> ~~the~~ valuation on it, as I did on the other property, of Patterson and Dyer's, in 1897, of \$100 a front foot.

The COURT: How much?

The WITNESS: \$100 a front foot.

Q (Mr. BRYAN) in 1897?

A. In 1897.

Q. My attention was diverted for a moment. You said the Fleischman lot was worth what?

A. \$500 rental. I capitalize that at 8 per cent., --- \$6250. Deducting the warehouse would leave \$3000 for the Fleischman lot.

Mr. BRYAN: I ~~am~~ did not catch what you said. I am not

James F. Morrow

cross examining you, now.

Q (Mr. Lauchheimer) How would Smith's wharf compare with Spear's wharf?

A. Smith's wharf is a superior wharf and the property on Smith's wharf, well --- I suppose I am justified in citing the B & O sale.

Mr. BRYAN: Do you know anything about it?

The WITNESS: From information and testimony here this morning.

Mr. BRYAN: You know in your long experience as an expert that you must not give hearsay testimony.

The COURT: Unless that sale is an admitted one.

Mr. MACHEN, Jr: It is not admitted at all. It gave in as hearsay from one of our witnesses upon cross examination. We do not admit it.

The COURT: I sustain the objection.

The WITNESS: Taking Spear's wharf --- in answer to the question as to the conditions; I was not going to refer to the sale; the question as I understand it was the comparative difference between Smith's wharf and Spear's wharf. I regard Smith's dock, 65 feet deep and I have regarded Spear's wharf as 105 feet deep, going back to Patterson

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Street, with a railroad on it, and I think the latter is entitled to at least 50 per cent. increase in valuation over the Smith dock property.

Q. A moment ago you stated you considered Smith's dock to be superior to Spear's dock. That was a slip of the tongue.

^ The COURT: I do not think he said so.

Mr. LAUCHHEIMER: Yes, he made that statement.

The COURT: That was manifestly a verbal mistake.

The WITNESS: Taking Spear's wharf at 105 feet, running back to Peterson Street, and a ~~xxx~~ railroad on it, I think there is 50 per cent. difference in value as between the Spear's wharf, 105 feet, and the Smith's dock lot, 65 feet deep.

#### CROSS EXAMINATION

By Mr. Bryen:

Q. You have not negotiated any sales on Spear's wharf since the fire, have you?

A. No, sir.

Q. You have not negotiated any sale on Smith's wharf since the fire, have you?

A. None whatever.

Q. And you have not been present at the making of any



James F. Morrow

sale there since the fire, have you?

A. None, other than that of the burnt district.

Q. I am not talking about that, of course. With that exception you have been present at no sale of property at either one of those wharfs since the fire?

A. No, sir.

Q. Have you had any sales of property at Smith's wharf within three years before the fire?

A. No.

Q. Or five years?

A. No.

Q. Never in your life?

My

A. ~~My~~ only knowledge of the value is from record sales and my observations.

Q. Please do not let me go too fast for you, because to give you chance to I have the habit of doing that, and I want ~~him~~ answer the questions. You have never any sale in your whole life there on Spear's wharf or Smith's wharf, have you?

A. I do not recall any.

Q. And you have never leased a piece of property on either one of those wharfs, have you?

A. No.

Q. Have you made a sale since the fire within a half mile

of this property we are condemning?

A. As I stated, I was engaged by the Burnt District Commission ---

Q. Answer the question and explain it afterwards.

A. (continuing) My duties in the Burnt District Commission fully occupied nearly my entire time.

Q. It is a fair inference on account of your duties with the Burnt District Commission, and being around with these gentlemen in court and on valuations, and so on, <sup>that</sup> you have not been able to make any sales anywhere since the fire, have you?

The COURT: He has not been in the business to make them.

Mr. BRYAN: I understand that. The important thing is to find out that he has not done it.

Q (Mr. Bryan): Do you know ~~where~~ where this Fleischman lot is?

A. Yes. I cannot just recall the number but I know that it is just north of this lot.

Q. You know where the Fleischman lot is, do you not?

A. Yes, sir.

Q. How long before the fire was the last time you were down there to see the Fleischman lot, what was the last

James F. Morrow

time you looked at it?

A. I do not recall.

Q. I know it is right hard to tell, but can you tell the jury whether you can recall having seen that lot within 4 years before the fire?

A. I think I have, but I could not fix the time or the date.

Q. Have you been on the premises within four years before the fire?

A. Not that I can recall.

Q. Do you think you were ever on the Fleischman lot premises?

A. I think I have passed it. ~~on the street.~~

Q. Passed it on the street?

A. Of course, yes.

Q. But you do not think that you have ever been inside?

A. For an inspection?

Q. Yes.

A. No.

Q. Could you tell us what improvements were on the lot?

A. A four story warehouse.

Q. How do you know it?

A. The record of the Appeal Tax Court ---

James F. Morrow

Q. Don't you know that is not what I asked you?

A. You asked me how I knew it.

Q. Do you not know that I want to get at your personal knowledge?

A. You asked me what the character of the building was on it and I said a four story warehouse ---

Q. Do you not know that I mean of your own personal knowledge---

The COURT: That is argument.

Mr. BRYAN: No, your Honor, it goes to the credit of the witness. He comes here as a chronic witness for the city.

The COURT: He is one of the gentlemen that were employed by the Burnt District Commission to put <sup>a</sup> this value on it and he did put <sup>a</sup> this value on it.

Mr. BRYAN: I want to treat him with entire respect, for I feel kindly and I have known him for many years.

The COURT: You asked him how many stories the building was and he said four stories, and that you asked him how he knew it, and he said he knew it from the record.

Q (Mr. Bryan) Is that the only way you know it?

A. What is the question?

Q. Have you any personal knowledge ~~frankly known~~ of what sort of a building was on it?

James F. Morrow

A. No, except the record of the Appeal Tax Court.

Q. You have no personal knowledge?

A. No, sir.

Q. Have you any personal knowledge of what sort of a building was on this property before the fire?

A. The same sort of knowledge as in regard to the Fleischman lot.

Q. You have no knowledge of what sort of buildings were on any of these lots, what sort of improvements, have you?

A. Yes, I have.

Q. Of your own personal <sup>knowledge?</sup> ~~knowledge?~~

Yes,

A. Prior to the fire, by passing up and down the wharf I knew they were generally improved by three and four story buildings, warehouses.

Q. How was Smith's wharf improved?

A. I am speaking of Smith's wharf.

Q. How was Spear's wharf improved?

A. I think it was improved in a very similar manner, whether or not

Q. Tell the jury if you have any recollection of the appearance ~~of~~ <sup>of</sup> the ~~building~~ <sup>property</sup> we are now condemning?

A. I cannot say I have.

Q. Have you any recollection of the appearance of the building on the Fleischman property?

A. None other than passing it.  
off

Q. If you were ~~an~~ the witness stand and I said to you that ~~and~~ I wanted your judgment as to what those improvements were worth, you would not think you knew about them to tell me, would you?

A. I think so.

Q. Without having any knowledge of the details?

A. I cannot give you any real estate information unless I seek it. If I were familiar with the property you want a valuation on as I am the City Hall or the Court House here I still would go to the property and inspect it.

Q. The Fleischman lot you cannot tell us how it was improved, can you?

A. No.

Q. You do not know anything about that?

A/ No.

Q. You do not know how this property was improved inside do you?

A. No.

Q. You do not know which was the better warehoused? you?

A. My impression was that the Fleischman was the superior.

Q. Why was it your impression?



A. Simply from passing by.

Q. Sort of a casual guess, was it not?

A. I don't know how casual. By passing by any property I can get an idea of the exterior of it, and the interior of it follows the exterior in nearly all property, that is warehouse property; from the character of the exterior of warehouses we know they are generally alike. Mr. Bryan, on Smith's dock or Spear's wharf the interior of the warehouses consist of walls and joists and flooring principally, and a cut off for an office. for the purposes of storage generally they are much alike; there is comparatively little or no difference in the interiors.

Q. One warehouse would not rent for more than another on account of the improvements on the property, would it?

A. I don't think there is much difference in the rental value.

Q. An old warehouse ---

A. The difference in rental values would be more on account of the difference in capacity of the warehouses rather than the difference in construction.

Q. And you tell the jury that an old warehouse, an antiquated, old-fashioned one, would rent for as much as an

up-to-date one?

A. ~~Yes~~ They were nearly all of that character, and if they are kept in repair they are about the same.

Q. And the fact that a warehouse is very old and hasn't any conveniences or elevators, or anything of that kind, would not prevent it from renting for as much as a modern improved warehouse?

A. In my judgment there was a similarity in all Smith wharf warehouses.

Q. And one would rent for as much as another?

A. Pretty nearly, except on account of the difference in capacity.

Q. If you had the meagre information which you have indicated ~~from~~ you have from your testimony as to the value of the improvements, why did you make a different deduction when you wanted to get at the value of the land, ~~if~~ <sup>for</sup> the improvements there, if you did not know anything about it, if there was no difference, ~~what~~ why did you make a different valuation?

A. The Fleischman lot produced a better rental.

The COURT: I think he did deduct the same amount from each one.

James F. Morrow

Mr. BRYAN: He put the lot as worth \$3000.

Mr. ROSE: The point was that he deducted \$3000 and in one case he brought the value of the lot up to \$3075, and with in the other case a rental of \$500, \$6250, he takes \$3250 off that for the value of the improvements and reaches the same result of \$3000.

The WITNESS: For the reason I did not consider the Peterson and Dyer warehouse, I did not think that was a proper value for ~~the~~ rental, I think the rental was very much under.

Q. (Mr. Bryan) But you did take off a different sum for the value of the improvements on the two lots, did you not?

A. No, sir.

Q. Our rental is underneath what it ought to be, you think?

A. I think so.

Q. You heard the testimony given by Mr. Fleischman's representative ~~given~~ here this morning?

A. Yes.

Q. You heard him say they paid \$5000 for that lot?

A. Yes, sir.

Q. And you tell the jury in your opinion it is only worth

\$3000?

A. Because I don't think that one sale by itself establishes values.

Q. Therefore, although the man told you that he paid \$5000 since the fire for it you tell the jury that you really think that he paid \$2000 too much for the lot?

A. It may have been worth the \$5000 for Fleischman's special purposes, but it was above the market value of the lot.

Q. Is not the market value of the lot what it will bring at a fair sale?

A. Not always.

Q. I am glad to know that. What is the market value--- what the Burnt District wants you to testify to?

A. I do not consider that \$350 rental for the Patterson and Dyer properties would establish rental values either.

Q. And you tell this jury although you know the property was sold since the fire for \$5000 you think the fair market value of that property is \$3000?

A. I do.

Q. And that is just as fair as any other judgment you have formed in the case, is it?

A. That is ~~in~~ for the jury to say.

James E. Morrow

Q. You are unwilling to say whether you think that is as fair as your other judgments, or not?

A. I am not criticizing my own judgments.

Q. Is not a large part of your industry testifying in real estate cases.

A. Not at the present time.

Q. But is not that a large part of your business.

A. If you will fix the time limit I will be able to answer.

Q. Well, since you left public employ?

A. I don't know. <sup>There is</sup> Hardly any branch of real estate that I have not been engaged in; that is to say, letting property, collecting rents, buying and selling property, and managing cases before boards of condemnation and pretty every that nearly branch of the business that I think could be followed.

Q. Has not testifying in court, and particularly before boards of condemnation, juries condemning property, formed 90 per cent. of your business in the last 10 years?

A. Absolutely no.

Q. What per cent. has it been?

A. That ~~is a difficult~~ would be difficult—

Q. I know it is hard to tell.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

James F. Morrow

A. It is difficult, but it was not 90 per cent.

Q. Was it 80 per cent?

A. I do not think it was.

Q. Was it 75 per cent?

A. Possibly.

Q. It was 75 per cent?

A. I say possibly.

Q. I understand perfectly well that you have not made a calculation as to what percentage, and you can only tell us approximately. I understand that.

A. In answer to your question I would like to supplement my answer by saying that this has been a most excellent training to me to give judgment on real estate values.

Q. You have gotten in the habit of giving judgment by informing yourself for purposes of testifying.

The COURT: He has to form a judgment and he has been able to give some reason for it.

Mr. BRYAN: And he becomes expert in testifying in such matters ~~just~~ but that does not always make a man's judgment good, any more than because a man is a good advocate he necessarily makes a good judge.

The COURT: That is the training they get.

(Testimony of witness concluded).



Whereupon ----

JOHN J. KELLY,

a witness produced in behalf of the defendants, having first been duly sworn was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lauchheimer:

Q. Have you ever purchased any ground on Smith's wharf?

A. Yes, sir.

Q. When did you purchase it? and what were the dimensions of the lot and for how much?

A. About \$3000. That is before the fire. I bought two pieces of property on Smith's wharf at the corner of an alley. I really forget the dimensions of the property now.

Q. Please point it out on the map?

(The witness did so)

A. Number 301 and Number 243 Smith's wharf.

Q. 25 feet one of them and 16 feet the other. You say those lots were bought about two years before the fire?

A. Yes.

Mr. MACHEN, JR: Of course we object to this.

The COURT: The same ruling.

Mr. MACHEN, Jr: We note <sup>an</sup> ~~the~~ exception.

Mr. LAUCHHEIMER: It was improved property?

A. Yes.

Q. What did you pay for those two lots?

A. I paid for one on the south side, Number 301, improved with a three and half store warehouse, \$2700 in fee.

Q. What did you pay for the other one?

A. I paid \$800 subject to a ground rent of \$96.

Q. Was that improved?

A. Yes.

Q. What was the character of the improvements?

A. <sup>AS</sup> ~~ANSWER~~ to the first <sup>one</sup> the 25 foot was a very good warehouse, the one on the other side was a two story. House.

~~Mr. BRYAN: He subject to that.~~

Q. What were the improvements on 301 worth?

Mr. BRYAN: The object to that. He has not laid any foundation yet.

The COURT: What were they estimated to be worth?

Mr. MACHEN, JR: Of course our objection goes to all this.

A. I do not think that you could build the houses for that.

Q (Mr. Lauchheimer) What would you estimate the value of the improvements on the lot, Number 301?

John J. Kelly

Mr. BRYAN: How much did it add to the value of the property?

The COURT: When you bought it how much did you put that in for?

A. I did not put any value on it really, because I bought it cheap, it was a bargain when I bought it and I took it without putting any valuation on it. It was a very good warehouse.

The COURT: And you said you paid \$800 subject to a \$96 ground rent?

The WITNESS: That is so; that was a two story one. The other one was in fee.

Q (Mr. Lauchheimer) Were the improvements burnt down?

A. Yes, sir.

Q. What insurance did you get on the improvements on lot 301?

Mr. BRYAN: I object to that.

(Discussion followed)

The COURT: The objection is overruled.

Mr. BRYAN: We note an exception.

A. For the small one I think I got \$1100.

Mr. ROSE: I think it is only fair to the Court to say we think we have decisions to show that in such a case the

John J. Kelly

value of improved property is inadmissible. I simply want to call this to the Court's attention, I think it is fair to the Court to make this statement. We understand our objection is overruled and we wish to reserve an exception.

The COURT: That might be inadmissible in many cases, but here is a peculiar state of affairs. This property is not in the market and the value has to be gotten at in some other way. All that property was improved before the fire. I cannot see any other way of testing the value of it except by getting at the values of adjoining properties and deducting the improvements and so on.

Mr. RO E: I simply want to call the Court's attention to our view of it and make this statement, and we will reserve our exception.

The COURT: I understand, and I think it is your duty to do so, but I think this case is a different case.

Q. (Mr. Leuchheimer) What insurance did you get on the larger lot?

(Objection made, objection overruled and exception noted).

John J. Kelly

A. I cannot tell you that now. I would have to refer to my books.

Q. I will ask you to refer to your books and tell us tomorrow morning.

A. I will do that with pleasure.

Q. Are you familiar with this Smith wharf lot, number 221 Smith wharf, have you seen that?

A. Only owning 243, it must be about 20 houses from there, according to the numbers. It would be about 10 houses above me.

Q. You know the location of the lot?

A. I know the general location, yes.

Q. What in your judgment is the value of that lot?

Mr. BRYAN: We object.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

John J. Kelly.

The COURT: Ask him how familiar he is with the property?

Q. (Mr. Lauchheimer) Mr. Blake testified as a property owner, ~~xxx~~ not as a real estate expert this morning.

How long have you been familiar with property there?

A. About twenty years.

Q. How long have you owned property?

A. At that time about two years before the fire.

Q. Do you feel competent to express an opinion as to the value of property on Smith's wharf?

A. Well, just as much as any ordinary person, I would imagine, familiar with that location.

The COURT: I think he is competent.

Mr. BRYAN: We withdraw our objection.

Q. (Mr. Lauchheimer) What in your opinion is the fair market value of the lot Number 221 Smith's wharf without improvements?

A. I think the value of it, not having railroad facilities back of Smith's wharf, it would be worth about \$130 or \$135, the full value for it.

Q. That much a front foot?

A. Yes. I did n't get that for mine.

CROSS-EXAMINATION

By Mr. Rose.



John J. Kelly.

Q. If my figuring is correct that would make about \$3400.

A. Whatever it is.

The COURT: Do you admit that?

Mr. POE: Yes, sir.

Q. (Mr. Ross) You have heard the testimony that the representative of Fleischmann and Company gave. He looked as if he would a man who would take care of himself, and he testified that he paid \$5,000 for a similar lot a couple of doors away?

A. I don't know what he paid for it.

Q. You were not in court this morning?

A. No.

Q. Then you did not consider that fact in giving your estimate?

A. Well, he might have wanted it pretty bad.

Q. If he said he did n't need it pretty bad what would you say?

A. Well, he might know his business, I don't know, but I think he paid too much for it.

Q. The fact that he paid \$5000 there would not influence your judgment?

A. I don't know what their ability is, in purchasing

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

John J. Kelly.

real estate we all make mistakes sometimes .

Q. And you sometimes make mistakes in making estimates?

A. Yes, sir.

Q. You may be a man that thinks on the whole you had better not buy real estate unless you can buy it cheap?

A. I know plenty of men who pay more than the real value because they want it for a special purpose, and I have done that myself.

Q. Well, there is not any special purpose that makes a vacant lot here on Smith's wharf worth much more than any other lot?

A. I don't know what that man wanted it for.

Q. Just to put a warehouse on it, he said, to carry on his business.

A. I cannot judge about that.

Q. You say the fact that he did that would not influence your judgment?

A. I have a great deal of respect for any man's judgment.

Q. Then does it not suggest to you that if a fairly wideawake business concern wanted to buy a lot there and was willing to pay \$5000 for it, you were putting rather low estimate on this property in saying that \$3500 is the

John J. Kelly.

highest price that ought to be paid for it?

A. No, I cannot see why because a man pays a good price for it that it should influence me.

(Testimony of witness concluded).

Whereupon ---

CLEVELAND P. MANNING,

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Lauchheimer.

Q. You are the agent for Mr. Charles J. Bonaparte?

A. I am.

Q. You have charge of his real estate?

A. I have.

Q. Mr. Bonaparte owned a lot on Smith's wharf which he sold to the Fleischmann Company. Are you familiar with that?

A. Yes.

Q. How was that lot improved before the fire?

Mr. BRYAN: We object to that.

(Objection overruled and exception noted).

A. It was a three-story warehouse, three or four stories, I think it was three full stories and an attic.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

Cleveland P. Manning.

Q. (Mr. Lauchheimer) Were those improvements destroyed by fire?

A. They were.

Q. What insurance was collected by you for Mr. Bonaparte?

Mr. BRYAN: We object to that.

The COURT: Objection overruled.

Mr. BRYAN: We note an exception.

A. \$5200 was collected.

Q. There has been testimony to-day here in reference to the sale made by Mr. Bonaparte of the lot on Spear's wharf to the Baltimore and Ohio Railroad. Can you tell us when that sale was made?

A. It was made in February, 1903, I think.

Q. Was that an improved or an unimproved lot?

A. It was an improved lot, improved with a four-story warehouse.

Q. What were the dimensions of that lot, if you recall?

A. I should think the lot was 25 to 30 feet ~~wide~~ front, by the depth, whatever it is there on Spear's wharf, to Patterson street.

Q. What was the price at which the B. and O. Railroad bought the lot?

Mr. BRYAN: We object to that.

(Objection overruled and exception noted).

A. They paid \$11,000 for it.

Q. (Mr. Laucheimer) Were the improvements destroyed by the fire?

A. They were.

Q. What insurance was collected?

(Objection;

(Objection overruled and exception noted).

A. That I could not state.

The COURT: What was the purchase price?

The WITNESS: \$11,000.

Mr. BRYAN: He said he did not know what the insurance was.

Q. (Mr. Laucheimer) What were those improvements worth at the time they were sold to the B. and O.?

(Objection, objection overruled and exception noted).

A. All that I could answer to that was that we sold the entire property to the B. and O., warehouse and grounds for \$11,000.

Q. You say the improvements were a four-story substantial building?

A. Yes.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

Cleveland P. Manning.

CROSS EXAMINATION

By Mr. Rose.

Q. You testified this Fleischmann warehouse was three stories and an attic high?

A. Yes.

Q. Has that lot been sold since the fire, that you know of?

A. It has.

Q. What price did Mr. Bonaparte get for it?

A. \$5000.

Q. It is a lot 24 feet and some inches front, is it not?

A. Yes sir.

Q. Do you know whether or not that was a fair price?

A. I considered it a very fair price for the lot. They offered Mr. Bonaparte \$4000 for it and he declined it, and then they came up to \$5000 and he accepted it.

(Testimony of witness concluded).

Thereupon at 2:55 p. m., the Court adjourned until to-morrow morning, November 10, 1905, at ten o'clock.



Date taken November 10, 1905.

# Stenographers' Transcript.

SECOND DAY'S PROCEEDINGS.

In the United States Court for the District  
of Maryland, in the matter of Appeal from  
the award of the Burnt District Commission,  
as to Lot 306. Laura Patterson, et al.

VS.

The Mayor & City Council of Baltimore.

Pechin & Johnson,  
Shorthand Reporters,  
Equitable Building, Baltimore.

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
Clerks' Office, Criminal Court,  
BALTIMORE, MD.

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SECOND DAY

Baltimore, Maryland, Friday, November 11, 1905

The Court met at 10 o'clock a. m.

Present, the counsel for the respective parties.

Whereupon ---

JOHN J. KELLY,

a witness heretofore produced and sworn in behalf of the defendants, was recalled for further examination.

DIRECT EXAMINATION

By Mr. Laucheimer.

Q. When you were on the stand yesterday you did not recall the amount of insurance you received from the improvements on the larger lot. Can you tell us know what that amount was?

A. Yes, sir.

Mr. ROSE: Of course we object to that.

The COURT: I verrule the objection.

Mr. ROSE: We note an exception.

Q. (Mr. Laucheimer) Tell us the amount?

A. \$2000.

Mr. LAUCHEIMER: That is all.

(Witness excused).

Whereupon ---

ALFRED D. BERNARD,

a witness produced in behalf of the defendants, having been first duly sworn was examined and testified as follows:-

DIRECT EXAMINATION.

By Mr. Laucheimer.

Q. What is your occupation?

A. I am a member of the bar and deal in real estate. I have been a member of the bar for sixteen years and have been dealing in real estate for twenty years in Baltimore City and the suburbs. I was one of the real estate experts appointed by the Burnt District Commission to value the property required by the city in the dock district. I have been for the past year reviewing assessments in the city and principally in the business district of the city, for the Appeal Tax Court.

Q. Give the jury some idea of your operations in real estate before you were employed by the Burnt District Commission.

A. My operations in real estate in Baltimore city amount in the past twenty years to about ten million dollars, and since the fire our individual operations outside

of the work done in the burnt district, or outside sales which the office made to the Burnt District Commission, amount to about one and a quarter million dollars, nearly two million dollars, up to the present time, since the fire.

Q. You were employed by the Burnt District Commission to value all dock property?

A. I was.

Q. Will you tell us the scope of your employment?

A. I was employed in the latter part of June, I think, 1904, and in connection with Mr. Walter Payne and Mr. Frank Caughy. We were given a fixed compensation and told to put a value on all the property required by the city in that dock district, and to get the report up and submit it to the Burnt District Commission. We got that report up about the middle of August, I think. We worked on it for about six weeks, and a number of nights we worked until midnight to get it up. Do you want to know the method we used?

Q. Yes, tell us how you informed yourselves as to values.

A. We secured the services of Mr. Norman. He gave us a report of all the sales in the dock district made since 1880, for twenty-four years, and we subsequently verified

each of those sales. We took all the information we could get in the way of leases, rents, and all information we could absorb from the different people that came in from time to time in the Burnt District Commission to negotiate for lots, and we fixed the value from those sales and from our personal experience, and put our figures together; and where we differed we came together, and some places where we were too far apart we submitted our individual opinions to the Burnt District Commission.

Q. You are, then, familiar with this lot, Number 221 Smith's wharf?

A. Yes, I know the lot very well.

Q. What, in your opinion, is the fair market value of that lot to-day?

Mr. ROSE: Now, may it please the Court, we object to that testimony because the witness has said that he has been influenced in informing himself by the bargains made by individuals with the Burnt District Commission. He says he has watched them all and they have influenced his judgment as to values. As the law is quite firmly established that the bargains made by the Burnt District Commission, in connection with this transaction, are not admissible in

evidence, the opinion of a witness based in whole or in part on those transactions would certainly not be admissible.

The WITNESS: If the Court will allow me ---

Mr. BRYAN: Don't you argue it.

The WITNESS: I wanted to make a statement.

The COURT: Let him make his statement.

The WITNESS: I certainly did not want the jury to infer that I have formed any opinion from any bargains the Burnt District Commission made in connection with this dock property, because no bargains had been made ---

Mr. ROSE: But you said you listened to all that was said. The stenographer can read what you testified to.

The WITNESS: From information, I said, I got from people that came in.

The COURT: Owners of property?

The WITNESS: Yes, some of them told us the rentals they got for property. We personally did not negotiate with them.

The COURT: I overrule the objection

Mr. BRYAN: We take an exception, your Honor.

The WITNESS: We valued the lot at ---

Mr. BRYAN: It is only fair to call to the Court's atten-



tion, taking the witness' first statement and his statement as it has now been modified by what he last said, to the fact that we now have it that his opinion is not formed from experience but what he got while these proceedings were going on. That does not qualify an expert.

The COURT: He says he has informed himself in every possible way, by his experience with transactions in that property in the last twenty-five years, and then he said that he got the rentals so far as he could ascertain them, and he also says that his mind was informed by statements of people who came in in regard to their own property, or representing others.

Mr. BRYAN: The only thing I wanted to do was to respectfully call your Honor's attention to the fact that those things are hearsay, so it will be no surprise to the city if the question is asked to be reviewed.

The COURT: Proceed.

The WITNESS: I valued the lot at \$115 a foot, and I based the valuation on five sales, three of which sales I personally made, the transaction going through our office, and I seeing the money pass. The other two sales were testified to in this particular case. Those five sales are Number 211 Smith's wharf ---

Mr. BRYAN: Is that one you made yourself?

The WITNESS: No, that was testified to in this case.

Mr. BRYAN: Then the witness must know that that is hearsay. The jury can judge of that testimony. This witness is a member of the bar and he knows that this is hearsay. The jury do not want his opinion.

The COURT: I do not see why you should accuse him. If it is not admissible that is sufficient. What is the objection?

Mr. BRYAN: That it is the baldest sort of hearsay.

He is telling now what other witnesses have said during this trial. He has no right to give any sales except those of his own personal knowledge, on direct examination.

The COURT: One of those sales is the sale you gave in evidence?

Mr. BRYAN: So he says; but the jury can tell about that. He cannot testify to that.

The COURT: It seems to me he can assume that to be an actual sale.

Mr. BRYAN: We are not vouching for him in any way.

The COURT: But he is giving the basis of his judgment, why he thinks the price he names is a fair price.

Mr. BRYAN: But even an expert witness cannot say that he formed his opinion some months ago from what some other witness was going to say here. Even the city's witnesses cannot go that far.

The COURT: I do not know that this witness does say that.

The WITNESS: I had the sale at the time we made this computation. I got it from the records. I got both of these sales from the records. I merely state that I took it from the testimony in this case simply to give the jury the certainty that the record would fail to disclose.

(Further discussion followed).

The COURT: You can give those you know of your own knowledge first.

The WITNESS: 301 Smith's wharf. That is the sale to John Kelly. The property ---

Mr. BRYAN: Is that one you know of your own knowledge?

The WITNESS: Yes. The leasehold interest was sold for \$100 subject to a \$204 ground rent, and the ground rent was subsequently bought for \$2500, making about \$2600 for the whole sale in fee.

Q. (Mr. Laucheimer) What were the dimensions of that lot?

A. 25 by 65, and it was on the corner of an alley ten feet wide, the corner of a private alley. And Kelly and Boyd acquired 243 Smith's wharf, which was on the other side of that 10 foot alley, for \$800, subject to a ground rent of \$96. Both of those properties were improved; the 301 Smith's wharf property had a pretty good old warehouse on it, and 243 Smith's wharf had a warehouse that did n't amount to much --- one of the walls, I believe, was condemned at the time they bought it. Deducting \$1500 for the construction on Number 301 gives you a land value of \$60 a foot. Putting in the ground rent at 5 per cent on Number 243 Smith's wharf gives you a land value of \$100 a foot. Then there is 308, 314, Spear's wharf, which is across the water from the Smith's wharf property. That was a lot 90 feet by 104 feet. It was sold to the National Building Supply Company by Rowland, trustee, for \$17,500; and the construction account on that ---

Mr. BRYAN: You were not asked about that.

The WITNESS: I was <sup>going</sup> to give you the construction account in order to reach the land value.

Mr. ROSE: How does the witness know what the construction account was ---

The WITNESS: I have seen the construction account ---

The COURT: He means the buildings.

The WITNESS: Yes, the cost of construction.

Mr. ROSE: He gets the cost of the buildings by the construction account of a concern. The proper way to do is to produce the construction account.

The COURT: I think there is a misapprehension.

The WITNESS: Yes, I mean the value of the building on the lot at the time they bought it.

Mr. ROSE: How do you get at it?

The WITNESS: From personal observation.

Mr. ROSE: What do you mean by construction account?

There is a technical meaning ---

The WITNESS: I take it the ordinary meaning is the cost of a construction that goes on a lot of ground.

Mr. ROSE: According to their books.

The COURT: What did you mean, Mr. Bernard?

The WITNESS: I mean to say the value of the building at the time they bought it.

Mr. BRYAN: That is what I understood, I did not understand it the way my brother, Mr. Rose, understood it. But before that he must show that he has some qualifications besides a willingness to accept statements.

The COURT: Let him show what knowledge he bases his

estimate of values on.

Mr. BRYAN: He can put his knowledge in first, before he gives the price.

The COURT: Mr. Bernard is obviously a man who has professionally familiarized himself with values of land and improvements in this particular district.

Mr. BRYAN: That is what he tells us, but I would like to know the source of his knowledge.

Mr. ROSE: We note an exception.

Mr. BRYAN: His Honor has not ruled on it yet.

Mr. ROSE: I thought he had.

The COURT: You object to his giving any values?

Mr. BRYAN: Until he shows a knowledge of the buildings.

The COURT: He does not have to be a builder to know that. You may ask him some questions to ascertain whether he is qualified.

Mr. ROSE: And in addition, your Honor understands that we object to all evidence as to the value of improvements on another lot of ground, except the one involved in this controversy, and your Honor has ruled on that, of course, and we simply want to note the exception.

Mr. BRYAN: And also an exception as to all sales of the value of improvements.

Q. (Mr. Bryan) Are you a builder?

A. No, but I have personally superintended the construction of a number of buildings.

Q. What sort of buildings were they?

A. I just finished an apartment house that cost \$30,000.

Q. Where was it.

A. On St. Paul Street.

Q. Whereabouts? That is a long street.

A. Number 1720.

Q. Did you ever build a warehouse?

A. I have never built a warehouse personally, no.

Q. Did you ever have anything to do with building a warehouse except in the employ of the city?

A. Yes.

Q. Where?

A. We have represented during our professional career a half dozen of the leading builders.

Q. That is not what I asked you. I asked you where you built or superintended a warehouse.

A. I told you I had not built any.

Q. Where have you superintended one or had anything to do with one?



A. I have had, in a professional way, dealings with a hundred warehouses.

Q. Name one, please.

A. Well, I am now interested in the Law Building. They are making a loan of \$125,000 on the Law Building.

Q. Please tell us whether you want the jury to understand you had anything to do with the construction of the Law Building?

A. I have not, but I want the jury to understand that the plans and specifications of the Law Building, the builder, and the character of construction, were all submitted to me, and we passed on them in connection with two other gentlemen who were builders.

Q. Do you want the jury to understand you think the Law Building is a warehouse?

A. No.

Q. Do you think there is a similarity, or that it throws any light on the increase in the vendable value of property down on the wharf when you go into the matter of the Law Building?

A. No. Let me give you another ---

The COURT: He is speaking in a general way now of the value of buildings and what he knows about the value of

improvements.

The WITNE SS: Right after the fire we ---

Q. (Mr. BRYAN) What do you mean by "we"?

A. The office of Robert Bernard and Sons, of which I am a member. We made a loan of \$50,000 on a warehouse on the east side of Concord street, west side of Falls avenue, just north of Pratt street, known as the McCormick warehouse.

Q. Did you attend to that or your father?

A. I attended to it. The plans and specifications and the name of the builder and everything were submitted to us, and in connection with two other gentlemen I went over them personally and approved them. And the Broadbent and David warehouse is a large warehouse, that covers some thirty thousand square feet of land, at the corner of President street and Alice Anna street and Falls Avenue, we made a loan of \$60,000 on, and personally I went over the plans in connection with some other gentlemen. We have been counsel for builders and building supply people during all the course of our career, and in addition to that I have made a special study of the computation of buildings by the cubic foot, and I have informed myself of the prices

of labor and building materials, and I believe I am competent to pass in a general way on the value of a warehouse or any other kind of a building, or the cost of construction.

Q. But you have never had anything to do ---

A. (Interrupting) I never personally superintended a warehouse or personally built a warehouse.

Q. And you never had anything to do with building a warehouse in that neighborhood?

A. Except in so far as I have related. There are two large warehouses within a quarter of a mile, or half a mile, at least, of that district.

Q. Do you want the jury to understand that you really believe that because one building is within half a mile of another in the city it throws any light on that other building?

A. No, but I want the jury to understand that the cost of construction of a warehouse in one section of the city is probably similar to the cost of construction of a warehouse in another section.

Q. Do you want the jury to understand that the purpose of our finding out value here is to find out how much it cost to build warehouses rather than finding out how much

improvements on certain property add to the salable value of the property ---

Mr. LAUCHEIMER: Your Honor, does not your Honor think that the witness has established his competency?

The COURT: I think so.

Mr. LAUCHEIMER: Proceed.

Mr. BRYAN: We note an exception.

The COURT: Yes.

The WITNESS: I was deducting ---

The COURT: You were speaking of the Spear's wharf property.

The WITNESS: Yes.

Mr. BRYAN: Let the city ask you a question, so we can get it clean out and have our exception.

Q. (Mr. Lauchheimer) What in your opinion is the fair market value of the lot of ground 304 and 308 Spear's wharf, without the improvements?

A. \$35 a front foot at the time it was bought in 1895. Property is worth a good deal more now.

Mr. BRYAN: We ask your Honor to strike that out because it is too remote.

The COURT: I think it is admissible.

Mr. BRYAN: We note an exception.

The COURT: The jury of course will determine what weight is to be given to it.

The WITNESS: Those are the three sales I made personally.

Q. (Mr. Laucheimer) Give us the fair value at the time ---

The COURT: What you have asked him is the value of the land, making a suitable allowance for the value of the buildings on it?

Mr. LAUCHEIMER: Yes, sir.

The WITNESS: In addition to those three sales we used the two other sales, that is the Fleischmann sale ---

Mr. BRYAN: The Court told you to state those of your own knowledge.

The WITNESS: I have done so.

Mr. BRYAN: The Fleischmann sale we know about, there can be no doubt about that, but we do not want the witness to state that from hearsay.

(Discussion followed).

The COURT: At the time when you made up your estimate of value of this lot had you heard of the Fleischmann sale

The WITNESS: Yes, of the two Fleischmann sales.

The COURT: I think he can testify.

Mr. BRYAN: We note an exception.

The WITNESS: The last Fleischmann sale from Mr. Bonaparte shows the land value of \$208 a foot and the other one \$123 a foot, after deducting the ground rents. Those five sales gave me an average ---

The COURT: Do you mean the ground rents or the improvements? You said the ground rents.

The WITNESS: Yes, sir, the ground rents. 211 Smith's wharf was a leasehold property. They paid \$2500 for the leasehold and the rent was \$3733. Those five sales gave me \$576, which I divided by five, which gave me \$115, which was the ratio of those five sales --- taking the two Fleischman sales, the Spear's wharf sale and the two Smith's wharf sales, of which I had actual knowledge.

Q. (Mr. Laucheimer) What valuation would you have gotten if you had confined yourself to the three sales?

Mr. BRYAN: That is a mere matter of computation for the jury.

Mr. LAUCHEIMER: Cannot he do it?

The COURT: He can do it.

A. \$81.67.

Q. (Mr. Laucheimer) Excluding the two Fleischmann sales?

A. Yes, sir.

Q. Has property in the dock district enhanced in value since the fire?

A. That would be very hard to say, Mr. Lauchheimer, for the simple reason that almost immediately after the fire the passage of this ordinance practically put this dock district out of the market. There has been, I think since 1897 a stiffening of rents down there, and you might say that there has been a gradual enhancement of values since that time, and I suppose it would be reasonable, and certainly liberal, to assume that if the conditions had not been as they have been, that is if the dock ordinance had not been passed, that the dock district would have shown relatively the same increase in value that property north and west of it has shown. That would be a matter of speculation. There are some parts of the property north of Pratt street opposite the dock district that showed very marked advances. In some instances there have been advances of as much as 100 per cent; in other instances there have not been any advances at all. I think some property around Gay and South and Frederick streets has deteriorated rather than increased in value since the fire.



Q. What is a fair rate of capitalization of rents on warehouse property in order to secure some information as to the value of <sup>the</sup> land and improvements?

A. Well, there are a great many things to take into consideration --- the character of the tenancy, the duration of the tenancy, the purpose for which the warehouse is used and the character of the warehouse. The average warehouse computation in Baltimore city is 10 per cent gross. There is a better element of warehouse property that is rented on eight and ten; that is, eight per cent for land and ten per cent for improvements; and the highest price of warehouse property --- and I know very few that are rented at that rent --- gives eight per cent gross all the way through, land and improvements. That is for new warehouse property on long term lease in the better warehouse district, where there is an element of increase in value in the land that the owner takes into consideration when he is making the lease.

CROSS EXAMINATION

By Mr. Rose.

Q. As I understand it, you are employed by the Burnt District Commission to assist in giving them data upon which they make up the valuations of this property. Is

that true?

A. Practically true, yes, though ---

Q. I want it to be entirely true ---

A. They asked me in connection with Mr. Caughy and Mr. Payne to get up a report showing our values of property in the dock district. Now, in most instances they affirmed ---

The COURT: They adopted them?

The WITNESS: Yes; but in some instances we were not together, we differed.

The COURT: The values were different?

The WITNESS: Yes, where the experts differed in the values of property, and then the commission exercised some discretion and in some instances they added them together and divided them by two, and in other instances they gave the high value, and in other instances they gave the low value.

Q. (Mr. Rose) But where you three experts ---

A. (Interrupting) Where we agreed the Burnt District Commission adopted our figures.

Mr. ROSE: That is rather interesting public information. As I understand it, then, the Burnt District Commission was not Mr. Swann, Mr. Graham and the other gentlemen who comprise that board, but as a matter of fact consisted of Mr. Bernard, Mr. Caughy and Mr. Payne, for all

practical purposes?

A. I would not like to state that.

The COURT: He has stated the facts.

Q. (Mr. Rose) And it also appears that you are now testifying in defense of your own work?

A. Yes, I am testifying in defense of my own work.

Q. It also appears that you have been not only sitting here in court waiting to be called but you have been getting up and making suggestions as to the examination of witnesses, and otherwise assisting in the conduct of the case?

Mr. POE: We object to that.

(Mr. Poe addressed the Court in support of the admission of the question and answer thereto).

The COURT: I do think that he has frankly stated exactly what his relations to the case are, and it is for the jury to weigh his testimony. Of course all this is after the event; at the time when he made the estimate that he is now testifying to none of these questions arose.

Mr. ROSE: Does your Honor rule that I cannot ask him whether while in court here he has been engaged in assisting the counsel by making suggestions?

The COURT: You can ask him that.

Q. (Mr. Rose) Have you not then during the course of

this trial making suggestions from time to time to the counsel for the city as to questions to be asked witnesses on cross examination and other matter of that character?

A. Occasionally, yes.

Q. In other words, except for arguing the case or actually examining witnesses you have been actually participating in the trial of this case.

A. I would not say that.

The COURT: That is a conclusion.

Mr. ROSE: Let him explain it if it is not.

Mr. LAUCHEIMER: We have no objection, we want the jury to have all information possible.

The WITNESS: At the time we made the valuation of these lots the question of defending our valuations in court had not arisen, naturally; we did not know whether any cases were going to be appealed or whether all of them might not be appealed, or what cases might be appealed; but the law department of the city employed us to defend these assessments and come into court and testify as expert witnesses. And in addition to that they employed us to render them such assistance as we could. I do not pretend for a moment that Mr. Poe or Mr. Lauchheimer would follow suggestions that I make, but still I have occasionally,

made suggestions. I do not consider I am an assistant counsel in the case at all.

Mr. ROSE: All right. Now, Mr. Bernard, you want to do in this case exact and fair justice, do you not?

A. No, we want to do further than that, we want to be liberal.

Q. Is it true or not that your father-in-law was on the last jury and that you knew it and did not disclose it to any of us?

A. That is true. I disclosed it to Mr. Poe, that one of the members of the jury was my father-in-law.

Q. But it was not disclosed to us in point of fact?

A. If the question has come to a question of an imputation on the veracity of my father-in-law or myself I would resent it. I want to say that my father-in-law is as respectable a man as any man that ever sat on a jury in the city of Baltimore, and the suggestion that my father-in-law would be biassed in favor of the side for which I happened to be a witness, or that I would do anything wrong in the matter, I think, with all due respect, is an insult.

Q. I have not made any comment except that you did not think that was a matter we would want to know. We

would differ from you there, that is all. Has any part of your employment been for railroads in valuing property for condemnation?

A. Yes, sir.

Q. How much?

A. O, a number of companies. I have been employed by the Western Maryland, the Baltimore and Ohio, a half dozen, I suppose.

Q. Well, how often have you been employed by property owners on the other side in condemnation proceedings?

A. You mean in condemnation proceedings where the railroads ---

Q. Yes, how often in the last five years have you been employed by any individual or corporation whose property was being condemned?

A. I would not like to say the number of times.

Q. You have been sometimes, have you, in the last five years?

A. O, yes, I have made reports and I have testified, I suppose, altogether may be as many as a dozen cases, not a great many. I do not consider myself a professional expert at all.

Q. For the property owners you have testified a dozen

times, or approximately a dozen times, in the last five years?

A. For the property owners? No, I do not think so.

Q. That was the question I asked you. How many times?

A. What you want to give to the jury, if I apprehend the question, is, whether I have represented the condemning party or the party whose land was being condemned?

Q. That is what I am after.

A. As a rule it has been the condemning party, but I have in some instances represented the other side --- a few cases.

Q. You have said that the values in Gay and Frederick streets have declined since the fire.

A. I mean north of Pratt street, of course.

Q. Are the rents lower down there than they were before the fire?

The COURT: What was the question?

Mr. ROSE: He said, as I understand his testimony, that certain sections of the burnt district north of Pratt street show declines in value since the fire, and he mentioned Gay and Frederick, and I think South street. Did you mention South street?

A. Yes, sir; portions of South street; South street



south of German street, or really south of Water street.

Q. With that correction --- Gay, Frederick and the lower portion of South street you say have decreased in value?

A. That is my judgment. We reduced the assessments there in a great many instances.

Q. Is that based on a decline in rental values of property since the fire?

A. No, I rather think the new properties that have been built there have rented for more.

Q. Considerably more, have they not?

A. I would not like to say how much more, but ---

Q. You have not inquired into that.

A. Not specially, no, but the character of the warehouses that have been built would justify that increase in rent notwithstanding that the land has deteriorated in value.

Q. Now, as to the dock district, do you not think that there would have been a very considerable appreciation in the dock district due to the fact of getting rid of these old improvements, most of which were not very well-adapted for modern uses, throwing them into the market, so that they could be bought in lots?

A. Assuming that the scheme of the docks was to remain as it formerly existed?

Q. Yes.

A. I rather think it would; I think the burning down of the buildings would warrant the owners in improving the land and that every improvement would increase the value of the property.

Q. That being your theory how is it that you give to a sale made ten years ago --- when did you say it was made, the sale of the five you mentioned which was made some years ago?

A. 1895.

Q. Then it was ten years ago. You think that sale made ten years ago --- and by-the-way, 1895 was a period of great commercial depression every where in the country?

A. Somewhat, yes. It was after the crash but things were beginning to recover; property was low there at that time.

Q. Was not the situation very much, so far as dealings of exhilaration were concerned, like the dealings of the fellow who had been shot three or four days before but who was at the worst period of his depression, in 1895?

A. He was beginning to have hope that he would recover.

Q. But awfully depressed in feeling? Do you think it

is fair to give precisely the same weight in your averages, to a sale made in 1895 as you do to the Fleischmann sale made since the fire, you put them in the average and treat each one of them as equal, consider them on an equal basis?

A. If I took into consideration the circumstances under which both sales were made, yes.

Q. You do say that you have taken a sale made ten years ago, in spite of the fact that you yourself believe the burnt district has improved in respect to values and in spite of the fact that the 1895 sale was made in a period of depression, and you say that you give as much weight to that sale as this Fleischmann sale?

A. Yes, I think the Fleischmann sale was more in excess of the true value of the property than the National Building Supply sale was less than its true value.

Mr. ROSE: That is all I want to ask you, sir.

(Testimony of witness concluded).

Whereupon ---

FRANK J. CAUGHEY,

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Lauchheimer:

Q. What is your occupation?

A. Real estate broker.

Q. How long have you followed that?

A. I have been actively engaged in it since 1889.

Q. What experience have you had ?

A. Bought and sold all over the city.

Q. Were you employed by the Burnt District Commission to value property in the dock district?

A. I was, sir.

Q. Kindly tell us what you did under that employment.

A. We were employed in June, 1904, to value all of the dock district, and I think we took about six or seven weeks to do that work, working very late at night. It was necessary to have it completed as soon as possible, and a week or so before I went into active work I exhausted every possible means I could to enlighten myself on valuations in the dock

Frank J. Caughey

district and conditions and rentals and sales.

Q. What in your opinion is the fair market value of lot 221 Smith's wharf at the present time?

A. \$2836.

Q. How much is that a front foot?

A. \$115 a front foot, sir.

Q. At what do you capitalize rental in order to secure information at arriving at the value of the land and improvements?

A. In certain warehouse districts we capitalize it at 10 per cent. and in some districts at ten and eight, and in others at eight; but it must be very good property to capitalize it at eight per cent. Hopkins Place is capitalized on a basis of ten and eight.

CROSS EXAMINATION

By Mr. Bryan:

Q. In the course of your professional employment you have felt it your duty to sit at the table, make memoranda and to make suggestions to the learned counsel?

A. Of course I am trying to sustain the valuation I placed upon there, and also to suggest to counsel anything in reference to sales that any other witness may have brought out;

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

Frank J. Caughey

I think I am familiar with every sale on the wharf.

Q. I know you personally and have great respect for you, but you would not mind telling the jury that you are human and have human frailties.

A. No, sir.

Q. And when you commit yourself to a thing you act like I would act or anybody else would act and are intent on it, and a little pigheaded, are you not?

A. I would not admit that, sir.

The COURT: I think it is going too far to ask him to admit that.

Mr. BRYAN: I admit it about myself, sir.

The WITNESS: You can say anything you want to me, Mr. Bryan.

Mr. BRYAN: You know I did not mean to say anything disrespectful. By pigheaded I mean perverse.

The WITNESS: That is all right, Mr. Bryan.

Mr. BRYAN: I am testing your frame of mind, that is all.

The WITNESS: I will not object to anything you may ask.

Q (Mr. Bryan) I am not going to say anything anybody could object to. What do you think was the real market value of the Fleishman property?

A. I think about \$115 a front foot.

Frank J. Caughey.

Q. Do you not think the fair market value of property is what it brings in the market?

A. No; I can explain that to you very readily.

Q. I wish you would. I want to see the atmosphere.

A. I will come up in your neighborhood---

Q. I haven't any neighborhood.

A. On Charles Street and will explain <sup>the</sup> sale of three ground rents. One was under Doctor McKinnock's, one under Doctor Reynold's house and one under Mr. Preston's house. The last two sold for three and five-eighths ~~xxxxx~~ ---- Mr. Preston and Doctor's McKinnock's--- and under Doctor Reynold's sold for three per cent. Now, why? There was a specific purpose, a reason, why Doctor Reynold's paid that for his rent; he wanted to put his house in fee. Now, would you mean to say, that the ground rents under all <sup>along</sup> these houses there ought to be three per cent?

Q. If that <sup>is</sup> the only explanation you have for saying that a fee simple piece of unimproved property, that sold for ~~fivexxxxxxat~~ \$5000 since the fire ---

A. (interrupting) You asked me if a sale did not show its value, and I say no.

Q. I asked you about the Fleischman sale, then. Come



Frank J. Caughey.

down to that.

A. The Fleischman sale was made under peculiar circumstances. Fleischman owned the adjoining lot. Now, in order to have adjoining lots (the sales were then showing \$75 and \$80 a foot) was it not cheaper for them to buy a lot from Mr. Bonaparte and pay \$200 a front foot for it (then it would give them <sup>an</sup> average valuation of those two lots of \$150) than to go to some other district and pay more money? They testified here that that lot was very well adapted for their purposes.

Q. But did you not hear that they could have gotten along with one of them, did you not hear Mr. Goodman say that they could have put up a six story warehouse, did you not know that?

A. I did not hear that.

Q. You do admit that the fair market value of property is what it will bring under ordinary circumstances, in the market?

A. If it is not bought for some specific purpose, yes. And let me say that Fleischman sale can be well compared with the Hanover Street opening. Everybody figures on that and what an enormous price it bought, and is it not a self-

JAMES E. WILKINSON,  
SHORTHAND REPORTER,  
BALTIMORE, MD.

Frank J. Caughey.

evident fact, as Mr. Manning testified yesterday, that it was an excellent sale?

Q. No, you are mistaken about that. Mr. Manning was a thoroughly disinterested witness, he considered it was a fair sale. That shows the bad effect of going on hearsay testimony.

A. Would it not be to the general broker in Baltimore a self-evident fact that if Mr. Bonaparte sold anything it was more than it was worth.<sup>7</sup>

Q. Is that as accurate as any other statement you have made in your testimony?

A. That is very accurate, sir.

Q. You are willing to let the jury judge of the fairness and impartiality of your testimony by that statement you make about the Secretary of the Navy---with whom I differ on a good many things?

A. In this way. When Mr. Bonaparte sells anything in the way of real estate the very fact of his selling it shows to the average broker that it is more than it is worth or he would not sell it.

Q. In the same way, if we were condemning the Fleischman property here, would you tell the jury that you would think

Frank J. Coughy.

the city ought to give them less than \$5000 for it?

A. I certainly would.

Mr. BRYAN: I do not want to ask any more questions.

The WITNESS: He bought it on a speculative ---

Mr. BRYAN: Nothing more.

(Testimony of witness concluded)

Whereupon---

THOMAS J. LINDSAY,

a witness produced in behalf of the defendants, having been first duly sworn, was examined and testified as follows:-

DIRECT EXAMINATION

By Mr. Lauchheimer:

Q. What is your occupation?

A. Real estate business, in the firm of George W. Lindsay & Sons.

Q. How long have you been in that business?

A. Twenty odd years.

Q. What experience have you had in buying and selling real estate?

A. Our firm has done a general real estate business; we have bought and sold and managed property and managed estates and a general real estate business.

Thomas J. Lindsay.

Q. Where you ever employed by the Burnt District Commission to value any property for that Commission?

A. No, sir.

Q/ Are you familiar with this property on Smith's wharf number 221?

A. I am familiar with all the property around there.  
the

Q. What in your judgment is a fair market value of that property today?

A. I think the fair market value of that property today would be \$125 a foot; that is \$3195, or \$3200 in round numbers.

Q. How do you arrive at that valuation, Mr. Lindsay?

A. Well, that is my judgment. We have had property down in the dock district, on Spear's wharf and I know of sales along in the neighborhood and I base it on the general conditions, and my general knowledge and the sales.

Q. Have you any personal knowledge of sales in that district?

A. The one on Spear's wharf immediately opposite, Number 204 Spear's wharf, a lot 25 by 104 running through from Spear's wharf to Patterson Street.

Mr. ROSE: I am not going to interrupt the examination of

Thomas J. Lindsay.

the witness, because there is nothing he has said so far to object to, but in order that he can tell his story right along without interruption, we wish it understood that we enter an exception to the sale <sup>of all</sup> ~~the~~ improved property. We assume your Honor's ruling will be the same and so we wish to note our exceptions.

Mr. MACHEN, Jr: I think Mr. Rose is mistaken if he thinks this is improved property. I think this property was not improved.

The WITNESS: No.

Mr. MACHEN, Jr: This sale was the one that was struck out from the testimony in the other case on the ground that it was made after the passage of the dock loan and in view of speculation.

The COURT: We can take it subject to exception and you can move to strike it out.

Q (Mr. Lauchheimer): When ~~the~~ was the sale consummated?

A. May I explain why that was stricken out the other day?

Mr. BRYAN: The Court knows; you are not the judge.

A. The sale was at the rate of \$200 a front foot. The lot was 25 feet by, 104 feet. That sold for \$5000, or \$200 a front foot. That was after the fire.

Just vacant land, it was sold by a client of ours, Thomas P. Ellicott.

Q. (Mr. Bryan) Was it sold after the dock ordinance was passed?

A. No, it was sold before the dock ordinance was passed. The other day when I was on the stand you asked me about that and I said I could not give the exact date, and then some one from the table said the transfer took place in June. I thought at the time that was rather late, but I could not correct it. But the sale was made as a matter of fact before the dock loan was passed.

Q. Cannot you tell us the exact date?

A. No, my client was in my office consulting me about it, and I told him I was positive that the ordinance was going to pass, I felt positively it would pass---

Q. That was when it was pending?

A. Yes, sir.

Q. Mr. Frank Carey and Mr. Goldsborough were telling the people that they ought to vote for the dock loan.

A. It was before the last ordinance had been passed, though, that the sale was made.

Mr. BRYAN: It seems to me, your Honor, that that ought to

Thomas J. Lindsey.

be stricken out. The debate was on whether it ought to be passed or not.

(Further discussion followed)

The COURT: I am inclined to strike it out.

(Mr. Lauchheimer addressed the Court in support of the testimony being admitted).

The COURT: If there are any disturbing considerations in regard to a piece of property, disturbing the ~~normal~~ normal valuation, I do not think we could consider it. One side might think it would be a benefit to hold a piece of property, if it was going to be condemned, some people hold property expecting to get more for it on account of condemnation, than they would otherwise would be able to, and on the other hand the owner might say "I do not want to be involved in this controversy and I would rather take what I can get for it". So it is not a fair criterion.

(Mr. Poe addressed the Court at length in support of the admission of the testimony).

The COURT: I will hear all the testimony he has to give in regard to the sale and then I can judge more about it as to whether the jury ought to consider it at all. Of course I do not say to the jury that any sale is to be taken



as conclusive, but they are to judge of the weight, and a sale made in the apprehension or expectation of a condemnation would ~~have~~ be a sale which the jury would have to weigh and they would have to weigh all the circumstances connected with it. I will hear what it has to say.

The WITNESS: Must I tell the advice I gave to my client?

Mr. BRYAN: No, his Honor says, ---

The WITNESS (interrupting) Must I tell the circumstances? He came to me and I advised him in the matter.

The COURT: You can go on and tell about it until it is objected to.

The WITNESS: My client came to my office. I might say we attend to other property for him, but not this particular property, we did not attend to this because he occupied it himself, it was his place of business. He came to see me and said he had an offer on that property on Spear's wharf and I said to him---

The COURT: You think this is about what date?

A. It was after this emergency committee had recommended certain improvements throughout the city.

The COURT: And the new dock scheme?

The WITNESS: The whole thing, the emergency committee recommended the whole thing. I said to him, "I do not think

there is any question but what the city is going to take all that property, and why not wait until the city comes along; I think the city will be willing to give you more than any one else, because I cannot imagine why any one would want to buy it now". "Well," he said, "I have got the offer and I want to know what you think about the price". I said, "I would not sell it unless I got a good deal more than I consider it is worth". He said, "That is exactly"--- No, he said, "What do you think would be a good deal more than it is worth?"

Mr. BRYAN: I think he has gone far enough to show us that the negotiations were on. If the negotiations were then on, it would then depend, as your Honor has very properly suggested, upon whether the man thought he could do better with the condemning power of the city or would do better to sell it before the city took it.

(Further discussion followed).

The COURT: The peculiar situation of this property makes it quite difficult to apply intelligently the ordinary rules with regard to property not affected by the great variety of circumstances and conditions that this was affected by. Here is a sale made quite near, in proximity of time to the condemnation, and the witness is speaking of that sale, and

Thomas J. Lindsay.

with a view of enabling the jury to determine whether it~~y~~  
less than  
was a sale at ~~length~~ and the proper market value of the prop-  
erty or not, he undertakes to tell what advice he gave and  
how the vendor, the owner of the property, was influenced in  
making the sale. AS I understand it, he was about to say,  
that his advice to the owner was that he should not sell un-  
less he got a full price. That is far as far as he has gone.  
I think he is entitled to go that far. I do not think that  
he ought to go ~~in~~ <sup>into</sup> the conversation, but I think he has a  
right to say what he has already said with regard to the  
attitude of the owner towards the property and the sale.

Mr. MACHEN, Jr: I would like to refer to the ordi-  
nance. I suppose the City Solicitor will agree that the or-  
dinance was passed about March 20. I refer to the ordinance  
for the widening of the streets. It contained a clause sta-  
ting the intention of the City Council to adopt this dock  
scheme. as soon as the loan should be voted on. I will get  
the ordinance if they want it.

Mr. POH: I think we had better have the ordinance, be-  
cause the first ordinance did not have anything to do with  
the dock loan, because it was simply a recommendation to the  
Burnt District Commission that if certain things happened,

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if the money was voted and so on, then they were in favor of certain other things.

The COURT: There was a case tried here which I think had all those dates in it.

(Further discussion followed).

The COURT: All those circumstances are considered.

Mr. ROSE: We want them in the record as a basis for our objection to the testimony.

The COURT: I think the ordinance required that the commission should submit a scheme for improvements.

Mr. ROSE: The Act of Assembly did that, may it please the Court.

The COURT: And the ordinance approved the scheme?

Mr. ROSE: Yes, the ordinance approved the scheme.

The COURT: Is there anything else you wish to ask Mr. Lindsay? We will pass by this for the moment and return to it.

Q. (Mr. Lauchheimer) At what rate is warehouse real estate capitalized for the purpose of arriving at some estimate of its valuation?

The COURT: You mean the rent?

Mr. LAUCHHEIMER: Yes, sir.

A. In arriving at values?

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with a view of enabling the jury to determine whether it<sup>is</sup>  
less than  
was a sale at length and a proper market value of the prop-  
erty or not, he undertakes to tell what advice he gave and  
how the vendor, the owner of the property, was influenced in  
making the sale. As I understand it, he was about to say,  
that his advice to the owner was that he should not sell un-  
less he got a full price. That is far as far as he has gone.  
I think he is entitled to go that far. I do not think that  
he ought to go <sup>into</sup> the conversation, but I think he has a  
right to say, what he has already said with regard to the  
attitude of the owner towards the property and the sale.

Mr. MACHEN, Jr: I would like to refer to the ordi-  
nance. I suppose the City Solicitor will agree that the or-  
dinance was passed about March 20. I refer to the ordinance  
for the widening of the streets. It contained a clause sta-  
ting the intention of the City Council to adopt this dock  
scheme, as soon as the loan should be voted on. I will get  
the ordinance if they want it.

Mr. POE: I think we had better have the ordinance, be-  
cause the first ordinance did not have anything to do with  
the dock loan, because it was simply a recommendation to the  
Burnt District Commission that if certain things happened,

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Q (Mr. Lauchheimer) Yes.

A. I do not tie conclusively to rental values, but the rate used in approximating values varies. On some property it is ten per cent. straight through, ten per cent. on land and ten per cent. on improvements; and on a better class it would be ten per cent. on improvements and eight per cent on land. Then the highest valuation on rentals, and on the very best of property, would be eight per cent. straight through, eight per cent. on land and eight per cent. on improvements.

Q. Do you know when the agitation for the docks commenced?

A. No. You mean the date?

Q. Yes, about when?

A. No, but it seems to me that the emergency committee was called in immediately after the fire.

Mr. ROSE: I was a member of that committee and it was about the 15th of February.

The WITNESS: It was immediately after the fire.

Q (Mr. Lauchheimer) I want to recur for one moment to your testimony as to the advice you gave your client. Will you kindly tell us what your advice to your client was? My object in asking this is because there is some conflict

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as to whether we understand exactly what he said.

Mr. ROSE: I think the conversations between himself and his client are inadmissible.

(Discussion followed).

The COURT: I sustain the objection to the conversation.

Mr. POE: It was not the object, your Honor, to give the conversation in detail, but he was stopped at a point when he said he had told his client that he would not sell unless he got a price above the value of the property, that is where he was stopped.

The COURT: Yes.

Mr. POE: Now, I want to find out whether the sale actually made was at a price a good deal above the price mentioned in the advice.

The COURT: You can bring that out.

Mr. BRYAN: Please put your question so we will get in our objection and exception.

(Mr. Launheimer) Was the sum received for the Ellicott sale full market value or was it in excess of the market value?

Mr. BRYAN: Question objected to.

The COURT: Objection overruled.

Mr. BRYAN: And we note an exception.



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A. I considered it in excess of the value of anything that had been shown along there. I told him ---

Mr. BRYAN: We do not want what you told him.

The COURT: I think he can say that.

Mr. BRYAN: Then we will move to strike it out.

The COURT: Very well.

A. ( continuing ) I told him I would not sell unless I got about \$200 a foot in view of the fact, as I stated before, of this contemplated improvement.

Mr. BRYAN: We move to strike out what he told his client, and I understand your Honor overrules it?

The COURT: I think he can give it.

Mr. BRYAN: We note an exception.

The COURT: Proceed.

Mr. BRYAN: Does your Honor state he can go on and state what his client told him? What I moved was to strike out what he said he told his client, now, he is going to state what his client told him, and I want the exception to cover that.

Mr. ROSE: It seems to me that your Honor has admitted it on the ground that the witness can give his opinion of what the value of the lot was in June 1904; but to allow

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him to go on and state what his client said is to allow the witness to corroborate and buttress up his judgment with hearsay testimony of what somebody else said 18 months ago.

The COURT: I will sustain that objection.

Mr. LAUCHHEIMER: Did your client act upon your advice?

Mr. ROSE: We object to that.

The COURT: I do not think that he can answer that.

Mr. LAUCHHEIMER: That is all.

CROSS EXAMINATION

By Mr. Rose:

Q. I think you had said that you think \$125, or say \$3200, is a proper price for this property?

A. Twenty-five feet would be \$5198, so I called it \$3200.  
a front foot

Q. Why is this property worth \$75 less than property 3 or 4 doors above it?

A. I do not say it is. You refer to the Fleischman sale?

Q. Yes.

A. I consider that Fleischman sale was considerably above the market value of the property.

Q. You put the Fleischman sale as being 50 per cent. above the market value.

A. About \$75 ~~per cent~~ a foot above the market value.

Q. And therefore you ignore that sale altogether in mak-

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ing your valuations?

A. I do not ignore it, I know the sale was made.

Q. But it does not influence your judgment?

A. No, one sale would not influence my judgment when I know the conditions around there.

Q. Did you know or had you any experience in such conditions as were about that property and has been about that property since the fire?

A. Since the fire?

Q. Yes, have you ever had in all your experience knowledge of any such conditions?

A. Of a <sup>big</sup> ~~street~~ territory like that thrown on the market?

No, certainly not.

Q. And so, in your theory what ought to be is one thing, and when you come to a sale which conflicts with that theory you disregard that?

A. No, not at all. If you mean <sup>instances</sup> ~~circumstances~~ of a piece of property selling above the real market value, that occurs often. Look at the Belvedere Hotel property. That was bought for forty or fifty thousand dollars and then the man who bought it <sup>held</sup> had the Belvedere Hotel people up, and they had to pay \$140,000. That would not show that all that property along there on Charles Street is worth \$140,000.

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Q. But you heard the testimony of the gentleman here yesterday, that the Fleischman Company did not have to have the adjoining lot, that it was a mere question of convenience to them, and that a six story warehouse built on the lot they already have would answer their purpose just as well as an additional building on an adjoining lot.

A. No, I did not hear that; you were about finishing when I got here yesterday.

Q. You have heard of the French scientist, who, when he was told his theories did not correspond with the facts, replied "So much the worse for the facts"? That is all.

(Testimony of witness concluded).

Mr. ROSE: That is our case except we want to put in the ordinance which was referred to.

Mr. MACHEN, Jr: The ordinance to which we refer is ordinance Number 66, approved April 5, 1904.

(Mr. Machen, Jr. read aloud the ordinance referred to).

The COURT: When was the question of the loan submitted to the people?

Mr. ROSE: Early in May.

Mr. ROE: The 7th of May, I think it was.

Mr. BRYAN: Early in May, as we all know, but I am not cer-

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tain about the date.

Mr. POE: Then the dock ordinance was passed in June and modified and re-passed in November, 1904.

The COURT: I think the testimony is in with all those facts before the jury, to enable them to judge of it.

Mr. MACHEN, Jr: Of course we move to strike it out.

The COURT: The motion is overruled.

Mr. MACHEN, Jr: And we note an exception, your Honor.

The COURT: Yes, sir.

Mr. ROSE: We submit the following propositions of law.

(Mr. Rose read to the Court five prayers offered by the defendants).

(Mr. Machen, Jr. read an additional prayer by the defendants).<sup>4</sup> offered

Mr. POE: We have no prayers.

The COURT: There is no serious contention between the counsel as to any of the prayers except the fifth and the sixth prayers of the defendants. The others are the prayers that are applicable to all cases of condemnation.

As to the prayer which we asked me to say that if the minds of the jury are in doubt, they should award the higher values which have been testified to, I cannot grant that. What the jury are to find is the value which

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would be a just compensation to the parties whose land is about to be taken from them--- a just compensation. That does not mean that they are to give more weight to the testimony of witnesses on one side than to the testimony of witnesses on the other side; it means that they are to weigh the testimony in a sensible way and that they shall arrive at the value of the property. If they cannot do that, if there is such a divergence of opinion among the jury that they cannot by any reasonable attempt at convincing of each other, accommodation of each other, arrive at a fair value of the property, then they can say so to the Court and they will be discharged. But as far as they can under their oaths they should find what is a just compensation to the owner in depriving him of his property, and it seems to me that it would be altogether wrong for the Court to say that you should give a higher valuation if you are in doubt as between a higher valuation and a lower valuation.

Then there has been a value put upon this property by the Board District Commission. The owners of the property were dissatisfied with the decision, and they come before me and say in effect "We will show by testimony what is the value, and we will take that".

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And so the jury are to take the testimony on both sides and find the true value, and certify to that by signing the inquisition.

Now, I am asked to say to the jury that they must decide this case by the evidence presented to them in Court and must not allow themselves to be influenced by any facts of which they have knowledge or information. I refuse this prayer. The jury comes to the duty which devolves upon them after being sworn in this case with some information, some general information on values, some idea of proportion in their minds to take hold of the question, and in judging <sup>of</sup> the weight of the testimony to be given by the different witnesses they are allowed to use their previous experience and knowledge. To say that they must obliterate from their minds all that they know would be to say what is not the law. Of course the jury should be careful not to be influenced by their moods or unsubstantial ideas, but if they have actual present knowledge and experience as to that part of the city, they can allow that to assist them in judging of the weight to be given to the testimony of the witnesses. There was an important case some years ago which went to the Supreme Court of the United States in which the question presented was as to the



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proper fee to be allowed an attorney for his services, and the testimony was very divergent indeed, very contradictory. The Court said to the jury "You can use your common sense about it and what knowledge you have acquired in the course of your life". So I think it would be wrong to say to the jury that they ought to exclude from their minds in determining the value of this property what they know themselves as to values in that section of the city.

All the other prayers I will allow.

Mr. ROSE: We beg to reserve exceptions to the refusal of the two last prayers.

(Argument of the jury followed).

No. 172 Civil C

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Dyer

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Mr. C. C. of Wells

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