

0/35/2/13

Docket 12

No. 6653

Folio 28

Charles J. Bonaparte

vs.

Baltimore Camden and
Lake Roland Railroad
Company et al.

^{12/22}
⁶⁶⁵³
In the Circuit Court
for Baltimore County
In Equity

Charles J. Bonebrake
Plaintiff

The Baltimore, Hampden
and Lake Roland Reclamation
Company,

William H. Whitney,

P. Sanford Ross

Joseph B. Sanford and

Walter B. Brooks, Jr.
Defendants

Mr. Shunklin Clerk

File the Bill and

Plff Exhibits A + B

as per return

H. Reynolds

H. S. Keech

Sol. for Plff

Amended Bill filed this
8th day of Oct 1891

Oct 6th 1891 pd

Bill of Complaint

CHARLES J. BONAPARTE

PLAINTIFF.

VS

THE BALTIMORE, HAMPDEN AND
LAKE ROLAND RAILROAD COMPANY.

WILLIAM H. WHITRIDGE, and

P. SANFORD ROSS

JOSEPH B. SANFORD and

WALTER B. BROOKS JR.

CO-PARTNERS TRADING AS

ROSS AND SANFORD.

DEFENDANTS.

(
(
(
(IN THE
(
(CIRCUIT COURT
(
(FOR
(
(BALTIMORE COUNTY.
(
(IN EQUITY.

To the Honorable the Judges of said Court.

Your orator complaining says:

1 That under the last will and testament of his father Jerome N. Bonaparte, who died in June 1870, he became the owner of an undivided moiety in fee simple of about twenty-two acres, one rood and twenty seven square perches of land, in the ninth election district of Baltimore County, the fourth course of which beginning at a point in the centre of a road known as Evans Chapel Road ran thence North $11-1/2^{\circ}$ W 44.8 perches along the centre of said road *and the fifth course ran thence North 25.8 perches still along the centre of said road* so as to include one half of the bed of said road as then laid out, and that subsequently he acquired the other undivided moiety of said land in fee simple, by a deed from his brother, Jerome N. Bonaparte and Caroline LeRoy Bonaparte, his wife, dated July first, 1872, and duly recorded in Liber E.H.A. No. 76 fol. 113 and one of the Land Record Books of Baltimore County aforesaid, as from a certified

copy of said deed herewith filed marked Plaintiff's Exhibit A will fully appear, and that your orator has ever since so acquiring title to said land, occupied the same as his residence, and has expended more than fifty thousand dollars in fitting up the buildings and putting new improvements thereupon.

2 That the said Evans Chapel Road had been used as a public road for many years before your orator acquired his title to said property, but he is unable to ascertain whether it was ever formally declared to be a public highway by the County authorities, as no record thereof has so far been found to his knowledge, although search has been made therefor.

3 That on November third 1870, Hiram Woods and others, made application to the County Commissioners of Baltimore County, for the opening of a new avenue and for widening the Evans Chapel Road, upon which application the ~~said~~ ^{road} supervisors for said district, made a report bearing date June 8th. 1871 with plats thereto annexed, wherein they recommended the opening of a new road sixty feet wide, as laid out on said plat, according to which the new road where it bounded on the land of your orator would cover the entire bed of the said Evans Chapel Road, (of which your orator then owned one half in fee simple, subject to the easement in the public of a right of way thereover,) and also a strip of your orator's land (of varying width, in some places being as much as fifteen feet wide,) binding on said Evans Chapel Road; and said report further assessed the benefits of the proposed road to the several owners of the lands adjoining the same, but allowed no damages whatsoever; the benefits assessed to the Bonaparte Estate being the sum of (\$500) five hundred dollars; and that on March 8th. 1873 an order was passed by the County Commissioners of Baltimore County, ratifying the said report, and proceedings of the supervisors and declaring

"that the said road be and the same is hereby condemned as a public road or way, to be kept in order as all public roads in said County are by law required to be kept;" all of which facts will fully appear from a certified copy of the said petition and condemnation proceedings thereunder, which is herewith filed as a part of this bill marked Plaintiff's Exhibit B.

4 That your orator paid the sum of five hundred dollars so assessed to the Bonaparte Estate, and the proposed road was duly laid out as described in the said plat, and has ever since been and is now used as a public County road and is known as Roland Avenue

§ That by chapter 284 of the Acts of Assembly of 1872, approved April 1st. 1872, Hiram Woods, John A. Dushane, William C. Wilson, William H. Ward, Henry D. Loney, William C. Pennington and Robert Gilmore Jr. were appointed Commissioners to take subscriptions to the capital stock of the ~~B. H. & L. R.~~ ^{Baltimore, Hampden and Lake Roland} Railroad Co. and the subscribers to said stock were thereby constituted a body politic and corporate for the purposes ~~and with no other~~ ^{and with the} powers therein described, but no other purposes and with no other or greater powers, and that by section 6 of the act aforesaid, the said corporation was given "power to construct a railway, with one or two tracks and the necessary sidelings, for the transportation of travelers or freight by horse power, and have the exclusive use of any streets or County roads, over which they may wish to lay their track, between Boundary Avenue and Lake Roland; provided said track or tracks are constructed in such a manner as not to interfere with the travel on such Streets or road, " and by section 11 it was provided "that said Company shall commence said Railway within three years from the passage of this act, and complete the same in ten years."

all of which will more fully appear by reference to the act afore-
-said, as published among the laws of Maryland of the year aforesaid,
on P.p. 464 to 469 of the volume printed by authority, and contain-
-ing the same, whereunto the Court is respectfully referred, and
and prayed to take the same as part of this bill of complaint, *which*

6 That your orator has no certain information as to whether the
said corporation was ever duly organized under said act at all;
he charges that but, if it was so organized, it wholly failed to commence its said
railroad within three years from April 1st. 1872, or to complete it
within ten years from said date, nor did it ever to the best of
your orator's information and belief, commence any work or do any
act whatsoever in pursuance of the purposes of its corporate
existence, unless the work commenced and the work done within four
days next before the filing of this bill as hereinafter set forth
are to be assumed to be its work and acts, and to have been done in
pursuance of the purposes aforesaid, both of which assumptions
your orator denies to be well founded; and your orator charges
that the corporate powers aforesaid have been defeated by neglect,
desuetude and delay, and further that the powers, if any there were
conferred by section 6 aforesaid, are qualified by Article 23 sec.
169 and Article 25 sec. 1 of the code of Public General Laws, which
were enacted long after the said periods of three and ten years as
prescribed by section 11 above quoted for the commencement and
completion respectively of the railway therein mentioned had expired
and when nothing had been done and no money or labor expended in
and about the same.

7 That within the past four days one William H. Whitridge and

Act of 1872... your orator charges that in violation of the provisions of the Com. Clauses of the 11th Sec. art. 23 of the Code of Public General Laws... the powers conferred by section 6 aforesaid are qualified by Article 23 sec. 169 and Article 25 sec. 1 of the code of Public General Laws, which were enacted long after the said periods of three and ten years as prescribed by section 11 above quoted for the commencement and completion respectively of the railway therein mentioned had expired and when nothing had been done and no money or labor expended in and about the same.

other persons, unknown to your orator, claiming to be said Baltimore Hampden and Lake Roland Railroad Company, who are made parties to this suit, under the name so assumed by them, but without any admission that they constitute the corporation organized under and by virtue of the act aforesaid; and the defendant Whitridge personally (he professing to be the President thereof, but your orator being ignorant whether he is such President or not,) and the defendants, P. Sanford Ross, Joseph B. Sanford and Walter B. Brooks Jr. who are co-partners trading under the name of Ross and Sanford, and many other persons professing to be the agents or servants of the said pretended corporate body, have torn up a portion of the bed of Roland Avenue, as laid out in the plats aforesaid, and have begun to put down iron railway tracks on wooden ties therein, and announce their intention of continuing the said work along the whole line of Roland Avenue from the present City limits to Lake Avenue.

8 And your orator believes and so charges that the laying down of said tracks by the said defendants, *done in good faith* is not, for the purpose of operating thereupon a horse railway in accordance with powers originally granted under the said charter of the Baltimore Hampden and Lake Roland Railroad Company, but with the intent to use the same for the purpose of either of themselves running cars thereover, propelled by electricity, or of enabling and permitting some other person or persons or corporation to run cars propelled by electricity thereover, but that no permission from the County Commissioners of Baltimore County to lay said tracks or to operate cars by electricity in Baltimore County, has been granted to, or has ever been applied for, ^{by} the said defendants, nor have they located their route from Boundary Avenue to Lake Avenue or sought or attempted to agree

with the County Commissioners of Baltimore County as to the terms and conditions upon which Roland Avenue may be used or occupied by them in the continuance of their said route, which location of the route of said road and agreement with the said County Commissioners (or in case of inability to come to such agreement, ^{proceedings} condemnation as provided for in section 167 of said Article 23 of the code of Public General Laws,) are as your orator is advised conditions precedent to the acquisition by any person or persons whatsoever of the right to lay down upon the bed of Roland Avenue any railway tracks whatsoever.

9. That your orator being as above set forth the owner of the fee simple of about one half, more or less, of the bed of that part of Roland Avenue ~~now~~ binding upon his said land, subject only to the easement acquired by the public therein by its condemnation for use as a public County road, and ~~now~~ that by such condemnation proceedings your orator acquired a special easement as well as right of property in the whole bed of said road for the purpose of a way and access to and from his said land, over the same as a public highway, which said easement and special property he cannot, except in violation of the **Constitutions** of Maryland and of the United States, be deprived of, or hindered in the enjoyment of, by the use or occupation of any part of said roadbed, against his will, for any other purpose than one for which **said** public road was originally designed, without just compensation for the damage thereby occasioned (as the same shall be agreed to by your orator or shall be awarded by a jury) being first paid or tendered to him.

10. That the laying down of iron railway tracks upon said Roland Avenue as begun and threatened by the said Defendants and the tear-

^{up}ing and obstruction of said avenue incident thereto, without any proper authority of law for so doing, is and would be an unlawful obstruction of your orator's ~~right~~ of access to and from his said residence over said avenue, as well as a public nuisance, and therefore is and would be an unlawful appropriation of your orator's property, causing him special damage not common to, but distinct and different from that suffered by the general public from said nuisance.

11. That your orator is informed and believes, and therefore so charges, that the tracks which the Defendants have begun laying, will not be constructed in such a manner as not to interfere with the travel over the said Roland Avenue as required by Section 6 of said Act of 1872 Chapter 284, above referred to; but that on the contrary the said travel has been and will be greatly interfered with thereby; and your orator further charges on information and belief that the pecuniary responsibility of the Baltimore, Hampden and Lake Roland Rail Road Company named among the Defendants to this bill, is (if it really has any corporate existence at all) extremely doubtful; and your orator further charges on information and belief that there is no reasonable probability that for the injuries which would be done to his private property by the location upon Roland Avenue of the tracks so contemplated to be laid by the Defendants, he could recover adequate compensation by proceeding in a civil action against the said corporation as contemplated by Section 169 of Article 23 of the Code of Public General Laws already cited, and being remediless in the premises in a Court of law, your orator is entitled to invoke the aid of this Court to protect him by the exercise of its equitable jurisdiction in the prem-

ises.

Wherefore he prays:

A. That the said Defendants and each of them, their and each of their servants, agents and workmen, and all persons whomsoever claiming to act under and by virtue of any contract or agreement with or authority derived either directly or indirectly from the said said Defendants, or any one or more of them, may be restrained by order and injunction of this Honorable Court from laying any iron railway tracks upon the bed of said Roland Avenue, or making any excavations in said Avenue, or placing any wooden ties or other materials upon said Avenue, or in any other manner interfering with or obstructing the same, *within the limits of Baltimore County* or hindering the Plaintiff in the free and unobstructed use thereof for the purposes of access to and from his land and premises adjacent thereto.

~~B. And that the said Defendants, their agents, servants and workmen may be required by the mandate of this Court to forthwith remove all railway tracks, ties and other obstructions heretofore within the last four days prior to the filing of this bill placed by them upon the bed of said avenue, and to restore the said roadbed to the same condition in every respect in which it was before the making of the excavations therein made by them within the last four days prior to the filing of this bill.~~

B. And that the Plaintiff may have such further and other relief in the premises as the nature of his case may require.

D. And that subpoenas may issue against the said Defendants, The Baltimore Hampden and Lake Roland Rail Road Company and William H. Whitridge and Walter B. Brooks Jr. all of Baltimore City, and an

order of publication against the said P. Sanford Ross and Joseph B. Sanford, who are non-residents of the State of Maryland, (being as your orator is informed residents of Newark in the State of New Jersey), giving them notice of the object and substance of this bill, and warning them to appear in this Court in person or by Solicitor on or before a certain day to be therein named, and to show cause if any they have, why a decree should not be passed asvprayed.

And as in duty bound your orator will ever pray &c.

W. Keese
W. S. Keese
Sol. for plffs

Charles J. Bonaparte
Plff.

STATE OF MARYLAND, BALTIMORE COUNTY Sct.

I hereby certify that on this sixth day of October A.D. 1891, *a Justice of the Peace of the State of Maryland* before me, ~~a Notary Public, duly appointed commission and qualified~~ in and for *Baltimore* County aforesaid, personally appeared Charles J. Bonaparte the above named Plaintiff, and ~~made~~ oath upon the Holy Evangely of Almighty God that the several matters and things in the foregoing bill of complaint are true as therein stated to the best of his knowledge and belief.

George Herbert - JD

October 8 1891
Sworn to as amended in open Court -
Geo John W Shanklin CLK

On the foregoing bill and exhibits it is ordered by the Circuit

Court for Baltimore County this day of October A.D. 1891,
that a writ of injunction ~~and mandate~~ be issued as prayed in said
bill upon the filing of a bond by the Plaintiff in the penalty of
 Dollars with security to be approved
by the Clerk of this Court, but liberty is hereby reserved to the
Defendants or any of them to move for the rescinding of this order
and for dissolution of the injunction ~~and mandate~~ to be issued as
aforesaid at any time after filing an answer to said bill or giving
the plaintiff days previous notice of such mo-
tion.

And the clerk is hereby directed to annex a copy of this order
to the writ of injunction.

Copy of 6603

Record of Evans Chapel
Road

9th Dist Balto Co

⁶⁶⁵³
In the Circuit Court
for Baltimore County
In Equity

Charles J. Bonaparte

vs

Baltimore Harbour &
Lake Roland Rail
Road Company, ~~THH~~
Whitridge & others

Plaintiff Exhib B
filed with bill

Oct 6th 1891

Petition for a Public Road

Hiram Woods

Geo. Prestman

Chas A Buchanan & others

Be it remembered that heretofore
in the year of our Lord one thousand Eight hundred & Seventy
to wit, on the 3rd day of November, Hiram Woods

Geo. Prestman, Chas. A. Buchanan, and others, taxable
inhabitants of Baltimore County Exhibit to the County
Commissioners of Baltimore County, here in their
office in Towson Town in the Court House, a
Petition to lay out a Public Road, or way in
said County, after giving the notice required by
law.

Petition

Francis Fossett

Benj. Coruch

David McCauley

Commissioners of Baltimore County

The undersigned, property owners
in Baltimore County, with the view of promoting
the public good, would respectfully petition your
Honorable Board for the opening of a road sixty
(60) feet wide commencing at the end of Central
Avenue, as laid down on a map of the Baltimore
and Hampden Rail Road Co. and extending through
the lands of which P. G. Sauerwein is Trustee, until
it intersects the Cold Spring Lane, at a point
about two hundred and twelve (212) feet east of
Evans Chapel Road, thence through the lands of
Hiram Woods, until it intersects the Evans Chapel

Road at a point near the S.E. corner of
the Harper Estate, thence along the bed of said
road, with the privilege of straightening, at any
point the Road Supervisor may deem necessary,
until it reaches Lake Avenue, and thence by the most
practicable route to Swann Lake. And your
petitioners further request that you will close
the Evans Chapel from Knights^{Lane}, northwardly to the
point of its intersection with the proposed new
Avenue, through the lands of Hiram Woods, also
that the course of Cold Spring Lane may be so
changed from the point of its intersection with the
new Avenue as to run in a direct line into
Knights Lane.

Hiram Woods
R.R. Guffeth
Geo. Cushman
Richard S. Hardesty
Saml. A.S. Kyle
John A. Lushane
Cumberland Dugan
H. C. Wilson
B. H. Jenkins
C. Oliver O'Donnell
David Carroll
W. C. H. Emory
E. H. Pennington per Wm C. Pennington for the Harper
Estate

Elizabeth Ward
Chs. A. Buchanan
Gerard H. Reese
Geo. L. Sutton
Saml. Devan
Michael Alder
Daniel Alder
D. M. Penne
E. N. Sweeney
Am Kennedy
Henry Mankin
Jos Stone

Notice

Notice is hereby given that application has been made to the Board by Hiram Woods Esq. Postman Chas. A. Buchanan and other taxable inhabitants of the 9th District for the location and opening of a Public Road sixty feet wide, commencing at the end of Central Avenue as laid down on a map of the Baltimore and Hampden Rail Road Company and extending through the lands of which P. G. Sauerstein is Trustee, until it intersects the Cold Spring Lane, at a point about 212 feet east of Evans Chapel Road thence through the Lands of Hiram Woods until it intersects the Evans Chapel Road at a point near the S. E. corner of the Harper Estate thence along the bed of said road with the privilege of straightening at any point the Supervisors may deem necessary, until it reaches Lake Avenue and thence by the most practicable route to Swann Lake. And also that the Evans Chapel Road, from Knights Lane, northwardly from the point of its intersection with the proposed new Avenue, through the lands of Hiram Woods may be closed. Also that the Course of Cold Spring Lane may be so changed from the point of its intersection with the new Avenue, as to run in a direct line into Knights Lane. The Supervisors of Roads of the 9th District are hereby ordered to meet upon

the premises on Monday November 14th 1870
at 10 o'clock A.M. make an examination
and report their judgment and examination to
this Board at once. The Supervisors of Roads
will apply at this ^{office} for the petition in the above
Case

F. C. Fossett } County
Benj Gorsuch } Commissioners
W. J. McCauley } for Baltimore County

Nov. 5-21

Office of the Maryland Journal
Baltimore November 5th 1870

County Commissioners of Baltimore County

To Wm H Ruby Dr.

To pub adv. annexed \$7.00

Rec'd payment

Wm H Ruby

To the Honorable the County Commissioners of
Baltimore County

The undersigned, the Road
Supervisor for the South District of Baltimore
County, having in accordance with the order of
Your Honorable Board, dated the 3rd day of
November A.D. 1870. Examined as to whether the
public convenience requires the altering and
widening of the Evans Chapel Road, as petitioned
for by Hiram Woods B. W. Jenkins David M.



Perine, Jas L Sutton Michael Alder Saml Beran
Chs. A Buchanan and others, beg leave to report
that we met on the premises on the 14th day
of November A.D. 1870 and found that the opening
and widening of the said road from Maryman's
Lane to a point where the said road intersects
Lake Avenue will be a great benefit and
convenience to the public, for the following
reasons; that the public convenience requires
it and we further suggest the continuation
of said road from Lake Avenue to be continued
to the Lake, at some further day when the prop.
erty-holders shall require it, and also in accordance
with sec 14 chapter 309 of the Acts of 1870, we beg
leave to report that we have employed A. W.
Boulden as Surveyor, who has surveyed the
route and made a plat of the same which is
hereto annexed, and we beg leave further to state
that the cost of said road will be about
Eight thousand Eight hundred Dollars, and after
having duly considered the damages and benefits
of said road to each and every person through
whose lands the same passes, as well as to all
persons interested, we beg leave to report that the
following persons are benefitted as follows.

Hiram Woods	\$ 750.00	Dr Duling	\$ 500.00
Michael Alder	1000.00	James Connor	250.00
A. A. Warner	200.00	J. L. Sutton	250.00

W A Pitcher	500.00	John Prentices Est.	250.00
S A S Kyle	250.00	G H Reese	250.00
C Axe	250.00	C A Buchanan	100.00
Bonaparte's Est.	500.00	Mt. Vernon Co.	250.00
Ward's Est. of Jno W.	500.00	Wm Martine	250.00
Wm C. Nelson	500.00	Harry Kimberly	100.00
Alt Bradford	250.00	C H Lord	150.00
Saml Beran	250.00	J. A Dushane	500.00
S Robert Jenkins	250.00	Arnats Estate	500.00
Mr Chapman	250.00	Mr. M Cornuck	250.00

all of which is respectfully submitted to
 Your Honor's Consideration
 Given under our hands this Eighth day of June
 A.D. 1871

Edward Rider Chairman
 Joseph Jackson } Supervisors
 Wm H Taylor }

And Whereas the County Commissioners of Baltimore County having carefully read and considered all and singular the proceedings in the foregoing case, it is thereupon this Eighth day of March in the Year of our - One thousand Eight hundred and Seventy three adjudged, ordered and determined that said proceedings of said Supervisors for the 9th Election District of Baltimore County be and the same are hereby finally ratified and confirmed and that the said Road be and the same is hereby condemned as a public Road-or-way to be kept

in order as all public Roads in said County
are by law directed to be kept

Edward Rider

B. F. Jordan

D. J. McCauley

Test.

Jacob Hoshall

Treas & Clerk.

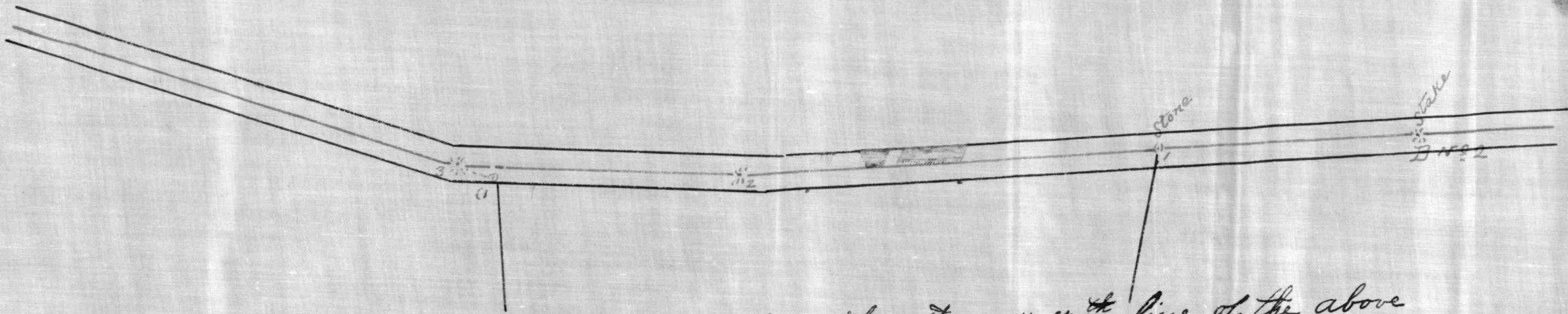
Office of
County Commissioners of Baltimore County
Towson Town Sept. 18th 1891

I hereby certify that the foregoing petition
Examiners Report plat &c is a true copy
taken from Road Record No 5 folio 49 &c
one of the Records of the office of County Com-
missioners of Baltimore County

In Testimony Whereof I hereunto sub-
scribe my name and affix the
Seal of the Office of the County
Commissioners of Baltimore County
this 18th day of September A.D.
1891

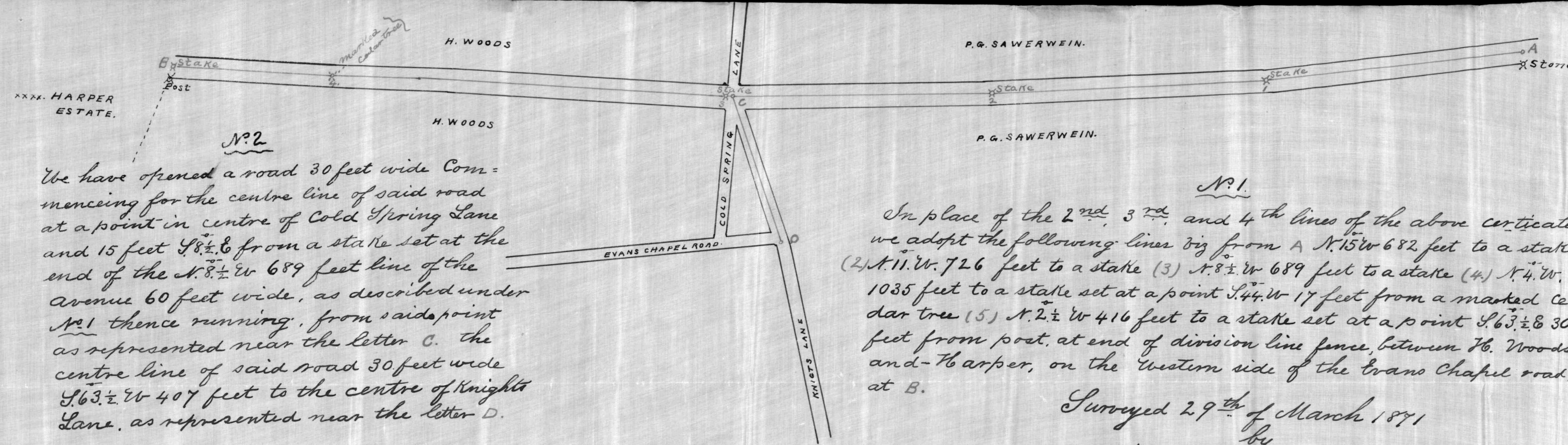
M. F. Connor

Chy. CLK & Audr.



In place of the 12th, 13th and 14th line of the above certificate we adopt the following lines viz from B No 2 $N 6\frac{1}{4}^{\circ} W$: 455 feet to a stone ^{at} a boundary between Armat and Bonapart $N 7^{\circ} W$ 72.8 feet to a point $N 88\frac{1}{2}^{\circ} W$ 7 feet from a marked Persimmon tree $N 1\frac{1}{4}^{\circ} W$ 486 feet to the end of $66\frac{1}{2}$ feet on the $N 14\frac{1}{4}^{\circ} E$ 1855 feet line of the above Certificate

June 7th 1871
August Bouldin



xxxx. HARPER ESTATE.

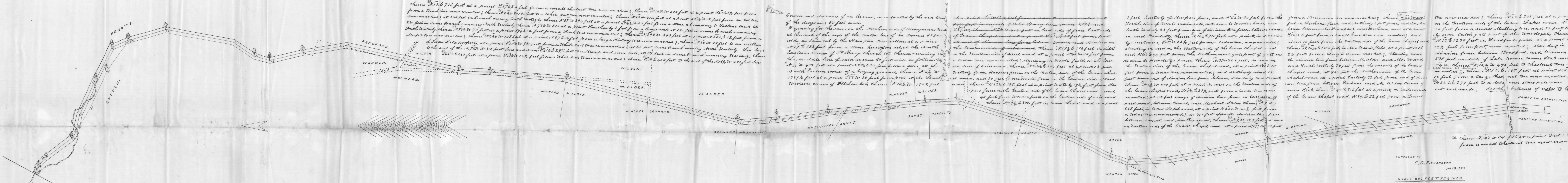
No. 2

We have opened a road 30 feet wide commencing for the centre line of said road at a point in centre of Cold Spring Lane and 15 feet $S. 8\frac{1}{2}^{\circ} E$ from a stake set at the end of the $N. 8\frac{1}{2}^{\circ} W$ 689 feet line of the avenue 60 feet wide, as described under No. 1 thence running, from said point as represented near the letter C. the centre line of said road 30 feet wide $S. 63\frac{1}{2}^{\circ} W$ 407 feet to the centre of Knights Lane, as represented near the letter D.

No. 1

In place of the 2nd, 3rd, and 4th lines of the above certificate we adopt the following lines viz from A $N. 15^{\circ} W$ 682 feet to a stake (2) $N. 11^{\circ} W$ 726 feet to a stake (3) $N. 8\frac{1}{2}^{\circ} W$ 689 feet to a stake (4) $N. 4^{\circ} W$ 1035 feet to a stake set at a point $S. 44^{\circ} W$ 17 feet from a marked cedar tree (5) $N. 2\frac{1}{2}^{\circ} W$ 416 feet to a stake set at a point $S. 63\frac{1}{2}^{\circ} E$ 30 feet from post, at end of division line fence, between H. Woods, and Harper, on the western side of the Evans Chapel road, at B.

Surveyed 29th of March 1891
by
Augustus Bouldin.



thence $N. 10.^\circ E. 716$ feet at a point $S. 37.^\circ E. 6$ feet from a small chestnut tree now marked; thence $N. 16.^\circ W. 480$ feet at a point $S. 55.^\circ E. 5.5$ feet from a Beech tree now marked; thence $N. 2.^\circ S. 7.^\circ W. 196$ feet to a white oak tree now marked; thence $N. 6.^\circ W. 412$ feet at a point $N. 41.^\circ W. 18$ feet from an oak tree now marked; at 365 feet in branch running South Westwardly, thence $N. 67.^\circ W. 392$ feet at a point $S. 74.^\circ W. 35$ feet from a stone boundary to Sutton's land, at 230 feet in same branch running South Westwardly, thence $N. 78.^\circ W. 815$ feet at a point $S. 74.^\circ W. 12$ feet from a large rock at 150 feet in same branch running South Westwardly, thence $N. 58.^\circ W. 73$ feet at a point $S. 74.^\circ W. 12$ feet from a Beech tree now marked; thence $N. 50.^\circ W. 105$ feet at a point $N. 67.^\circ E. 16$ feet from a large Hickory tree now marked; thence $N. 3.^\circ E. 360$ feet at a point $N. 30.^\circ E. 12$ feet from a Maple tree now marked; thence $N. 50.^\circ W. 85$ feet to an outline of Swan Lake property, at a point $S. 28.^\circ W. 9.5$ feet from a white oak tree now marked; at 66 feet same branch running North Westwardly, then back to the end of the $N. 78.^\circ W. 815$ feet line and run $S. 61.^\circ E. 297$ feet to a stump and stone pile, at 38 feet in same branch running Westwardly, thence $S. 66.^\circ W. 438$ feet at a point $S. 13.^\circ W. 12.5$ feet from a white oak tree now marked; thence $S. 59.^\circ E. 405$ feet to the end of the $N. 16.^\circ W. 480$ feet line

Course and distance of an Avenue, as indicated by the red line of the diagrams, 60 feet wide
 Beginning for the same on the Northern side of Merryman's lane at the end of the end of the centre line of an Avenue 80 feet wide, as laid out by the Hampton Association, at a point $N. 17.^\circ E. 135$ feet from a stone, heretofore set, at the North Eastern corner of St. Mary's Church lot, thence running on the middle line of said Avenue 60 feet wide as follows viz
 $N. 7.^\circ W. 452$ feet at a point $N. 85.^\circ E. 30$ feet from a stone at the North Eastern corner of a burying grounds, thence $N. 6.^\circ W. 1387.5$ feet at a point $S. 88.^\circ W. 30$ feet from post at the South Western corner of Pitcher's lot, thence $N. 10.^\circ E. 1808$ feet

at a point $S. 7.^\circ W. 12.5$ feet from a Cedar tree now marked; at 447 feet in middle of Cold Spring Lane, course $N. 77.^\circ E. 487.5$ feet, thence $N. 3.^\circ W. 419$ feet on East side of fence East side of Evans Chapel road at a point $S. 63.^\circ E. 30$ feet from post at end of division line fence between Woods and Harper on the Western side of said road, thence $N. 17.^\circ E. 186$ feet in ditch on the Western side of said road, at a point $N. 65.^\circ W. 30$ feet from a Cedar tree now marked; standing in Woods field, on the East side of said road, thence $N. 26.^\circ E. 304$ feet at a point 1.5 feet Westwardly from Harper's fence on the Western side of the Evans Chapel road, thence $N. 22.^\circ W. 188$ feet at a point Westwardly 17.5 feet from Harper's fence on the Western side of the Evans Chapel road, and 45 feet from Woods' fence on the Eastern side of said road, thence $N. 19.^\circ E. 502$ feet in Evans Chapel road at a point

3 feet Eastwardly of Harper's fence, and $N. 62.^\circ W. 30$ feet from the South side of turn to main gate, entrance to Woods' house, and fence between Mrs Bonapart, and Deshane, and at a point $S. 82.^\circ W. 5$ feet from a small Gum tree now marked; and Hardy's, thence $N. 16.^\circ E. 713$ feet at a point, in Hardy's enclosure, $S. 35.^\circ W. 33.5$ feet from a Cedar tree, now marked; standing in and on the Western side of the Evans Chapel road and $N. 6.^\circ E. 44$ feet from the Northernmost gate post of gate entrance to Hardy's house, thence $N. 3.^\circ W. 34.8$ feet, in and on the Western side of the Evans Chapel road, at a point $S. 20.^\circ E. 10$ feet from a Cedar tree now marked; and Northwardly about 18 feet from end of division line fence between Hardy's and Armat, thence $N. 67.^\circ W. 400$ feet at a point in and on the Western side of the Evans Chapel road, $S. 14.^\circ E. 29.5$ feet from a Cedar tree now marked; at 45 feet of opposite division line fence between Armat, and Mrs Bonapart, thence $N. 7.^\circ W. 528$ feet on Western side of the Evans Chapel road at a point $N. 87.^\circ W. 30$ feet

from a Persimmon tree now marked; thence $N. 2.^\circ E. 402$ feet, in Deshane's field, and Northwardly 2 feet from division line fence between Mrs Bonapart, and Deshane, and at a point $S. 82.^\circ W. 5$ feet from a small Gum tree now marked; and about 10 feet from the Western side of the Evans Chapel road, thence $N. 14.^\circ W. 1855$ feet, in Mrs Ward's field, at a point $N. 18.^\circ E. 9.5$ feet from a Cherry tree now marked; standing near the division line fence between M. Alder, and Mrs Ward, and South Westwardly 30 feet from the middle of the Evans Chapel road, at 965 feet the Northern side of the Evans Chapel road, at a point Eastwardly 32 feet from end of division line fence between Deshane and M. Alder, course $S. 54.^\circ E. 10$ feet from a large Chestnut tree now marked; thence $N. 15.^\circ E. 165$ feet at a point $N. 85.^\circ W. 10$ feet from a large Chestnut tree now marked; thence $N. 32.^\circ E. 277$ feet to a stake and stone pile now set and made, see the balance of notes to left

tree now marked; thence $N. 2.^\circ E. 308$ feet at a point on the Eastern side of the Evans Chapel road, $S. 5.^\circ E. 10$ feet from a small Mulberry tree, and 52 feet Eastwardly from latch of gate post of Mrs Ward's gate, thence $N. 12.^\circ E. 1230$ feet, in Bradford's field, at a point $S. 75.^\circ E. 17.5$ feet from post, now marked; standing in the division fence between Bradford, and Warner, at 595 feet middle of Lake Avenue, course $S. 54.^\circ E. 10$ feet, thence $N. 10.^\circ W. 475$ feet to Chestnut tree now marked; thence $N. 15.^\circ E. 165$ feet at a point $N. 85.^\circ W. 10$ feet from a large Chestnut tree now marked; thence $N. 32.^\circ E. 277$ feet to a stake and stone pile now set and made, see the balance of notes to left

SURVEYED BY
 E. D. RICHARDSON

NOV 1870

SCALE 200 FEET PER INCH.

In the Circuit Court
6653
for Baltimore County

In Equity

²
Charles J. Bonaparte
¹⁷

Mattison Hampden
Lake Roland Rail-
road Company, Trustee
Wiltuppe & Co.

Plaintiff vs. Defendant
filed with vice

Copy

Jerome Napoleon Bonaparte
& wife

Deed to

Charles Joseph Bonaparte

Oct 6 " 1891 fd

1.75

20 2 27
13
22.1.27

Jerome Napoleon Bonaparte and
Deed to
Charles Joseph Bonaparte

This Deed made
this first day of
July in the year
of our Lord, one

thousand eight hundred and seventy two —
Jerome Napoleon Bonaparte of the City of
Baltimore in the State of Maryland, but now
sojourning at Newport in the State of Rhode
Island, and Caroline Le Roy Bonaparte, his
wife, Witnesseth that in consideration of the
sum of Twelve Thousand five hundred dollars
current money of the United States to them
in hand paid at and before the delivery of
these presents, the said Jerome Napoleon Bon-
aparte and Caroline Le Roy Bonaparte, his wife
do hereby grant unto Charles Joseph Bon-
aparte his heirs and assigns, all the right,
title, interest and estate in law, and in
equity in possession and reversion of the
said Jerome Napoleon Bonaparte and Caroline
Le Roy Bonaparte, his wife, of in and to the
following described pieces and parcels of
land lying in Baltimore County, in said
State of Maryland, that is to say. Beginning
for the first of said pieces at a stone hereto-
fore planted at a corner of Mrs General Harper's
land, and at the end of the south one de-
gree east forty five and a half perches line
of the whole tract of land conveyed by Augus-
tus W. Bradford to J. G. Waters, by deed
dated the twenty seventh day of November

U.S.S
\$12,500

A. D. eighteen hundred and fifty four and recorded among the Land Records of Baltimore County in Liber H. M. J. no 10 folio 118. ¹⁰ and running thence binding on the outlines of said land so conveyed, and on the land of Mrs Harper, the two following courses and distances to wit; north eighty eight degrees east eleven and a half perches to a stone, ² south one degree east twenty six perches to a stone at a corner of Christopher Arnats land, ³ then binding on that land and the outline of said Waters land, south seventy degrees east sixty four and eight tenths perches to the centre of the County road called and known as Evans Chapel Road, ⁴ then along the centre of said road ^{and} on the outline of said Waters land, the two following courses and distances to wit, ⁵ north eleven and a half degrees west forty four and eight tenths perches, ⁶ north twenty five and eight tenths perches to a stake, then ⁷ south eighty five and a half degrees west fifty and a half perches to a stone, ⁸ then north eighty eight and three quarters degrees west sixteen and nine twentieths perches to a stake and cherry tree at Mrs Harpers fence, ⁹ and then binding on that land south one degree east fourteen and three fourths perches to the place of beginning.

containing twenty acres, two rods and twenty seven square perches of land, more or less, subject nevertheless to the rights reserved in the deed

thereof from James S. Waters and Andrew
G. Waters, Executors, to Edwin L. Parker to the
heirs and assigns of Freeborn G. Waters, to the
use of the water flowing from the spring on
said land for the purpose of working their
rams, and to have peaceful ingress ^{water} and egress
to and from the land hereby conveyed for the
purpose of repairing and keeping in order the
water rams, reservoir and fixtures located there-
on at the time of the execution of said
deed to Edwin L. Parker, as by reference
to said deed dated the nineteenth of Novem-
ber, eighteen hundred and fifty nine, record-
ed among the Land Records of Baltimore
County aforesaid in Liber G. H. G. No 27 folio
274. ^{re}, will more fully appear. and for the
second of said pieces, all that other piece
or parcel of ground, being part of Oakland
and part of the land which by deed dated
June the tenth eighteen hundred and fifteen
recorded in Liber W. G. No 131 folio 280. ^{re} was
conveyed by Daniel and William Evans to
Robert G. Harper, and thus described:

Beginning for the same at a stone planted
for the beginning of said whole parcel of
land, and running thence bounding on the
lines of said whole parcel of land severally
north eighty nine degrees east eleven ^{and three}
quarters perches to a stone, thence south one
fourth of a degree east twenty five ^{and three}
quarters perches to a stone, then bearing the

outlines of said whole parcel and running north sixty eight and three fourths degrees west thirteen perches, thence north twenty one ^{and seven} tenths perches to the beginning. Containing one acre and three fourths of land; The said two pieces and parcels of land hereinbefore described and conveyed, being the same which were conveyed by Oliver A. Parker and Llewellyn L. Parker, executors of said Edwin L. Parker to the late Jerome Napoleon Bonaparte, dated the thirty first day of July in the year eighteen hundred and sixty nine and recorded among the Land Records of said Baltimore County in Liber E.H.A. no 63 folio 240, and which by virtue of the last will and testament of the said late Jerome Napoleon Bonaparte, became vested at his death, in the said first mentioned Jerome Napoleon Bonaparte, party grantor to this deed and the said Charles Joseph Bonaparte share and share alike. And the said Jerome Napoleon Bonaparte hereby covenants to warrant specially the undivided half part of the lands herein before described, and to execute such further assurances as may be requisite.

Witness our hands and seals

Test	}	Jerome Napoleon Bonaparte	(Seal)
Henry H. Young		Baroline Le Roy Bonaparte	(Seal)
Benjamin Marsh Jr			

United States of America.

State of Rhode Island, City of Newport, to wit:

Be it remembered, and I hereby certify, that

on this first day of July in the year of our Lord, one thousand eight hundred and seventy two before me the subscriber, a Notary Public of the said State of Rhode Island duly appointed, Commissioned and qualified and resident in said City of Newport personally appeared Jerome Napoleon Bonaparte and Caroline Le Roy Bonaparte his wife and did each acknowledge the foregoing Deed to be their respective act.

In Testimony whereof I hereto sign my name and affix my seal notarial on the day and year above written

Benjamin Marsh Jr
Notary Public

Recorded on the 11 day of July 1872^{and} examined
per Edward H. Ady. Clk.

State of Maryland

Baltimore County to wit

I hereby certify that the foregoing is a true copy taken from Liber E. N. A. No 76 folio 113. re one of the Land Records of Baltimore County.

In Testimony whereof I hereto set my hand and affix the Seal of the Circuit Court for Baltimore County this 7th day of Sept. A. D. 1891

John W. Shanklin

Clerk of the Circuit Court for Baltimore County

6653

12/222

Charles J. Bonaparte
vs.

The Baltimore & Annapolis
& Lake Roland Railroad
Co. Exec.

Order of Court

Oct 6th 1891 pd

Charles Monoparti

3

The Baltimore Hampden &
Leak Roland Railroad
Company William H. White
vs. P. Sanford Ross
Joseph B. Sanford and
Walter B. Brooks &

In the Circuit
Court for
Baltimore County
to wit

Ordered by the Circuit Court for Baltimore County
that the application of the plaintiffs for an
injunction in the foregoing case be set for hearing
on Thursday October 8th A.D. 1891 and that the
defendants are hereby enjoined from interfering
further in any manner with the bed of Roland
Avenue within the limits of Baltimore County
until after the hearing of said application
and the action of the Court thereupon upon the
plaintiff filing an injunction bond in the penalty
of \$5000 with approved securities
provided that a copy of this order
be served on the defendants on
or before Wednesday October 7th 1891

Charles Smith.

6653 12/22/22

Opportunity

Chas. J. Bonaparte

VS

The Balt. Harbor
and Lake Roland
Rail Road Co

Copy of Order
Served on Joseph
Whitridge, and served
on Joseph Whitridge
as president of the
Baltimore Harbor
and Lake Roland
Railroad Company
October 5th 1891
Chas J. Beckley
Sheriff

Oct 7th 1891 pd.

Circuit Court for
Baltimore County

Charles J Bonapartes

vs
The Baltimore Hampden and
Lake Roland Railroad Company
et al

Copy order of court
to be served on B & L R.R. Co

Copy of the Within order
of Court Served on the
Baltimore, Hampden and
Lake Roland Railroad
Company by Service on
Fielder C Slingsuff
a Director

George W Cuffray
Sheriff

see 67c
Oct 4th 1891 sel

In the Circuit Court
for Baltimore County

In Equity

Chas. J. Bonaparte

vs

Math. McCusker & Lok
Account R.R. Co. Jan

Petition for leave
to amend his order
of Court return

Filed Oct 7th 1891,

Bonaparte
vs
The Balto. Hampden &c. R. W. Co.
et al.

In the
Circuit
Court
for
Balto. Co.

In Equity.
The Plaintiff prays leave to be permitted
to amend this Bill of Complaint as
follows:

By inserting ~~after~~ ^{at} the end of the fifth
paragraph of the said bill of Complaint
the words "Which act of Assembly
your orator charges was in violation
of the Constitution of this State and
altogether null and void and, even
if constitutionally valid, was never
accepted by the subscribers to the
said Capital Stock of the said alleged
corporation until after the time therein
limited for the exercise of the powers
conferred by sections 6 and 11 above
set forth."

And as ~~reasons~~ in duty &c.

Charles J. Bonaparte

Plaintiff

W. Keywood

W. S. Ketch

Sol. for part.

Ordered by the Court this 7th day of
October that the said bill be amended
as above prayed.

Charles M. M.

6653 12/227
Chas. J. Burapauli

4.
Bassi. Navut su &
Lasse Ricana R. W. Co.

Mr. Chas

Fili this express

~~of~~ facts:

Julian C. Skofth
Mets. some by
for 5/11

Filed Oct 8th 1891

Charles Bonaparte

"

Baltimore Hampden

Lake Roland R.R.

It is agreed and admitted for the purposes
of this case that the first subscription for any of
the Capital Stock of the Baltimore Hampden &
Lake Roland R.R. was made at a meeting
of the Commission held in September 1891 at
which time and place 500 shares of \$50 each
were subscribed for and an installment of
ten per cent on each of said shares was then
paid in cash. ~~The meeting then adjourned~~
~~a meeting of the subscribers was held on the~~
~~same day and place~~ and that in the construction
of its tracks on Roland Avenue in Baltimore
County double tracks are to be laid in the
middle of the Avenue with a driveway on
either side and that rails will be
of the ordinary street railway pattern

~~M. Reynolds~~

H. P. Keece for plaintiff

Fielder C. Shugluff
Steel, Sumner & Carey
for defendants.

6653
12/222

C. P. Donoharte

79

Patent Hanks

& Lake Roland Me

tal

Application for
personal inspection
of premises by law

Mr. Clark

Please find

Mequon

W. S. Kunk

See for bluff

Filed Oct 8th 1891

Charles Bonaparte

"

The Baltimore Record.

Lake Roland R.R.

doctm

In the Circuit Court

for Baltimore County

to wit

To the Honourable the Judge of said Court

The Plaintiff respectfully prays the Court
to make a personal inspection of the bed of
Roland Avenue between the City limits and
Lake Avenue where it is proposed by the
defendants to lay their railroad tracks
before deciding upon the granting or refusal
of the application applied for

Attest

W. S. Ketch

Attorney for Plaintiff

6653 12/22

In the Circuit Court
for Baltimore County
Md.

Charles Bonaparte

Baltimore Hampden
& Lake Accords etc

Affidavit of Henry D.
Long

Mr. Shanker

Please file the
affidavit

W. Reynolds

W. S. Kane

Secy for p. l. c.

Oct 8th 1891 pd

State of Maryland City of Baltimore Set

I hereby certify that on this seventh day of October A.D. 1891 before me a Notary Public duly appointed commissioned and qualified in and for the City of Baltimore aforesaid personally appeared Henry D. Loney and made oath upon the Holy Evangelists of Almighty God and deposed as follows:

I am one of the Commissioners named in section one of Chapter 284 of the Act of Assembly of Maryland of the year 1872 to take subscriptions to the Capital Stock of the Baltimore, Hampden and Lake Roland Railroad Company. To the best of my recollection and belief no stock was subscribed for nor was anything done by said Commissioners before in execution of the powers conferred by said act until some time during the month of September 1891 when a meeting was held at the office of Meram Woods & Co. No 18 E. Lexington Street at which I think five thousand shares of the stock was subscribed for, and at the same place on the same day the subscribers to said stock organized and elected officers

H. D. Loney.

Sworn to and subscribed before me on this 7th day of October
A.D. 1891

Paul M. Burneth
Notary Public.

12/6653
/289

Bonobara

Male Kumpu &
Cab. Kent ME

Nota for pulchra
injuncta

Mr. Clark

Ken pin

W. H. Kumpu

W. S. Kumpu

Soe for plate

Oct 8th 1891 (filed)

Charles Bonaventure
Balthus Humbert
John Nolan NCo



In the Circuit Court
for the Eastern C
District of
New York

In the presence of the Judges of said Court

The plaintiffs upon the Court by and
the preliminary injunction made in the title in
this case

J. M. Mason
W. S. Ketch
Attorneys for plaintiffs

⁶⁶⁵³
In the Circuit
Court of Baltimore County
(In Equity) 12/222

Charles J. Bonaparte
vs.

The Baltimore Harbor
& Lake Roland Railroad
Company
et al.

Answers of Defendants

Mr. Shanklin:
Enter my appearance
for all defendants and
file this answer.
J. Edgar & Stungituff
Steel, Summers & Carey
Attorneys for defendants.

Oct 8th 1891 J.E.

In the Circuit Court of Baltimore County
(In Equity)

Charles J. Bonaparte,
vs. Plaintiff

The Baltimore Hampden & Lake Roland
Railroad Company et al.,
Defendants

The Joint and several answer of the Baltimore, Hampden
and Lake Roland Railroad Company, William H.
Whitridge, P. Sanford Ross, Joseph B. Sanford and
Walter B. Brooks, Jr. to the Bill of Complaint in this
Cause in this Court against them exhibited:

These defendants, reserving to themselves all proper
exceptions to said Bill of Complaint for its Mani-
fest errors and irregularities and for an answer
thereto or to such part and so much thereof as they
is advised it is material or necessary for them
to answer, say:

- (1) That they admit the allegations of the first, second
third and fourth paragraphs of said Bill so far
as the same are within their knowledge.
- (2) That in answer to the allegations of the fifth
paragraph of said Bill they refer for a full and
particular account of ~~them~~ the Corporate rights

of the Baltimore Hampden and Lake Roland Railroad Company to the provisions of the said Act of 1872, Chapter 284, referred to in said fifth paragraph; and further answering said fifth paragraph these defendants deny that said Act was in violation of the Constitution of this State

(3) That in answer to the allegations of the sixth paragraph of said Bill they show to the Court that the said Corporation was duly organized under said Act and while they admit that the said Company did not commence its said Railroad within three years from April 1st 1872, or ~~it~~ complete it within ten years from said date yet it has recently begun the construction of its Railroad and has now a large force of men at work upon the same within the corporate limits of Baltimore City; that it has purchased its rails and cross-ties for the construction of its entire road and is now engaged in laying them along its proposed route; that it has already laid a large part of its track in Baltimore City and that it was about to proceed with the construction of

its tracks on Roland Avenue in Baltimore County when served with the process of injunction by this Court.

(4) That in further answer to the allegations of said sixth paragraph the defendants deny that its Corporate powers have been defeated by neglect, dereliction and delay; ~~but to the contrary thereof~~ that all of the original incorporators named in said Act are still living with the exception of William C. Wilson and William B. Ward whose places have been recently filled by the election of two other persons interested in lands on Roland Avenue, to wit Douglas H. Thomas and Charles O. Lee; that two of said original incorporators, to wit Hiram Woods and John S. Dushane are connected with the Roland Park Company, in whose interest ^{in part} and with whose financial aid said Railroad is being constructed and that William C. Pennington, another of said original incorporators had recently sold his lands adjoining Roland Avenue to said Roland Park Company; ~~that said Railroad was not constructed within~~

~~the time limited by the Charter partly because~~
~~of the great financial panic which occurred~~
~~in or about the Year 1876, partly because~~
~~certain streets and roads necessary for its~~
~~route have only recently been condemned~~
~~and opened and partly because until the~~
~~said Roland Park Company was organized~~
~~and offered financial assistance to said~~
~~railroad it was doubtful whether it could~~
~~be made to loan its expenses, ^{and the} wherefore~~
defendants show that the time is only now
ripe for the construction of said railroad
and that if now constructed it will serve
exactly the purposes of its incorporation
and that the persons at whose instance and
for whose benefit said act was passed will
be active in the control and direction of
its progress.

57 But further answering said sixth paragraph
these defendants show are advised that the
State of Maryland can alone complain of
the neglect on the part of the said Corporation
to exercise its franchises within the period

of time prescribed by the said Eleventh Section (supposing that there has been in law any such neglect) and that the same is true of the other charges of non use and misuse in the part of said Corporation in this and other paragraphs of said Bill which acts of non use and misuse, if they could be established, cannot be inquired into collaterally or challenged by the plaintiff in this cause but can only be made the subject of judicial inquiry at the instance of the Governor of the State of Maryland.

(B) In answer to the seventh paragraph of said Bill the defendant, the Baltimore, Hampton and Lake Roland Railroad Company, says that the acts complained of in said seventh paragraph are the corporate acts of said Company; that the said William H. Whitridge is the president of said Company and that the defendants P. Sanford Ross, Joseph B. Sanford and Walter B. Brooks, Jr., trading as the firm of Ross & Sanford are Railroad Contractors employed by said Company.

(7) In answer to the eighth paragraph of said Bill the defendants deny that the said Company is not laying down said Railway tracks in good faith but to the contrary thereof says that it will operate thereupon a horse railway in accordance with power originally granted under said Charter unless it is lawfully authorized to use some other motive power and they deny that the said Company has any design or intention of running electrically in the propulsion of its Cars without proper and lawful authority therefor.

(8) In answer to the ninth paragraph of said Bill the defendants admit that said Roland Avenue has been lawfully condemned as a public highway but they deny that the use of said avenue for the tracks and Cars of a passenger Railway (whether said Cars are propelled by horses or electricity) will be such a use of the same as to require condemnation of said avenue for said purpose or the payment of damages to the

plaintiff therefore.

(9) In answer to the tenth paragraph of said Bill the defendants deny that the laying of said tracks will be an unlawful obstruction of the rights of the plaintiff or that it will be a public nuisance.

(10) In answer to the eleventh paragraph of said Bill the defendants say that the tracks which the defendants have begun laying will be constructed in such a manner as not to interfere with the travel over the said Roland Avenue as required by Section 6 of the said Act of 1872, Chapter 284 and they deny that the said travel will have been or will be interfered with thereby; that the said Corporation is financially able to meet all of its obligations including any damages which it could possibly do to the plaintiff.

(11) And further answering said eleventh section these defendants say that the plaintiff is endeavoring to delay hinder and embarrass the said railroad not because

the alleged delays and omissions charged
against said Company in any way affect
the rights of the plaintiff in regard thereto
or because he can allege any fair and
equitable reason why said rights should
now be questioned but because the
said plaintiff is materially opposed to
the construction and operation of any
railway on Roland Avenue whether by
the defendant Railroad Company or any other.

And having fully answered said
Bill of Complaint these defendants pray
to be hence dismissed with their proper
costs.

And again duly bound
JAMES C. STINGLUFF
Steele, Semmes & Carey
- Solicitors for defendants

State of Maryland, Baltimore County, Court:
I hereby Certify that on this 8th day of
October in the year eighteen hundred and
ninety are before the Subscriber a Justice

of the Peace of the State of Maryland, in
and for Baltimore County aforesaid
personally appeared Fieldes C. Shugruff
one of the Board of Directors of the
Baltimore Hampden & Lake Roland
Railroad Company and made oath in
due form of law that the matters and
facts set forth in the foregoing answer
are true and bona fide as therein
set forth.

Geo B Mitchell, J.P.

6603 12/289

Charles J. Brewster

H

The Baltimore, Annapolis,
and Little Potomac Rail
Road Company follows

Wing Point

Oct 16 " 1891 filed

Charles J. Inaparte
" " Plaintiff

The Baltimore, Annapolis and Little
Potomac Rail Road Company, versus
Defendants.

I have
carefully considered the Bill, answer, affidavit,
and all the other papers filed in this cause, as well
as the arguments of the respective counsel made
at the hearing, and having also made "a
personal inspection of the bed of Potomac Avenue
between the City limits and Little Avenue where it is
proposed by the Defendants to lay their rail road track,"
and am of opinion that the plaintiff is not
entitled to the injunction prayed for in his Bill of
Complaint. It is therefore ordered by the Circuit
Court for Baltimore County this 16th day of Oct 1891
that the restraining order of this Court passed

passed in this cause on the 6th day of Oct 1891
be and the same is hereby rescinded, and it is
further ordered that the injunction prayed for
by the plaintiff in his bill of Complaint and
moved for in his motion filed in this cause
Oct 8th 1891 be and the same is hereby
refused with ~~costs~~ costs to the Defendant.

H. Charles Smith.
Clerk

6653 12/289
In the Circuit Court for Baltimore
County, in Equity.

Charles J. Bonaparte
vs
The Baltimore, Hampden
and Lake Roland Rail-
road Company, Petitioners.

Prayer

Prayer for an Appellate
the Court of Appeals of
Maryland

The Clerk, Clerk etc
Please file etc
William Reynolds
William J. Keel
Prayer Charles J.
Bonaparte

Oct 16" 1891 filed

Charles J. Bonaparte

vs.

The Baltimore Hampden and
Lake Roland Railroad
Company & others

In the Circuit Court for Baltimore
more County
in Equity.

To the Honorable the Judges in said Court.

The Complainant & Plaintiff by William Reynolds
& William S. Keach, his attorneys, pray an appeal
to the Court of Appeals of Maryland from the order of
Court this day passed in the above cause rescinding the
restraining order heretofore passed in the above entitled
cause & refusing the injunction prayed for in the
above entitled ~~cause~~ cause etc

William Reynolds
William S. Keach

Attorneys for Charles J. Bonaparte

6653 12/222

Eq.

Charles J. Bonaparte

vs.

The Baltimore Hampden
& Lake Roland Railroad
Co. Inc.

SUBPCENA

W^m H. Whitridge Summoned
Not Found as to all others

Chas J. Beckley
Sheriff.

FILED Nov 13th 1887

W^m Reginald
W^m S. Keech at atty

Baltimore County, Sct :

THE STATE OF MARYLAND.

To *The Baltimore, Hampden & Lake*

Roland Railroad Company, William

H. Whitridge, P. Sanford Ross, Joseph B. Sanford &

Walter B. Brooks Jr. Co-Partners Trading
as Ross and Sanford,

OF *Baltimore Co* GREETING:

WE COMMAND AND ENJOIN YOU, that all excuses set aside, you be in your person before the Judges of the Circuit Court for Baltimore County, at the Court House, in Towsontown, on the first Monday of *November* next, to answer the complaint of *Charles J. Bonaparte*

against you in the said Court, exhibited.

Hereof fail not, as you will answer the contrary at your peril.

WITNESS, the Honorable *David Fowler* ~~GEORGE YELLOTT~~, Chief Judge of the said Court, the *7th* day of *October* in the year of our Lord one thousand eight hundred and ~~eighty~~ *ninety*

Issued the *5th* day of *October* 18*91*

John W. Shuckaline

Clerk of the Circuit Court for Baltimore County.

6653

Bonaparte

v.

Balto, Hampden
& Lake Roland R.R. Co.

Docket Entries.

Oct 8: Motion for preliminary injunction filed.
" 16 Order of court refusing injunction to. filed.
" " Order for appeal filed by plaintiff.

12/222

Charles J. Bonaparte

vs.

The Baltimore, Hampden and Lake Roland
Railroad Company

William H. Whitridge and
P. Sanford Ross

Joseph B. Sanford and
Walter B. Brooks Jr.

copartners trading as
Ross and Sanford

- 1891
Oct 6: Bill of Complaint & Pltff's Exhibits A. & B. filed.
" " Order of court nisi, and setting application for injunction
for hearing, restraining defendant re. filed.
" " Approved injunction bond filed.
" " Copies of order of court sent.
" " App of Wm Reynolds & Wm S. Keech for pltff
Oct 7 " Copy of order served on Wm H. Whitridge and Wm
H. Whitridge as president of the Baltimore, Hampden
and Lake Roland Railroad Company Oct 6th 1891,
sheriff's return filed.
" " Copy of order of court served on the Baltimore, Hamp-
den and Lake Roland Railroad Co. by service on Fielder
G. Shingluff a director; sheriff's return filed.
" " Petition of pltff & order of court granting leave to amend
bill of complaint filed.
Oct 8 Plaintiff's application for personal inspection of the
premises by the court filed.
" " Agreed statement of facts filed.
" " Amended bill filed.
" " Answer of defendants filed.

In the Circuit Court for
Baltimore County,

12/28/91

6653

Charles J. Bonaparte
vs.

The Baltimore Hampton
and Lake Roland Railroad
Company,

Order of Court granting
preliminary injunction

Wm. Bacon, Clerk etc
Please file etc
William S. Keed
Pres Atty for Plaintiff

Filed Mch 9th 1892



Charles J. Bonaparte

vs

The Baltimore Hampden
and Lake Roland Railroad
Company et alIn the
Circuit Court
for Baltimore
County,
In Equity.

Ordered by the Circuit Court for Baltimore County
this ninth (9th) day of March A.D. 1892 that
the order of this Court passed on the sixteenth
(16th) day of October 1891 referring the preliminary
injunction prayer for in the bill in this
case to the same ^{is hereby} is rescinded, & it is further or-
dered that the preliminary injunction issue
as prayed in the bill of complaint & it is further
advised that the Sheriff of this County forthwith
forthwith serve a copy of this order of Court on
the said Company & William H. Whitridge Esq.
Attendant thereof

N. Charles Smith.

6653 12/289

CIRCUIT COURT

FOR

BALTIMORE COUNTY

18..... No 12/289 Docket.

Chas J Bonaparte

vs.

Baltimore, Hampden
and Lake Roland Railroad
Company, et al.

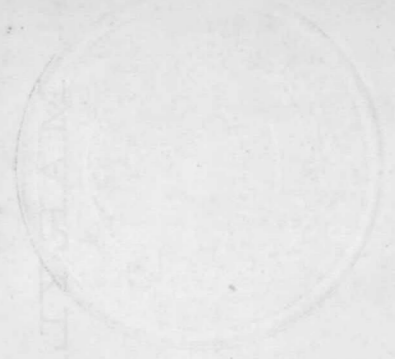
INJUNCTION. x

within Injunction made known
by reading said writ to Walter B
Brooker Jr March 11th 1892 at 3 o'clock PM
& to Mr G Whitridge ^{Pres} March 10th 92 at
3 o'clock PM & copies left with Mr G
Whitridge Pres, Non Est asto Ross
& Sanford

Thos R Jenifer
Sheriff

FILED Feb 11 1892

Reynolds Keech



THE STATE OF MARYLAND

MARYLAND, SCT.

THE STATE OF MARYLAND,

TO *The Baltimore, Hampden and Lake Roland
Railroad Company, William H. Whitridge and P. Sanford
Ross, Joseph B. Sanford and Walter B. Brooks Jr., copartners
trading as Ross and Sanford - defendants,*

Greeting:

WHEREAS,

Charles J. Bonaparte, plaintiff,

hath exhibited to us in our CIRCUIT COURT FOR BALTIMORE COUNTY, his Bill of Com-

plaint for relief in Equity, and for AN INJUNCTION to restrain you the said *Baltimore
Hampden and Lake Roland Railroad Company, William
H. Whitridge and P. Sanford Ross, Joseph B. Sanford
and Walter B. Brooks Jr., copartners trading as Ross and Sanford,
defendants, you and each of you, and your and each of your
servants, agents and workmen, and all persons whomsoever claiming
to act under any contract or agreement with you or any of you,
from laying any iron railway tracks upon the bed of Roland
Avenue, or making any excavations in said avenue, or placing
any wooden ties or other materials upon said avenue, or in
any manner interfering with or obstructing the same within
the limits of Baltimore County, or hindering the said Charles J.
Bonaparte in the free and unobstructed use thereof for the purpose
of access to and from his land and premises adjacent thereto,
until the matter can be heard and determined in Equity.*

NOW, THEREFORE, these are to COMMAND and strictly to ENJOIN and PROHIBIT you, the said
*Baltimore, Hampden and Lake Roland Railroad Company,
William H. Whitridge and P. Sanford Ross, Joseph B. Sanford
and ~~William~~ Walter B. Brooks Jr., copartners trading as Ross
and Sanford, you and each of you, and your and each of your
servants, agents and workmen, and all persons whomsoever
claiming to act under any contract or agreement with you
or any of you, from doing any of the acts forbidden as
above set forth,*
until the further order of our said Court in the premises.

WITNESS, the Honorable *David Fowler*, Chief Judge of the Circuit Court
for Baltimore County, the *7th* day of *March* 18 *92*.

Issued the *9th* day of *March* 18 *92*

Lewis M. Bacon Clerk.

Charles J. Bonaparte
vs.
The Baltimore, Hampden
and Lake Roland Railroad
Company, and others.

Court of Appeals

OF

Maryland.

January Term, 1892

The Appeal in this case standing ready for hearing, was argued by Counsel for the respective parties, and the proceedings have since been considered by the Court.

It is thereupon, this ~~seventeenth~~ day of February 1892, by the Court of Appeals of Maryland, and by the authority thereof, adjudged and ordered that the Order of the Circuit Court for Baltimore County, in Equity, dated the 16th day of October, 1891, from which this appeal was taken, be and the same is hereby reversed with costs and the cause remanded that an injunction may issue as prayed.

R. A. Alvey
Oliver Miller,
Levin T. St. Irving,
Jas. M. Sherry,
John P. Birse.

Appellants costs in the Court of Appeals
including \$10.00 Appearance fee \$117.95

Appellees costs in the Court of Appeals
including \$10.00 Appearance fee. \$77.90

12/289

6653

Bouaparte

vs.

The Baltimore Hampden
and Lake Roland Railroad Co
fd.

Feb 4th 1892 fd.

Charles J. Bonaparte } Court of Appeals
 } of
 } Maryland.
The Baltimore, Hampden,
and Lake Roland Railroad
Company, and others. }
 } January Term, 1892.

Judge Irving delivered the opinion of the Court.

By Chapter 284 of the Acts of the General Assembly of 1872, was passed the Act entitled "An Act to incorporate the Baltimore, Hampden and Lake Roland Railroad Company." The first section of the Act names certain persons as commissioners to take subscriptions to the Capital stock of the Company; and in case of the death resignation or refusal to serve of any of the persons named as commissioners, a majority of the remaining commissioners were given authority to appoint others.

By the second section of the Act subscribers to the stock and their successors and assigns are declared incorporated into a company by the name of "Baltimore, Hampden and Lake Roland Rail Road Company," with perpetual succession under that name, with power of holding, purchasing and encumbering property for the purposes of the corporation.

The 3rd section makes the capital stock of the Company

to consist of shares not exceeding two thousand in number, of the value of fifty dollars per share; five dollars of which was to be paid at the time of subscription and the residue in such installments as the President and Directors should determine.

By the fourth section as soon as five hundred shares should be subscribed, the commissioners to take the subscriptions, were authorized by publishing notice as prescribed to call a meeting for the election of seven directors, who on being elected should elect a president for whose qualification the fifth section provides.

The sixth section gives the company thus incorporated, power to construct a rail road with one or two tracks and necessary sidings for the transportation of travelers or freight by horse power, and gives the Company the exclusive use of any streets or county roads over which they may wish to lay their track between Boundary Avenue and Lake Poland; "provided said track or tracks are constructed in such manner as not to interfere with the travel over said streets or roads."

The seventh section provides for the condemnation of right of way and estimating damages and benefits.

The eighth section prescribes the rate of fare, not exceeding five cents per mile or the fraction of one.

The ninth section authorizes the borrowing of money to the extent of twenty five thousand dollars. The tenth authorizes the making of bylaws, rules, and regulations, and the appointment of officers.

The eleventh section provides that said company shall "commence said rail-way within three years from the passage of the act, and complete the same in ten years". By the twelfth and last section the act is made to go into effect upon its passage and the right to alter, amend or repeal is reserved to the legislature.

The appellant is a property owner residing on Roland Avenue, which is opened as a public Avenue or highway, of the width of sixty feet past his property, and has filed his bill for an injunction restraining the appellee from the construction of their road which has been begun. He charges that the tearing up and obstruction of the avenue as is proposed is without lawful authority and will be an unlawful obstruction of the appellant in going

to and from his premises. He avers that what is being done, is not for the purpose of using horses for the road, but with the design of using electricity as a method of propulsion. He sets up in his bill and contends in argument, that the act of Assembly, relied on by the appellees as an act of incorporation, is void because it is in conflict with the provisions of Art. 3 section 48 of the constitution, which prohibits the granting of charters to corporations when there is a general law under which they may be formed as appellant contends that there is.

2. That it was not accepted in time to confer on the corporation the powers which are claimed for it, or to create a corporation at all.

3^{dly}, that if originally and accepted in time the charter gives no right to the corporation to lay down their tracks in the highway without the consent of the county commissioners which has not been obtained.

The appellees deny all these several propositions and the court below agreed with the appellees in reference to them and refused

the preliminary injunction which was asked and from that refusal this appeal was taken. The appellees have moved to dismiss the appeal because it is contended that this particular case does not fall within the provision of section 27 of Art. 5 of the code. When the bill was filed and preliminary injunction was asked for instead of granting the injunction at once and outright the judge set a day for hearing and until that hearing could be had the judge passed a restraining order. The contention of the appellee is that this restraining order was a preliminary injunction and the order of the court passed after the hearing which was appointed, was the dissolution of the injunction already granted. When the court passed the order setting ^{and meanwhile restraining the appellee till the hearing} the day for hearing, it is very evident that the court was not acting finally on that application for preliminary injunction. The court wanted opportunity to consider whether a case was made for preliminary injunction & therefore ordered a hearing, on the application made by the bill. When that hearing was had the preliminary injunction was refused & the order refusing the same

is the subject of the appeal. We think it does fall within the statute, and that appeal was properly prayed and granted.

The motion to dismiss must be overruled.

For the purpose of deciding the case we need not consider the question whether the Act of Assembly under which the appellee claims corporate powers was constitutionally enacted. We may assume without so deciding that it was; for conceding that it was lawfully passed, we are of opinion that the appellee never acquired lawful corporate existence under it. If it did not acquire corporate life under that act, the injunction should have gone. The statute appointed commissioners to take subscription for the stock of the road it authorized to be built upon specified conditions and within certain limitations as to time. Those commissioners were not declared to be incorporated. They were the mere agents of the state to offer the charter to subscribers, willing to accept it as offered. *State vs. Bull* 26 Conn. 179. Those who should become subscribers for stock

of the corporation intended to be formed were by the second section of the act declared incorporated. The act went into effect on the day of its passage and made incorporation possible, but the stock had to be taken as prescribed before there would be incorporators to accept the charter offered to them.

Subscribers to the extent of twenty five thousand dollars with ~~five~~ five dollars per share actually paid in were necessary to justify an organization as a corporation. Before there could be an acceptance of the charter and its conditions and limitations, subscribers to the extent mentioned were necessary. They were incorporated and not ~~the~~ the commissioners.

The latter being the state agents to make the offer, could not accept it. They need not be stock holders and might never be such and until they should become subscribers for the stock they could have no voice in the matter.

Confessedly no stock subscriptions were made until Sept. 1891. which was more than nineteen years after the passage of the act tendering the charter upon the terms and limitations mentioned in it and more than nine years after the time limited

for completing the road. Construing the act as is our first duty, we think it intended to offer the corporate existence and corporate power mentioned in the act to such stock subscribers as could accept the offer on the conditions annexed. The commissioners named were charged with a specific duty. They could do nothing which the act did not authorize them to do. They could offer nothing to subscribers but what ~~what~~ was given them to do, and it was their duty to so discharge their functions that the conditions of the offer might by possibility be complied with. Certain limitations were imposed in the act. The road was to be commenced within three years and was to be completed within ten years from the passage of the act. The commissioners to take subscriptions must act therefore within such time that subscribers to the stock who were to be the corporation could accept the conditions annexed and could make the effort, at least, to do what was authorized.

When therefore the commissioners delayed action until limitations imposed by the act had fully attached and the time limited for beginning and finishing

the road had long passed it would seem to be clear that the powers of the states agents were at an end, and their powers must be enlarged by legislative action to justify their doing anything under the act. They had no right to offer to subscribers anything but the charter with its conditions and when the conditions became impossible of compliance, before the states agents offered it to any body, it is clear that they were functi officio and the act itself was no longer operative. It perished under its own limitations and required legislative action to again vitalize it. The legislature was influenced by what was supposed to be the public interest, no doubt, at the time when the act was passed. Such a mode of conveyance for passengers and freight was deemed necessary for the public good at that time and authority was given to form a corporation to meet the existing exigency. As was said in the case of state vs Bull 26 Conn. 179. "We cannot suppose it was creating a supernumerary charter to be laid away among the state records to await convenience or necessity of future times. In the case of state vs. Bull the charter was not forfeited. That was not a case of forfeiture."

The corporation was declared never to have come into legal existence; that the commissioners acting as states agents, had not acted within a reasonable time, and had surrendered their authority by their delay. They had once offered the charter for subscription of stock, and the requisite stock was not taken.

Few years afterwards the commissioners again took subscriptions & the amount of stock, which the law had required should be taken, before organization, was taken, and the company proceeded to organize, but the court said the commissioners on the part of the state to take subscriptions had no longer any authority to act, and that the charter was therefore not accepted in time.

It is true that this decision was made in a proceeding on the part of the state, but the grounds of the decision are such as show that like objections ought to be entertained at the suit of any body injured by the doings of a corporation claiming existence through void proceedings. The acceptance must not only be within reasonable time but it must be of that which is offered. 1 Morawitz on corporations

p. 22. State vs. Bull 26 Conn. 179. Hammond
 vs. Strauss 50 Md 12. In the last cited case
 this court said acceptance is essential to the
 existence of a corporation and whether there
 was an acceptance was a question for a jury
 under the direction of the court as to what will amount
 to an acceptance. The case, in which this court
 said that, was one at law where the existence of
 the corporation was in issue. Here the case is in
 Equity and the whole ^{matter} is for the court. The
 legal existence of a corporation is always open for
 inquiry. Hammond vs. Strauss 50 Md. 12.

Smith vs. Silver Valley R. R. 64 Md 85.
 Lyons vs. Orange R. R. ^{Agnew vs. Bank of Kittsburg N.J. 495} 35 Md 18. Acceptance being essential
 it becomes a condition precedent to corporate life.

Whether that has been done within a reasonable
 time is a question of law for the court on
 the facts before it, for decision by the court
 when arising an equity or for instructions to a jury
 when the facts are to be found by it. Loring vs. Boston
 7 Mete. (Mass) 409. Chicago vs. Dana 43 N.Y. 240.

Nozzle vs. Bennett 4 Jones (Neb.) 429. Hammond vs.
 Strauss 53 Md 12. The time for finishing the
 road under the law expired in 1882, and no effort
 to get subscribers appears to have been made up to

that time, or if there was such effort nothing was accomplished until Sept 1891, when subscriptions were made and organization was effected. This was nearly ten years after the expiration of the ten years limited for ~~the~~ completing the road. Was this an acceptance of the charter as offered? It is admitted that acceptance was necessary, but the appellee claims ~~that~~ this was all the acceptance which was required. The terms of offer could not then be accepted nor complied with. They were impossible, being impossible of acceptance or of execution. Counsel for the appellant most pertinently and forcibly suggests how such an acceptance differs from one made before any limitations had attached, and within undeniably reasonable time, but with express rejection of the time limit? If that had been done with the Lyons & Orange rail road case already cited staring at them, it would not have been contended that it would have been a valid acceptance. If not why should it be a valid one, when parties wait until it is unnecessary to make the exception in relation to the time limit, because that has by the delay been rendered an impossible condition? We can see no escape from the conclusion that there is no difference and that counsel's question can

only be so answered. But the appellees council contend
 that this objection can not and no objection to the
 valid existence of this corporation can be made at
 this time & in this way, and that it could only be
 made by the state on scire facias or by quo warranto.
 it is unquestionable the law that a forfeiture for
 non user or misuser or for non compliance with any of the
 conditions of the charter after the corporation had once
 been legally created and invested with franchises, can only
 be availed of and declared at the suit of the state.
 The Canal case 4 G. & J. is undeniable authority for this
 statement of the law, and we do not question it, but we
 do not think that this case applies nor do any that
 have followed its ruling apply to the case we consider.
 This case is not one where forfeiture is asked to
 be disclosed. It is a question of legal birth.
 If the corporation had been legally born its life
 could only be forfeited, and its death declared
 at the instance of the state, but ^{whether} it ever did have life
 on in other words ever was born, seems to us upon
 both reason and authority, open to inquiry ^{and contest} at
 the instance of any one suffering from its unauthorized
 acts. If within a reasonable time after the passage
 of the law, for example, if before the time limit had
 attached in either of its aspects, the commissioners

had taken enough subscriptions to enable the company to organize and it had organized in acceptance of the charter, and then delays in the construction of the road had occurred, until it was impossible to comply with the requirements of the act respecting the completion of the road, then we do not think any one could complain but the state, for it could waive the conditions and limitations annexed to the charter.

Had such a state of facts existed the canal case 4 G. & J., & Hodges case 58 Md. 620 and the other cases of like character cited by appellee would have applied & this appellant could not be sustained in his application for injunction because of such failure and for the reason that the corporation was only and legally in existence before the default made; & the state only could complain and ask a forfeiture. This was so in the canal case. It had been fully invested with franchises and made a corporation by the express language of the act of Assembly.

In that case and the others relied on there was no question of legal existence in the start.

In Hammond vs. Strauss 53 Md. already cited the incorporators were named & declared a corporation

but it was held to be a legitimate inquiry whether the corporation had excepted the terms of a certain charter, and that inquiry was made ^{in a case} where the state was no party to the proceedings. A corporation as plaintiff asserting rights must establish its corporate existence to maintain its suit.

That is the first step if its existence be denied and put in issue. If it has committed a wrong and justifies because of corporate authority to do what is complained of; it must establish that authority.

It will not do to say that because it claims to be a de facto corporation it must be assumed to be a legal corporation till the state claims it is not. The common right of men to protection in the enjoyment of their rights forbids such assumption. A corporation cannot gain right to recognition as such simply by claiming to be such and holding itself out as such. *Boyer vs. Trustees &c*

46 Md 372. *Agnew vs. Bank of Gettysburg* 2 H&B. 493 In the last cited case Judge Archer said "Upon authority it is clear that the plaintiff to maintain his case must show that by law he has been effectually created a corporation" *Franklin Fire Insurance Co vs. Hart* 31 Md 59 *Lyons vs. The Orange and Alexandria R. R. Co* 32 Md. 15 and the *Silver Valley* case 64 Md. 85. establish the same rule; viz that whenever any act is essentially necessary

to be done before a corporation can be regarded as in esse that must be established for the corporation can not be held to be a legal entity. Fire Department vs Kip 10 Wendell 266.

The act of 1872 Chapter 284 did not create a corporation eo instante. It names as corporators future subscribers.

It does use the term "hereby created" but that means that when there are subscribers such as the act calls for there are hereby declared a corporation. It provided for the formation of a corporation, but before there could be one in esse there must be the requisite subscribers to the stock. We have already said that such subscribers were not only necessary but they must accept the charter as offered, that this became a condition precedent - that they must be legal subscribers capable of accepting and must accept within a reasonable time. We have seen that according to ~~our~~ construction of the statute, the powers of the commissioners, the states agents, expired when they could no longer offer the charter as framed by the legislature and that their act in taking subscriptions was void; and if so it follows there were no longer legal subscribers. But if that were not so, these subscribers did not accept within a reasonable time. It is not necessary for us to establish and lay down what in any given case is

reasonable time; but we may safely say, that when nothing is done towards an organization and acceptance by subscribers such as there were, until the full lapse of time within which they were to complete the road contemplated by the legislature, that such acceptance was not within reasonable time. The offer was not accepted for it could not be performed. It was impossible to do the thing which was required. We cannot say a corporation has been brought into legal existence which does not get some apparent existence till the thing it was to do can not be done: or that it was intended as an acceptance it was within reasonable time.

The offer as made was not accepted. If it accepted at all, it accepted without limitation, whatever as to time, as fully as if it had said, we refuse that condition. To allow the commissioners the right to take subscriptions for stock & then to recognize such subscribers as competent to organize after such a lapse of time, when they could ^{not} execute the terms of the contract would be violating the principles, spirit and terms of the act of the assembly. It would be allowing the commissioners to do what the legislature did not allow them to do. It would be according to them the power to change the offer; which the legislature never designed. It would be allowing practically a fraud to be perpetrated on the state, the appellant and all in consimilicam

as this court said would be the case against ~~the~~
case against the corporation under the circumstances
alleged in the bill in the case of Campbell & Noss vs.
Poultney 6 G. 94. if permitted, and where the court
said a bill for injunction on the behalf of a stockholder
was a proper remedy.

It was certainly not the intention of the legislature to allow
the commissioners appointed under this statute to per-
petrate their existence indefinitely by filling vacancies
from time as mentioned in the act; so as to enable them
at any distant period, after the lapse of time prescribed
by the legislature for doing the work, until such time as
they or their successors thought advisable, and then
to bring by their act a corporation into existence,
at will, which act of theirs no body could gainsay but
the state. If the state did not intend by this act
to give such wonderful powers, then the attempted
exercise of such powers was without warrant of
law, and accomplished nothing, - was void, and any
one interested may contest it. If that organization under
that act cannot be questioned in this way at the
instance of this appellant, then if the taking of sub-
scription and organization had been delayed a hundred
years and then that was done, which has now been

done, no body no matter how much injured by its doings could complain & be heard in the courts; and if the state did not interfere, unexampled injury any loss might be wrought without redress. Although other agencies for meeting the public convenience might in the meantime, have ^{been} devised adopted and introduced if the position of the appellee be sound, a hundred years hence it would be possible for the stock to be taken, the charter to be accepted and the work might proceed to the infinite damage of the people who had a right to rely on the act of the assembly as dead.

We cannot give ~~our~~ assent to any proposition involving such consequences. Even in the space of nineteen years great changes will occur in the proximity of a great city. People had a right to assume that this project was abandoned, they had a right to suppose the authority to build the road no longer existed and to improve build and act accordingly. They had a right to look to ^{and} rely on the limitations on the act of assembly. For illustration suppose after the lapse of fifty or a hundred years and the improvement of properties as suggested, ^{commissioners had taken the subscriptions} and the subscribers claiming corporate power had organized and proceeded to exercise the power of eminent domain given them in the seventh section of the act and to condemn the right of

way through such improved property.

Can it be possible that under such state of facts the owners would not be allowed an application for injunction to question the ^{existence} ~~rightful~~ of such corporation. The mind instinctively shrinks from giving a negative answer. If under such state of facts the existence of the corporation could be questioned and the owner could get relief, as in our opinion there can be no doubt, it must be competent in this case and any similar case to enquire into the question whether a corporation has ever had legal existence. We have already cited numerous authorities in support of this view, showing as we think this is the clearly accepted law in this state, and as we understand it the law in other states also. After careful examination of the cases to which we have been cited and many more we have been able to find no case where the law is as in Maryland, which really sustains the position of the appellee. Especial reliance has been placed on the case of County of Macou vs. Shores 97 U.S. 272 and we have examined it with great care and cannot see that it touches the question which is engaging us. That was a suit by a holder of certain county bonds against the county, for overdue interest coupons.

The County Court of Macon County had, in pursuance of legislative authority, ordered the County's subscription to the Missouri and Mississippi R. R.; and the County had issued the bonds and this was a suit by a bona fide holder of some of those bonds for interest due.

The County in defence did raise the question, amongst others, that the rail road, to which the subscription was made, had, at the time of the subscription no corporate power, not having been organized within one year as required by law. The court only held that the plaintiff being a bona fide holder of the bonds without actual notice of alleged invalidity. No question could be raised as to the regularity of issuing the bonds by the county as it could not effect his right; and that the company being a de facto corporation when the subscription was made, it was not competent to question the regularity of its existence in that collateral way in a case where the question at issue in fact was whether the town of Macon ^{was} responsible ^{to plaintiff} for interest on ^{it had issued} bonds, although issued in aid of the rail road. But the court went further and said that advantage could only be taken of forfeiture by non user or misuser by quo warranto and that individuals could not avail themselves of it in collateral suits until it was judicially declared. Being a Missouri case the

court said that the decisions of that state ^{on the subject} were controlling and cited *Kaysers vs. Trustees of Bremen* 16 Mo. 88 & *Smith et al vs County of Cocker* 54 Mo. 58. To the statement of the law applicable to the case of *Macon vs. Shores* as laid down by the supreme ^{court} we entirely agree. It is in entire harmony with the law as we understand it to be in such case. The question being collaterally raised was not cognizable in a case where the gist of the suit was the liability of a county to a bona fide holder of bonds it had issued although issued in aid of such railroad. Beside the Railroad company had been made a corporation by the act of Assembly & now user or misuser in such case only be availed of at the suit of the state. Resorting to the Missouri decision which the supreme court refers to as controlling its decision we find they have no application to the case as we have it presented to us. In *Keyser vs Trustees of Bremen* (16 Mo. 88) it was an application for injunction to restrain the trustees of the town from collecting certain taxes. The court held that the County Court of St Louis County under a state of facts which gave it jurisdiction had incorporated the town and ^{that} therefore being a corporation created by legal authority proceedings had to be instituted by the state to avoid it for fraud or other

justifiable reasons; and that the corporate authority thus acquired could not be assailed by a private individual. We have already in this opinion asserted the same doctrine. The case of *Smith vs. County of Clarke* 54 Missouri 58 presents substantially the same question: as was presented in the *Anacon* case 97 U. S. and in precisely the same way. The question was as to the liability of Clarke Co. on bonds issued by the County to the Alexandria & Bloomfield R. R. Co. for subscriptions^{to} its stock, to a bona fide holder. On a motion for a rehearing of that case, after decision, the new point was made that the charter of the railroad company had ceased before the company was organized. The court only said that this question could not be enquired into in a collateral proceedings: that the company did exist as a matter of fact in the exercise of all its chartered franchises when the subscription to the stock was made by the county authorities. The County had issued the bonds and bona fide holders owned them and of course they could not be denied payment for the reason attempted to be set up. None of these cases apply in our apprehension to this case. The attack here is directly made against the corporation itself and that too against one which was not made one in the beginning as in these cases was the case, but only provision was made by which one could come

into existence, and which in our opinion never did legally acquire life. The order refusing the injunction must be reversed and the cause must be remanded that injunction may issue as prayed.

Reversed and remanded

Maryland, Sch:

I, J. Frank Ford, Clerk of the Court of Appeals of Maryland do hereby certify that the foregoing is truly taken from the Record of Proceedings of the Court of Appeals of Maryland

In testimony whereof I have hereunto set my hand as Clerk and affixed the seal of the said Court of Appeals this 29th day of February A. D. 1892.

J. Frank Ford,
Clerk Court of Appeals
of Maryland.