

MAYOR AND CITY COUNCIL OF : IN
BALTIMORE : THE CIRCUIT COURT
VS. : FOR
H. MILTON WAGNER, JR., : ANNE ARUNDEL COUNTY
ET AL : No. 4071 Equity

.....

TESTIMONY IN OPEN COUR BEFORE JUDGE MACGILL

April 28, 1955

Present:

Mr. Thomas N. Biddison,)
Mr. LLOYD M. McAllister) Solicitors for plaintiff.
Mr. John R. Cicero,)
Mr. John G. Rouse, Jr.)
Mr. William T. Marbury) Solicitors for defendants.
Mr. Frank T. Gray,)
Mr. Earl Schellman, Deputy Clerk.
Mrs. Katharine H. McCutchan, Court Stenographer.
Mrs. Irene Hazel, Court Stenographer.

Witnesses:

John M. Mackall, pages 4 to 11.
Joseph N. Johnson, pages 11 to 30.
George N. Potee, pages 31 - 38
Richard W. Tyler, pages 38 - 59
Henry C. Burke, pages 60 - 72
James B. Woodward, pages 72 - 78
John P. Helmer, pages 78 - 97.
Henry C. Bourke, page 98.

Filed FEB 15 1956

MR. CICERO: If Your Honor please, the Mayor and City Council of Baltimore ask the Court to take judicial notice of all those legislative enactments of the General Assembly of Maryland, either Public General Laws or Public Local Laws, which have been referred to in our Amended Bill of Complaint in this case. I would like to offer in evidence a map prepared by the United States Government, United States Coast & Geodetic Survey, certified to by the Department of Commerce, Office of the Secretary, as being ^{nautical} ~~Article~~ Chart No. 549, Edition of May 1905, involving the approach to Baltimore Harbor, Maryland.

MR. MARBURY: I will call your attention to the fact that this map which is now being offered, while dated May 1905, shows on its face, it is based on information developed during a period beginning in 1844 and ending in 1899, subject to correction and surveys, November 1904. We have no objection to the introduction of the map as simply a general description of the area as it may have been sometime prior to the time in which we speak. We object to it, however, as any evidence of the state of facts existing in 1909.

MR. CICERO: May we have this marked. (MARKED PLAINTIFF'S EX.1)
We also offer in evidence a photostatic copy of a section of ^{nautical} ~~Article~~ Chart No. 549, corrected to May 20, 1918 by the United States Department of Commerce, certified by the Office of the Secretary, as being a portion of the map of Baltimore Harbor, showing particularly the areas in question in this case. The map is an extension of that map we have offered in evidence as Plaintiff's Ex. 1.

MR. MARBURY; Your Honor, this photograph of a copy of a section ^{nautical} ~~Article~~ Chart No. 549 says that it is a section, United States Coast & Geodetic Survey, issued on May 20, 1918. That is nine years after the map, the validity of which you are called upon to

determine here and we would have to object to its introduction.

MR. CICERO: If Your Honor pleases, this is as ^{relevant} ~~valid~~ to this case as any photograph that has been handed to you. It is the only map that the United States Coast & Geodetic Survey issued to this area from 1905 and the time of this map. It shows, if Your Honor pleases, the same thing that this other map shows, except that it shows ^{Hanover Street} ~~an overstreet~~ bridge has been put in here and it shows the soundings and depth, by that very party they asked Your Honor to consult. They asked you to take judicial notice and call up Washington. We did that in this case. Here is information here certified by the Department of Commerce. Certainly it is the best evidence that we can give Your Honor this morning. If this is not admissible in evidence, then any picture that has been offered in evidence is certainly inadmissible, because they are certainly almost identical in points of time.

COURT: The notations referred to are on that photostatic copy?

MR. MARBURY: It has not referred to authorities on which the survey is based. They do appear on the original, but they don't appear on this copy.

MR. CICERO: May I suggest this to Your Honor. We are citizens of this country. We have asked the United States Department of Coast & Geodetic Surveys to furnish us two of these maps. . They are dated as late as 26th of April, two days ago. They told us they had a copy of this they could give us, but they could not give us a full copy of this one. They would photostat a copy for the areas in question. Now what difference does it make if its the same map---it is the 549 series. If Your Honor can take judicial notice of tides by telephone call, it would seem Your Honor could take judicial notice of the ^{data} ~~status~~ upon which the United States of America founded these ^{depths} ~~steps~~.

MR. MARBURY: There is nothing to show when they were founded.

MR. GRAY: I have a complete copy of that. If Your Honor would like to see the completed one instead of this little corner, I would be glad to bring it to the Court. We have no objection to the introduction of this. We have nothing to hide, except that I don't think that this is of any significance to us, except for pin-pointing the time, a fact with which we are concerned.

MR. CICERO: If Your Honor pleases, I would like to offer in evidence the compilation of the tides from September 11, 1908 through and including September 19, 1908 by the hours, compiled by the United States Coast & Geodetic Survey people and certified to by the Office of the Secretary of the Department of Commerce, through its proper officers, as well as those hourly tides from September 6, 1909 through and including September 14, 1909. I ask that they be marked as Plaintiff's Ex. No 3.

(MARKED PLAINTIFF'S EX. NO. 3)

John M. Mackall, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Cicero)

1. State your full name.

A. John M. M-a-c-k-a-l-l.

2. Where do you live?

A. 12 Marymount Road, Baltimore 10, Md.

3. How old are you?

A. Sixty-nine.

4. When were you born?

A. November 5, 1885.

5. Are you working at the present time?

A. No.

6. What is your status now?

A. I am unemployed.

7. Are you unemployed or retired?

A. Retired.

8. During a period of your life and specifically 1915-1916, were you employed by the State Roads Commission of Maryland?

A. Yes, from 1905.

9. What was your job-title with the State Roads Commission?

A. I was, at the time of this construction of the Hanover Street Bridge, Engineering Surveyor for the State Roads Commission; I had charge of surveys and plans and acquisitions of rights-of-ways and matters of that nature.

10. In that capacity, were you ever on the site of the island, called Reed Bird Island?

A. Yes, a number of times.

11. Are you familiar with that?

A. Yes.

12. Can you remember in your recollection?

A. Yes.

13 I show you the original or linen copy--

MR. CICERO: At this point, I would like to offer in evidence, the stipulation entered into by the parties in this case, in which Mr. Gray handed to Your Honor, earlier in his comments.

I show you agreed Exhibit No. 9, and I ask you, whether or not, you have ever seen this paper before?

A. Yes sir.

14 When did you see this paper?

A. It was prepared under my direction; I saw it a number of times. It was in connection with the Hanover Street Bridge and it is approved by the Chief Engineer on August 25, 1914.

15. The date of this plat then would be August 25, 1914. Now the information that was charted thereon, can you tell us when it would have been obtained from your recollection?

A. Well, immediately prior to that; perhaps over a period of a year and a half, two years.

16. What does this right-of-way plat, agreed Exhibit No. 9, show?

A Well, I don't believe it's correct to call it a right-of-way plat.

MR. CICERO: You call it whatever it is.

Well, it is a plan in profile of the Hanover Street Bridge from Baltimore over to Brooklyn.

17. When you say profile, what do you mean?

A. I mean the elevation above mean low tide of the plan for the entire laying of the Hanover Street Bridge.

18 Does that include also the area known as Reed Bird Island?

- A. Yes, it goes directly across Reed Bird Island.
19. I ask you to refer to that part of the chart, known as Reed Bird Island; is it shown on the chart?
- A. It is.
20. Will you please point, so that the Court can see what is Reed Bird Island on this chart?
- A. It begins over near Brooklyn and extends for about a thousand feet.
21. Would you say this irregular figure here is Reed Bird Island?
- A. Yes sir.
22. What you have pointed out to be Reed Bird Island has certain lines across there on the upper part; you are holding this thing in the way, where the North would be, proper, toward the East there is a line called Light Street Drawbridge, is that right; it shows Light Street Drawbridge?
- A. Yes.
23. Then immediately to the West of that and going off on an angle, there are a series of three lines, with little markings on them, now, sir, what do those three lines indicate?
- A. They indicate the center and outside edge of the Hanover Street Bridge
24. What do those little markings indicate on there; they start at 63?
- A. They are 100 feet apart; 63 starts from the beginning over on the Baltimore side of the survey.
25. What is the last 100-foot marker, as close to the last one as you can indicate?
- A. 76
26. Now, Mr Mackall, from this plat, can you refer to any other part thereof, and tell us whether there is a profile for the point in question?
- A. Yes sir.

27. Will you help His Honor follow that so he knows exactly where it is?

A. Your Honor, it begins the section on the bottom of the sheet at the station that is marked from left to right in numerical order.

28. I refer you on the profile, Mr. Mackall, to Station No. 63, have you got it there?

A. Yes sir.

29. I ask you to look from 63 over to 76 on the profile, and ask you, after having looked at that, to tell us what you can about the ^{depths} ~~steps~~ of this area at the time of this chart?

MR. MARBURY: Are you asking Mr. Mackall to tell us what the drawing shows?

MR. CICERO: Yes.

A. The drawing shows that no point between Station 63 and 76 is the elevation of the ground as high or higher than 00 being mean low tide.

30. I ask you, do you have independent recollection of this area other than that that you have just testified to?

A. Yes I do.

31. Can you or not state whether water covered this area that you have pointed out as Reed Bird Island at the time you stated you were on this bridge?

MR. MARBURY: I don't think he identified that tide?

MR. CICERO: I would like to know, of course, whether or not you can identify it in the period of 1908 to 1909, if you can tell us that?

A. Yes, a number of times in 1908 and 1909--no I have no recollection.

32. Tell me what year you do have recollection?

A. In 1912, 13 and 14.

33. Then in 1912, 13 and 14, do you have independent recollection of whether water covered the area known as Reed Bird Island?
- A. Yes sir.
34. You do have recollection?
- A. Yes sir.
35. Did water cover that island or not at that time?
- A. Yes sir it did.
36. Did it cover it at low tide?
- A. I would say except at low; I think at normal/^{low}tide, it was covered with water.
37. Would you say it was covered at high tide?
- A. It was always covered at high tide.
38. During the period you have just mentioned 1912, 13?
- A. Yes sir.
39. Were you familiar with that area at all prior to that time?
- A. No sir.
40. During the period of time that you worked on this bridge, did you have occasion to observe the Light Street Bridge?
- A. Oh yes.
41. Was it there at that time?
- A. Yes sir.
42. Was there any land between the Light Street Bridge and the Hanover Street Bridge as you subsequently took down, showing at high tide?
- A. I would say not.
43. You stated before that you were in charge of acquisitions of right-of-ways?
- A. Yes.
44. Did you have anything to do with the acquisition of right-of-ways here?
- A. Yes.

45. Did any consideration pass hands, do you know, for an acquisition of this right-of-way?

A. I would say not.

46. What I am talking about is the grant from the Wagners to the State Roads Commission, is that right?

A. That's right.

MR. CICERO: That was agreed by stipulation entered into on or about 6 December--no, strike that out; it is incorrect. In agreed stipulation No. 15, the date of that conveyance from the Harry M. Wagner and Harry Cleveland Wagner, was May 5, 1916; that was the right-of-way. That is the date the deed was signed. The agreement would have been prior to that.

47. The deed as we stipulated had a consideration of one dollar, is that right?

A. That's right.

48. No other valuable consideration?

A. No sir.

49. Had you actually gone across that land and worked on it prior to the date you got the signature on the deed?

A. Oh yes, the bridge was practically completed; the roadway was completed; the agreement was entered into in 1914.

50. But it was not signed and formalized by deed until 1916?

A. That's correct, at which time, I believe, the bridge was completed, the fill was completed.

51. During the period of 1912, I believe you said, to--what was the last time you had worked around the bridge there?

A. Well the construction was started the middle of 1921, correction 1914, August 21, 1914, this plat was signed.

52. When did you complete your work there, do you remember?

A. How do you mean-completed?

53. Your duties, when did your duties terminate?

- A. Well they didn't terminate until the completion of the bridge.
54. During the period of time from 1912 through the completion of the bridge, did you have occasion to go down on the actual site?
- A. Yes, many times.
55. Did you or not see any boats going across this area, that is Reed Bird Island, in that period of time?
- A. We used some^{row-}boats to do surveys; I never saw any boats actually cross it except those used by the Commission to make the survey.
56. Did those boats go over the area known as Reed Bird Island?
- A. Yes sir.
57. You are positive of that?
- A. Yes sir.
58. All during this period?
- A. Well I don't know about all during the period; there was never a time when it was an occasion to have a boat go across it if they were unable to go.

MR. CICERO: If it please the Court, I think that the State Roads Commission are rather jealous of this plat and they have asked us to please return it as soon as possible and accept the photostatic copy which is on Your Honor's desk in lieu thereof. Would that be agreeable with everybody?

MR. MARBURY: Yes, I would just like to look at it.

MR. CICERO: I recall two questions I would like to ask Mr. Mackall.

COURT: Let's get this map straightened out. You have already offered the original in evidence.

MR. CICERO: Is it His Honor's desire we offer in evidence each of these exhibits in stipulation.

COURT: I suggest you take a quick look at this; I assume it shows everything it should; I don't know.

59. Can you tell us when the fill that you put across Reed Bird Island, the date and the year, if you recall?

A. The work was started in August--September 1914, and I would say it was completed in 1915.

60. That fill was what in vertical height?

A. Ten feet.

61. Ten feet above mean low tide?

A. Ten feet above mean low tide.

Joseph n. Johnson, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Cicero)

1. What is your full name?

A. Joseph N. Johnson.

2. What is your address?

A. No. 5 Talbott Street.

3. Where is that?

A. Between Hanover and Potee Road in Brooklyn; it's in the City.

4. It is in an area called "Brooklyn", is that correct?

A. Yes.

5. And it is on the South side of the Hanover Street Bridge?

A. Yes sir.

6. How far away would you say you live from the area about which we are having litigation now, Reed Bird Island?

A. What do you mean--all my life?

7. No right at this time?

COURT: Does he know Reed Bird Island?

MR. CICERO: I think that is a good idea; we'll lead up to that.

8. Mr. Johnson, how old are you?

- A. I'm seventy; I aint quite seventy-one yet.
9. When were you born/
- A. 1885.
10. Are you now working?
- A. No sir.
11. What is your status; are you retired?
- A. I am retired.
12. Prior to your retirement, what kind of work did you do?
- A. What do you mean--when I was working; well I was a lead burner; a lead burner's rigger, chemical works.
13. Have you lived in the vicinity of Brooklyn all your life?
- A. Not all my life.
14. What period of time did you not live around Brooklyn?
- A. I moved in Brooklyn in my estimation close as I can come to it 1896, the latter part of 1896.
15. From that period of time, did you maintain your residence in Brooklyn?
- A. That's right. Right in that same territory.
16. I ask you, do you know the area known as Reed Bird Island?
- A. Yes sir.
17. Did you know it in 1905 and subsequent to that period?
- A. As fur as that goes, I can't say, because there was no such name as Reed Bird Island until later.
18. Did you know the area which is now known as Reed Bird Island?
- A. Yes sir, every inch of it.
19. Can you tell us why you know that area so well?
- A. Well, I was always around the water crabbing and fishing.
20. Did you have your own boat?
- A. Not at first.
21. When did you acquire a boat?
- A. I started to build my boat the latter part of 1905.

22. What kind of a boat was that?
- A. It was one of these Eastern Shore Log Canoes, they call them, sailboat, and I converted it over into power.
23. How long did it take you to convert this boat?
- A. About a year.
24. Where was the boat while you were converting it?
- A. I had the boat in a place which is called "Adamses" now.
25. Can you come to this plat on the blackboard and generally point out where Adamses was?
- A. It's about a thousand feet from the end; where I built the boat was a shed, part of it built over the water and part over the land.
26. Where is that place?
- A. About a thousand feet where you come over Hanover Street Bridge right along in there.
27. Take this ruler and show His Honor where it is?
- A. This is Hanover Street Bridge; about along in there.
28. You say a thousand feet from the old Light Street Bridge, is that correct?
- A. Yes, it might be a little bit more; I am just giving an estimate.
- COURT: You say a thousand feet from the old Light Street Bridge and the Hanover Street Bridge?
- A. Well they come pretty close together; they aint ten feet apart.
29. Before you converted this boat to motor, did you have occasion to sail it in the area?
- A Yes sir.
30. What period of time would you say you sailed this boat?
- A. I bought it in the latter part of 1905; I ~~sa~~ sailed it during that winter.
31. That would be 1906?
- A. As soon as cold weather come, I stripped her and put her in the

23

Circuit Court for Anne Arundel County

Term, 19

No. 4071 Equity.

Mayor & City Council Of Baltimore

vs.

H. Milton Wagner, Jr., et al.

Baltimore City:

To the Sheriff of ~~Anne Arundel County~~

You are hereby commanded to summon

JOHN P. HELMER, 306 Jeffrey Street, Brooklyn, Baltimore City, Maryland.

HENRY C. BOURKE, Jr., 2717 South Hanover Street, Brooklyn, Baltimore City, Maryland, or 3806 Fifth Street, Brooklyn, Baltimore City, Maryland.

and them have here before the Judges of the said Court to testify for Respondents.

Hereof, YOU ARE not to fail and fail not at your peril, and have you then and there this writ.

Witness the Honorable James E. Boylan, Jr., Chief Judge of the said Court, the 7 day of March, 19 55. Issued the 25 day of April, 19 55. Returnable 10 o'clock A.M., Thursday, April 28, 1955.

John H. Hopkins, 3rd Clerk 72

(William L. Marbury, Frank T. Gray and John G. Rouse, Jr., Attys.)

shed.

32. So you sailed this boat from 1905 until the winter of 1906, the summer, rather; did you have occasion during this period of time to sail this boat in waters around this area?

A. Yes.

33. Did you ever or not sail your boat over what is known as what is now Reed Bird Island during this period?

A. What is called Reed Bird Island now, I have.

34. Was there water on the island at that time?

A. Yes sir, I crossed there in a boat.

35. You are familiar enough with this island, where was the channel to this island?

A. It come right down back of those houses of Adamses, come down there just about where that pumping station stands just now; then when you got there and didn't want to come the old Light Street Bridge underneath the trestle, you made a turn and went back towards Baltimore County side, which we all used to call the "Gut".

36. I am asking you, do you know where the channel was; I didn't ask you where the "Gut" was?

A. The main channel; well they claimed it used to stop at Baltimore County; it was in relation to Reed Bird Island--

37. Which you later learned to be Reed Bird Island?

A. It was on the Baltimore County side; of course, gradually they called it all Reed Bird Island afterwards.

38. Do you remember that they put a bridge across Reed Bird Island, Hanover Street Bridge, is that right?

A. Yes

39. One bridge was a 500 foot bridge?

A. Yes.

40. And one bridge was a small bridge of a hundred feet?

A. Yes.

41. Close to Brooklyn?

A. Yes.

42. Which of the two was known as the channel at that time, the 500 foot bridge or the 100 foot bridge?

A. It didn't go through there because it wasn't no channel, because we went to what you call the "Gut" because you had to turn there; old man Irving had a blacksmith shop there and we had to turn right there and go on back out to the main channel which comes down from Haley house now.

43. In other words you had to go through the area where the 500 foot bridge was?

A. No we didn't have to go through it, just out where that pumping station stands, about ~~where~~ ^{where} you come ~~here~~ ^{off the bridge}, there used to be a blacksmith's shop standing there; after that the Wineholt's had it and opened up a saloon.

44. That was after the bridge was built?

A. No, before. I am not talking about the old Light Street Bridge; I am talking about the Hanover Street Bridge;

45. You could go right across the area and that was Reed Bird Island?

A. Yes ~~that~~ sir. Right where Hanover Street Bridge is now.

46. That's on the south side of the channel; it comes down from Relay?

A. I have sailed my boat all across there on a medium tide.

47. I am slightly confused now; are you indicating that the main channel ^{passes} to the north or to the south of Reed Bird Island?

A. It was the south. They called Reed Bird Island.

48. The main channel?

A. They call it all Reed Bird Island as far as I know of.

49. I don't know whether you understand my question, but look at this plat, exhibit number 9 and tell me if you can, whether or not the channel was not up here or was it here?

A This is the old Light Street Bridge. Between here and there is where I built my boat; we come down here, right in there, make the turn and go out this way.

50 Did you point to where you went?

A. I had to come around this way here and go out through here and come out this channel through here, through the drawbridge.

MR. GRAY: For the record, the witness is indicating the stretch between Reed Bird Island and the island south of Reed Bird Island adjacent to, ~~and~~ running ^{to} ~~through~~ the B. & O. Railroad tracks, indicating he would go up ~~that~~ channel to center section of the Patapsco River out toward the main part of Baltimore Harbor.

MR. CICERO: May it please the Court, he is indicating that he had to go to the left. I think it would be a good idea if Mr. Johnson showed Your Honor exactly what he is talking about.

MR. GRAY: Why not tack it on the board and let him set him straight.

51 Would you come over here and look at Ex. No. 9 and orient yourself. Now this is Brooklyn shore here. Here is the area known as Reed Bird Island and this is the old Light Street Bridge. These three lines here mark where the Hanover Street Bridge was subsequently put. Show us on there where you were building your boat?

A. I was building it about a thousand feet from the bridge. I used to go down--I couldn't get under the old bridge because it wasn't high enough; there wasn't standing room; ~~it wasn't~~
Would

52. /it draw enough water; was there enough water under it for you to go under it?

A. It would be if I got under it.

53. At what time was this?

A. That was all the way from 1905 up until--

54. Until what?

A. Until before that.

I am speaking of myself; I used to travel it.

55. Tell us exactly what you did; the bridge was too low; you couldn't get under it?
- A. There was enough water to get under it.
56. What year was this?
- A. 1905, 1906, 1907.
57. In 1909, was there enough water for you to get across there?
- A. No, that's when I had to take her away.
58. Why did you have to take her away?
- A. My boat drew around three feet of water and it got so shallow that I struck bottom and I had to move her down to what we call Stansbury's.
59. Where was Stansbury's?
- A. Down on the shore; this is the old bridge; it went along in here, somewhere.
60. You are indicating, now, a point on the shore to the East of Athens Park and that is to the East of the old Light Street Bridge. What channel did you use; what did you recognize as the main channel in this area?
- A. I come down here and make a short turn; sometimes I had to make it so short I had to take an oar to push around, I couldn't make it.
61. Then which way did you go?
- A. I come right on out this "gut". Wait, I am a little confused on this drawing. I used to come up this "gut" and I used to come on out this channel. I had to come on up here, because that bridge was there then, come on out this channel, come on up here to the new drawbridge.
62. That is the channel you refer to as the main channel?
- A. No, this one up here.

63. That is in the vicinity of the old Light Street Drawbridge?

A. Yes.

64. Which was, subsequently, when the Hanover Street Bridge was put in, left this 500 foot bridge there, is that right?

A. Yes.

65. What did you refer to this little area in here as in 1909 when you couldn't get your boat in there, is that the channel or gut?

MR. GRAY: Object. I am not clear myself what is the channel and what is the gut.

66. What did you call that area South of Reed Bird Island that comes in here and North of the fast lane?

A. Whenever we went out there, we always called that "The Flats".

67. Was there a little deeper spot in there on Reed Bird Island?

A. Yes. You just come on down the old bridge; there was six or eight feet of water at times.

68. But you didn't in 1909?

MR. GRAY: Object. It is a leading question.

MR. CICERO: He has already said that, Mr. Gray.

MR. MARBURY: Where he said about nine feet, let him finish his sentence.

MR. CICERO: He didn't say nine; he said six.

A. If we come around to get through the old bridge, we'd have plenty of water. We couldn't get through the old bridge. It was low bridge and we couldn't get my power boat through. We could get through there in a row boat.

69. In 1909, you testified before, you couldn't get through, there wasn't enough water, is that right?

A. We come out that channel; after they started to fill in, I was drawing about $3\frac{1}{2}$ feet of water, and then on account of getting in and out nighttime, I was always going in and out at night scratching the bottom on account of my wheels--

COURT: Suppose you point out to me exactly where you couldn't get through.

A. What do you mean--in 1909; down that channel I would make a turn there, down in this corner here was an old blacksmith shop, and I would come right on down back by that and come on out this way, the gut.

COURT: What do you mean by gut?

A. That is where the deepest water was.

COURT: In 1909 you would come out through there?

A. Well it started to fill in here gradually. Sometimes we would go right up against the wall and have plenty of water.

70. All this ~~time~~ that you are referring to was to the West of the Old Light Street Bridge?

A. Yes.

71. And subsequently to the West of where the Hanover Street Bridge is now, is that right?

A. Yes.

72. You made your left turn before you got to the bridge?

A. Before I got to the bridge.

73. You used to make your turn where the new bridge comes up the shore now?

A. Yes.

74. But all during this period of 1909 there was water known over the area known as Reed Bird Island?

A. Yes.

75. Was there or not?

A. Yes, but as I say at times you might have two feet of water and you might have eighteen inches of water.

76. Regardless, there was water over that island?
- A. Yes.
77. Did you ever see any other boats go over that land known as Reed Bird Island around 1908-1909?
- A. Yeah lots of ^{row}boats; I never seen no big power boats, nothing like that, no large boats, but rowboats, small boats; we used to go out Reed Bird shooting.
78. Did they go on that actual area known as Reed Bird Island?
- A. We'd take a medium tide and go up there.
79. How about high tide?
- A. You would have to go up to your waist.
80. The water was above your waist?
- A. To your waist.
81. How can you be certain of the period of time that this existed, Mr. Johnson?
- A. How can I be certain as to the period of time; well I was down there practically all the time.
82. You remember moving your boat, don't you?
- A. Yes.
83. What year was that?
- A. That was the latter part of 1909, I went to Norfolk; I moved away just for awhile; I went to ~~work~~ work down in Norfolk.
84. How long were you in Norfolk?
- A. About seven months, six to seven months.
85. Then what happened?
- A. After seven months, I come on back and got a job here?
86. One period of time you were away; when you came back, was this area covered with water?
- A. No sir.
87. Not covered with water?
- A. I mean, yes sir, it was covered with water because after that we used to go soft crabbing up there; I soft crabbed through

there until about 1911, I guess.

87. You were telling me something about carp fishing; would you tell His Honor about that, what took place on Reed Bird Island?

A. We used to go out there, take pitchforks, harpoon them and everything.

88. Right on the area known as Reed Bird Island?

A. Right on the area known as Reed Bird Island, yes.

89. What year was that?

A. That was in the latter part of 1909, 1910.

90. When you say you think, ^{is there anything that} can ~~we~~ recall vividly to your mind that period of time?

A. Yes.

91. What was that?

A. We was out there one morning; I think that was in the latter part of 1909, 1910, that Robert Stansbury was working for the

92. Who is Robert Stansbury?

A. He used to live right around there.

93. A friend of yours?

A. Yes, he was going to work on ^{the back of} an old car going across the bridge; we waved to him to come on.

94. This is a trolley car that used to go across the Old Light Street Bridge?

A. Yes.

95. And he was standing on the back of it?

A. Yes, we hollered to him, told him to come on, not to go to work, he could make more out on the flats harpooning carp than he could at work.

96. What did he do?

A. He went to work; about 11 o'clock we got word he lost his arm, had ~~he~~ cut his arm off in one of the machines.

97. During that morning: did you actually engage in harpooning carp?

A. Yes sir, we were out there with old pants on, had a half a rowboat full of them.

98. That was on the area known as Reed Bird Island?

A. Yes sir.

99. Was there water on it then?

A. Yes sir, sometimes we were above our knees in water.

100. Did you ever recall this area in the wintertime?

A. Yes sir.

101. Did it ever freeze over?

A. Yes sir.

102. Were you on Reed Bird Island during that period of time?

A. I think it was 1911 the last winter we skated across there.

103. You used to skate across it?

A. Yes, the ^{leaves} ~~weeds~~ started to come ^{off} ~~off~~ then. We tripped on our skates. Take 1905, 1906, 1907, we have skated right straight across from Adamses, which is Adamses now; that's where we used to get on, because they didn't have no boards or nothing. We skated right straight across them flats anywhere.

104. How about 1908, 1909?

A. After the weeds fell.

105. After the frost, after the weeds fell, the tide would come up and freeze overtop and keep on building up.

106. Even in winter then, there was either water or ice in that area?

A. Yes. I come home wet where I had broken in many times.

107. In 1908, 1909, do you remember what the depth of that gut was between the South end of ~~Reed~~ Reed Bird Island and the North end of the fast land there?

A. Well, you had about, on ordinary tide, what I call medium tide, we had around--some places we had around three feet of water, some places we had four, just as the current washed it up.

107. How deep would you say the water was at that time over Reed Bird Island?

A. Over Reed Bird Island?

108. Yes?

A. On a medium tide, around twelve inches of it there.

109. What was the bottom of this area?

A. Plenty of mud.

110. In other words it was a mud bottom there?

A. Plenty of mud. You would be wading up there, you would be wet to your knees.

(Mr. Marbury, Cross-Examine)

1. I am going to show you a picture^{and} ask if you recognize it?

A. This was taken later, because there's the old wharf down there where the fellas used to keep their boats.

2. ~~When~~ Where was it you used to keep your boat; do you see it on this picture?

A. I used to keep it up on this side; it don't show it on there; the picture don't show it.

3. Aren't we looking over to Brooklyn now?

A. Yes.

4. This is the Patapsco River coming down from the West; in other words this is West and this is east; this is South and this is North, isn't that right?

A. Yes.

5. This is Brooklyn side over here somewhere where you catch a boat, isn't it?

A. Yes.

Right over in there.

6. This is Potee Street, though, isn't it?

MR. CICERO: You can't tell what that is in that picture, can you, Mr. Johnson?

MR. MARBURY: Wait a minute. Let me ask him.

7. You can see what this is; this is the fill of the Hanover Street Bridge, not finished yet?

A. Well we used to come right down through here; this picture isn't the way I understand it; I don't understand this, which way I am looking at it.

MR. MARBURY: Well you are looking at Brooklyn.

MR. CICERO: When the witness was first shown this picture, he said it was taken later. You can see these pictures were taken in 1916. I don't know what can be gained by showing this witness this picture here when his testimony is back in 1908 and 1909.

COURT: I don't know yet, so let him continue.

A. That's the shore line of Brooklyn; by this picture here, we used to make the turn right about in here and come out the gut.

8. I think the picture may have gotten you confused; let me show you another one and you ~~can have~~ maybe it will give you little more help. Your Honor, this picture, taken June 3, 1916 from the Anne Arundel shore just above the embankment looking Northwest, about 11:05 A.M.

It is marked on the Stipulation that the picture is correct as of that time. Now you are looking from the Anne Arundel shore over there at the Baltimore side. Here you are over on the Anne Arundel shore. Is this the gut you were talking about?

A. Yes. This is the Baltimore County side, ain't it?

MR. MARBURY: I asked you ^{what} that is.

9. Do you know what that is, isn't that Reed Bird Island?

A. Where this water is.

A. That looks like land to me.

10. Isn't that Reed Bird Island?

A. No.

11. In other words, you don't recognize it, that picture?

A. No.

MR. MARBURY: The picture he doesn't recognize is marked H 14.

MR. CICERO: What was the picture you handed him before?

MR. MARBURY: The picture I handed him before is H 15. This one says it was taken at the North end of the embankment, looking Southwest at about 11:¹⁵~~00~~ A.M. H 15 looks over this here to Brooklyn. You can see water coming in there. This is looking from the Brooklyn side of the same land to the Baltimore side.

12. I ask you what that land is there that lies between the main channel; this is the Anne Arundel County side and I ask you what this land is?

A. That there in there we used to call flats.

13. What you used to call flats?

A. What we used to call flats, yes sir.

14. Are you telling the Court that you sailed over that land; this land that is between?

A. Yes.

15. That you sailed over that?

A. Yes. Anywhere in here, from Geises, going down that is the Brooklyn side/there; you go under the old bridge up here. The old Light Street Bridge comes in here; I come down here right where this fill is; I been all over there in a sail boat.

16. You have been all over this area where you see these reeds?

A. Yes.

17. And that land?

A. Yes,

18. Years ago?

19. This picture was taken in 1916?
- A. In 1909.
20. You say within seven years of that time, you sailed over that?
- A. Yes, I went over the land in boats; reeds started to fill in there; you come down here and make this turn in here at Geises and went out that gut.
21. The gut is over here?
- A. This is Geises over here, isn't it?
22. Yes, but there is water between Geises and this land; the water you see goes down behind the land?
- MR. CICERO: He is telling you ~~what~~ he did in 1909.
23. I think you can straighten this out and get it clear; there is still water in 1916 between Anne Arundel County and where I am talking about, and here it is; this is 1916; here is the water on the Anne Arundel County side and here is the water on the Baltimore County side; right in the middle of that water, there are the reeds sticking up?
- A. I have been all over that; those reeds show; that dark spot is supposed to be reeds and that channel come down here and went up back of there; that looks like it there; that white spot looks like the channel.
24. Isn't that the other side of the reeds, the channel?
- A. You can come down here and go up behind; go back there and it is between here, the reeds between, and the fill of Hanover Street Bridge now; that's the fill; well we used to go up that gut; before I went up that gut, I come all across there in a boat, clear across Baltimore County over there.
25. Not in your boat?
- A. Yes sir.
26. You say you went over there in a boat with a 3½ foot draught?
- A. I didn't say--I said in a rowboat and I had sail on my boat; we had to use the channel; we couldn't get across there

I had sail and I used to go over there and I sailed anywhere across /there and across here when she had sail on her; she only drew about 8 inches of water before this centerboard come on across.

27. Was that before or after the B. & O. Bridge?

A. Before the B. & O. Bridge? Sure. That B. & O. Bridge was put across there; I was quite small when that B. & O. Bridge was put across there.

28. The B. & O. Bridge was there before, is that what your answer is?

A. Yes.

29. Do I understand you to say they started the fill after the B. & O. Bridge was put in?

A. That's when they started the fill.

30. In other words, when the

A. I have been all across there in a rowboat and my sailboat when I had a sail on it.

31. Can you make out what this one is marked H 11, can you make out what that is?

A. Looking towards the Baltimore side.

32. Exhibit 11 is looking toward the Brooklyn shore?

A. This is the fill of the old Hanover Street Bridge; that's the fill; we used to come back of them houses and go in/that turn there and make and come up that channel right there and come on out right there. Now we are getting it clear. It didn't go right straight west, more of a southwest--

33. That's where the channel went?

A. All in here and all in here, I have been up there in boats even from that channel, across in there.

34. You say you lived there in 1909?

- A. 1909! I taken my boat away from there in 1909.
- 35 Up until thetime you took your boat away, you could go across that area?
- A. Yes.
36. About the channel which you called "thegut"~~and~~ which went under the bridge and out into Baltimore Harbor, is that right?
- A. Underneath the old bridge--you couldn't get throught it on account of the old bridge stopping you.
37. I understand you couldn't get through it; you said a rowboat could go through?
- A. A rowboat could go under it.
- 38 Was it used by people?
- A. Oh yes.
39. How long did that use go on?
- A. All day; I used it up until 1914; on that end I used to keep my rowboat; a friend of mine used to go out there fishing; go underneath that, and go on out.
- 40 As late as 1914?
- A Yes. After they built the new bridge, they left the stand and we used to go underneath that.
41. And the bridge was finished in 1916?
- A. I think it was; they opened it in 1916; I used to go up there fishing; I used to take the boat, had to stoop down in the boat to come underneath ~~te~~ concrete bridge. If the tide was real high, we couldn't get underneath. If we got caught out we had to leave the boat on the other side until the tide dropped and we could get underneath there. It was '16 when the bridge was opened because that's when I had my first "flivver".

(Mr. Cicero)

1 You said just now this 100 foot bridge that the State Roads Commission put over there was low, isn't that right?

A. Yes

2 And it wasn't really meant as a channel, isn't that true?

A. Not after the Hanover Street Bridge went across.

MR. GRAY: I move that answer be stricken. What it was meant to be, certainly---

COURT: I'll have to sustain that. Strike it out.

3 State whether or not, in your opinion, the area where the 100 bridge was^{left,} was or not a channel after the bridge had been constructed there, the Hanover Street Bridge?

A You mean the one on Brooklyn side.

MR. GRAY: Object.

COURT: WAIT A minute. What his opinion is, Mr. Cicero,

MR. CICERO: He is certainly qualified. On Cross-examination, he has been asked whether or not he could use it as a channel and they developed it through their questions and they got an answer that the only way you could go through there was to get real low in the rowboat, because the clearance wasn't sufficient. That's all I want to make sure of. I want to be able to question him on that point.

MR. MARBURY: Isn't that a question of law

MR. CICERO: I will withdraw that if you admit those are the facts.

MR. MARBURY: I don't admit those are facts. I admit that is his testimony.

COURT: You stated the B. & O Bridge was built when you were very small?

A Yes.

COURT: You don't know when it was built, do you?

A. No, I can't say what year it was built.

MR. CICERO: That is a stipulation in here that may help you as far as the B. & O Bridge is concerned; that is that it was filled in under their bridge in 1900, so it was there before 1900

A That's when it was filled in.

COURT: Do I understand then that sometime after that, this area known as "Reed Bird Island" began to fill up?

A. It began to fillin there; reeds began to grow first, what we call "Wild Oats".

COURT: When was that approximately?

A.. That was right after they filled the bridge in; you could see little spots here and little spots there

COURT: After they filled what bridge in?

A. The B & O Bridge I used to softcrab whete they filled in the bridge.

(Mr. Cicero)

4 From the period of 1900 through 1909, you state that there was water over that area, anywhere over there?

A Mostly anywhere, but about 1909 that's when it stopped going up further the railroad bridge, anywhere clo~~se~~ se up there back of those houses--

5 That wasn't Reed Bird Island?

A No.

George N. Potee, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Cicero)

1. State your full name.
- A. George N. Potee.
2. And where do you live, sir?
- A. 3611 So. Hanover Street.
3. And how old are you, Mr. Potee?
- A. 58 next birthday, that's in a few months time.
4. And you were born what year?
- A. 1897.
5. Now, have you been in Court all morning?
- A. Yes sir.
6. Have you heard testimony about Reed Bird Island?
- A. Yes sir.
7. Do you recognize the name?
- A. Yes sir, I didn't at that time, it wasn't called Reed Bird Island at that time.
8. Well, you know the area?
- A. I know the area, yes sir.
9. Now, is this the area you were referring to, I'm now looking at Exhibit No.2, and I'm tracing my finger around an irregular line here, is that the area that you knew as Reed Bird Island?
- A. Yes sir.
10. You subsequently learned the name of it?
- A. That's it, yes sir.
11. Now, sir, did you spend your life in that area?
- A. Yes sir.
12. Your name is Potee?
- A. Yes sir.
13. Has that anything to do with the name of the street that subsequently has been put over that island?
- A. Yes sir, that street was named after my father.
14. Who was your father?

- A. John E. Potee.
15. Did he hold any governmental position?
- A. Yes sir, he was Sheriff of Anne Arundel County and then Sheriff of Baltimore City.
16. Now, sir, what can you tell this Court about the area from around 1907, 1908 and 1909?
- A. In 1907, '08, and '09 we use to play down there in that water there, in the high tide you could walk across there, I wouldn't call it a channel because if it was a channel you wouldn't be able to walk across it, the water would be up to about our waist, a little above our waist at high tide.
17. Now, you're talking about walking across the back land on the south?
- A. Yes sir.
18. Will you show His Honor or point on the map, take this ruler and show where you walked across? In order to refresh your recollection this is the base of the old Light Street Bridge here and Acton's Park is over here.
- A. Well, down in this section, I'm wrong here, we couldn't walk across here. I'm not talking about here, we couldn't walk across here, this was up further ^{so} ~~where~~ we use to walk across.
19. Tell us exactly where you walked across?
- A. Well, right up here in back of Marshall's old home place, that was up past Patapsco Avenue, about a hundred feet past Patapsco Avenue.
20. And then where did you walk?
- A. We use to walk across the street here and there was what we called "flats" on the other side of that.
21. Now, what about this area in here, did you walk across the backland to this area here?
- A. In places you could and in some places you couldn't.
22. Did you ever walk across that to the Reed Bird Island?
- A. Many times, yes sir.

23. And how old were you then?
- A. About eight years old.
24. And how tall are you now?
- A. Indeed I couldn't tell you.
25. Well, were you as tall then as you are now?
- A. No sir.
26. Would it be fair to say that you're 5' 7" tall now?
- A. I guess so.
27. You're not a tall man?
- A. No sir.
28. You're not above 5' 7" are you?
- A. No sir, I wouldn't think so.
29. Well, when you use to walk across this area where would the water come, if water came up?
- A. Well, the water would come up around about here on me.
30. You're designating your belt line?
- A. Yes sir, a little above the belt line, it would come above the belt line.
31. And that was when you were eight years old?
- A. Yes sir.
32. Now, sir, when you got to what is known as Reed Bird Island what, if anything, was there?
- A. Well, there was a lot of mud there, around Reed Bird Island there was a lot of mud. There was, I would say, in the neighborhood of three to four foot of water at low tide.
33. On the island, three to four foot of water?
- A. Around between ^{two and} three foot of water at high tide.
34. At high tide?
- A. At high tide.
35. Now, what about low tide?
- A. Low tide there would be about a foot, about a half a foot or foot of water there at low tide. I've never seen it without water on it at all times.

36. Now, did you ever see any reeds or anything?
- A. Yes sir, you see we use to go down and we use to sit down and watch the men out there gunning for reed birds.
37. And were they in the water?
- A. Yes sir, they would all have hip boots on out there, gunning reed birds.
38. Did you ever hunt or fish anything?
- A. Did a lot of soft crabbing around there.
39. On the island itself?
- A. Around on the island and around over on the flats on the other side of the railroad bridge.
40. Now, how can you tie this down from a point of time so that the Court can understand what you're talking about in 1907, '08 or '09?
- A. Well, the only way that I can tie it down is because I was forbid to go down, my mother would forbid me going down to the water and when I'd come back I'd get fanned good for it and I'd have to go back in the water to get cooled off.
41. And you're certain of that?
- A. I'm positive of that because I never did forget that, that's one thing that made me remember.
42. Now, do you know where the channel was in this area?
- A. Well, I wouldn't call that a channel, there was a stream I would call it. The channel was over in the second trestle of the railroad bridge, that's what they call the channel.
43. Suppose you go show us on that, if you can.
- This mark in the brown crayon, sort of a dotted, is the old Light Street bridge. Now, orient yourself.
- A. Well, the channel, what I would call the channel would be along in here ^{about} ~~xx~~ half way between here would be the channel, what I would figure would be the channel.
44. Perhaps you can better point it out from this chart here, this

will give you an idea of the old Light Street bridge, and this is where the draw bridge was, and this is the southern end where Brooklyn^{end}/is, and this area here, irregular shape here is Reed Bird Island.

A. This was about where the channel went through, right along about in this area here is where the channel went through and that's about where it is now, they're going through on the new bridge. That is where the stream goes through there now.

45. You're pointing at a point here between an area where it says five hundred foot (500') bridge on the proposed Light Street, and you call that the channel?

A. That's right.

46. Now, you heard testimony this morning about another channel or whatever you call it --

A. Well, I wouldn't call that a channel, I'd say that was a stream through there but not a channel.

47. Now, where did that run so that the Court can understand that?

A. That started here, down here at Dixon's Park, going through here and went on up this way with the stream.

48. And is that the stream that you walked across?

A. That's right, yes sir.

Mr. Cicero: Witness with you.

Cross Examination by Mr. Gray:

1. Mr. Potee, how wide was this stream that you just referred to?

A. I'd say about a block, I'm not very much on judgment of distance but I'd say about a block wide.

2. Did you ever see any boats in there?

A. Yes sir, I've seen boats in there.

3. What kind of boats?

A. Row boats.

4. Do you remember any of the people who used boats in there?

- A. No sir, I do not.
5. Did you know any of them personally?
- A. No sir, I did not, because it was all Baltimore people that use to come over there and go gunning, hunting reed birds and we wouldn't know any of those people that would come over there hunting reed birds.
6. Did there use to be a boat club?
- A. Yes, it was a canoe club, it was way up at the head of the stream.
7. What was the name of that club?
- A. I think it was called, one, the Arundel, and the Aerial Boat Club. They had some dispute or something from what I can understand and these boys pulled away from them and started a club of their own up at the head of what they call Chaney's Point.
8. Were there any boats in connection with that club?
- A. What do you mean? Oh, they kept the canoes right up there. They had canoes right up there, kept the canoes right up there at the club.
9. Did those canoes come down the stream?
- A. Yes sir, those canoes would come down that stream and go up the other stream and go into wake, on a Sunday.
10. Did boats use to go through between Reed Bird Island and the next mud flat toward the railroad bridge?
- A. I've seen boats go through there, men have pushed boats through there, I've never seen them in the boats, I've seen them push them through there when they were hunting reed birds. They'd carry their shells and things in the boat, a lot of times they'd put their guns in the boat and push the boats through because the reeds were so high you couldn't row the boats through them, you'd have to push it through.
11. Were there reeds cross Reed Bird Island?
- A. Yes sir.
12. And we're talking about the period around 1909?

A. Yes sir.

13. There were reeds there?

A. Yes sir.

14. Were the reeds pretty thick on Reed Bird Island?

A. They were pretty thick, yes sir.

15. When were you born?

A. 1897.

16. And you lived in Brooklyn all your life?

A. Born right there in that same spot.

17. How far was your home from the shore?

A. It wasn't very far.

18. About a block?

A. It wasn't over a block away from there.

Mr. Gray: That's all.

Re-Direct Examination by Mr. Cicero:

1. These reeds you were talking about, were they on land above water or under water?

A. They were under water.

2. They were under water?

A. They were under water, the roots were under water but they grew way above the water because the birds use to go in there and feed off of them and you couldn't see the men walking through there. They were so high you couldn't see the men when they gunning walking through there.

3. You did see men pushing the boats?

A. I have seen men pushing the boats through there, yes sir.

Court: Mr. Potee, you say a stream, what do you mean by that?

Witness: Well, I wouldn't call it a channel, I'd say it was a stream going through there, we could walk across it, boats could go up and down it, row boats and canoes could go up and down, but I wouldn't call that a channel.

Court: I'm not a nautical man myself.

Witness: What I would call a channel would be deep enough for motor boats to go up and down it, but that seaweed and grass that was in there so thick that a motor boat couldn't go up and down it because it would get tangled up in it's propeller, that's the reason I said it was a stream, if it was a channel it would be deep enough for the motor boats to go up and down it.

Re-Cross Examination by Mr. Gray:

1. When you say you walked across the stream, did you walk from the backland on the Brooklyn side, where would you walk to?
- A. Walked over to the flats where the reed grass was, where the water was over on the reed grass, where the grass was. We'd walk over into the grass.

Richard W. Tyler, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Cicero)

1. Mr. Tyler, what is your full name?
- A. Richard W. Tyler.
2. And where do you live?
- A. 3236 Glendale Avenue.
3. And that is where?
- A. That is in Baltimore City.
4. Now, Mr. Tyler, what is your job?
- A. I'm principal associate engineer with Bureau of Harbors.
5. For what municipality?
- A. Sub-department of the Public Works for the Mayor and City Council of Baltimore City.

6. And how long have you been an employee of the Mayor and City Council of Baltimore City in that capacity?
- A. Well, that has only been a year or so, I mean in my radius at the present time, but I've worked for the City of Baltimore in the engineering division for the past thirty years.
7. In Harbor work?
- A. In harbor work.
8. Now, what are your duties with the harbor board?
- A. I have charge of construction work for the City of the Municipal docks, piers and wharves, dredging, hydrographic survey work, and other phases of engineering work.
9. You actually work on the harbor?
- A. Yes.
10. Now, in connection with this ~~hydrographic~~ ^{hydrographic} survey work, do you actually use ~~charts~~ ^{charts} in surveys?
- A. Yes.
11. Are you familiar with charts in surveys and maps made up by U. S. Coast and Geodetic Survey?
- A. Yes.
12. Do you use those in your job?
- A. Yes.
13. Is part of your job knowing anything about the rise and fall of the water in Baltimore Harbor?
- A. We have to take the tidal change into our work at all times.
14. And that is in connection with tides?
- A. That is in connection with tides, yes.
15. Now, Mr. Tyler, I want you to look at Plaintiff's Exhibit No. 1, well, this is a copy of the U. S. Coast and Geodetic Survey Chart No. 549 of ~~Reed Bird~~ ^{Reed Bird} Island, are you familiar with that chart or that type of chart?
- A. Yes, I'm familiar with this chart, I use this chart.

16. Now, sir, is the area in question, Reed Bird Island, Brooklyn and Hanover Street Bridge, or rather the Light Street Bridge, shown on that chart?
- A. Yes, this is the area here.
17. Will you refer to that area and refer specifically, sir, if you please, to the area known as the Light Street Bridge, if you can find that there?
- A. This is the Old Light Street Bridge, across here.
18. Now, refer to the point to where the old Light Street Bridge touches the south end of Brooklyn.
- A. You mean the north shore of Brooklyn?
19. That's right, the north shore of Brooklyn, have you got that?
- A. Yes.
20. Now, sir, by looking at that chart, in that general vicinity and going northward from that point, can you determine, can you tell the Court what that chart purports to indicate as to the depth of waters in that vicinity?
- A. Well, this would indicate here that on to the east of the bridge there is no fast land above mean of water at all.
21. Is there any depth soundings along there especially by Light Street Bridge?
- A. There's a half a foot alongside of the bridge, a little further off into the north, one foot; two feet further south off the shore.
22. Now, sir, does that prevail as on the west side of the bridge in that area?
- A. Adjacent to the bridge, yes, but there are two spots that would indicate that there was a little bit of land maybe above mean low water.
23. Are they adjacent to, or do they run under the Light Street Bridge as shown on this chart?
- A. No.

24. Can you determine how far the closes point there is from the old Light Street Bridge?

A. Well, this is a rather small scale, I think it's 1 to 40,000.

Mr. Gray: This is the 1904 Exhibit we're talking about?

Mr. Cicero: Yes.

Witness: Well, this scale is extremely small to measure from, but I would say, about fifteen hundred feet (1500').

25. The closes point of land, bit of land shown on that chart is fifteen hundred feet?

A. No, I'm wrong. I'd say about three hundred, I'd say in the neighborhood of three hundred feet.

26. You'd say in the neighborhood of three hundred feet from the east end, or rather from that Light Street Bridge?

A. From the west side of the Light Street Bridge, yes.

Mr. Gray: Would you point to the point you're indicating?

Witness: This one right here.

Mr. Gray: You think that's three hundred feet from the bridge?

Witness: I can't tell exactly, but this is, I think, thirty six hundred feet to the inch, the scale of this chart.

Mr. Gray: Could the witness make a mark so the record will show where he's indicating on the map as the point he has in mind.

Mr. Cicero: Would you circle a small dotted line that you're pointing to there?

27. Can you determine from that point there how big that point is, from this map?

A. I would say, no, it would be almost impossible to tell the

area of that small parcel of land.

28. You mean because it's too small?

A. Because it's too small a scale, yes.

29. Now, sir, I want you to look at Plaintiff's Exhibit No.2, I think this is, and I ask you if you're familiar with that?

A. Yes, this is portions of 549 chart.

30. Now, does that show the area in question, Brooklyn and the Hanover Street Bridge, and the Light Street Bridge I mean?

A. Yes, the same area as the other exhibit.

31. Now, I refer you to the point on the map where you were just looking on the other map, and I ask you, if this map shows anything other than what was on the other map in the way of bridges and improvements?

A. Well, this shows the new Hanover Street Causeway across there.

32. It does?

A. Yes.

33. Now, sir, does it also show the depths around the causeway and the old Light Street Bridge?

A. Yes.

34. Now, sir, in the vicinity of where Reed Bird Island is suppose to be, can you tell us what the depth of water, the depth of soundings are according to that chart?

A. Well, just where is Reed Bird Island suppose to be, I mean there's no island shown there.

35. There is no island shown on this chart?

A. No.

36. Will you go about five hundred feet north of the southern terminus of the Light Street Bridge and look in that general vicinity, and tell us what the depth of water is there?

A. This scale is bad because it's a photostat, it looks to me like it could be about a half a foot.

37. Is there a marking on there that shows a half a foot?

A. I think that is it there, I can't see it too well.

38. That's a half a foot in your opinion?

A. Yes.

39. And is there any land area under the old Light Street Bridge on this map which shows that is out of order?

A. No.

40. Everything around the old Light Street Bridge is under water?

A. According to this chart.

41. Now, look at the Hanover Street Bridge or what you refer to as the causeway, and tell us where the nearest point of land that shows above the water is?

Marberry: and

Mr. ~~xxxx~~: That is dated 1918, /looks the same as 1905?

Mr. Cicero: May it please the Court, I would like

to continue with my examination, Mr. Marberry may have all the leeway he wants.

Witness: The balance of land would appear the same on this as appear on here.

42. Now, will you circle on here what appears to be the same nubbin of land that appears on the other one?

Witness marked the exhibit.

43. And that is under, all around the Hanover Street Causeway, is that right?

A. Yes sir.

44. And how big would you say that area was?

A. I couldn't make a guess.

45. Why?

A. The scale on the chart is too small.

46. Would you say that area is anywhere in the size of 33 acres?

A. I would say, no.

47. Would you say it was smaller or larger?

A. I would say, much smaller.

48. Based on the chart and your scale, can you give us an

estimate, or an approximation of what that size of nubbin is?

A. Well, ~~from here~~ I would say it ~~wouldn't be~~ much over an acre or two acres, that one I circled.

49. And that's the only one near the vicinity according to the United States Coast and Geodetic Survey Chart that appear near the Light or Hanover Street Bridge?

A. Well, no, there's another one directly north of there, there's another parcel directly north of there.

50. Does it touch the Hanover Street Bridge?

A. It appears to, yes.

51. And how far north would you say that is of the nubbin that you put in on your other map?

A. I'd say about 1200 feet, 12 or 15 hundred feet north of the Brooklyn shore line.

52. Now, sir, ~~having~~ ~~having~~ observed both of those charts I ask you to look at these tide records that are in evidence as Plaintiff's Exhibits No. 3, and I ask you specifically, to look at the tides for the day on which the department surveyed, September the 15th, 1908, and I ask you, sir, to tell us from that, in your experience whether or not, what the depth of the water was in that vicinity of the bridge --

Marberry: ~~he~~

Mr. ~~Gray~~: Objection. How can ~~you~~ tell from looking at the records of the tide what the depth of the water is?

Court: I don't know whether he can or not, Mr. Marberry.

A. I can't, the only thing I can tell you, if you give me a definite spot on there I can tell you the depth of the water at the time of that tide reading.

53. All right, sir, I will give you a definite spot on this chart. Take first the chart of 1920, that is Plaintiff's Exhibit No.2, and the area surrounding the nubbin of land.

which you have circled, do you understand me?

A. Well, your closes sounding to that area is probably this half a foot here or this half a foot here.

54. And that is where on the chart, so that the Court can understand?

A. Well, on the old Light Street Bridge I would say it would be about three, maybe four hundred feet north of the bridge, four or five hundred feet north of the Brooklyn shore line.

55. Along the bridge?

A. Along the bridge, that's the old Light Street Bridge.

56. Now, at that point and immediately to the west thereof til you come to the nubbin based on the hourly tide heights, tell us what the height was starting, I would assume the man didn't get out before 7 o'clock in the morning, maybe he did, let's start at 6 o'clock in the morning, so start at 6 o'clock in the morning and tell us what the depth of the water would be according to these hourly tides charts?

X
Mr. Marberry: Your Honor, I'd like to object. All the witness is being asked to do, I think, is to take these figures that is shown on Exhibit 1 and add to them, do a little arithmetic, and add what the tidal sheets show. Now, anybody, it doesn't take an expert witness to do that, but, the form of the question is a form which would undertake to have him say what the depth of the water is. Now, he doesn't know, he wasn't there, he's got to work from these things. Now, I'll object to having this witness answer in the form of what the facts are when he doesn't know anything except what these things show, and all he's doing is adding two figures together, which anybody can do.

Court: Well, I assume ^{they} ~~we~~ are submitting those figures

on the basis of what he has before him.

X
Mr. Marberry: I submit, Your Honor, it doesn't take an expert witness to say that a half and one and a half added together make two.

Court: Well, you mustn't over estimate the ability of the Court in mathematics. It might be helpful to me, if I knew as much as the rest of you maybe I could figure it out. I'd like to hear from him, go ahead, sir.

Witness: Well, that is right, the only thing I have to work from is the sounding on this chart, which is a minus sounding, that is, below mean low water plus these tidal levels which are above and below mean low water. Now, on that day there were no minus readings, in other words, everything was above mean low water, so it's simply adding these figures to what were the depths as shown on this chart, to get the water depth at that time.

57. And that would be starting 6 o'clock in the morning?
- A. At 6 o'clock it would be 1 foot, at 9 it would 1.3 feet.
58. Depth of water?
- A. That's right, at 8 o'clock it would be 1.8, at 9 o'clock it would 2 feet, at 10 o'clock it would be 2.1 feet, at 11 o'clock it would be 2.3 feet, at noon it would be 2 feet. There were 13 hours, which was 1 o'clock in the afternoon, starting again it would be 1.9 feet, 14 hours it would be 1.7 feet, at 15 hours it would be 1.1 foot, at 16 hours it would be 1.5 feet, and that appears to be the low water period at that time. At the 17th hour it would be 1.7 feet, it is starting to rise again, at 18th hour it would be 2 feet, 19 hours it would be 2.3 feet.
59. And these points are based on tenths of a foot, is that correct?

A. Tenths of a foot.

60. Mr. Gray: On what day?

Mr. Cicero: That is the day Mr. Green made his same survey in 1908, September the 15th, 1908.

f
Mr. Marberry: Wait a minute, you're working from a chart that's dated 1905, so what you've added is the figure from a 1905 chart that may have been made according to the source, as indicated, in 1899 to a tidal record made in 1908, and I submit, Your Honor, that you can't add those that are taken ten years apart, and that testimony ought to be stricken out.

x
Mr. Cicero: Mr. Marberry's objection is answered by the very fact that from ^{the} 1920 chart, which was prepared way back like he says, certainly from the time 1905 chart was made showed the depths at the point to be about the same, and I submit to Your Honor that the best evidence in this case, as to the soundings and depths, are these charts that were made by disinterested parties that holds the paramount position in our government, it's their job to make these soundings, and they are accepted in navigation, and they certainly are accepted by the harbor people in Baltimore. And I humbly submit to this Court, has got to accept these because the only way you can arrive at a figure is to take the tides as they existed on that day, take the soundings, and see what you come up with. Now, if we had known, or if the U. S. Coast and Geodetic Survey had put out a chart we would have had one for 1909, or

we sure tried to get one I can tell you that, or 1908, but these were the two closes charts that we could get to this thing in point time. And Mr. Tyler can explain, and has shown this Court that what those tides should be at that period of time.

Court: Do I understand that the chart is 1905, the tide readings are 1908?

Witness: These are from September 15th, 1908, yes, for a full day.

X
Court: I'm going to let that in, Mr. Marberry, it's understood the discrepancy that you pointed out, and anything Mr. Tyler can do, going into that point, I'd like to hear from him.

Mr. Cicero: We will follow that now with the chart of '20.

60. Now, sir, I ask you to look at the same area for the mark on Plaintiff's Exhibit No. 3, and take a close look and tell us whether the soundings shown on there correspond to the soundings as shown on the Plaintiff's Exhibit No. 1, only in that area that you have circled on both charts as the nubbin of land.

A. They appear to me to be identical.

61. All right, sir, now, in your experience as a harbor engineer, what would that indicate as to the depth condition from the year 1905 when the original Plaintiff's Exhibit No. 1 was published and Plaintiff's Exhibit No. 2 was published?

X
Mr. Marberry: I have to object to that, unless this witness is prepared to say that those are accurate and that there was absolutely no change during 1905 and 1908 in the actual depth, in other words, that those accurately represent the conditions as they were in 1905 and 1918. I don't think that there's any

48

answer that he can give you except just what these papers show. Now, the witness hasn't been qualified to give any other answer, and I Object to the question.

Mr. Cicero: It's plain and simple to me, Your Honor, that this witness, if he's not qualified as a harbor man then I don't know who is. Do you want me to give his educational background?

Mr. Marberry: He's qualified to say what the maps say, but he isn't qualified to say what the depth is, and that's what you asked him.

Mr. Cicero: Plaintiff's Exhibit No. 1 which shows depth soundings in that area; the second thing Your Honor has is what Mr. Mackell showed, and that is, that in 1914, before May, it was under water; and the third thing Your Honor is being asked to admit and check on is the map of 1920. Now, unless Mr. Marberry's objection is based on the idea that between 1905 and 1908 there was a decided difference, and then it dipped again by the time 1914 came around, I don't know. But I want this witness to tell us about that, whether there could have been such a discrepancy, and that's what we're leading up to.

Court: What was your last question?

62. In your experience as a harbor engineer, Mr. Tyler, and you're looking at these two exhibits, Plaintiff's Exhibit No. 1, the map of 1905, and Plaintiff's Exhibit No. 2, the map of 1920, what changes in that area took place as far as the depth soundings based on those two maps?

Mr. Marberry: Objection, unless he's basing his

testimony on what the maps show.

Court: I think he said that, what those two maps show. It's understood, Mr. Tyler, that's what you're doing, based on those two maps before you.

A. Those two charts show identical readings, soundings.

63. They show identical soundings?

A. Yes.

64. Now, can you answer for this Court whether or not that indicates a static condition of soundings in that area between 1905 and 1920?

A. That would indicate that there had been no major changes in the water depths in that time.

L
Cross Examination by Mr. Marberry:

1. Mr. Tyler, looking at those two surveys, wouldn't you think it highly probable that there never was any surveys made between 1905 and 1918, as the Geodetic Surveys used the same map that they had before?

A. No.

2. Why wouldn't you say that?

A. There's always a check made, and if there's no major changes shown, a complete survey is not gone through with, but the area is always checked.

3. Well, now, there's nothing on this 1918 map to show it's surface, is there?

A. I think on all of these it shows that they have been brought up to a certain date.

4. Well, does that show it?

A. I think it does.

5. Well, look at it and see if it does?

A. As a rule there's a date down in here that shows where it is brought up to.

6. Now, you're looking at the 1905 exhibit.

Mr. Cicero: If Your Honor pleases, we can see that the 1920 is a photostatic copy of a portion of the 1920 map, and I feel it's grossly unfair to this Court to inquire into that, when counsel for the Respondents in this case have a copy which shows the sources. We're willing to admit those sources for the purposes of this case.

X
Mr. Marberry: Well, let us get it clear.

Witness: This chart here has been corrected to 1904.

Mr. Marberry: Let me identify what we're talking about first. This is marked Plaintiff's Exhibit 1, and this is the map which says that the triangulation was executed between 1844 and 1897; the topography executed between 1891 and 1899; the hydrography executed 1896 and 1899; corrections from surveys by the Corp of Engineers, U. S. A. to Nov. 1904. I read that correctly, didn't I?

Witness: That's right.

7. Now, that doesn't mean that every sounding in this map were re-sounded as late as 1904, does it?
- A. No, it doesn't mean that every one, but it means that every area that is covered by this chart was checked to be certain that there was no major change.
8. Well, you say, major change, they didn't run all over these spots here and take soundings as they did when they originally made them?
- A. I couldn't say whether they did or not.
9. You don't know whether they did or not?
- A. I couldn't be certain of that.
10. But the fact of the matter is that 1920 and the 1905 are in this entire area, absolutely ~~and~~ identical. Let's

look at them and see if they don't correspond?

A . Every single item.

11. In other words, there's been no change?

A. There's been no change.

Mr. Cicero: Well, the maps speak for themselves, and they definitely show there 's a change because the Hanover Street Bridge has been put on that second map.

Mr. Marberry: I'm talking about the soundings.

12. Now, let me ask you this. You do know something about this area, you know that they had put in the new Hanover Street Bridge, and that the B & O Bridge/^{had}been filled in, do you think that it's possible in a period of thirteen years that there would be absolutely no change in any soundings in that body of water there?

A. It's possible, yes, I mean, that is, no major change, you may have a small difference in depth here or there, some place may deepen, other places may shoal a little.

13. Well, I'd like to show you some photographs which have been stipulated they're correct representations of this area in 1916, and ask you whether they are consistent with either the 1905 map or the 1918 map. I'll select first and ask you to look at this exhibit which is marked on it's back, 11 L. Now, this says this is taken at the north end of the embankment looking southwest, on April 20th, 1916.

A. The north end of what embankment?

14. The embankment is the fill which was later covered by the Hanover Street Drydock. You're looking down to Brooklyn, that's been identified by a previous witness, you're looking at Brooklyn.

A. In other words, this is the west side of the bridge?

15. That's the west side of the Drydock, and we'll take this map.

A. We're in here looking south.

16. That's right, we're looking south. Now, I show you this

photograph, now is that consistent, could that be a correct representation and also be consistent with the map showing the half a foot of water at mean low tide?

A. Well, of course, you know this could be a lot of cattails here.

17. Well, some of it looks like cattails, but some of it looks like a good deal more than cattails.

A. Well, it looks to me like it's mostly all cattails.

18. But this might correspond to this little nubbin of land that we see here?

A. It could or this one.

19. Which I have admitted was at mean low water.

Mr. Cicero: Which of course doesn't mean that it's below high level.

20. Here's one called Exhibit I-L, this is taken on the Long Bridge opposite the end of Pavillion looking northwest on April 20th, 1916. In other words, here you see to the left is the shell of the new bridge, and there are the flats that have been talked about with the advertising signs standing on them. Doesn't that appear to be fast land up there?

A. That appears to be fast land, but it still has a lot of cattails on it.

Mr. Cicero: And that is your exhibit No. I L, meaning it was taken at low tide by your admission?

A. With this fill going across here it was all soft material over there, putting this causeway ~~fixx~~ ^{shell} across there would cause this mud to come up on both sides considerably.

21. What I'm trying to bring out, sir, at the moment is, that this 1918 map does not show what these pictures unquestionably show. Now, let's look at some more of them and see whether what I just said isn't true. Here's another picture, let me identify it first, this is H-15, H means high tide. H-15 we're looking again from the Hanover Street fill, toward

Brooklyn, and I ask you if there isn't, plainly, fast land there there. This is the west side of the Hanover Street fill, if that isn't obviously fast land as well as cattails?

A. I couldn't say, no, I couldn't say whether that was more cattails or fast land, I honestly couldn't. It's nothing all through it, but a dark splotch, there's water areas over in here, I couldn't say.

22. Well, that is certainly not consistent with the soundings shown on this 1918 map, is it?

A. It could be, because on this 1918 map you have the spots, you have this spot here, you have this spot here, which definitely shows that that water was pretty close, was at mean low water.

23. Well, this is high tides, and it comes all the way up to bridge, doesn't it?

A. Well, when you get cattails that grow three and four and five feet above your bottom it takes a rather high tide to cover them.

Mr. Marberry: Well, I'll have the Court look at them.

24. Now, let me show you one on the other side where there's no fast land shown at all. Withdraw that.

Your Honor,
Mr. Marberry:/ This is on the east side of the fill, this is the one the witness just said looked like the fast land, this is on the east side of the fill.

25. Is it not a fact that this Geodetic Survey does not show any fast land on the east side of the fill in this 1918 map?

A. No, there's no fast land shown.

Court: Mr. Marberry; where is your island on there?

Mr. Marberry: We're looking toward Baltimore now.

Court: Is that a boat there?

Mr. Marberry: Well, it looks like a hulk.

Mr. Cicero: And this picture we're talking about is Respondent's Exhibit 1-L, in which Your Honor has asked if there is not a boat in the center of it.

26. Now, I'd like to show another one here, here is another picture taken at low tide, it's marked Respondent's Exhibit No. 5-L, and it's taken from the north end of the embankment looking southeast toward the south end of Long Bridge, that's the old bridge of course. That then would be on the east side of the Hanover Street Bridge now, would it not? This is the fill, this is a low tide picture, isn't that completely inconsistent with this 1918 map that has been brought in evidence?

A. I wouldn't say so, no, because this fill looks to me like a sea of cattails, sea of moss grass, I can distinguish no fast land in that whatsoever.

Mr. Marberry: Well, I suppose that's the question, I'll have to hand it to Your Honor to look at to form your own conclusion about it.

Court: Are you referring to this piece right around here? Just put it in as evidence.

27. Now, I show you another picture, Respondent's Exhibit 4-L, that means low tide. This is taken on the embankment about 75 yards from the north end of Small Bridge, and that means they were looking toward Baltimore, and that means that this area between the two bridges is to the east of the Hanover Street Bridge and is an area in which the survey showed --. Let's see how much water ~~xxx~~ does the survey show? It's the area between Hanover and Long Bridge in there in this area. Have we got any sounding there? What's that, 2, is that a sounding?

A. It doesn't look to me like it is, no.

Mr. Cicero: Well, you're now in the middle of a

channel there. The closes point that you're showing, according to Reed Bird.

28. Now, we're looking at the two spots spreading, you're standing here and looking out.

Mr. Cicero: Your closes sounding is a half a foot marker.

A. This is on the old bridge looking west to the Long Bridge on the Brooklyn end looking north?

A29 We're on the Brooklyn end, this is the fill of the Hanover Street Bridge, this is the old Long Bridge, and we're looking toward Baltimore, and this area appears at low tide to be no water on it, doesn't it?

A. No, I would say there is water here, that's water in that area. This is above water here.

30. So there is land above water and there's none shown on the map, is that right?

A. Well, don't lose track of this point that they're putting this causeway here which they're dumping a tremendous load of solid fill in amongst a bunch of mud which would spread that surrounding mud to the side, spread it out.

31. Now, I simply asked you whether or not this land, whatever it's cause and however it got there, is shown on this map?

A. No, it is not.

Mr. Cicero: Now, if Your Honor pleases --

Mr. Marberry: I'm speaking now, the witness is referring to land which is identified as fast land shown on Respondents Exhibit 4-L.

Mr. Cicero: If Your Honor pleases, I must take an objection to this line of questioning on these photographs because many different people could look at this area and see different things. Your Honor found a boat in the middle of what they called fast land, low tide

This witness has not been proven competent to testify as to the area at the time. If he had been we would have asked him questions on it. They're asking this witness to talk about some pictures that were taken at a period of time that it certainly isn't relevant to this case. They're trying to attack his credibility, not his credibility but the credibility of the United States Coast and Geodetic Survey on the basis of what this witness can see on photographs that are taken in 1916. I submit to Your Honor that it isn't pertinent, nor is it relevant to this case. If the photographs are in evidence the Court can certainly see what's on them.

X
Mr. Marberry: May it please Your Honor, if I may be permitted to answer that. What we are trying to bring out, I think has conclusively shown, is that this 1918 survey, whatever might be true of the 1905 survey, this 1918 survey is not in accordance with the facts. Here two years before that time there was fast land unmistakably there which does not appear on this survey. Now, the fact of the matter is, that there is no difference between the 1905 and the 1918 survey, they're identical. We all know as what the harbor engineer has told us, and that is, that the United States Government can't go around sounding every ten feet of ^{land} ~~wax~~ all over the United States every few years, they can't possibly do that, it's obvious that they have not made any soundings, have not indicated any changes, and that this 1918 thing is

completely unreliable, and whatever value might be attached to the 1905 one the 1918 is worthless as evidence and that's what I've been trying to show and I think that Your Honor will concede to doing it.

Mr. Cicero: If it were questioned, Your Honor, of determining the credibility of the paid photographer for the Respondents, taking certain pictures at a certain period of time when law ^{this suit was in litigation,} suit was in litigation, as against a disinterested party like United States Corp of Engineers and the Coastal Geodetic Survey, I'm sure that you must find that there was no intention on the part of the Coastal and Geodetic Survey people to perpetuate a fraud on the whole United States Government and everybody in it. Those findings are sound and you can't attack them by saying that these pictures which were taken, I couldn't refute that they were taken, I could have said we won't admit any of them, but I stipulated it because I want the Court to see all the facts.

X
Court: Let's not get too passionate, gentlemen, this thing has been since 1916. He has a right to cross-examine on that. The U. S. Government I'm sure is in good faith, but even the U. S. Government is sometimes in error, I don't say it's necessarily been proven but I think Mr. Mafberry had a right to cross-examine Mr. Tyler. After all it's before the Court and I should be able to determine as much as I can myself.

Mr. Cicero: Fair enough.

58

32. Did you ever yourself work for the Coastal Geodetic Survey?

A. No.

Re-Direct Examination by Mr. Cicero

1. Now, Mr. Tyler, you were shown several pictures that were taken at low tide, can you from those pictures determine whether or not the area was covered, that one picture was the only one you talked about that might be some land, and that was this one here, 4-L. This is the only one he identified land in.

X
Mr. Marberry: No, he identified land on this one too, where the Judge thought there might be a boat on it.

Mr. Cicero: I'd like to take an exception to that, but we'll show you both.

2. Look at both of those pictures, now, can you determine whether or not they would be covered by water at high tide?

A. I would say at a normal high tide this area would be definitely covered with water.

3. And that is Respondent's Exhibit No. 4L?

A. And this on a tide of a little bit higher level it would probably be.

4. All right, they would both be covered by water at high tide?

A. Yes.

:::::

Mr. Cicero: I would like to reserve one witness for tomorrow morning.

(Mr. Clark is a witness for the plaintiff, and it's understood that when he gets here they will put him on.)

Plaintiff's Case

Henry C. Burke, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Gray)

1. State your name.

A. Henry C. Burke.

2. What is your address?

A. 3717 Hanover Street.

3. Is that in Brooklyn?

A. Yes.

4. How long have you lived in Brooklyn, Mr. Burke?

A. Since 1909.

5. Where did you live when you first came to Brooklyn?

A. The same place I live now, 5th Street, 3806.

6. How far is that, or when you first came, how far was that
the shore of
from/P atapsco River?

A. About six squares.

7. At the time, when you first came and since you've been there,
did you become familiar with the Patapsco River off the
different shore?

A. Yes sir.

8. How did you happen to become familiar with it?

A. Well, my office was in view of it to begin with, my office
and place of business is just one square from the water.

9. Where was your office located?

A. 3717 Hanover.

10. Now, at that time and since then, have you become familiar
with an area known as Reed Bird Island?

A. Well, the exact location of Reed Bird Island is very con-
fusing to a majority of people. I don't know if I have a
fair conception of what it is or not.

11. Well, now, looking at this chart which is in evidence, Mr.
Burke, there is, from where you are you may be able to see
this Long or Light Street Bridge here, and the Hanover Street

Bridge going across here. This is what was then the Baltimore County shore at about where my pencil is, from there on is Baltimore County, and from this point on is the Brooklyn shore, right here, where my pencil is now. The area in here is marked with a line as Reed Bird Island, now, does that clarify in any respect the area about which I'm talking?

A. I think so.

12. That is, when I refer to the Reed Bird Island area I refer to the area described by this line on that Exhibit No. 9. Now, were you familiar with that area at that time?

A. Yes sir.

Mr. Cicero: At what time?

Mr. Gray: The beginning of 1909.

13. Now, at that time what is your recollection as to what part, if any, of that island was exposed from above water or covered by water?

A. The west part, when I say west I mean west of Potee Street, to my knowledge, was always above water.

14. Now, by always do you mean even at normal high tide?

A. I have never seen it below water in that area.

15. Now, Mr. Burke, was there any water between Reed Bird Island, the area I designated, and the Brooklyn shore?

A. Yes.

16. Would you know how deep that water was during this period, from about 1909 to say 1916?

A. Well, I use to keep a canoe at the Maryland Canoe Club, which was much further south than the southern most portion of Reed Bird Island. And that canoe we use to paddle down to Reed Bird Island area, and I recall one night a man in a canoe opposite me tipped his canoe and fell over board, and he went down just about up to his shoulders, and that was a very few hundred feet from what I might call the south end of Reed Bird Island now.

41

17. Do you remember whether any boats used that section of water in there besides some canoes?

A. At the Maryland Canoe Club, which is a rather large frame building, we had a sort of a walk or ramp and I've often seen sailboats tied there. I recall several sailboats, possibly fifteen or twenty feet long, with a passenger or two in them.

18. Did you know of a farm called, "Mushaw's Farm"?

A. Yes sir.

19. Where was that located?

A. The area close to where Brooklyn Park is now, perhaps part of Brooklyn Park, Brooklyn Heights was the largest portion of it.

20. Did that front on that stretch of water that ran south --

Mr. Cicero: I haven't objected to all this leading questioning, but I must stop it, and object now.

Mr. Gray: Withdraw the question.

21. Where was "Mushaw's Farm" located with respect to this section of water between Reed Bird Island and the Brooklyn shore, running along the Brooklyn shore?

A. In reference to what portion? That stream ran sort of southwest, northeast, now, what portion of that stream are you referring to?

22. Well, was Mushaw's Farm anywhere near any part of that stream?

A. I don't think so, I don't think much of it, it may have been the extreme northern end of Mushaw. Mushaw Farm may have touched the southern end of that stream.

23. Do you know whether or not any produce from the Mushaw Farm was shipped on that channel?

A. Personally I've never seen it shipped there. I have talked to some of the people --

Mr. Cicero: Objection

24. Do you know of any other use that was made of this section of water there which you have described south of Reed Bird Island aside from the canoes and sailboats, did you ever see anyone else in there, any other kind of boats?

A. Yes, I've seen row boats, various row boats in there, they use to come in from fishing, all come in the stream and some use to sell the fish years ago.

25. About how late would you say that you saw fishermen?

A. Well, that would be more or less guess, I couldn't say definitely when they ceased fishing there, but it was shortly after the railroad bridge filled in when they started to dump dirt, fill in between the trestle, and that stream was more or less cut off.

26. Well, was it used by the fishermen after you moved to Brooklyn?

A. Yes.

27. Well, could you estimate the number of years after you came there that you remember fishing there?

A. No, I couldn't.

Cross Examination by Mr. Cicero:

1. Mr. Burke, you used the very interesting word "guess". You guessed it was shortly after the railroad bridge filled in, do you know when that railroad bridge filled in there?

A. Well, they filled it at various times to my recollection. They never made a complete fill at any one particular time.

2. Well, if I told you that the Corp of Engineers gave permission to the B & O Railroad Company, and the B & O Railroad Company filled it in in 1900, would you repute that?

A. I would say that they dumped additional ground after that time considerably.

Court: I think he said they dumped additional dirt after that date.

Mr. Cicero: After that date?

Witness: Yes.

3. But you don't know whether they made a fill in there in 1900?
- A. My testimony wouldn't date back to 1900, I didn't come to the Brooklyn area until 1909.
4. When did you come to Brooklyn, specifically, when?
- A. I don't recall, I think about the middle of 1909.
5. The middle of 1909?
- A. Yes sir.
6. That would put us where, you tell us the month?
- A. Well, I don't know the month, I don't know whether it was June or July or not.
7. Would you say then it was July?
- A. I wouldn't say.
8. Would you say it was in the summer or in the spring?
- A. I'd say it was in the spring summer.
9. Had you ever been over this area before that time?
- A. Oh, yes.
10. Did you know it then?
- A. Not too well.
11. So you don't know what the condition was in 1908?
- A. No, I don't have as much information, I knew the streets and I'd been over it, but I don't know a great deal about it/
12. How old are you, sir?
- A. 63.
13. And how old were you in 1909?
- A. About 18 or 20.
14. Now, you say you lived at 3717 Hanover Street?
- A. No sir, I didn't say that.
15. What did you say?
- A. I said my office is at 3717 Hanover Street.
16. Now, have you ever lived at 3117 Hanover Street?
- A. Never have lived at 3117.
17. 3717?

- A. Never lived there, no sir.
18. Where did you live in 1909?
- A. Prior to coming to Brooklyn?
19. No, no, when you came to Brooklyn. When you came to Brooklyn the first time to live?
- A. On Sixth Street, 3600 block, Sixth Street, Brooklyn, when I first came to Brooklyn.
20. How far was that from Reed Bird Island?
- A. Oh, from Reed Bird Island it was possibly eight or nine squares.
21. And how often would you say that in the period of time, from the date you moved there in 1909 spring summer, until the end of 1909 that you were out in the area of Reed Bird Island?
- A. Practically every Saturday night, Saturday afternoon and night.
22. Weren't you working then?
- A. Yes sir, we'd go out Saturday afternoon.
23. What time would you quit work on Saturday?
- A. About 12 or 1 o'clock.
24. And then what would you do on Saturday?
- A. Well, I'd do different things, often we went to the City, to Baltimore.
25. Well, you didn't go boating in that area then, you went to the city?
- A. Not so much on Saturdays, most of the boating was done on Sunday nights, Sunday afternoon and Sunday nights.
26. Now, in 1909 on Saturday afternoons/^{when you were}going ~~to~~ to Baltimore, is that what you're referring to, that you were there once a week, every Saturday, is that the idea?
- A. Well, often times we'd go to the city on business trips during the week, we'd bank in the city and we'd have to go the city ~~in~~ in those times to make a deposit slip, we often

went two or three times a week.

27. Have you ever, during 1909, ever gotten off of a canoe and walked on to Reed Bird Island?

A. No sir.

28. So your observation is based on a view from a distance, is that correct?

Mr. Marberry: Your question is very confusing. I thought you were asking ^{him} whether he got out of his canoe and walked, and I guess that's what he thought.

Mr. Cicero: I guess that's what I meant.

A. When you go canoing you don't usually get out and walk.

29. You never got out of your canoe to get on Reed Bird Island, did you?

A. I had no need to get on Reed Bird Island because I had another object in view, a place I wanted to go, I never wanted to go to Reed Bird Island when I was canoing.

30. Then as a result you have never been on this island as you were saying is out of the water?

A. Never been on it?

31. Yes, on this particular piece of land that you testified was out of water, west of Potee Street.

A. I don't think that I have been on it, no, sir.

32. Now, how close would you say you were to that ~~island~~ ^{through} ~~land~~?

A. So close that we'd have to paddle ~~to~~ the channel to get away from it.

33. Why did you have to paddle?

A. Because a canoe won't go across low water where there's mud.

34. They won't go across low water because there was water in there, isn't it?

A. No sir, there wasn't any water in the area at all, but as you got closer to shore it got too shallow and we'd have to go back out in the channel, go further northeast and

66
5/11

come around.

35. Oh, in other words, you were close to shore, you weren't out at the island?

A. I was in this river, this small channel, or river or creek, or whatever you may want to call it, that's the outlet from the canoe club, you see we would get our canoes and we would go northeast into this small channel and go around mud flats on Reed Bird Island and get into the large channel.

36. You say mud flats in Reed Bird Island?

A. I said what has been referred to as mud flats in Reed Bird Island.

37. You don't know whether there was mud on there or reeds or not because you were never on there.

A. When you're paddling a canoe and you run into mud you know it.

38. Well, did you try to go through the island, did you ever make the attempt to go through the island?

A. It would be very foolish.

39. You never made that attempt?

A. With grass up to eight or ten feet high, would I want to try to paddle a canoe.

40. So you never made that effort?

A. Why that would be absurd to try it.

41. Did you ever see anybody shooting on that island?

A. Yes sir.

42. Did you ever see them wear boots?

A. I don't know as I remember them wearing boots, no sir.

43. You don't remember that?

A. The man that I saw shooting wasn't wearing boots.

44. You saw one man?

A. He was shooting from a boat, and I never saw him get out of the boat, and he was standing a distance away from me.

45. So you did see a man hunting reed birds or shooting there

in a boat, is that right?

A. He was shooting at Reed Bird Island.

46. Now, what kind of business were you in in 1909?

A. Lumber business.

47. And was it your own business?

A. Yes sir, no sir.

48. For whom were you working?

A. Brooklyn Lumber and Supply Company.

49. What were your duties?

A. They varied, bookkeeping, shipping, general supervision.

50. Your duties kept you at the plant pretty much?

A. Well, not all the time, no, I often made deposits and I often did some collecting and various outside work.

51. Well, how many days a week would you work at the Brooklyn Lumber --

Court: What is the purpose of this, Mr. Cicero?

Mr. Cicero: Your Honor, my recollection, this case was filed before I was born, but when I started to work back in the '30's, why I remember we worked pretty much a six day week, a full day on Saturdays, and I'm trying to see if this witness won't recollect a little bit more about when he actually went out on his Saturday afternoon jaunts or whether they were evenings.

Court: I understood him to say evenings, Sunday nights.

Mr. Cicero: Well, that was my understanding, but then he made a mention of afternoons, and I wasn't quite sure that I understood that.

52. Didn't you work on Saturday afternoons?

A. Not every Saturday.

53. But you did on some Saturdays?

A. Some I may have, yes, but not every Saturday.

54. So your observation of Reed Bird Island, in that area, is

68
58

from
based ~~on~~ the period 1909, is based on those weekends, Saturday
and Sunday?

A. I didn't say that.

55. Let me ask my question and then you can answer it. From
the period of time, those Saturdays and Sundays in 1909,
from when you moved there until the end of 1909, is that
correct?

A. Based On Saturdays? No, that isn't correct. I just told
you I made deposits two or three times a week across the
bridge and was in that area sometimes three or four times
a week.

56. Now, are you acquainted with any of the respondents in
this case?

A. I know some of them, yes.

57. Who do you know?

A. Well, I know the witnesses, I don't know the respondents,
no.

Court: Mr. Burke, when they use the word respondents,
do you know what they're talking about?

Witness: I suppose it's the defendants.

Court: That's right, I just want to be clear.

Witness: The defendants I don't know.

58. Do you know any of the Bruns that originally patented this
island?

A. No sir.

59. Did you know any of the Wagners?

A. No sir.

60. When did you first learn about this case?

A. When did I first learn about the patent of Reed Bird Island?

61. No, about this case, that you're in here today testifying
on, when did you first learn about this case?

A. Oh, I think three or four days ago.

62. And that's the first time you heard anything about this

case since 1909, is that correct?

A. I don't think I've heard much about it since 1909, not a great deal.

63. And how long did you talk with whoever talked to you two or three days ago about this case?

A. I don't think I timed it.

64. Well, can you give me an idea?

A. Possibly thirty minutes.

65. And what was, as a result of that conversation of thirty minutes, your recollection was completely requested and you come in here and you want this Court to believe that the tides did not cover Reed Bird Island way to Potee Street?

A. I think that's my testimony.

66. I didn't understand, if you testified, whether or not there was any land to the east of Potee Street that was not covered?

A. I don't recall much fast land on the east side.

67. Was there any?

A. There may have been but I don't recall.

68. You don't know?

A. I don't know on the east side.

69. Well, how can you be so certain about one side of this bridge and so uncertain about the other side if you went canoing all around?

A. I love gunning to start with and wherever there's shooting and reed bird shooting I'm more interested than I was on other side where there was nothing going on.

70. Well, did you actually go out gunning on Reed Bird Island?

A. No sir, I didn't.

71. How tall was the man who fell out of the canoe and fell up to his shoulders in 1909?

A. How tall was the man who fell out of the canoe?

72. How tall was the gentleman who fell out of the canoe and fell up to his shoulders?

- A. I don't think I'd better answer that question because it would be guess if I did.
73. It would be a guess, wouldn't it, that would be a guess how tall he was?
- A. I'd say he was the average man but I wouldn't specify as to his height.
74. What time of the night was that that he fell?
- A. I think that was a Sunday afternoon.
75. Before you said it was at night?
- A. It may have been on an evening just before dark, but I don't know whether it was a Sunday or Saturday.
76. Did you rescue him?
- A. No sir.
77. What happened?
- A. He capsized in his canoe.
78. He was able to stand there and get back in his canoe?
- A. Well, I suppose he did.
79. Nobody helped him?
- A. No, I don't think anybody helped him.
80. Well, now, when he got back in his canoe, was the canoe between you and he or was he between you and his canoe?
- A. I don't remember that, sir.

Mr. Cicero: If Your Honor pleases, it's very important for us to get into that because they are trying to prove in this case a depth of water by a casual observation, a man falling up to his shoulders. We don't say he didn't fall in, but if this man didn't have a chance to observe him and he doesn't know how tall he was or anything else, it might have been a boy, he might have been in such a way trying to get his canoe it looked like he was up to his shoulders.

Court: Well, don't you think regardless of what, this is just an observation, that his recollection as to 1909 would be very vague, so it wouldn't have too much value whatever he said. He just remembers ^{him,} as I understand it, falling out of the canoe. I don't think either of us could rely on his recollection.

Mr. Cicero: That's exactly right. And this question about the shoulders I think is very important, and I think the same thing applies there. We admit probably the man did fall but whether he fell in above his shoulders, his belt line or not, we do know this, he's admitted this he got back in the canoe himself, and that's a pretty hard thing to do in deep water.

Mr. Marberry: I'd like to point out that you had a witness testify that he was in water to his belt line at 8 years of age.

James B. Woodward, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Gray)

1. Would you state your full name please, sir?
- A. James B. Woodward.
2. Where do you live now?
- A. In Anne Arundel County.
3. What's the address?
- A. 335 Cherry Lane.
4. How old are you now, Mr. Woodward?
- A. I'm in my 91st year.
5. How long have you been living in Anne Arundel County?
- A. Well, since about 79.

6. Where were you living about the year 1909?
- A. Well, I couldn't say, I haven't got the years and dates like that.
7. Did you ever live in the town of Brooklyn?
- A. Lived there since 79.
8. In the town of Brooklyn?
- A. In Brooklyn.
9. Whereabouts in Brooklyn?
- A. 3436 So. Hanover Street.
10. On what side of Hanover Street is that, is that toward the river or is it away from the river?
- A. Yes, my back yard run right down into the water.
11. And you lived there beginning in 1879?
- A. No, I lived in Acton Park for eight years, and I lived a couple different places before I bought this house on Hanover Street.
12. Do you know about when you bought the house on Hanover Street?
- A. No, I couldn't say, I never paid no account to keeping any dates or anything like that.
13. Now, Mr. Woodward, during the time you were living in Brooklyn, do you recall, did you become familiar with the P atapsco River?
- A. Oh, yes, I travelled it up and down every which way.
14. What occasion did you have to travel up and down the river?
- A. Well, I done fishing, crabbing, one thing another like that, just for my own pleasure.
15. During what period was this, how old were you when you were using the river?
- A. Oh, I was fifty years old.
16. Fifty years old?
- A. Yes.
17. Did you ever have occasion to use the river before you were

fifty years old?

A. Oh, I guess I did.

18. Now, did you know an area called, or are you familiar with an area called Reed Bird Island?

A. Oh, that was over on Baltimore County side.

19. Well, now, let me show you this chart here, just to show you the area I have in mind. Can you see this from here, Mr. Woodward?

A. No sir, I don't understand that anyhow.

20. Alright, then I won't try to point it out to you. Do you remember when the Hanover Street Bridge was put across the Patapsco River?

A. Oh, yes.

21. Where were you living when that was done?

A. On Hanover Street.

22. How long had you been living on Hanover Street then?

A. All the time I've been in Maryland except eight years.

23. Now, do you recall any marsh land between the Brooklyn shore of the Hanover Street Bridge and the center of the river?

Mr. Cicero: Objection.

Court: I take it you're objecting because it's leading?

Mr. Cicero: Yes, we have a very fine old gentleman here and I'm sure he wants to tell us the truth, but I want him to testify from his recollection and not from what Mr. Gray wants him to recollect.

Court: I'll let that in, first of all he doesn't understand the chart and we have to get him pinned down somehow, Mr. Cicero. We'll see what he says, go ahead.

24. Do you remember any marsh land between the Brooklyn shore about where that bridge went across and the center of the

Patapsco River?

A. Oh, yes, there was some cattails out there.

25. Well, now, that area where those cattails were is what we call Reed Bird Island.

Mr. Cicero: Objection. I'm taking exception to that.

Mr. Gray: May it please the Court, that's simply agreed to in the exhibit already.

Mr. Cicero: No, ^{it} isn't, you have pictures all the way out to the channel, and there are exhibits in this case, specifically, the Coast and Geodetic Survey reports, and you can't take a general area.

26. Mr. Woodward, disregard what I said about that being Reed Bird Island. You say there were some cattails there between Brooklyn shore and the center of Patapsco River. Now, will you tell us whether or not there was any space of water between those cattails and the Brooklyn shore?

Mr. Cicero: Objection. We're objecting on the basic form of the question.

Mr. Gray: The question was whether or not there was any space of water between those cattails and the Brooklyn shore.

Court:; I don't see any harm in that.

Mr. Cicero: Your Honor, in order to expediate this why don't they ask him to describe the area in this general area.

Court: He just said there was some cattails, I'll expect more than what has been brought out.

27. Was there any space of water in there, Mr. Woodward?

A. Yes sir.

28. Did you ever take a boat through that space of water or did you ever not?

A. I have rowed all the way from Acton't Park, all the way

around where the movie theatre is now clean up to Pat O'Brien's place, that's the end of Greenwell Bridge.

29. Now, I'm not sure we understand, Mr. Woodward, exactly the area you mean. I'm talking about the area between where those cattails were that you described and the Brooklyn shore, now, you said there was a space of water between there, did any boats ever come down that channel or did they not to the place where your house was?

A. No, no boats ever come down there except row boats.

30. Row boats?

A. Yes.

31. Did you ever have any boats in there?

A. I owned a row boat.

32. Could you bring your row boat down toward your house?

A. Tied it right in my back gate, it ran down to the water.

33. Do you know whether any other people ever brought boats in there?

A. Oh, yes, several people up there had launches.

34. What kind of launch was that?

A. Oh, only a small boat.

35. Did it have a motor in it?

A. Oh, yes.

36. Do you remember a man by the name of Barrett?

A. Barrett was one of the men that had a motor boat up in there.

37. Do you remember whether he had his motor boat in there before or after they put the Hanover Street Bridge across?

A. Before they put the Hanover Street Bridge.

38. Now, Mr. Woodward, do you remember whether or not the area where the cattails were, what the situation was with respect to that being covered or not covered with water?

A. Well, at a real high tide water flowed over the marsh.

39. How about at a normal high tide?

A. Well, it was practically dry in there.

40. I say at a normal high tide.
- A. Normal high tide there was still water in there.
41. How about at low tide?
- A. It was still water, but not very much, kinda marshy.
42. Now, what period are you talking about when you say that it was marshy in there. That is, I'm trying to know what period you're talking about.
- A. Well, up the other side of the B & O Bridge where the disintegrater is now.
43. I haven't made myself very clear, Mr. Woodward, I'M talking about the area that is known as Reed Bird Island, it's the area where the Hanover Street Bridge goes across now, do you know where I mean, and the incinerator is not there, isn't that right? The incinerator is not on the area right on the land on the Brooklyn side of the center of the channel, isn't that right?
- A. No, it's over on the Baltimore County side.
44. No, I'm not talking about that side, I'm talking about the Anne Arundel County side of the center of the Patapsco River.
- A. Oh, you mean above the Hanover Street Bridge?
45. Right at the Hanover Street Bridge.
- A. Oh, well, that's been cattails out there for many years, and marsh.
46. It's been marsh out there?
- A. Yes.
47. By "many years" how long do you mean?
- A. Well, ever since the bridge was build.
48. Now, before the bridge was built, do you remember whether there was any cattails there?
- A. I couldn't say.
49. You don't remember before the bridge was built?
- A. No.

Court: I'm still a little curious, he hasn't pinned down these cattails very closely yet.

Mr. Gray: No, Your Honor, I decided Mr. Woodward can't recall specifically what the situation was before the bridge was built, so if he can't remember any more why I can't see any reason to try to pursue it any further.

John P. Helmer, a witness of lawful age, being first duly sworn, deposes and says:

(Mr. Gray)

1. Would you state your full name, please?
- A. John P. Helmer, 306 Jeffrey Street, at present.
2. Where is Jeffrey Street?
- A. It runs east and west, from Hanover it runs east.
3. That's in Brooklyn?
- A. Brooklyn.
4. What is your present position?
- A. I'm retired from the police department, and I'm associated with Arundel Federal Savings and Loan Association.
5. What is your position?
- A. President.
6. How long have you lived in Brooklyn?
- A. Since 1908.
7. Where did you live when you first came to Brooklyn?
- A. I lived at Glen Burnie.
8. And what was your business at that time?
- A. Well, while living at Glen Burnie I farmed with my daddy, and I moved to Brooklyn in 1908 and started a little grocery store and then from there I was appointed in the police department in and around the County.

9. What store were you with?
- A. A small grocery store in the 3500 block.
10. When were you appointed in the police department?
- A. In 1909.
11. And what was your duty with the police department?
- A. Well, I was, first I was to patrol the road from Brooklyn to Glen Burnie, kept the drivers awake, that was mainly the object, kept the drivers awake when the automobiles became popular on the road, and then I was transferred to the Curtis Bay Brooklyn area, and of course, after annexation I was annexed into Baltimore City.
12. You were annexed along with Brooklyn, is that it?
- A. That's right.
13. Now, do you remember when annexation occurred?
- A. 1919, January 1st it took effect, it was passed in Legislature in 1918.
14. Now, prior to that time, however, you had been, you say a policeman in Anne Arundel County?
- A. Yes.
15. In the course of the time you were in and around Brooklyn, did you have any familiarity with Patapsco River in the area of Brooklyn?
- A. I crossed the old wooden bridge, I lived in Baltimore up until I was 8 years old, my dad bought the farm at Glen Burnie, and I crossed the bridge as a boy probably seven or eight years old, that was far back as 1890.
16. How old are you now?
- A. 69, going on 70.
17. Now, about the time that you started to work in Brooklyn, that would have been 1908 you said, did you have occasion to observe what the river was like at that time?
- A. Yes.
18. Do you know the area that we've referred to today, testimony as Reed Bird Island?

A. I presume you mean the stretch between the old wooden bridge, which was then called Light Street Bridge, and the present Hanover Street Bridge, between the two streams?

19. That's part of it, Mr. Helmer, it extends a good deal to the west of the present Hanover Street Bridge. I can show it to you on this map.

A. Well, that would be west of the Hanover Street Bridge, I mean east of ~~the~~ Hanover Street and west of the wooden bridge.

20. It also extends west of Hanover Street. This is the old Long Bridge here, here is the Hanover Street Bridge here, they come together and form a V. Now, Reed Bird Island is the area which is between the stream, also it includes its ~~estuary~~ ^{estuary} over here to the west of the Hanover Street Bridge.

A. I know the west side of the Hanover Street Bridge is known as Reed Bird, between that and the railroad bridge which is further south and also runs west.

21. Now, that's correct. Now, this chart also shows another island between Reed Bird Island and the railroad bridge, the railroad bridge is here across the bottom of this chart, here is Reed Bird Island comes down to here, then there is another island which you can see in here ^{where} the point of my pencil now is, that is between Reed Bird Island and the Railroad Bridge.

A. Now, are you speaking of the east side of the stream or the west side of the stream?

22. I'm speaking of the--

A. First stream, the hundred foot span?

23. Now, could you point to me what you mean by the hundred foot span? ...

A. The nearest to Brooklyn shore there was a stream, approximately, we called a hundred foot stream because it left a 100' opening in the bridge, and the other opening that

that made Patapsco River with the channel that was the 500 foot span.

24. Well, I'll refer to them then as the 100' stream and the 500' stream hereafter in speaking to you. Now, then the islands I'm talking about are Reed Bird Island that lies between the 100' stream and the 500' stream, and this chart shows a second island between the 100' stream and the 500' stream at the railroad bridge.

A. Well, I wouldn't be able to separate that tract in there, I know it all as Reed Bird Island.

25. All right, well, can you tell us this, Mr. Helmer, can you remember when you were first working in Brooklyn, can you tell us your recollection as to the extent to which that area/^{you} called Reed Bird Island would be covered by water at a normal high tide?

A. Yes, at first that was covered by water, and the erosion, or let's call it the surf and wash coming down the Patapsco River during storms and what not washed through and around the span and began to create mud flats east of the railroad bridge, it started at the fill after the railroad filled that in, if I recall correctly because that was suppose to have been done, according to some testimony here this morning, in 1900.

Mr. Gray: That is a fact in the case, Mr. Helmer. Now, before that the railroad was also built on trestles and the water flowed it beneath those trestles as well as it did beneath the bridge, but after the fill by the railroad between the two streams land began to make on both sides of the railroad.

26. Well, now, the time that we're concerned about is 1909, you say the land began to make. By 1909 would you say any land had made up in there?

A. I would say a small portion of land had been created by 1909,

27. Which would be nine years following the fill?

A. That's correct, nine years following the fill; I would say there was a small portion beginning to make.

28. Now, would you say that small portion, I'm not asking you to say how big it was, but would you say that small portion that any of it would have been exposed at a normal high tide by 1909?

A. I would think so, it would protrude above the water close to the fill at first, it grew up further year by year.

29. My question is, whether any portion of this section was above water at a normal high tide, not counting an extra high tide?

A. Well, if I would be permitted to say, starting from the fill that was made by the railroad bridge when it first started, I would say, yes, that it protruded above the water in 1909.

30. Was any of it exposed at low tide?

A. In 1909?

31. Yes.

A. Well, naturally, I think it was beyond the water in nine years time through most all tides.

Court: Was it beyond the water?

Witness: Above the water, yes sir. This fill I presume between the two streams that the railroad made, Judge, would approximately be four or five thousand feet in length, and as the storm waters would wash down through these openings it would deposit the debris and whatnot around behind it. And that's how it started to make.

32. Did this area build up, did the build up extend as far as out as where Hanover Street Bridge now is?

A. Eventually, it's solid now, but it eventually grew until it reached that point, yes.

Mr. Gray: Your Honor, I would like to introduce another

52
1/1

one of these Coast and Geodetic Survey, this one is dated 1926.

Mr. Cicero: We have no objections to this even though it's not a certified chart of the Department of Commerce.

33. Now, Mr. Helmer, I show this Geodetic Survey map of this area, the part that I'm interested in observing is the area off ~~at~~ the Brooklyn shore in the vicinity of the railroad bridge and the Hanover Street Bridge. Now, do you see the area I have in mind?

A. Is this the stream near the shore?

34. You see Brooklyn right here?

A. Yes.

35. And you see the Hanover Street Bridge going across there?

Mr. Cicero: Don't you want to mark this as an exhibit first?

(CHART MARKED DEFENDANT'S EXHIBIT NO.1)

Mr. Cicero: Now, we're talking about a map 1926, April, 1926.

36. Now, I call your attention to the area, an area shown on this map as the shaded area running between the Brooklyn shore and the point, the first point north of the Patapsco River that the bridge comes to, do you see the shaded area I have in mind?

A. Yes, I see, this particular one here?

37. Now, I presume that this is the stream --

Mr. Cicero: Phrase it a question.

38. Do you see a stream between that point and the Brooklyn shore?

Mr. Cicero: Objection.

Mr. Gray: Withdraw the question.

39. Is there any water between that section and the Brooklyn shore?

Mr. Cicero:

Mr. Gray: Withdraw the question.

53
110

Mr. Cicero: I have about four reasons for objecting.

Mr. Gray: I have photographs but I'm not sure that Mr. Cicero will agree to let me show you the photographs.

Mr. Cicero: I have no objections.

Mr. Gray: It's a photograph of Defendant's Exhibit No.1.

Mr. Cicero: It's a smaller photograph ~~of~~ ^{than} the one we have of ours? We have no objection to that.

Mr. Gray: Your Honor, that's a photograph of a portion of Defendant's Exhibit No.1.

(PHOTOGRAPH OF DEFENDANT'S EXHIBIT NO.1 FILED AND MARKED DEFENDANT'S EXHIBIT 2)

Mr. Gray: Let the record show that Defendant's Exhibit No. 2 is a photographic copy of a portion of Defendant's Exhibit No.1, dated 1926.

40. Now, Mr. Helmer, you have referred previously to a ⁵⁰⁰ foot channel and a 100 foot channel, now as you call them.

A. Right.

41. Do you or do you not see those channels on this chart?

A. Yes, I do.

42. What do you see between those two channels?

Mr. Cicero: Objection.

Mr. Gray: I ask his grounds for objection.

Mr. Cicero: May it please the Court, Mr. Helmer was a policeman and he worked for the City, and he was a fine policeman, but he has not been qualified as an expert on topography or of anything like this, and I'm sure that the Court can get just as much out of looking

54
7/10

at these pictures or these maps as Mr. Helmer can give it. I don't want to labor the Court's time, let's ask him what he knows about the thing without showing him maps taken in 1926 which are irrelevant.

Mr. Gray: The purpose of my question is to eventually have Mr. Helmer specify the areas he's talking about, and has been talking about previously.

Court: I think I would like to find^{that} out, Mr. Cicero. In other words I can look at this map but I would like to have somebody pinpoint the area you're discussing.

Mr. Cicero: But the point is, Your Honor, this gentleman is not qualified to talk about this map, he can tell us about the area but he can't tell us about this map.

Court: Can he locate this area with reference to this map?

Mr. Cicero: I would assume he can locate an area that would exist on this map in 1926, by the same token he has these other maps by the same authority that are in here for a closer period of time to the date in question, why not look at those.

Court: Well, he can look at those too. We know it's in 1926, it's in the record, but to me it means nothing.

Mr. Cicero: Well, of course, we have an exception to the fact.

Court: Yes, you may have an exception.

Witness: Well, as shown on the map it shows a darker shade from the lighter shade which if I may illustrate the lighter shade is presumed to be

43
1/2

the water and the darker shade to be the grass part.

43. Now, Mr. Helmer, what was the area, could you point to the section that is shown on this chart? Now, recognizing that this chart did not attempt to show what it was like in 1909, but the same geographic area existed in 1909, what was the area that you referred to as having built up from the railroad fill?

Mr. Cicero: Objection.

Court: Let him answer it.

A. I would say that there was a horseshoe shape form between the two streams at the east side of the railroad bridge first, which eventually grew, grew over and when the Hanover Street Bridge was filled in it was all clear water and the dirt was dumped right in the clear water, but by reason of that fill also being made this land began to rise above the water more and more, year by year.

44. Now, Mr. Helmer, you say this began to build up from the railroad fill, was there any area exposed between where the Hanover Street Bridge went across and the railroad bridge?

A. You mean clear water?

45. Was there or was there not any area of land exposed at a normal high tide?

A. I would say nearest to the railroad bridge.

46. I understand that, and the land you call exposing above the water line?

A. Well, yes, there was a small portion I'd say in nine years time that had formed at the railroad bridge, and as this shows all the way over to the Hanover Street Bridge, but that has taken place in twenty six years, that this survey shows.

47. Well, I understand that this doesn't purport to show what it was like in 1909, and my only question is whether any

portion of this area was above water in 1909?

A. I would say a small portion on the east side of the railroad was above water.

48. Now, Mr. Helmer, did you ever have occasion to observe any use at all being made of this channel or did you not? The 100 foot channel that you referred to.

A. Well, I ~~had~~^{have} seen residents that lived on the west side of Hanover Street row back and forth up this 100 foot stream. And there were several fishermen that sold shrimp to other fishermen that came through the town, and they would sell their shrimp to these people, I think Mr. Barrett was one of the men, I rather believe Mr. Woodward was, but I'm not too positive but I think Mr. Woodward sold shrimp.

49. How late would you say that use was made as you described of this channel?

A. Oh, my, that hasn't been too long back. The railroad afterwards filled in the 100 foot channel, and then of course that began to make land, closed in more and more.

50. Well, now, was use made of this channel up until the time the 100 foot span at the railroad bridge was filled in?

A. Yes, and later. It became shorter all the time, at one time it went up to the Canoe Club then it was stopped by the railroad, and ~~xxx~~^{then} the fill, kept ~~drawing~~^{throwing} it in and it became a shallow stream all the time.

51. Do you remember when the railroad, approximately the date, that the railroad filled in, closed off the 100 foot span?

A. No, I do not know the exact date, but it was a number of years, I'd say at least five or ten years after the fill was made between the streams.

52. Well, now, I show you Exhibit No. 9-H, and ask you if you can see on there, this view was taken in 1916, which is sixteen years after the center span was filled in, and ask you if that shows an opening for the 100 foot channel that

you referred to, can you see that?

A. Yes, I would presume this is the 100 foot span under the fill?

53. No, this span in the immediate foreground is the fill for the Hanover Street Bridge.

A. I can see that, yes.

54. And the railroad is in the background, going along, this is looking toward Brooklyn, that is looking south.

A. Well, how close/are we in Brooklyn?
to the shore line

55. This is out on the north end of the embankment that went across Reed Bird Island, that is the north end of the embankment that ran across Reed Bird Island, in other words, about at the south end of the 500 foot span.

A. This is the south side of the fill?

56. Well, yes, southwest side.

A. I'm looking south here?

57. That's correct, toward Brooklyn from the Baltimore County area.

A. Now, you see, I can't tell from this picture where this picture was started from, how far? Was it near the 500 foot span?

58. This picture was taken from the west side, what you call the south side of the north end of the embankment looking southwest.

A. That 500 foot stream I suppose should be here?

59. That's correct, the north end of the embankment would be the south end of the bridge.

A. Well, now, this other stream that you just asked me a question about is right up here and you can't see it, hardly see it.

60. I understand, my question is now, about whether or not the B & O Railroad had filled in it's railroad track cross that 100 foot span or whether it was still open on piles at that time, can you see that, when the picture was taken in 1916? Perhaps my questions haven't been very clear and I apologize

88
116

There was a fill and it's stipulated that a fill was made, part of the fill was made in 1900, that is, a fill leaving open the 500 foot span was made in 1900 and that was completed at that time. Now, if this photograph shows, I submit an opening across the 100 foot span indicating that a complete fill was not made in 1900.

Mr. Cicero: I move that everything Mr. Gray says about what the photograph is purported to show is stricken from the record because the photograph speaks for itself, Mr. Gray wasn't there when it was taken, it's his idea what it shows, we all have our ideas what it shows, it's purely argument and purely opinion, and I move that it be stricken.

Court: All right, strike it out.

61. I'll ask you this, Mr. Helmer, at the time of the original fill was made at the railroad was the 100 foot span closed off or was it left open?

A. Left open.

62. Now, at the time that this picture was taken, can you tell me from looking at the picture or do you remember whether or not at that time the 100 foot span had been closed or was still open?

A. Left open.

Court: When was that it was left open?

Mr. Gray: The picture was suppose to have been taken in 1916.

Witness: At that time the 100 foot span was still open.

Cross Examination by Mr. Cicero:

1. When you talk about this 100 foot span, do you mean when the bridge was put in there by the State Roads Commission?

A. That's right.

89
114

2. Mr. Helmer, how high would you say the bottom of that bridge was above the water?
- A. Well, I wouldn't like to say. I didn't go under it but I know that they had to stoop in their boats going through.
3. Would you say then that that was more in the nature of a natural drain rather than a channel, or, you characterized it as a stream?
- A. I remember, well, there was a great controversy about the volume of water coming down that Patapsco River, and J. Charles Linthicum was Congressman at that time made a strenuous fight to keep that original span 500 foot the width, he did want a draw bridge in it but he insisted on it being at least 500 foot wide because of the volume of water coming down there at times.
4. You're talking about 100 foot wide?
- A. No, 500 foot as well as the 100 foot. They both were left open to take care, because that inner land line in Brooklyn is a crescent shape, and the Patapsco River more or less ran straight out to the upper point, and they almost met at one point, therefore, if there was a volume of water that couldn't be carried off by the 500 foot span it would naturally overflow these cattails and marsh land and some of it would go out through the 100 foot span.
5. And that was the reason for leaving the 100 foot span?
- A. That's it, both of them.
6. And it wasn't for the channel at that point, the other point was for the channel?
- A. I don't know the reason for it.
7. There's only one other question; as I understood you to say, when the Light Street Bridge was built across the area, the fill was put in there, it was all up in water, is that correct, at that point?
- A. That is correct, they dumped it right in the water.
8. And you're sure about that, that's the Hanover Street Bridge?

- A. That's right, that was in 1916 or '17.
9. And up until that time it was all open water right there?
- A. To the best of my knowledge, it was.
10. And the land that you were talking about, that was above water to the east of the railroad bridge, was a considerable distance away?
- A. West of that bridge, yes.
11. West of that bridge?
- A. A considerable distance southwest of that bridge.
12. How far would you say that was?
- A. Well, I just don't know the distance between those two bridges but I presume it to be a couple thousand feet.

Court: Mr. Helmer, let me get it clear in my mind. You say it was open water east of the Hanover Street Bridge in 1916, is that right?

Witness: Yes sir, before the fill. Now, the fill created the mud to come up, Judge, and I recall that even on the north side of the 500 foot span on the Baltimore County side, the fill created an island by reason of the mud, dirt being dumped pushing the mud up. And a man named, Conn, on that side claimed that by settler's rights, he put a man on it and he won his claim as a result of it.

Court: Was this bridge you referred to built when, 1916?

Witness: In about 1916 or 1917, I'm not too sure.

Court: And then east of where that bridge was located began to build up after that date, is that correct?

Witness: I would say, yes.

Court: You said a small portion of land on the east side of the railroad bridge was above water in 1909, is that right?

41
1/28/17

Witness: I'd say a small portion was created as a result of that first fill by the railroad.

Court: The first fill, of course, was around 1900. Was that small portion on the east side of the railroad bridge above high water as well as low water?

Witness: Yes, a short distance of it I would say was pushed up by the fill and I don't know how big it was, but it was small at first.

Court: And that was even visible above high tide, is that right?

Witness: Yes.

Mr. Cicero: If Your Honor please, I'd like to clarify that one point. Was that portion known as "mud island", do you remember?

Witness: It was known by various names I would say, some called it the "flats", some called it "Reed Bird Island", it was at one time a bird sanctuary.

Mr. Cicero: No, I'm talking about, Mr. Helmer, the portion that you said was out of the water just east of the B & O Bridge, remember that, in 1909? I would like to have you identify that.

Witness: Well, you know there are a lot of islands in there as compared to the Reed Bird, one named Mud Island, one named Gilliken Island, and one called ~~Bridgeview~~ ~~Bridgeview~~ Island.

Mr. Cicero: Now, you know that ~~Bridgeview~~ ~~Bridgeview~~ Bridgeview

92
179

Island is between the railroad bridge and Reed Bird Island, don't you?

Witness: Well, now, which one are you designating as Reed Bird?

Mr. Cicero: Well, you see this is Reed Bird according to this case.

Witness: How far do you go out, far as the 500 foot span?

Mr. Cicero: Yes sir. Now, in here, this is the railroad bridge, as I understood your testimony, you said there was a build up in this area here.

Witness: That's right.

Mr. Cicero: And this area here, sir, is another island called Birdsvew Island, is that the island that you said was out of water in 1909?

Witness: If it was close to the railroad fill --

Mr. Cicero: It was adjacent to the railroad fill.

Witness: Yes, and it was contrast and there was water between that fill and what was right.

Mr. Gray: Your Honor, I would like to offer in evidence these twenty five pictures which I think they may already be in evidence by virtue of the stipulation, if they haven't I'd like to offer them as an exhibit. They can be a single exhibit.

(25 PICTURES FILED AS DEFENDANT'S EXHIBIT 3)

Mr. Cicero: If Your Honor pleases, we want to raise the same point as we did at the outset on these photographs. No proof has been brought in as ^{to} the tides, what the ^{tides} were when they were taken. And we submit even though they're irrelevant from the point of time, that they are not proper before this Court as showing anything unless those tides can be established and the depth of those tides can be established at that point.

Court: Let me ask you something about these photographs, we don't know who took them, do you know who took them and when?

Mr. Gray: Yes, they were taken by The Hughes Company on the dates specified on the back, and it's agreed that they are true representations as of the time and date specified on the back of them.

Mr. Cicero: As to what the picture shows, yes, but as we say it's a very important thing because the key of those pictures on the back are identified as an "L" and "H", they're suppose to show high tide and low tide, this, that and the other, we can't concede that because we don't know.

Mr. Gray: In connection with the tides, Your Honor, I can present additional data on that, as I say, a tide is^a determined thing published in public tide tables which are not subject to dispute in any way, cannot be, and I will ask Your Honor to take judicial notice of the tides on those particular days, which are a matter beyond dispute. And I would also like to offer in evidence the plaintiff's exhibits A, B, and C, which are already in the record being filed with the Bill of Complaint, I assume there's no objection to those.

Mr. Cicero: Oh, no, I join in with my brother on that, I think that all the papers that have been filed in this case with the original pleadings and with the answer should be properly made a part of the case.

Court: Well, you do offer them as an exhibit?

Mr. Cicero: And we do offer them as an exhibit

94
87

Mr. Gray: They are Complainant's Exhibits A, B, and C, attached to the original Bill of Complaint, and subsequently referred to in the amended Bill of Complaint.

Now, I would also like to offer, Your Honor, certain portions of a file from a United States Corps of Engineers this data as in connection with the closing of a portion of the 100 foot span between Reed Bird Island and the Brooklyn shore, and then subsequently the closing of the last remaining span between Reed Bird Island and the shore. I think it might be shorter for the record if I just read pertinent parts of these with Mr. Cicero so that we wouldn't have to put the whole thing into evidence and clutter up the record with a lot of useless papers.

Court: Now, is your stipulation with all the exhibits in evidence too?

Mr. Gray: The Stipulation and all exhibits are in evidence.

Your Honor, I will read excerpts from a file of the United States Corps of Engineers which I will offer in evidence, an application for approval of plans of a bridge to cross navigable waters of the United States, is the heading, Baltimore, Maryland, February 19th, 1935, Secretary of War, Sir: Application is hereby made by Mayor and City Council of Baltimore of City Hall, Baltimore, Maryland, for approval of plans to modify a bridge "across a small opening in a swamp adjacent to the south branch of

95
1/17

Patapsco River." The application was forwarded by the U. S. Corps of Engineers for the Baltimore district through military channels to the Secretary of War with the notation as follows: March 4th, 1935, No objection received at the public hearing or otherwise. Under the item, Proposed Bridge, it says, distance from mouth of waterway 0 miles least horizontal at right angles to access of channel 13 feet under "Clearance and Navigation Opening" Also under "Clearance and Navigation Opening" it says, least vertical clearance at low water, least vertical at ^{low} ~~xxx~~ water 3.5 feet, and at high water 2.3 feet. Another item, "Nature and Extent of Present Navigation," and that is noted as row boats. Then the next item, "Views of District Engineers concerning probable effects on navigation present and prospective" and the answer is "none." And it can be noted that approval for the modification was granted by the Secretary of War March 25th, 1935. And I will offer in evidence the plat which was attached to the application.

On March 20th, 1942 and application was made to the United States Corps of Engineers for the District of Maryland by the Department of Public Works in the City of Baltimore for a closure of the last remaining span of the 100 foot bridge between Reed Bird Island and the Brooklyn shore. Strike that out. Department of Public Works, Chief Engineer Office, City of Baltimore, March 20th, 1942.

Court: How much of that is in the Stipulation, any of it?

Mr. Gray: No sir, Mr. Cicero wouldn't agree to it so we have to put it in this way.

Court: Is there any objection to stipulating that?

Mr. Cicero: No, as long as he reads what's here instead of getting an inference of what's there.

Mr. Gray: United States District Engineers

Post Office Building

96
100

Baltimore, Maryland

Dear Sir:

Enclosed herewith is an application in quadruple for approval by the Chief of Engineers and the Secretary of War for modifying the Hanover Street Bridge across a small opening in a swamp adjacent to the south branch of the Patapsco River, Baltimore, Maryland. Also ~~is~~ enclosed is a tracing and five white prints showing the expense of the proposed modification.

The notation from the U. S. District Engineers office in reporting to the Secretary of War includes the following notation:

Location of Bridge- small swamp adjacent to south branch of Patapsco River.

Date of sending notice to other interested parties in summary of rejections offered at public hearing or otherwise with comments of District Engineer thereon. A public hearing was not deemed necessary due to the location of the existing bridge. No interest was evidenced at a hearing held on March 11th, 1935 for the closure of six other openings of this bridge. The public notice was issued March 26th, 1942, no objections were received in response to the notice or otherwise.

The next item: Nature and Extent of Present Navigation -- a few row boats.

View of District Engineers concerning probable effects on navigation present and prospective with reasons --none.

Then there's another item, Flood Heights and Drift Tidal Water.

That application was granted by the Secretary of War. Another notation in the letter to the United States Secretary of War: The closure is urgently requested by the U. S. Maritime Commission in order that plans might be prepared to relieve transportation problems in a highly congested transportation area. Signed by Conrad P. Hardy, Lt. Col. Corps of Engineers.

The closure requesting this application was approved by the Secretary of War on April 22nd, 1942.

That's all we have, Your Honor.

97
844

Henry C. Bourke, a witness of lawful age, being first duly sworn, deposes and says:

Court: Mr. Bourke, one thing that's been puzzling me. You say that this Reed Bird Island was above the water, could you tell me how you knew that?

Witness: In the canoe approaching the land we could see ground instead of water.

Court: In the daytime?

Witness: Yes.

Court: You could see ground?

Witness: Yes sir.

Court: When you went down that channel or got in a canoe you could see earth above water or what is known as Reed Bird Island?

Witness: That's right, I even remember large muskrat places that have been built up by muskrats there too.

Court: All right, sir

STATE OF MARYLAND, Anne Arundel County, Sct:

I HEREBY CERTIFY, That the foregoing papers are the original papers filed in Case No. 4071 Equity, in the Circuit Court for Anne Arundel County.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Seal of the Circuit Court for Anne Arundel County, this 20th day of February, 1956.

George T. Cromwell
George T. Cromwell, Clerk