

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 **DUCES TECUM** (See attached copy of Order)

W CUSTODIAN OF RECORDS, U. S. Corps of Engineers, 24th Street and Maryland Avenue, Baltimore City, Maryland. *W*

and him 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

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

Summed
Jed C. Meyer
Jes 8/27

Received: 36 May of 1955
and forthwith delivered to the
Sheriff of Baltimore City.

Test:
M. L. ...

B

THIS INDENTURE made this twenty-fifth day of May in the year eighteen hundred and fifty-eight between the Patapasco Company, a corporation, duly incorporated under an act of the General Assembly of Maryland, passed at January session, eighteen hundred and fifty-three, Chapter 137, of the first part, William McKim, of the City of Baltimore, in the State of Maryland, of the second part, James Mason Campbell, of the said City of the third part, Josias Pennington and William Fisher, of the same place of the fourth part, and Richard O. Crisp and Richard Cromwell, Jr., of Anne Arundel County, in the State of Maryland, of the fifth or other part.

WHEREAS the said William McKim and others by their deed, dated on or about the twenty-fifth day of May, eighteen hundred and fifty-three, conveyed to George R. Cinnamond a certain tract of land called Duck Cove or by whatsoever name it may be known or called, situate, lying and being in Anne Arundel County and for a part of the purchase money a mortgage was given to the said James Mason Campbell on or about the first of July of the same year, which mortgage debt has since been transferred to the said McKim for the purposes of the trust under which the title was vested in him before the said sale by him to Cinnamond, and as no assignment of the said Mortgage has even been executed otherwise than by the assignment of the said debt, the said McKim has requested the said Campbell to unite in these presents which the said Campbell has consented to do, as is witnessed by his executing the same.

AND WHEREAS the said George R. Cinnamond and wife afterward conveyed the said Land to the Patapasco Company aforesaid, subject to the said Mortgage, and the said Company afterwards, to wit; on the sixteenth day of April, eighteen hundred and fifty-six, agreed with the said Crisp to convey to him to the landing of a bridge which he was then about to construct; one-half an acre of the said land to be located within ninety days from the said date the said land to be along the water front at low watermark, and to be of the depth of the side of the square acre, and in length along the water of one-half the side of one

AGREED EXHIBIT

(1)

square acre on the express condition that the said land should be only used for the legitimate purposes appertaining to the erection, construction and easement of the said bridge, and the erection of the necessary toll house and outbuildings, sheds, store house for lumber or materials, but never for the purpose of any house of entertainment, tavern, summer parlor, pleasure ground, store for the sale of any articles or any other purpose than those above mentioned and by the same agreement, the said Crisp was to have the use of a small road running from the said Company's wharf to the Annapolis Road for the use of such passengers as should cross the bridge in the same manner in which the said Company had theretofore used it for passengers by the Ferry Boat.

AND WHEREAS the said Crisp has assigned one half his interest with the said Bridge and lot to the said Richard Cromwell, Jr., and has requested these presents to be executed to himself and the said Cromwell as is witnessed by his signing these presents,

AND WHEREAS after the execution of the said agreement the said lot was located to the mutual satisfaction of the said Company and the said Cromwell and Crisp, so as to suit the convenience of all parties in the manner hereinafter described.

AND WHEREAS the said Potapoco Company after laying out the said land as the City of Brooklyn with streets and alleys conveyed the same with sundry other tracts and parts of tracts of land to the said Josias Penninton and William Fisher by deed dated on the twentieth day of December, eighteen hundred and fifty-six in trust to secure the payment and redemption of certain bonds with said deed designated.

AND WHEREAS the said bridge has been built and the purchase money for the said lot has been paid to the Potapoco Company with the consent of the said parties and they are accordingly willing to carry out and complete the said agreement of the said Company.

NOW, THEREFORE, THIS INDENTURE WITNESSETH; that in consideration of the above recited premises and of Five Dollars to each of the said parties hereto of the first, second, third and fourth parts paid by the said parties of the fifth part hereto.

The Patapsco Company aforesaid doth grant and the said William McKim, James Mason Campbell, Josias Pennington and William Fisher who unite in the execution of these presents for the purpose of conveying their interest in the hereinafter described land whatever it may be and for no other purpose whatever do and each of them doth grant, release and confirm unto the said Richard Crisp and Richard Cromwell, Junior, their heirs and assigns, all that piece or parcel of land lying in Anne Arundel County, Maryland, thus described, to wit:

BEGINNING AT A stone planted on the south shore of the Patapsco River at the waters edge northeasterly from the Junction of the said Bridge now called Light Street Bridge with the said south shore, thence along said shore south fifty-two degrees west one hundred and fourteen feet thence crossing First Street on the Plat of the said City of Brooklyn, south sixty-two and a quarter degrees east eighty-five feet to the east side of said street thence running along the east side of said street, southerly forty-three feet to the north side of Chesapeake Street, thence easterly with the north side of said street one hundred and six feet, thence northerly at right angles with said Chesapeake Street one hundred and fifty feet to the south side of a thirty-foot alley, thence with the south side of said alley westerly one hundred and thirty-three feet to the beginning. Containing and now laid out for one half acre of land, more or less. Subject to the opening of a thirty-foot alley as laid out on the plat of said City along the eastern side of said lot or reservation of the gate and fences thereon.

TOGETHER WITH the use of the said Roads as heretofore described to be held by the said Richard C. Crisp and Richard Cromwell, Junior, and their heirs, subject, however, to the express condition and these presents are executed subject thereto that the said premises shall be used in the manner designated by the said agreement described in these presents and not in any of the ways prohibited by the same.

AND THIS INDENTURE FURTHER WITNESSETH that the Patapsco Company aforesaid doth constitute and appoint Richard W. Templeman of the said City of Baltimore to be the true and lawful attorney of the said company

and for it and in its name and as its act to acknowledge these presents before any person having authority by law to take the said acknowledgment in order that this Indenture may be duly recorded.

IN WITNESS WHEREOF the Patapsco Company hath caused these presents to be sealed with its corporate seal and William C. Pennington, president of said Company hath hereunto subscribed his name and the said William McKim, James Mason Campbell, Josias Pennington, William Fischer and Richard O. Crisp, have hereunto set their hands and affixed their seals on the day and year first herein written.

Signed, sealed and delivered in the presence of

Wm. C. Pennington,
President.

Seal of #
Patapsco #
Company. #
#####

Daniel E. Myers.

William McKim (seal)
James Mason Campbell (Seal)
J. Pennington (seal)
Wm. Fisher (Seal)
Richard O. Crisp (Seal)

On the back of the foregoing was thus written, to wit:

State of Maryland, City of Baltimore, to wit:

Be it remembered and it is hereby certified that on this thirty-first day of May in the year eighteen hundred and fifty-eight, before the subscriber, a Justice of the Peace of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared Rich. W. Templeman the person who is named and described as and professing to be the attorney appointed in and by the letter or power of attorney contained in the foregoing deed or Indenture and by virtue of the power and authority thereby granted doth acknowledge the said Indenture or Instrument of writing to be the act and deed of the Patapsco Company, the party of the first part thereto. And now at the same time also before me personally appeared William McKim, Junior, James Campbell, Josias Pennington, William Fisher and Richard O. Crisp and each

acknowledged the foregoing deed to be their respective act.

Daniel E. Myers.

State of Maryland, Baltimore City, Sct.

I hereby certify that Daniel E. Myers, Esquire, before whom the annexed acknowledgement was made and who has thereto subscribed his name was at the time of so doing a Justice of the Peace of the State of Maryland in and for the City of Baltimore duly commissioned and sworn.

In testimony whereof I hereto set my hand and affix the seal (Seal) of the Superior Court of Baltimore City the 31st day of May A. D. 1858.

George W. Sangston, Clerk
of the Superior Court of Baltimore City.
Recorded the 3rd day of June 1858.

State of Maryland, Anne Arundel County, Sct.

I hereby certify that the foregoing indenture is truly taken and copied from Liber H. H. G. No. 7, folio 207, one of the Land Record Books for Anne Arundel County.

In testimony whereof I hereto set my hand and affix the seal of the Circuit Court for Anne Arundel County, this 17th day of May, A. D. 1916.

Circuit Court #
for Anne Arundel #
County, Md. #
#####

George Wells, Clerk.

THIS INDENTURE made this Third day of May in the year Eighteen hundred and Eighty, between Richard O. Crisp and Anne E. Crisp, his wife and Richard Cromwell, jr., and Elizabeth Ann Cromwell, his wife of Anne Arundel County in the State of Maryland, of the first part, and the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County of the second part.

WHEREAS under and in pursuance of an act of the General Assembly of Maryland passed at the January Session in the year Eighteen hundred and fifty-six, Chapter 215, Entitled An Act to authorize the building of a Bridge over the river Patapsco at Ferry Bar. Richard O. Crisp and Richard Cromwell, Jr. purchased certain Land in Anne Arundel County and condemned certain Lands in Baltimore City for the purposes of abutments and approaches and also built and constructed a Bridge from Ferry Bar to the City of Baltimore over the Patapsco River to the foot of First Street in the City of Brooklyn Anne Arundel County.

AND WHEREAS under and by virtue of an act of the General Assembly of Maryland passed at the January Session, Eighteen hundred and seventy-eight Chapter 159, entitled an Act to repeal Chapter two hundred and twenty, of the acts of Eighteen hundred and seventy-six, entitled an Act to establish a free bridge over the Patapsco river, at or near the present site of Light Street bridge and to provide for free travel from Anne Arundel County to Baltimore City. The said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County were authorized, empowered and directed to purchase the said Bridge built and constructed as aforesaid by the said Richard O. Crisp and Richard Cromwell, Jr. or the owners thereof would agree to sell the same upon such terms as would be acceptable to the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County.

AND WHEREAS the said Richard O. Crisp and Richard Cromwell, Jr. the owners thereof have agreed to sell the said Bridge and necessary Land connection therewith to the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County for the sum of Thirty-five thousand dollars.

AGREED EXHIBIT

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NOW THIS INDENTURE WITNESSETH that for and in consideration of the premises and of the sum of Thirty-five thousand dollars, the receipt of which is hereby acknowledged, the said Richard O. Crisp, Anne E. Crisp, Richard Cromwell, Jr. and Elizabeth Ann Cromwell do grant, convey and assign unto the said Mayor and City of Council of Baltimore and the County Commissioners of Anne Arundel County, their successors, successor or assigns, "The Bridge" built and constructed by them as aforesaid over the Patapsco River from Ferry Bar in the City of Baltimore to the foot of First Street in the City of Brooklyn, Anne Arundel County known as "Light Street Bridge".

TOGETHER with the buildings, abutments and all other appurtenances thereto belonging or appertaining and also the following Tracts of Land. First, being all that tract of Land situate in the City of Baltimore and described as follows:

BEGINNING for the same at a point on the line of the City of Baltimore where the last line of the Ferry Point Road as condemned, fifty feet wide, strikes the said City line which point is supposed to be south seventeen and three quarter degrees West, distant forty-three feet from the southwest corner of the Bush Tavern occupied by A. Bush and owned by John S. Ciddings and Frederick I. Deegan, thence North seventeen and three quarter degrees East with the East line of the Ferry Point Road as condemned sixty feet, thence at right angles to said East Line westwardly sixty feet, thence southerly parallel to said East line sixty feet, thence Easterly by a straight line to the place of beginning, containing three thousand square feet.

BEING the same piece or parcel of Land which under a proceeding of condemnation recorded among the proceedings of the Superior Court of Baltimore City in the year Eighteen hundred and fifty-six was awarded to the said Richard O. Crisp and Richard Cromwell, Jr. for the purposes therein set forth.

SECONDLY Being All that tract of Land situate in Anne Arundel County and described as follows:

BEGINNING at a stone planted on the south shore of the Patapsco River at the Water's Edge Northeastly from the Junction of the said

Bridge now called Light Street Bridge with the said South shore, thence along said south shore fifty-two degrees West one hundred and fourteen feet then crossing First Street on the Plat of the said City of Brooklyn south sixty-two and a quarter degrees East eighty-five feet to the east side of said Street, thence running along the East side of said Street southerly forty-three feet to the north side of Chesapeake Street, thence Easterly with the north side of said street one hundred and six feet, thence Northerly at right angles with said Chesapeake Street one hundred and fifty feet to the south side of a thirty foot alley, thence with the south side of said alley Westerly one hundred and thirty-three feet to the beginning, containing about one half acres of Land more or less. Subject to the opening of a thirty foot alley as laid out on the plat of said City along the Eastern side of said lot and a reservation of the Gate and Fences thereon.

BEING the same lot of ground which by Indenture dated the twenty fifth day of May, Eighteen hundred and fifty-eight and recorded among the Land records of Anne Arundel County in Liber N. H. C. NO. 7, folio 207, etc., was conveyed by Patapsco Company to the said Richard O. Crisp and Richard Cromwell,

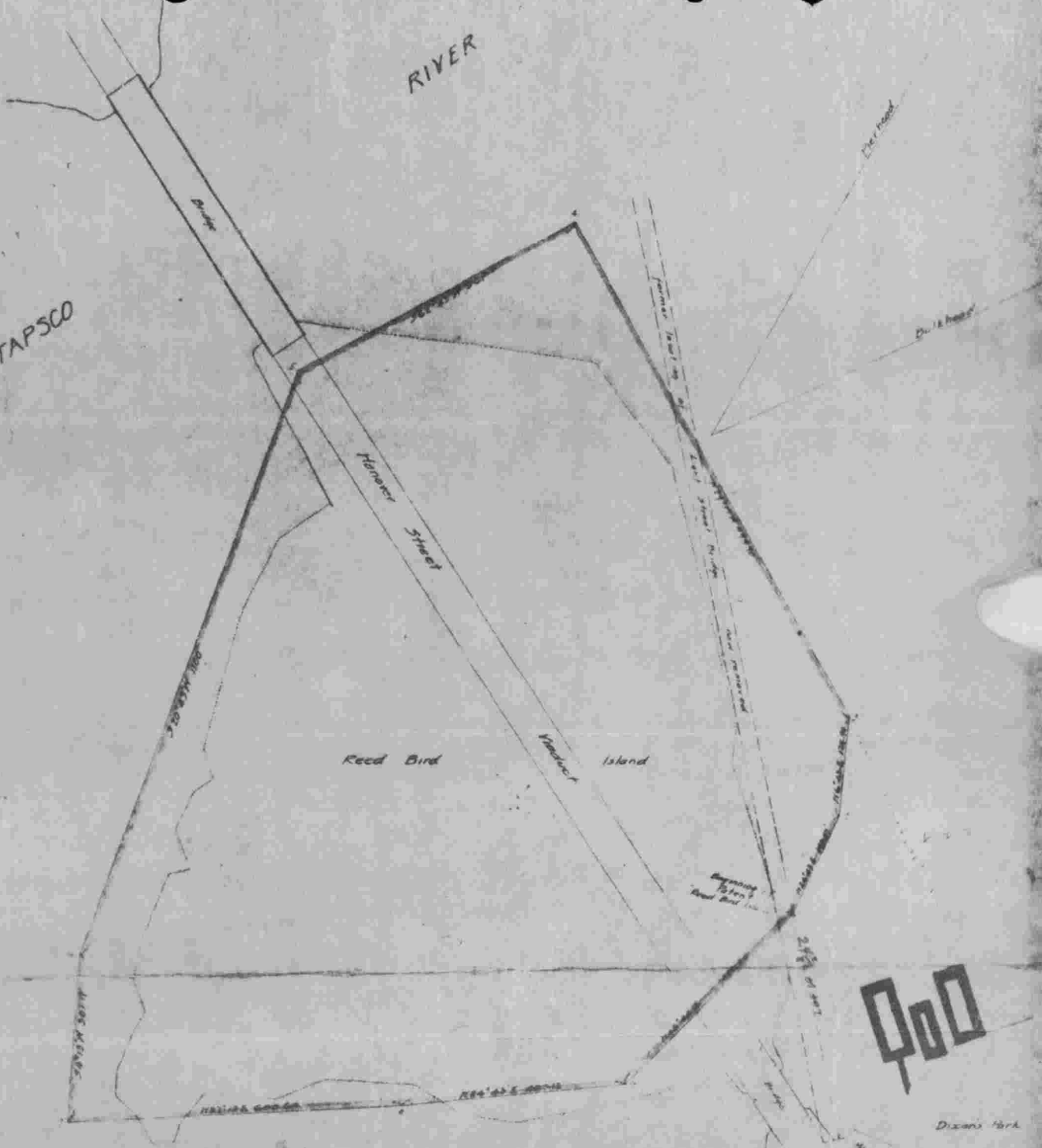
TOGETHER WITH the improvements thereon and the rights and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said Bridge and lots of ground unto the said Mayor and City Council of Baltimore and The County Commissioners of Anne Arundel County, their successor or successors and assigns, subject to the Act of the General Assembly of Maryland passed at the January Session Eighteen hundred and seventy eight, Chapter 159, Entitled "An Act to repeal Chapter two hundred and twenty of the Acts of Eighteen hundred and seventy six, entitled an act to establish a free bridge over the Patapsco river, at or near the present site of Light Street bridge and to provide for free travel from Anne Arundel County to Baltimore City.

AND the said Richard O. Crisp and Richard Cromwell, Jr. hereby covenant with the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County, their successor or successors and assigns that they will warrant specially the property hereby conveyed.

RIVER

PATAPSCO



Reed Bird

Island

Homers Street

QoQ

Dixons Park

BROOKLYN

Note

The dashed lines show the location of Reed Bird Island as indicated by the edge of the marsh grass.

The irregularly shaped and numbered 1-116 etc. show the lines of Reed Bird Island granted to John P. Bruns by patent dated September 10 1909 and recorded among the Land Office records in Liber E 37 11 Folio 217 &

The courses are referred to the True Meridian

Scale 100 feet to one inch

L. J. Smith & Co.

Baltimore Md. May 28 1920

100' = 3/8"

AGREED EXHIBIT (4)

Mayor & City Council of Baltimore) THIS DEED Made this 8th day of July
Deed to) in the year one thousand nine hundred
Standard Oil Company of N J) and twenty four by and between the
Mayor and City Council of Baltimore a municipal corporation of the
State of Maryland party of the first part Wesley S Hanna Deputy
Comptroller of the City of Baltimore Howard W Jackson Mayor of
the City of Baltimore Elmore B Jeffrey Albert G Towers Frederick
A Dolfield Finance Commissioners of the City of Baltimore who unite
herein to express their approval of the hereinafter mentioned sale
in accordance with the terms of the City Charter relating thereto
parties of the second part and Standard Oil Company a corporation
of the State of New Jersey party of the third part

WHEREAS the Board of Estimates acting by the authority
contained in Ordinance No 212 of the Mayor and City Council of
Baltimore approved June 21 1924 have sold at private sale the
property hereinafter described to the Standard Oil Company at and
for the consideration hereinafter mentioned which sale was duly
entered upon its minutes Wherefore the said party of the first
part executes these presents the Board of Finance Commissioners
entering herein to signify their assent as provided for in Section
13 of the Charter as amended by the Acts of 1912

NOW THEREFORE THIS DEED WITNESSETH that in consideration
of the premises and the payment of the sum of Eighteen Thousand
Dollars the receipt whereof is hereby acknowledged the said party
of the first part (by and with the approval of the said parties of
the second part) doth grant and convey unto the said party of the
third part its successors and assigns in fee simple all that lot
of ground situate in Baltimore City State of Maryland and describ
ed as follows

BEGINNING for the same on the northeast side of Chesa
peake Avenue sixty feet wide as now laid out being on the northeast
side of Crisps Lane as heretofore used and not the line of Chesa
peake Avenue as laid down on the Plat of Brooklyn at the distance
of one hundred and twenty four feet one inch northwesterly from
the northwesternmost corner of said Chesapeake Avenue and Second

Street as laid down on said Plat said point of beginning being at the point of intersection of the northeast side of Chesapeake Avenue by the fifth line of the lot secondly described in the Deed from Richard O Crisp and wife and Richard Cromwell Jr and wife to the Mayor and City Council of Baltimore and County Commissioners of Anne Arundel County dated May 3 1880 and recorded among the Land Records of Anne Arundel County in Liber S H No 16 folio 27 and also the Land Records of Baltimore City in Liber FAP No 887 folio 369 etc thence binding on part of said fifth line as now surveyed north twenty one degrees twenty four minutes east one hundred and ten feet and eight and three fourths inches to the end thereof thence binding along the sixth line of said land and continuing the same direction north sixty eight degrees and twenty minutes west one hundred and forty nine feet and ten inches to the southeast shore of the Patapsco River thence binding along said southeast shore of Patapsco River south fifty one degrees and forty six minutes west twenty four feet and two inches and south seventy eight degrees and twenty six minutes west thirty two feet and seven and one half inches to intersect the northeast side of Hanover Street Viaduct leading from the terminus of First Street Brooklyn to Hanover Street Bridge as laid down by the Mayor and City Council of Baltimore thence binding on the northeast side of said Hanover Street Viaduct south thirty three degrees and four minutes east ninety two feet and eight and one half inches thence by a line curving toward the east with a radius of one hundred and nine feet and six inches the distance of seventy one feet and two inches to intersect the northeast side of Chesapeake Avenue above referred to and thence binding on the northeast side of Chesapeake Avenue south seventy degrees and eighteen minutes east forty seven feet and one and three fourths inches to the place of beginning

BEING a part of the secondly described lot of ground which by Deed dated May 3rd 1880 and recorded among the Land Records of Anne Arundel County in Liber SH No 16 folio 27 was granted and conveyed by Richard O Cromwell et al to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County The interest therein of the said County Commissioners

of Anne Arundel County was acquired by the Mayor and City Council of Baltimore under Chapter 82 of the Acts of the General Assembly of Maryland passed at its session in the year 1918 which Act is known as "The Annexation Act" The mention of streets avenues lanes and alleys in the above description is for the purpose of description only and the rights of the Mayor and City Council of Baltimore in and to the same are hereby specially reserved

AND IT IS FURTHER UNDERSTOOD AND AGREED That the Mayor and City Council of Baltimore reserves unto itself its successors and assigns all riparian rights in and to the Patapsco River to which this property is in any way entitled

TOGETHER with the buildings and improvements thereupon and the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in any wise appertaining

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of the said Standard Oil Company its successors and assigns in fee simple

AND the said party of the first part hereby covenants that it will warrant specially the property hereby granted and conveyed and that it will execute such further assurances of said land as may be requisite

AND the said Mayor and City Council of Baltimore hereby constitutes and appoints Wesley S Hanna Deputy Comptroller of said City to be its true and lawful attorney for it and in its name and as its corporate act and deed to acknowledge these presents before any person authorized to take such in order that the same may be recorded

WITNESS the corporate seal of the said Mayor and City Council of Baltimore the signature of Howard W Jackson Mayor and the signature of the Deputy Comptroller of Baltimore City and the signatures of the Finance Commissioners of the City of Baltimore this 8th day of July in the year one thousand nine hundred and twenty four

Attest as to all signatures (City of Baltimore)
F A Deifield City Register (1797)

MAYOR AND CITY COUNCIL OF BALTIMORE
By Howard W Jackson
Mayor

W E Hanna (SEAL)
Deputy Comptroller
Howard W Jackson (SEAL)
Mayor
Elmore B Jeffrey (SEAL)
Albert G Towers (SEAL)
F A Dolfield (SEAL)

Finance Commissioners of Baltimore City

STATE OF MARYLAND BALTIMORE CITY to wit I HEREBY CERTIFY that on this 8th day of July in the year one thousand nine hundred and twenty four before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City aforesaid personally appeared Wesley S Hanna Deputy City Comptroller the person named as attorney in the power of attorney embodied in the foregoing Deed and by virtue of the power thereby conferred upon him acknowledged the foregoing Deed to be the act of the Mayor and City Council of Baltimore At the same time also personally appeared Wesley S Hanna Deputy Comptroller Howard W Jackson Mayor Elmore B Jeffrey Albert G Towers Frederick A Dolfield Finance Commissioners of the City of Baltimore Grantors as hereinabove named and severally acknowledged the foregoing Deed to be their respective act
WITNESS my hand and Notarial Seal

(Notarial Seal)

Walter Eric Bauchelt
Notary Public

Approved as to form and legal sufficiency this 8th day of July
1924

— City Solicitor

Frank Driscoll

Assistant City Solicitor

Recd for record recorded & exd July 9th 1924 at 2.56 O'clock PM

Stephen C Little Clerk

South Balto Harbor &
Improvement Co of Anne
Arundel Co
Deed to
Mayor & City Council
of Balto

THIS DEED Made this 15th day of
in the year nineteen hundred and
six by the South Baltimore Harbor and
Improvements Company of Anna Arundel

County a body corporate duly incorporated under the laws of the
State of Maryland party of the first part unto the Mayor and City
Council of Baltimore a Municipal Corporation of the State of
Maryland duly incorporated party of the second part

WHEREAS the Public Improvements Commission of Baltimore
City by virtue and in pursuance of the power and authority vest
ed in it has purchased from the party of the first part hereto
on behalf of the Mayor and City Council of Baltimore the property
and riparian rights hereinafter referred to and described at
and for the sum of fifty thousand (\$50,000.00) and

WHEREAS the entire amount of the purchase money has been
paid by the party of the second part hereto to the said party
of the first part hereto receipt whereof is hereby acknowledged

NOW THEREFORE THIS DEED WITNESSETH That for and in consider
ation of the premises and of the sum of fifty thousand dollars
(\$50,000.00) the said South Baltimore Harbor and Improvement
Company of Anna Arundel County does hereby grant and convey
unto the Mayor and City Council of Baltimore its successors and
assigns all the two lots of ground hereinafter described in fee
simple and also the riparian rights hereinafter mentioned which
said two lots of ground are described as follows

BEGINNING for the first thereof at a point on the west
side of First Street at the distance of 110 feet southerly from
a point on the west side of First Street where said side of
said Street would be intersected by the southernmost side of
Baltimore Street if the same were extended westerly thence run
ning northerly on the westernmost side of First Street 317 feet
6 inches to a point on the west side of First Street where said
Street begins to bend thence continuing northerly along the
west side of First Street by a curve to the left a distance of
85 feet 1 3/4 inches to the southeasternmost corner of a Lot
described in a Deed from August Wienhold et al to the State of
Maryland dated April 29th 1915 and recorded among the Land Records

AGREED EXHIBIT 6

of Anna Arundel County in Liber S H No 118 folio 26 thence west
erly along the southernmost line of said lot 53 feet more or less
to the waters of the Patapsco River thence southerly following
the meanders of the shore line of said River until it intersects
the northernmost line of the lot described in a deed from the
party of the first part to William G Gunther and wife dated January
20th 1913 and recorded among the Land Records of Anna Arundel
County in Liber G W No 92 folio 490 thence easterly along the
northernmost line of said lot 111 feet more or less to the east
side of First Street the place of beginning

BEGINNING for the second thereof on the westernmost side of
First Street at a point distant 135 feet southerly from a point
on the west side of First Street where said side of said Street
would be intersected by the southernmost side of Baltimore Street
if the same were extended westerly running thence southerly along
the westernmost side of First Street 59 feet more or less to the
northernmost line of the property now or formerly owned by Peter
Adams and Lena Adams his wife running thence westerly along the
northernmost line of said property 105 feet more or less to the
waters of the Patapsco River thence northerly following the meand
ers of the shore line of said River until it intersects the south
ernmost line of a lot of ground described in a deed from the party
of the first part hereto to Wilhelm G Gunther and wife dated May
29th 1922 and recorded among the Land Records of Baltimore City
in Liber S C L No 3942 folio 51 thence running easterly along
the southernmost line of said lot 100 feet more or less to the
place of beginning

AND the party of the first part does further grant unto the
party of the second part its successors and assigns all of its
right title and interest in and to all the riparian and aquatic
rights which are appurtenant to the property herein conveyed and
also all rights in and to the waters of the Patapsco River South
west of the property of the Arundel Sand and Gravel Company whether
said rights are connected with the property above described or other
wise

AND also all land covered by the waters of the Patapsco River
southwest of the property of the Arundel Sand and Gravel Company

in which the party of the first part has any interest as also all the right title and interest of the party of the first part acquired through the Patent of Brooklyn in the waters of the Patapsco River and 100 feet from the shore line or water edge out into the Patapsco River southwest of the property of the Arundel Sand and Gravel Company

TOGETHER with the improvements thereupon and all the rights alleys ways waters easements and Street bounding on adjoining or running through the said property privileges and appurtenances thereto belonging or in anywise appertaining and especially all the riparian or aquatic rights which are appurtenant to the property above described

TO HAVE AND TO HOLD the said ground and premises and also the riparian rights and land covered by water above described and hereby granted and conveyed to and unto the said Mayor and City Council of Baltimore its successors and assigns in fee simple forever

AND the said party of the first part hereby covenants that it will warrant specially the two lots of ground above particularly described and that it has done no act to encumber the said two lots of ground and that it will execute such further assurances with reference to the said two lots of ground as may be requisite

WITNESS the signature of the South Baltimore Harbor and Improvement Company of Anne Arundel County by the hand of Albert W Rayner its President and its corporate seal hereunto affixed

Test (South Balto Harbor) South Baltimore Harbor and Improve
(& Improvement Co) ment Company of Anne Arundel County
Geo A Foos (of Anne Arundel)
(Co) By Albert W Rayner President

STATE OF MARYLAND CITY OF BALTIMORE to wit I HEREBY CERTIFY THAT
On this 15th day of April in the year nineteen hundred and twenty six before me the subscriber a Notary Public of the State of Maryland in and for the City of Baltimore aforesaid personally appeared Albert W Rayner the President of the South Baltimore Harbor and Improvement Company of Anne Arundel County a body corporate and he acknowledged the foregoing to be the act and deed of said body Corporate

WITNESS my hand and Notarial Seal

(NOTARIAL SEAL)

Geo A Foos

Notary Public

Approved as to form and legal sufficiency this 28th day of
April 1926

Charles C Wallace

City Solicitor

By Alfonso Von Wyszecski

Assistant City Solicitor

Recd for record recorded & exd May 10 1926 at 11.10 A M

Stephen C Little Clerk

State Roads Commission &) THIS DEED Made this 20th day of Aug
Deed to) ust in the year one thousand nine
Mayor & City Council of Balto) hundred and forty one by and between
Esra B Whitman Chairman P Watson Webb and W Frank Thomas constitut
ing the State Roads Commission and Herbert R O'Conor Governor J
Millard Tawes Comptroller of Treasury and Hooper S Miles State
Treasurer constituting the Board of Public Works parties of the
first part and the Mayor and City Council of Baltimore a municipal
corporation of the State of Maryland party of the second part

WHEREAS the State Roads Commission acting in pursuance
of the authority given it under Chapter 267 of the Acts of the
General Assembly of Maryland for the year 1914 did purchase in the
year 1915 for the use of the construction of a bridge over the
Patapsco River from Baltimore City to Brooklyn the lot of ground
hereinafter fully described lying in Brooklyn Anne Arundel County
and by the Annexation Act of 1918 now lying in the City of Balti
more and

WHEREAS the Mayor and City Council of Baltimore is charg
ed with the duty of maintaining said bridge and the approaches
thereto and keeping the same in repair and proper condition and

WHEREAS the Mayor and City Council of Baltimore has re
quested the State Roads Commission to convey the said lot of ground
acquired for the approach to said bridge to the said Mayor and
City Council of Baltimore which the State Roads Commission with
the consent and approval of the Board of Public Works has agreed
to do

NOW THEREFORE THIS DEED WITNESSETH that in consideration
of the above premises and the sum of one dollar (\$1.00) and other
good and valuable considerations the receipt whereof is hereby ac
knowledged the said parties of the first part do hereby grant and
convey unto the Mayor and City Council of Baltimore party of the
second part its successors and assigns in fee simple all that lot
of ground situate lying and being in the City of Baltimore State
of Maryland and described as follows that is to say

BEGINNING for the same on the west side of First Street
at a point where the line of the north side of Chesapeake

(2) AGREED EXHIBIT (6A)

if extended northwardly would intersect the said west side of First Street and running thence northeasterly along the west side of First Street forty three feet to intersect the eighty five foot line of the lot described in a deed from the Patapsco Company and others to Crisp and Cromwell dated May 5th 1858 and recorded among the Land Records of Anne Arundel County in Liber SH No 7 folio 207 etc thence northwestwardly at right angles with First Street one hundred feet thence southwestwardly parallel with First Street forty three feet and thence by a straight line one hundred feet to the beginning

BEING the same lot of ground the leasehold interest of which was acquired by Deed dated April 29th 1915 and recorded among the Land Records of Anne Arundel County in Liber GW No 118 folio 26 from August Wæenhold and William Nagell to the State of Maryland

BEING ALSO the same lot of ground the reversionary interest of which was acquired by Deed dated April 28th 1915 and recorded among the Land Records aforesaid in Liber GW No 118 folio 24 from the South Baltimore Harbor and Improvements Company of Anne Arundel County to the State of Maryland

TOGETHER with the improvements thereupon and all the rights alleys ways privileges and appurtenances thereto belonging or in anywise appertaining

TO HAVE AND TO HOLD the said parcel of land and appurtenances unto and to the said Mayor and City Council of Baltimore its successors and assigns in fee simple

IN TESTIMONY WHEREOF the said Ezra B Whitman Chairman P Watson Webb and W Frank Thomas constituting the State Roads Commission and Herbert R O'Conor Governor J Millard Tawes Comptroller of Treasury and Heeper S Miles State Treasurer constituting the Board of Public Works have hereunto set their hands and seals the date above written

Attest:

Lamar H Steuart

Attest:

Joseph O'C McCusker

Ezra B Whitman (SEAL)
Chairman

P Watson Webb (SEAL)

W Frank Thomas (SEAL)

(State Roads Commission)

Herbert R O'Conor (SEAL)
Governor

J Millard Tawes (SEAL)
Comptroller of Treasury
Hooper S Miles (SEAL)
State Treasurer
(Board of Public Works)

STATE OF MARYLAND COUNTY OF BALTIMORE TO WIT I HEREBY CERTIFY that
on this 20th day of August in the year one thousand nine hundred
and forty one before me the subscriber a Notary Public of the
State of Maryland in and for the County of Baltimore aforesaid per
sonally appeared Ezra B Whitman Chairman P Watson Webb and W Frank
Thomas constituting the State Roads Commission one of the grantors
in the aforegoing Deed and they acknowledged the same to be the
act of said Commission IN TESTIMONY WHEREOF I hereunto set my hand
and affix my notarial seal.

(Notarial Seal)

R Donald Wooten Notary Public

STATE OF MARYLAND COUNTY OF BALTIMORE TO WIT I HEREBY CERTIFY that
on this 9th day of September in the year one thousand nine hundred
and forty one before me the subscriber a Notary Public of the State
of Maryland in and for the Baltimore County aforesaid personally
appeared Herbert R O'Conor Governor J Millard Tawes Comptroller of
Treasury and Hooper S Miles State Treasurer constituting the
Board of Public Works one of the grantors in the aforegoing Deed
and they acknowledged the same to be the act of said Board IN
TESTIMONY WHEREOF I hereunto set my hand and affix my notarial seal.

(Notarial Seal)

Joseph O'C McCusker Notary Public

Legal form and sufficiency approved this 23rd day of September 1941

Charles C G Evans City Solicitor

Alfonso von Wyszecski

Assistant City Solicitor

Rec'd for record recorded & exd Oct 1st 1941 at 9. 0'clk A M

M Luther Pittman Clerk

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
		Folio 66
	*	Year 1916
	*	No. 4071
	*	

* * * * *

S T I P U L A T I O N

IT IS STIPULATED by and between the parties hereto as follows:

1. Chapter 215 of the Laws of Maryland of 1856 authorized Richard Owens Crisp to construct a bridge over the Patapsco River from a point on the north side of said River called Ferry Bar to such point on the south side of said River in Anne Arundel County as the said Richard Owens Crisp might select. The said Act also authorized the said Richard Owens Crisp "to enter upon and hold in fee any land necessary or proper for the abutments or piers of said bridge, and for other purposes contemplated by this Act; and for this purpose" to purchase or condemn such lands as he might deem necessary for the purposes aforesaid.

2. On May 25, 1858, Richard Owens Crisp and Richard Cromwell, Jr., purchased from Patapsco Company a certain tract of land in Anne Arundel County by deed recorded among the Land Records of Anne Arundel County in Liber W.H.G. No. 7, folio 207, a copy of which is attached hereto as Agreed Exhibit No. 1. The land described therein is shown as plot "D" on the plat attached hereto as Agreed Exhibit No. 2. The Light Street Bridge referred to in the deed of May 25, 1858, is the bridge authorized by Chapter 215, Laws of Maryland of 1856.

3. Chapter 159 of the Laws of Maryland of 1878 authorized, directed and empowered the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County to purchase said Light Street Bridge, together with the buildings, abutments and all other appurtenances thereto belonging or appertaining, if a price could be agreed upon with the owners thereof and if unable to agree with the owners thereof the said Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County were authorized, empowered and directed to build a substantial bridge over said river. The bridge purchased or built as provided by said Act by the City and County and the cost of purchasing it and maintaining it was to be borne equally by the said City and County.

4. On May 3, 1880, Richard O. Crisp and Annie E. Crisp, his wife, Richard Cromwell and Elizabeth Anne Cromwell, his wife, conveyed to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County their interest in said bridge, together with the lot of ground hereinabove referred to, which they purchased from the Patapsco Company on May 25, 1858. The deed from Richard O. Crisp, et al., to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County is recorded among the Land Records of Baltimore City in Liber F.A.P. No. 887, folio 369. It is likewise recorded in the Land Records of Anne Arundel County in Liber S.H. No. 16, folio 27. A copy of said deed as recorded among the Land Records of Baltimore City is attached hereto, marked Agreed Exhibit No. 3.

5. Section 27 of Chapter 98 of the Acts of 1888 (being the Annexation Act of 1888) provides in part that the said Light Street Bridge should thereafter "be maintained and kept in repair for public travel at the sole expense of said City of Baltimore * * *", and that the said City so maintained said bridge until

sometime during the year 1917, when the said bridge was replaced by the present Hanover Street Bridge. The said Light Street Bridge was a public highway between Baltimore City and Anne Arundel County used by all kinds of vehicular traffic as well as street cars and pedestrians.

6. On September 10, 1909, a patent was issued out of the Land Office of Maryland to John P. Bruns for "a tract or parcel of land called 'Reed Bird Island', (being an island in the Patapsco River) lying in Anne Arundel County, State of Maryland, and containing 33-3/4 acres of land, more or less", said patent being recorded among the Land Office Records in Liber E.S.T. No. 1, folio 217. A copy of said patent is attached to the Bill of Complaint herein marked Plaintiff's Exhibit A. Said patent was granted upon a survey of Reed Bird Island made September 15, 1908, including a description and plat of the Island, by L. H. Green, County Surveyor. A copy of said survey and plat is attached to the Bill of Complaint herein marked Plaintiff's Exhibit C. The Light Street Bridge shown on said plat is the same Light Street Bridge authorized and built under Authority of Chapter 215, Laws of Maryland of 1856.

7. On September 23, 1910, the said John P. Bruns, together with one John McLeod and Minnie McLeod, his wife, executed a deed to the said "Reed Bird Island" to the original defendant, Harry M. Wagner, which deed is recorded among the Land Records of Anne Arundel County in Liber G.W. No. 83, folio 184. A copy of said deed is attached to the Bill of Complaint marked Plaintiff's Exhibit B. The present defendants have been substituted as parties defendant in the place and stead of the original defendant, now deceased. The present defendants are successors in title to Harry M. Wagner, as more fully described in the Petition to Substitute Parties Respondent, heretofore filed herein.

8. Chapter 267 of the Laws of Maryland of 1914 authorized the State Roads Commission to construct a bridge from Baltimore City to Brooklyn either directly or by way of the point of Baltimore County and provided that upon completion of the said bridge and the opening of the same to travel as a public highway the Mayor and City Council of Baltimore was authorized to remove the present Light Street Bridge. The bridge authorized by said Chapter 267 is known as the Hanover Street Bridge and was completed as set forth above during the year 1917, following which the old Light Street Bridge was removed.

9. By virtue of Chapter 82 of the Laws of Maryland of 1918 there was annexed to Baltimore City certain portions of Baltimore County and Anne Arundel County, including Brooklyn in the latter. Under Section 9 of said Act the title of the County Commissioners of Anne Arundel County and Baltimore County, etc., in any school-houses and lots, etc., etc., and other public property became vested in the Mayor and City Council of Baltimore; and by Section 11 of said Act it was provided that all roads, streets, avenues and alleys lying within the annexed territory should be thereafter validly constituted public highways of Baltimore City, and that any bridges existing in any of said highways would be considered parts thereof. All of the area referred to in this stipulation, including that formerly occupied by the Light Street Bridge, that now occupied by the Hanover Street Bridge and the lot conveyed by Crisp and Cromwell to the County Commissioners of Anne Arundel County and the Mayor and City Council of Baltimore on May 3, 1880, hereinabove referred to, are within the corporate limits of Baltimore City as enlarged by the said Chapter 82 of the Laws of Maryland of 1918.

10. The plat of S. J. Martenet & Co. dated May 28, 1920, attached hereto as Agreed Exhibit No. 4, is a true representation

of the facts which said plat purports to show, except that:
(1) the said plat does not purport to show water levels or depths, and (2) the lines purporting to show Reed Bird Island as granted to John P. Bruns by patent dated September 10, 1909, are not intended to reflect a physical state of facts known to the surveyor making the plat constituting Agreed Exhibit No. 4, but are simply a transposition of the property lines as described in said patent to the geographic area included on said plat.

11. The Plat of Bureau of Surveys of the City of Baltimore showing Reed Bird Island, etc. dated April 20, 1955, attached hereto as Agreed Exhibit No. 2 is a true representation of the facts which said plat purports to show.

12. On July 8, 1924, the Mayor and City Council of Baltimore conveyed to the Standard Oil Company of New Jersey a part of the lot conveyed by Crisp and Cromwell to the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel County on May 3, 1880, reserving to itself "all riparian rights in and to the Patapsco River to which this property is in any way entitled". The said deed from the Mayor and City Council of Baltimore to the Standard Oil Company is recorded among the Land Records of Baltimore City in Liber S.C.L. No. 4250, folio 60. A copy of said deed is attached hereto marked Agreed Exhibit No. 5.

13. On April 15, 1926, the South Baltimore Harbor and Improvement Company of Anne Arundel County conveyed to the Mayor and City Council of Baltimore for the consideration of \$50,000 certain property and riparian rights as will more fully appear from said deed recorded in Liber S.C.L. No. 4570, folio 49 among the Land Records of Baltimore City. A copy of said deed is attached hereto marked Agreed Exhibit No. 6. The tracts conveyed thereby are shown on Agreed Exhibit No. 2 as plots "A", 1st and 2nd Parts.

14. On August 20, 1941, the State Roads Commission and other proper officials for the State of Maryland conveyed to the Mayor and City Council of Baltimore the fee simple title to that lot of ground shown on Agreed Exhibit No. 2 as plot "C", copy of deed making said conveyance attached as Agreed Exhibit No. 6A.

15. On May 5, 1916, after the institution of this suit, Harry M. Wagner and Harriet Cleveland Wagner, his wife, in consideration of the sum of \$1.00, conveyed to the State of Maryland "a right-of-way for the purpose of a street or highway over and across that part of the tract of land situate in Anne Arundel County, in the State of Maryland, and constituting an island in the Patapsco River known as 'Reed Bird Island' * * *". It is further provided in said deed that the said Harry M. Wagner reserves "to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the state road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway, and the privilege of unloading material from said road upon his said land for grading the same". A copy of said deed is attached hereto marked Agreed Exhibit No. 7.

16. On or about December 16, 1940, H. Milton Wagner, Jr., and others, as successors to Harry M. Wagner's title to Reed Bird Island executed a deed to the Mayor and City Council of Baltimore of such part of Reed Bird Island as lay in the bed of Race Street, 70 feet wide, as opened by Ordinance of the Mayor and City Council of Baltimore, which deed has never been recorded. A copy of said deed is attached hereto as Agreed Exhibit No. 8. Said deed was executed by the grantors after they had appealed from a ruling of the Commissioner for Opening Streets awarding damages

for the Reed Bird Island portion of said street to the Mayor and City Council; said appeal was dismissed, and the aforesaid deed was executed in consideration for the agreement of the Mayor and City Council to proceed with the prosecution of the proceedings in the present case, said deed, and dismissal of the aforesaid appeal to be without prejudice to the rights of the parties herein. Race Street as so opened and laid out is shown on Agreed Exhibit No. 2, marked "formerly Race Street". This street is now part of Potee Street.

17. In 19 , the Mayor and City Council of Baltimore opened an extension of Potee Street across Reed Bird Island, as shown on Agreed Exhibit No. 2; the land for which street the Mayor and City Council have never purchased from the successors in title to Harry M. Wagner, nor condemned. Said street is now being used without the permission or authority of the Respondents herein.

18. According to the tax records of Anne Arundel County, Harry M. Wagner was first assessed for "Reed Bird Island" for the year 1912, the said assessment totaling \$5,056.00, which was increased in the year 1918 to \$5,950.00. Harry M. Wagner paid Anne Arundel County and State of Maryland taxes, based on said assessments, for 1912 through 1918. For the years 1919 to 1928, inclusive, Harry M. Wagner paid Baltimore City and State of Maryland taxes on Reed Bird Island in the total amount of \$1,276.98. In 1926, after the City's purchase of certain Patapsco River shore land from South Baltimore Harbor and Improvement Company, et al., the City of Baltimore Law Department advised the Appeal Tax Court to abate any assessment against Harry M. Wagner or others upon "Reed Bird Island" but apparently this communication failed to reach the Appeal Tax Court, and it appears that taxes were paid through 1928. On May 23, 1928, the Appeal Tax Court was again

notified to abate the assessment against Harry M. Wagner for "Reed Bird Island" and Harry M. Wagner was notified of such abatement and that he was entitled to a refund thereunder for the tax year 1928, of which, however, he never availed himself.

19. For some time prior to 1919 certain outdoor advertising billboards were located on Reed Bird Island. On February 21, 1919, attorneys for Harry M. Wagner wrote to the owners of these billboards demanding removal of the signs or rental from January 1, 1917. P. & H. Morton Advertising Co. paid rental from January 1, 1917, and renewed the rental for a subsequent period. American Sign Company also paid rental for sign space, paying \$70.77 for a number of signs for varying periods between January 1, 1919, and January 1, 1921, and executing a contract for an additional period at the rate of \$62.00 per annum. On January 14, 1924, General Outdoor Advertising Company entered into a contract for rental of space at the rate of \$93.00 per annum, which rental was paid until April 25, 1928, at which time the City of Baltimore demanded that the owners of said signs cancel any agreements with the said Harry M. Wagner. From that time until 1946 the City of Baltimore collected rent from owners of the signs. The City of Baltimore in 1946 ordered all billboards to be removed from the Island.

20. The twenty-five photographs filed with the Respondents' original answer are true representations of the scenes shown thereon from the point indicated on each of said photographs, at the date and time indicated.

21. Reed Bird Island lies in an area which the State of Maryland and the Mayor and City Council of Baltimore now propose to develop as the southern end of a park to be known as Patapsco River Valley Park.

22. The Plat of State Roads Commission showing location plan of the Hanover Street Bridge dated August 21, 1914, and approved by H. G. Shirley, Chief Engineer, and attached hereto as Agreed Exhibit No. 9, is a true copy of a survey made by the State Roads Commission in connection with the Hanover Street Bridge.

23. The Baltimore & Ohio Railroad Company was authorized by the U. S. Corps of Engineers on May 17, 1900, to fill in under the Railroad's Curtis Bay Branch Bridge across the Patapsco River, provided the Baltimore & Ohio Railroad Company left a 600 foot opening northwest of Billiken Island, shown on Agreed Exhibit No. 2. This was subsequently accomplished before the end of 1900.

24. While the facts stated herein are agreed to exist as stated, each of the parties reserves the right to object to admissability of any of such facts on the grounds of relevancy, for purposes of which objections, if any be offered, each statement in each of the foregoing paragraphs shall be considered separately.

25. No advantage is to be taken by either party by reason of the delay in prosecuting or defending this suit.

John R. Ciccia
Clayton H. Walliter
Attorneys for Plaintiff

John S. Rowe Jr.
Walter I. Gray
William L. Markover
Attorneys for Respondents

①

THIS DEED made this fifth day of May nineteen hundred and sixteen, by and between Harry M. Wagner, and Harriet Cleveland Wagner, his wife, of Baltimore City, in the State of Maryland, of the first part and the State of Maryland, of the second part.-

WITNESSETH, that in consideration of the sum of One dollar to them paid and of other valuable considerations, the said parties of the first part do hereby grant and convey unto the said party of the second part, its successors and assigns, a right of way for the purpose of a street or highway over and across that part of the tract of land situate in Anne Arundel County, in the State of Maryland, and constituted an island in the Patapsco River known as "Red Bird Island", which is thus described to-wit:-

BEGINNING for the same at a point on the line of the face of the north abutment of the first State Bridge crossing the Patapsco River, northwest of the town of Brooklyn in Anne Arundel County, distant thirty-three feet easterly from the center line of said bridge, running thence northwesterly fifteen hundred sixty-one and five tenth feet, more or less, to a point in the line of the face of the south abutment of the second bridge crossing the Patapsco River, northwest of the town of Brooklyn in Anne Arundel County, distant thirty-three feet from the center line of said last mentioned bridge, thence along the line of the face of said last mentioned abutment southwest sixty-six feet, more or less, to intersect a line drawn parallel to the line secondly mentioned in the afore-said description, thence reversing said last mentioned line and running thereon southeasterly fifteen hundred sixty-one and five-tenth feet to intersect the line of the face of the abutment first above mentioned, thence southeasterly along the line of the face of said abutment thirty-three feet to the place of beginning;-

BEING a part of the tract of land which by deed dated the 23rd day of September, A.D. 1910, duly recorded among the Land Records of Anne Arundel County in Liber G. W. No. 83, Folio 184 etc;- was conveyed by to the said Henry M. Wagner.

AGREED EXHIBIT

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TOGETHER with the right to build and at all times to repair and maintain said street or highway within the bounds of said right of way and the necessary slopes on each side thereof; said Harry M. Wagner, however, reserving to himself the fee and reversion in said land, subject to the easement hereby granted and the right of access to the said State Road on each side thereof from his land by roadways which he may hereafter construct connecting with said right of way when and as such roadways are brought up to the grade of said highway and the privilege of unloading material from said state road upon his said land for grading upon the same.-

IN CONSIDERATION of the premises and of one dollar to it paid, the said party of the second part doth hereby covenant and agree that the rights hereinbefore reserved by said Harry M. Wagner, shall be at all times available.

WITNESS the hands and seals of the parties of the first part and seal of the party of the second part duly attested by its proper officers.

Test:-	(Signed) Harry M. Wagner (Seal)
(Signed) J. A. Hilleary, Jr.	(Signed) Harriet Cleveland Wagner (Seal)
Attest(Signed) Wm. L. Marcy.	(Signed) State Roads Commission-
	(Signed) F. W. Zouck- Chairman

State of Maryland, Baltimore City- to wit:-

I hereby certify, that on this fifth day of May in the year nineteen hundred and sixteen, before me, the subscriber, a Notary Public of the State and City aforesaid, personally appeared Harry M. Wagner and Harriet Cleveland Wagner, his wife, and acknowledged the foregoing Deed to be their respective deed and act.-

WITNESS my hand and notarial seal.

(Notary's Seal)- J. A. Hilleary Jr. Notary Public--

State of Maryland, Anne Arundel County - to-wit:-

I hereby certify that the foregoing is a true copy of deed left for record on the 12th day of May, 1916 in the Office of the Circuit Court for Anne Arundel County, to be recorded among the Land Records of the Circuit Court for A-A- County-

In Testimony whereof I hereunto set my hand and affix the seal of the Circuit Court for Anne Arundel County this 17th day of May 1916.

(Signed) George Wells Clerk.

THIS DEED, dated this 16th day of December, 1940, by and between H. MILTON WAGNER, JR. and MARGARET C. WAGNER, his wife, ROBERT B. WAGNER and HESTER C. WAGNER, his wife, AMELIA W. SUTTON and LENORE V. WAGNER, parties of the first part, and the MAYOR & CITY COUNCIL OF BALTIMORE CITY, party of the second part,

W I T N E S S E T H :

WHEREAS, the Commissioners for Opening Streets have awarded the owner or owners damages in the matter of the condemning and opening and grading of Race Street, 70' wide, from the Hanover Street Bridge to the intersection of the southern boundary of Baltimore City established in 1918, and Hanover Street, pursuant to the provisions of Ordinance No. 744, approved May 31, 1938, for the fee simple interest in the lot of ground and premises designated in the return of said Commissioners and on the plat marked A. & B. which is filed with said return by the letter "V-2a", One Dollar (\$1.00) damages, which amount was awarded to the Mayor & City Council of Baltimore as owner; and

WHEREAS, the parties of the first part have taken an appeal to the Baltimore City Court from said award, claiming to be the owners of said property, which ownership, however, has been and is being denied by the Mayor & City Council of Baltimore and proceedings are now pending in the Circuit Court for Anne Arundel County, in Equity, in a cause wherein the Mayor & City Council of Baltimore is Complainant and Harry M. Wagner and John P. Bruns are Defendants; and

AGREED EXHIBIT

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WHEREAS, all the parties have agreed to have said appeal in the Baltimore City Court dismissed, without prejudice to either of the parties; and the parties of the first part have agreed to convey all the right, title and interest which they may have to the Mayor & City Council of Baltimore in the tract of land needed for the opening of Race Street, together with the necessary slopes.

NOW, THEREFORE, THIS DEED WITNESSETH, That in consideration of the premises and the sum of One Dollar (\$1.00) the said parties of the first part do hereby grant and convey unto the Mayor & City Council of Baltimore, its successors and assigns, all the right, title and interest of all the parties of the first part in and to all that piece or parcel of ground situate, lying and being in the City of Baltimore, State of Maryland, and particularly shown on the plat filed in the condemning, opening and grading of Race Street, 70' wide from Hanover Street Bridge to the intersection of the southern boundary of Baltimore City, established in 1918, and Hanover Street, in the office of the Commissioners for Opening Streets, and marked A. & B. and by the letter "V-2a", together with the necessary slopes. Being a portion of the tract of land known as "Reed Bird Island".

IT IS, HOWEVER, UNDERSTOOD AND AGREED, that this Deed is executed without prejudice to the rights of any of the parties hereto in and to the remaining portion of the tract of land known as "Reed Bird Island" and that the execution hereof is not to be considered as a determination in any manner whatsoever of the title to said remaining portion.

To have and to hold said ground and premises hereby granted and conveyed unto and to the Mayor & City Council of Baltimore, its successors and assigns.

AND the parties of the first part covenant that they will execute such further assurances as may be requisite.

s/ H. MILTON WAGNER, JR.

s/ MARGARET C. WAGNER

s/ ROBERT C. WAGNER

s/ HESTER C. WAGNER

s/ AMELIA W. SUTTON

s/ LENORE V. WAGNER

(ACKNOWLEDGEMENT)

No. H071 Equity

MAYOR & CITY COUNCIL OF
BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al

Respondents

STIPULATION

Filed: 28 Apr. 1953

No. 4071 Equity

MAYOR and CITY COUNCIL OF
BALTIMORE

COMPLAINANT

VS

H. MILTON WAGNER, JR., and
OTHERS

RESPONDENTS.

OPINION and DECREE

Filed: 27 Oct. 1955

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, IN EQUITY

MAYOR and CITY COUNCIL OF BALTIMORE, :

COMPLAINANT. :

VS. :

NO. 4071 EQUITY

H. MILTON WAGNER, JR., and
OTHERS, :

RESPONDENTS. :

:::::

O P I N I O N

The Court will adopt the following statement of facts contained in the Respondents' very able memorandum.

"This case is an action filed by the Mayor & City Council of Baltimore to remove a cloud on its alleged title to certain property called "Reed Bird Island". The Respondents claim title through a patent issued by the State of Maryland for Reed Bird Island and this suit is brought to have the patent declared invalid. The suit was originally filed in 1916, and at that time Reed Bird Island was located in Anne Arundel County. Although the property is now located in the City of Baltimore, the Circuit Court for Anne Arundel County properly retains jurisdiction under provisions of Section 18, Chapter 82 of the Laws of Maryland of 1918 (1918 Annexation Act).

"Reed Bird Island is located at about the point where the main branch of the Patapsco River empties into Baltimore Harbor, that is, at the point where Hanover Street crosses the Patapsco River from Brooklyn to the point on which the Maryland Yacht Club is located. The plats included with the stipulation filed herein will more carefully describe the Island.

"In 1856 one Richard Owens Crisp was authorized by the Laws of Maryland (Chapter 215, Laws of Maryland of 1856) to build a bridge over the Patapsco River from Ferry Bar, on the north side, to

(2)

some point in Anne Arundel County on the south side of the River. In 1858 Crisp, together with one Richard Cromwell, Jr., purchased from Patapsco Company a tract of land in Anne Arundel County as a bridgehead for this bridge. The deed for this bridge had contained the restriction that the grant was made 'on the express condition that the said land should be only used for the purposes appertaining to the erection, construction and easement of the said bridge, and the erection of the necessary toll house and out buildings, sheds, store house for lumber or materials.' The bridge was subsequently built and became known as the Light Street or Long Bridge. This bridgehead tract is located near Reed Bird Island, being on the Brooklyn shore of the River. By Chapter 159 of the Laws of Maryland of 1878 the City of Baltimore and the County Commissioners of Anne Arundel County were authorized to purchase the Light Street Bridge and, in due course this purchase was effected from Crisp and Cromwell. The latter parties conveyed to the Mayor & City Council, by deed dated May 3, 1880, the Bridge together with bridgeheads in both Baltimore City and Anne Arundel County, the deed specifically referring to the purposes for which the property had been acquired by Crisp and Cromwell and was being conveyed to the City. In 1918, by the Annexation Act, cited above, Baltimore City acquired all roads, streets, avenues and alleys lying within the annexed territory, any bridges existing in any of the highways being considered parts thereof. On April 15, 1926, South Baltimore Harbor and Improvement Company of Anne Arundel County conveyed to the City of Baltimore certain property along the southern shore of the Patapsco River adjacent to the bridgehead property previously described, and across from Reed Bird Island. It is on these properties that the City bases its claim as riparian owner of these properties to Reed Bird Island.

"On September 15, 1908, a survey of Reed Bird Island was made by L. H. Green, County Surveyor of Anne Arundel County, on a warrant issued from the Land Office of the State of Maryland. Subse-

quently, on September 10, 1909, a patent was issued out of the Land Office for Reed Bird Island to John P. Bruns. The Light Street Bridge above referred to crosses Reed Bird Island, as indicated in the Green survey. On September 23, 1910, Bruns conveyed Reed Bird Island to Harry M. Wagner, predecessor in title to the respondents in this case. It is through this patent that the respondents claim title to the Island.

"Under authorization of the Legislature in 1914, the State Roads Commission of Maryland began about 1915 to construct the Hanover Street Bridge across the Patapsco River as a substitute for the old Light Street Bridge. The portion of this Bridge running from the Baltimore County point to the Anne Arundel County shore of Brooklyn consisted of a large span across the main branch of the Patapsco, a causeway elevated about 6 feet across Reed Bird Island and a shorter bridge, about 110 feet long from Reed Bird Island to the Brooklyn shore. In this connection, Wagner conveyed to the State Roads Commission a right-of-way to cross Reed Bird Island for Hanover Street, reserving to himself certain rights of access. The new bridges were completed in 1917 and at that time the old Light Street Bridge was destroyed. In the meantime, Wagner had been paying taxes on the property to Anne Arundel County, beginning in 1912, as well as collecting rents for certain billboards located on Reed Bird Island, the rents being collected from January 1, 1917. The rent collections and tax payments continued until 1928, at which time the City ordered abatement of taxes and ordered the billboard owners to pay rent to the City.

"In due course, Race Street was extended across the very southern end of Reed Bird Island to connect with Hanover Street and in connection with this extension, an agreement was reached between the Wagner interests and the City whereby a deed was given to the City for the property included in Race Street and the City agreed that the present proceedings would be prosecuted in order to determine title to

Reed Bird Island."

It should be added that counsel for the parties have stipulated, among other things, that no advantage would be taken by either by reason of the delay in prosecuting or defending this suit.

It is conceded that the facts in this case are governed by Chapter 129 of the Laws of Maryland of 1862, now codified as Sections 45, 46 and 48 of Article 54 of the Annotated Code, 1951 Edition, and which reads as follows:

"WHEREAS, Doubts are entertained in regard to the extent of the rights of proprietors of land bounding on navigable waters, to accretions to said land, and to extend improvements into said waters; for the purpose of solving such doubts, therefore,

"SECTION 1. Be it enacted by the General Assembly of Maryland, That article fifty-four of the Code of Public General Laws, be amended by adding thereto the following sections, to wit:

"Thirty-seven. The proprietor of land bounding on any of the navigable waters of this State, is hereby declared to be entitled to all accretions to said land by the recession of said water, whether heretofore or hereafter formed or made by natural causes or otherwise, in like manner and to like extent as such right may or can be claimed by the proprietor of land bounding on water not navigable.

"Thirty-eight. The proprietor of land bounding on any of the navigable waters of this State, is hereby declared to be entitled to the exclusive right of making improvements into waters in front of his said land; such improvements, and other accretions as above provided for, shall pass to the successive owners of the land to which they are attached, as incident to their respective estates. But no such improvement shall be so made as to interfere with the navigation of the stream of water into which the said improvement is made.

"Thirty-nine. No patent hereafter issued out of the Land Office shall impair or affect the rights of riparian proprietors, as explained and declared in the two sections next preceding this section, and no patent shall hereafter issue for land covered by navigable waters."

The City, to support its contention that the patent was invalidly issued, since the locus in quo was covered by navigable waters at the time, offered a chart of the approaches to Baltimore Harbor prepared by the Coast and Geodetic Survey. The Respondents objected to its introduction in evidence on the ground that it did not show the status of Reed Bird Island as of the date the patent was issued. The

Court felt that it had, at least, some evidentiary value. The Exhibit, published in May, 1905, was first published in 1900, and was corrected from surveys by the Corp of Engineers to November, 1904. On it, under the heading of "Soundings", is the notation "the soundings are in feet and show the depth at mean low water. Depths of 18 feet and less are shown on a dotted surface." An examination of the matter in question, as indicated on this chart, shows that what is now known as "Reed Bird Island", was below mean low water at, or before, November, 1904.

The City called as its first witness Mr. John M. Mackall, who was born on November 5, 1885, and, beginning in 1905, was employed by the State Roads Commission of Maryland, and was, at the time of the construction of the Hanover Street bridge, engineer of surveys, plans and rights-of-way. He testified that he was on the actual site of Reed Bird Island a number of times during the years 1912, 1913 and 1914, and that he remembered it vividly. He identified "agreed Exhibit No. 9" as having been prepared under his direction in connection with the construction of the Hanover Street bridge from information and data gathered and acquired one and one-half to two years prior to its preparation. The Exhibit is a location plan of the bridge prepared and approved by the State Roads Commission of Maryland on August 21, 1914. Mr. Mackall pointed out that on the profile scale on the plan, there was no point between Stations 63 to 76, where the elevation of the ground was indicated as higher than zero, or mean low tide, and the interval between Station 63 and Station 76 was that occupied by approximately the central portion of Reed Bird Island.

He admitted that he was not familiar with the Island in the years 1908 and 1909, but he did recollect that, during the years 1912 to 1914, it was covered with water at normal low tide. The old Light Street bridge was still in existence at that time, and he stated that there was no land then showing at high tide between it and the Hanover Street bridge under construction. He and his associates used rowboats to make surveys across the area of the Island, and, although he did not

observe any other boats crossing it, he did not recall that he had any trouble in doing so. The State Roads Commission constructed a fill across the Island site 10 feet above mean low tide.

Another witness for the City, Mr. Joseph N. Johnson, a resident of Brooklyn on the south side of the Hanover Street bridge, who was born in 1885, testified that he moved to Brooklyn in the latter part of 1896, and that he was familiar with every inch of the area known as Reed Bird Island. According to him, he was always around the water crabbing and fishing, and that he started to convert a boat in the latter part of 1905. He sailed this boat, in the summertime, during the years 1905 and 1906, in the waters around this area and over what is now known as "Reed Bird Island". According to his recollection, rowboats could cross the Island on medium tide in the years 1908 and 1909, and the water there was as high as a man's waist at high tide. The site was still covered by water in 1911, for at that time he had caught crabs there, and in 1909 and 1910, he had harpooned carp on the Island. He and his friends in the winter of 1911 had skated across it on the ice, but, after that, the reeds came up and tripped them. In 1911 the water over the Island was about 12 inches deep at medium tide, and there was a "gut", 3 to 4 feet deep, at medium tide between it and the fast land. He recalled that the area of Reed Bird Island started to gradually "build" after the Baltimore and Ohio Railroad bridge was erected.

Another witness for the City, Mr. George N. Potee, who was born in 1897, and who lived on South Hanover Street, testified that he had spent his life in the area of Reed Bird Island, and that Potee Street had been named after his father. In 1907, 1908 and 1909, he and other boys had played in the water in that area, and were accustomed to walk across the channel or gut in certain places at high tide to Reed Bird Island. According to his recollection, there was from 2 to 3 feet of water over it at high tide, and from $\frac{1}{2}$ to 1 foot of water over it at low tide. He recalled that men, wearing hip-boots, would go

(7)

out on it and gun for reed birds. He had seen rowboats in the channel or stream, which was about a block wide, between the Island and the fast land. He remembered that there were reeds on the Island, the roots of which were under water.

Mr. Henry C. Burke, a witness for the Respondents, testified that he had lived in the area since 1909, and that he was familiar with the Patapsco River near the Brooklyn shore. According to his recollection, that part of the site known as Reed Bird Island west of Potee Street was always above water; he had never seen it under water, although there was water between it and the Brooklyn shore. He used to paddle a canoe down to the Island, but he never got out and walked on the Island itself, although he could see muskrat dens there.

Mr. James B. Woodward, 91 years old, a witness for the Respondents, testified that he had lived in Brooklyn since 1879, and he remembered when the Hanover Street bridge was constructed across Patapsco River. According to him, at that time, there were some "cattails" out there, and there was a space of open water between the cattails and the Brooklyn shore. A few people used launches in the waters thereabouts, but the majority used rowboats. He described the area as a marsh, and he said that at "real high tide" water flowed over the marsh, at normal high tide the marsh was still under water, and at low tide there was some water in the marsh, but not much.

Another witness for the Respondents, Mr. John T. Helmer, 69 years old, who had lived in Brooklyn since 1908, recalled that he had frequently crossed the old wooden bridge over the Patapsco in 1890, and that the area known as "Reed Bird Island" was separated from the Brooklyn shore by a stream 100 foot wide. The Island was, in his earliest recollection, first covered with water, and then, as silt washed through and around the spans of the Railroad bridge, mud flats began to appear in the area of Reed Bird Island, and finally in 1909 a small portion of land was beginning to "make". This portion protruded

above normal high tide in 1909, and at low tide, the whole area of the Island was above water. This land kept "making" or growing until it reached the point where the Hanover Street bridge is now located.

It is apparent that it is difficult for a witness, after almost fifty years, to be accurate as to the exact status of something with which he had no reason to be particularly concerned at some certain time in the past. Of all the witnesses, Mr. Mackall, and to a lesser extent, Mr. Johnson, had reason to have their attention called to the locus in quo within the period which is important to the determination of this case.

The photographs of the locus in quo and the surrounding area taken in April, May and June, 1916, at high and low tides, and offered in evidence by Counsel for the Respondents, have been examined carefully by the Court, and it is frustrating to find that none were taken from the Hanover Street bridge fill with the camera pointed downward towards the reeds so as to give a clue as to the presence of earth or water among them. Assuming that they hid fast earth in 1916, it may also be assumed that some or all of this earth was built by erosion from the earth fill, construction of which, according to Mr. Mackall's testimony, had begun several years before, and which is shown, with erosion channels, in the photographs.

The first question to be determined from the evidence is whether or not "Reed Bird Island" was, at the time of the issuance of the patent, covered by navigable water. If it was, the patent was invalid, as falling within the prohibition of the Statute. In the case of Mayor and City Council of Havre de Grace vs. Harlow, 129 Maryland 265, at page 272, it is said that "under the English common law navigable waters were held to be those in which the tide ebbs and flows--- this fact was made the test of navigability. By the Roman law rivers in which the flow of water is perennial were held to belong to the public, and they were navigable if they were capable of being navigated,

in the ordinary sense of that word. The rule of the civil law is the one which has prevailed in this country.....the test of navigability is navigable capacity without regard to the character of the craft, the business done, the ease of navigation..... ." As has been pointed out, in the Maryland Law Review article on the case of Gray vs. Gray (Volume V, page 314), the question remains as to whether our Court of Appeals, in that case, went on record as abandoning the Common Law rule, which it had theretofore often followed, in favor of the Civil Law rule. As the article observes, the evidence there enabled the Court to reach its conclusion by either rule.

This Court is of the opinion that the application of both rules in the State of Maryland is not necessarily inconsistent. The Court of Appeals appears to have used the phrase "navigable water" in its technical, common law meaning for the purpose of determining whether or not its "entire property (is) vested in the public." (Sollers vs. Sollers, 77 Maryland 148; and Clark vs. Todd, 192 Maryland 492).

"Rivers or streams within the ebb and flow of tide, to high water mark, belong to the public, and in that sense are navigable waters; all the land below high water mark, being as much a part of the jus publicum, as the stream itself. Looking then to the general purpose disclosed by these affirmative provisions (of the Act of 1862), it is clear that the clause in the 3rd section prohibiting the issue of any patent of land covered by navigable water should be so construed, as to apply to all lands below high water mark, or in terms still more comprehensive, to embrace any lands, to which the rights and privileges conferred by this Act could attach." (Day vs. Day, 22 Maryland 530, at 537). It appears, therefore, that the prohibition of Section 39 of the Statute as to the issuance of patents for land covered by navigable waters means land covered by waters navigable in the technical, common law sense.

The preponderance of the evidence, in the opinion of this

Court, indicates that "Reed Bird Island" was, in its entirety, covered by navigable water, as defined in the technical, common law sense, at the time the survey was made and at the time the patent was issued, whether or not the water was navigable in the civil law definition. For this reason, if no other, the patent should be declared invalid as having been issued in contravention of the provisions of the Statute.

Even if the locus in quo were fast land, and not covered by navigable waters at the time the patent was issued, this Court is of the opinion that the patent was invalid, having been issued in violation of the Plaintiff's riparian rights as defined in Section 46 of Article 54. Respondents contend that, since the evidence clearly shows the presence of a navigable channel or "gut" between the Island and the South Shore, about 100 feet wide, and, since the patent did not interfere with the Plaintiff's access to that, its rights under Section 46 were not interfered with. The evidence does indicate the existence of such a channel at the time in question, and that it was navigable by small craft, such as rowboats and sail boats, but, in the Court's opinion, riparian rights, within the meaning of the Statute, are not so restricted. These rights, so provided for, mean not merely that the riparian owner is entitled to access to navigable waters, however shallow, provided only that a skiff is floatable therein, but that he is entitled to access, by way of improvements, to the generally usable part of the navigable water, in other words, to the main channel of commerce of the river.

In *Melvin vs. Schlessinger*, 138 Maryland 339, the Court of Appeals said "for by a grant of these (accretions) the riparian owners would not only be excluded from the use of the navigable stream, but as such accretions lie between the shore and the channel of the stream (underscoring supplied), the riparian owners would be prevented thereby from making improvements in the waters in front of their lands".

In *Baltimore and Ohio Railroad Company vs. Chase*, 43 Maryland 23, at page 34, the Court of Appeals said that "in addition to this

right by reliction or accretion, the riparian proprietor, whose land is bounded by a navigable river, whether his title extends beyond the dry land or not, has the right of access to the navigable part of the river..... ." (Underscoring supplied). See also Potomac Steamboat Company vs. Upper Potomac Steamboat Company, 109 United States 672, wherein the same language is used. And in the case of Baltimore City vs. Steamboat Company, 104 Maryland 485, at 498, the Court said: "It is to be observed that the question before us is not that of the right of riparian owners to wharf out to the deep water line (underscoring supplied)..... ," thus implying that such right is recognized. The City's right, as a riparian owner, is not satisfied by access to the "gut" or stream described in the testimony, navigable only by the lightest of craft. The possibility that the main channel or the area of deep water may in the future shift, would appear immaterial; the rights of riparian owners must be determined with reference to the situation at a specific time, if they are to have any practical value.

In *Buttenuth vs. St. Louis Bridge Co.* 123 Ill. 535, 17 N.E. 439, the Supreme Court of Illinois, although deciding questions not germane to those in the case at bar, discussed very thoroughly the definition and meaning of the word "channel". It quoted with approval: "The word channel, when employed in treating subjects connected with the navigation of rivers, indicates the line of the deep water which vessels follow". And further on it said "so far back as can be known....., the main channel of the Mississippi River, at the point where Complainant's bridge is constructed, was always west of Bloody Island, that is, between that island and the Missouri shore.....and for that reason Bloody Island, although the river East of it was in fact at one time navigable for shallow draught vessels, --certainly in seasons of high water, --- was always regarded as being within the limits of the state of Illinois."

But the Respondents contend that in any case the City, since it claims under a grant limited to the erection of a bridge and uses

incidental thereto, cannot assert the rights of a riparian owner as set forth in the Statute. It appears doubtful that the Respondents, in this proceeding, are entitled to assert such a construction of the grant, but assuming that they are, and that their construction is correct (although there is no reverter in the grant), the rights lie somewhere and the Statute provides a blanket injunction against interference with them. It does not provide that a patent issued in violation thereof shall be good until such rights are asserted by one having title to assert them.

"This act is one relating to the interests and property of the public, and we are bound to take judicial notice of it, whether the parties on either side rely on it or not." (Day vs. Day, supra). "In most cases, the caveat proceeds upon the ground that some right or title of the caveator would be interfered with by the grant of the patent, but as the question is always whether it is lawful, right and just to issue the patent, this may and sometimes does depend upon other and higher considerations than the rights of the caveator, and therefore a caveat will not be dismissed merely for want of interest in the caveator in the matter in dispute....." (Patterson vs. Gelston, 23 Maryland 432). Although the case at bar does not involve a caveat, it is near enough for the principle to apply.


Finally, the Respondents contend that the City recognized the navigability of the gut or stream by applying to the United States District Engineer for authority to close it in 1935 and 1942. In the opinion of this Court, no such recognition can be implied from such applications. It is undisputed that the Patapsco River at that point is a navigable river, by either definition. Since the Federal Government had paramount jurisdiction, its permission was required to make such encroachments into the river, whether or not water navigable in fact was involved. In fact, the requirement to secure such a permit is obviously for the purpose of enabling the Federal government to deter-

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mine whether or not the navigable use of the river will be interfered with. If discretion were in the riparian owner to determine this, there would be no need to apply.

For the reasons set forth, the patent must be declared invalid. It is equitable, however, that the Plaintiff pay the costs of this proceeding.

10/27/55



Judge.

MOTION FOR RE-HEARING

MAYOR & CITY COUNCIL OF
BALTIMORE

VS.

H. MILTON WAGNER, JR., et al

In the Circuit Court for Anne
Arundel County, Docket 6, Folio
66, Year 1916, No. 4071, Equity

ROUSE AND MORTON
18 West Street
Annapolis, Md.

LUCAS BROS., INC., BALTIMORE, FORM L 133

Filed: 21 Nov. 1955

...OR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
	*	Folio 66
	*	Year 1916
	*	No. 4071
	*	

MOTION FOR RE-HEARING

H. Milton Wagner, Jr., et al., Respondents, by William L. Marbury, Frank T. Gray and John G. Rouse, Jr., their attorneys, move the Court to grant them a re-hearing upon the issue of fact of whether or not the land known as "Reed Bird Island" was covered with navigable water at the time of the granting of the patent therefor on September 10, 1909, to John P. Bruns, and as grounds for their motion say:

1. That following the announcement of the Court of its decision in this case on October 27, 1955, the Respondents' counsel learned for the first time of an extremely important witness, Mr. Harry MacLeod, whose affidavit is attached hereto as a part hereof.

2. It is submitted that the testimony of Mr. MacLeod, as indicated by the attached affidavit, would make a substantial difference in the Court's finding that on September 10, 1909, the land known as "Reed Bird Island" was covered with navigable water.

WHEREFORE, the Respondents respectfully move the Court that a re-hearing upon the aforesaid issue of fact be granted to them in order that their cause may be justly heard and determined in accordance with the true facts and circumstances now available

for presentation to this Court.

William I. Marbury 8977

Frank G. Gray

John P. Brown L.
Attorneys for Respondents

I HEREBY CERTIFY that on this 18th day of November, 1955, copy of the above mailed to Thomas N. Biddison, Lloyd G. McAllister and John R. Cicero, Solicitors for the Mayor & City Council of Baltimore.

Frank G. Gray

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
	*	Folio 66
	*	Year 1916
	*	No. 4071
	*	

* * * * *

AFFIDAVIT OF HARRY MacLEOD

STATE OF MARYLAND,
 SS.
 CITY OF BALTIMORE,

I HEREBY CERTIFY that on this 18TH day of November, 1955, before me the subscriber, a Notary Public in and for the City and State aforesaid, personally appeared HARRY MacLEOD, who made oath in due form of law as follows:

My name is Harry MacLeod, my residence being Hunt Club Road, Elkridge, Maryland; I am engaged in the construction business, and have my office at 619 S. Caton Avenue. I learned of the pending trial in this case through a notice which appeared in the newspaper on Saturday, October 29, 1955, announcing the Court's decision that the property known as Reed Bird Island should be considered City property and that the patent originally granted to Mr. John P. Bruns was invalid. Upon learning of the case in this manner I 'phoned Mr. W. L. Marbury, attorney for the respondents to advise him of my knowledge concerning the status of Reed Bird Island in 1909 and prior thereto.

My Father was Mr. John MacLeod who was well versed in maritime matters generally and had a substantial interest in the Patapsco River since his home residence, and the residence in which I grew up as a boy, was located on the North shore of the

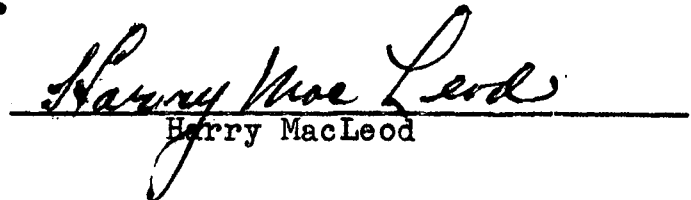
Patapsco River between Brooklyn and Ellicott City. I was born on January 26, 1886, and at about the time that I was fifteen years old my Father asked me to handle certain of his business affairs concerning land in and around the Patapsco River. He did this since he was away a good bit of the time. At this time I was attending City College, where I was enrolled in the Class of 1905. I left City College in 1904 and I remembered that I had been handling certain of my Father's business affairs prior to that time.

Some time prior to 1909 I remember that I had frequently been hunting on Reed Bird Island for reed birds. I would take a boat from our property further up the River down to Reed Bird Island and would pull the boat into the Island and get out and walk around on it hunting reed birds. These birds fed on wild grain, probably wild oats, which grew there. At that time the ground was dry and so far as I know the grain that grew there grows only on dry ground, and not on ground that is flooded at high tide. I was there at various times and was familiar with the Island at both high and low tide. I firmly and clearly recollect that at both high and low tide a portion of Reed Bird Island was exposed. Needless to say, there was surrounding the portion exposed at high tide a fairly substantial portion which was covered with water at high tide. There were reeds and marsh grasses growing over virtually all of the Island and the grain upon which the reed birds fed grew in the portion that was above ground at high tide. The people who went hunting with me were Frank and George Doetzer who lived near our home on the Patapsco River. Frank Doetzer died recently and I do not know where Mr. George Doetzer is now living. He has been away from this vicinity

for some time.

Mr. Bruns was a friend of my Father's and he and my Father had a joint arrangement under which they patented Reed Bird Island in Mr. Bruns' name. I remember going to Reed Bird Island with Mr. Bruns and my Father when Mr. Bruns went to look at the Island prior to the application for the patent. We got a rowboat from a pier on the Brooklyn shore near the end of the long bridge and rowed over to the Island. As we approached the Island a number of birds flew up and Mr. Bruns asked me what kind of birds they were. I told him they were reed birds, to which he replied that "We will name the island 'Reed Bird Island' ". At that time, Mr. Bruns did not get out and walk around on the Island. My memory is perfectly clear, however, that at about that time I had been hunting on the Island and that it was dry enough so that I could walk around and hunt on it without boots.

When I was approximately twenty-six years old I moved out West where I stayed for some time. I definitely remember that my hunting experiences on Reed Bird Island occurred prior to the time when I went out West.


Harry MacLeod

Subscribed and sworn to before me the day and year first above written.


Notary Public

No. 4071

Equity.

MAYOR & CITY COUNCIL OF
BALTIMORE

VS.

H. MILTON WAGNER, JR.,
et al

NOTICE OF APPEAL.

Filed 26 Nov, 1955.

IN THE CIRCUIT COURT
FOR
ANNE ARUNDEL COUNTY
IN EQUITY
Docket 6
Year 1916

Folio 66
No. 4071

MAYOR AND CITY COUNCIL OF BALTIMORE
Complainant
vs.
H. MILTON WAGNER, JR., et al.
Respondents

ANSWER TO MOTION FOR RE-HEARING

Mr. Clerk:
Please file, etc.

Thomas N. Biddison
Thomas N. Biddison

Lloyd G. McAllister
Lloyd G. McAllister

John R. Cicero
John R. Cicero
Solicitors for Mayor and City
Council of Baltimore

Filed 29 Nov, 1916

MAYOR AND CITY COUNCIL OF BALTIMORE	:	
	:	
Complainant	:	IN THE CIRCUIT COURT
	:	
	:	FOR
H. MILTON WAGNER, JR., et al.	:	
	:	ANNE ARUNDEL COUNTY
Respondents	:	IN EQUITY
	:	
	:	Docket 6
	:	Folio 66
	:	Year 1916
	:	No. 4071

ANSWER TO MOTION FOR RE-HEARING

Now comes the Mayor and City Council of Baltimore, Complainant, by Thomas N. Biddison, City Solicitor, Lloyd G. McAllister and John R. Cicero, Assistant City Solicitors, its solicitors, and in answer to the Respondents' motion for re-hearing in the above-entitled case, respectfully prays this Honorable Court to deny the motion for re-hearing for the following reasons:

1. That upon its face, the affidavit of Harry MacLeod discloses that he is, and was, not without interest in this case in view of the fact that he states, "Mr. Bruns was a friend of my father's and he and my father had a joint arrangement under which they patented Reeedbird Island in Mr. Bruns' name. * * * "

2. That this case was set for trial on a specific date by agreement of the parties with the concurrence of this Honorable Court in order that all parties would have, in the meantime, ample opportunity to adequately and completely prepare their cases for trial, including the attendance of any and all witnesses able to testify as to relevant and material matters involved in this case.

3. That Respondents notwithstanding this more than adequate time for preparation and notwithstanding the fact that Harry MacLeod is not without interest in this matter and as a result was, or should have been, aware of the trial of this case, now seek to re-open this case for the sole purpose of having this Honorable Court consider whether or not Harry MacLeod's testimony would alter one of this Honorable Court's findings of fact in

this case, to wit: That the land known as Reedbird Island at the time of the issuance of the patent was covered by navigable water.

4. Assuming, without admitting, that Harry MacLeod's testimony might cause this Honorable Court to revise its finding of fact that Reedbird Island was covered by navigable water at the time of the issuance of the patent, and this we cannot agree to in view of the specific testimony of Mr. John M. Mackall, supported and buttressed by agreed Exhibit No. 9, being a drawing showing in profile scale that there was no point between Stations 63 to 76 where the elevation of the ground was indicated as higher than zero or mean low tide, and the area between Station 63 and Station 76 was that occupied by approximately the central portion of Reedbird Island, as well as the testimony of other witnesses in the case, both called by the City and by the Respondents, in the main substantiating the fact that Reedbird Island was covered by navigable water at the time the patent was issued; said alteration will in nowise aid Respondents because this Honorable Court has found and determined that the patent was further invalid as it had been issued in violation of this Complainant's riparian rights as defined in Section 46 of Article 54 of the Public General Laws of Maryland.

5. That the granting or refusal of a re-hearing in this matter is in the discretion of this Honorable Court and no appeal lies from this Honorable Court's action unless there is a showing of injustice to the Respondents or an abuse of power by this Honorable Court; and no injustice will result to Respondents by this Honorable Court's denial of Respondents' motion to allow them to introduce testimony of a party not without interest in said proceedings and which testimony cannot, even if taken in its best light for Respondents, alter or contravene the finding of fact that Complainant's riparian rights were violated and hence the patent was invalid without regard to whether the land was,

or was not, covered by navigable water at the time of the issuance of the patent.

WHEREFORE having fully answered Respondents' motion for re-hearing, your Complainant respectfully requests that said motion be denied and your Complainant be excused with its proper costs.

AND as in duty bound, etc.

Thomas N. Biddison

THOMAS N. BIDDISON

b

Lloyd G. McAllister

LLOYD G. McALLISTER

John R. Cicero

JOHN R. CICERO

Solicitors for Mayor and City Council
of Baltimore

I hereby certify that copy of the aforementioned Answer to Motion for Re-hearing was mailed to William L. Marbury, Frank T. Gray and John G. Rouse, Jr., Solicitors for Respondents, this 28th day of November, 1955.

John R. Cicero

JOHN R. CICERO, Assistant City Solicitor

No. 4071

Equity

Mayor & City Council of
Baltimore

vs.

H. Milton Wagner, Jr.,
et al

Order of Court denying Motion
for Rehearing.

Filed: December 29, 1955

WORTH CO
FACTORY BOND

NO. 4071

EQUITY

MAYOR & CITY COUNCIL OF

BALTIMORE

VS.

H. MILTON WAGNER, JR.,

et al

Petition for Extension of
Time, Consent and Order of
Court.

Filed 25 Jan., 1956.

H. MILTON WAGNER, JR., et al : IN THE
Appellants : COURT OF APPEALS
Vs. : OF
MAYOR & CITY COUNCIL OF : MARYLAND
BALTIMORE :
Appellee : OCTOBER TERM, 1955
: No.

; : : : : : : : : : : :

PETITION

The Petition of H. Milton Wagner, Jr., et al, Appellants in the above entitled case respectfully represents:

-1-

That this is an appeal from a Decree of the Circuit Court for Anne Arundel County (Equity No. 4071) dated October 27, 1955, said appeal having been noted by your Petitioners on November 25, 1955.

-2-

That under the Rules of this Court, relating to appeals from Courts of Equity, the transcript of the record is required to be filed in this Honorable Court within sixty days from the time the appeal is taken.

-3-

That due to the present illness of one of the Court Stenographers of the Circuit Court for Anne Arundel County, who took part of the testimony in the above entitled case, it is impossible for the record to be transmitted to this Court within the time required by said Rules, the transcript of the testimony being incomplete at this time.

-4-

That Rule 11 of the Rules of this Court provides that for good cause shown, this Court, or if it is not in session, the Chief Judge thereof, may extend the time for transmitting the

transcript of the record by an Order made before the expiration of the time.

-5-

That counsel of record for the Appellee have consented to the passage of an Order extending the time for transmitting the transcript of the record to this Court, said Consent being attached hereto and made a part hereof.

WHEREFORE your Petitioners pray an Order extending the time for transmitting to this Court the transcript of record in the above entitled appeal.

AND, AS IN DUTY BOUND, ETC.

John S. Rouse, Jr.

William T. Hartung

Frank T. Gray

Attorneys for Appellants.

STATE OF MARYLAND
COUNTY OF ANNE ARUNDEL, to wit:

I HEREBY CERTIFY that on this 19th day of January, 1956, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared John G. Rouse, Jr., one of the counsel of record for the Appellants and made oath in due form of law that the matters and facts set forth in the foregoing Petition are true and correct to the best of his knowledge and belief.

AS WITNESS my hand and Notarial Seal.

James P. McAllister
Notary Public

H. MILTON WAGNER, JR., et al	:	IN THE
Appellants	:	COURT OF APPEALS
	:	OF
Vs.	:	MARYLAND
	:	
MAYOR & CITY COUNCIL OF BALTIMORE	:	OCTOBER TERM, 1955
	:	
Appellee	:	No.
	:	
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:

ORDER

Upon the foregoing Petition, Affidavit and Consent, it is this 23rd day of January, 1956, ORDERED by the Court of Appeals of Maryland that the time for transmitting the transcript of record in the above entitled appeal to this Court be, and it is hereby, extended to February 24th, 1956.

Fredrick W. Gruene

 Chief Judge.

Court of Appeals of Maryland

No. 195....., OCTOBER TERM, 19..55..

.....¹⁰⁷
.....H. Milton Wagner, et. al.....

VS.

.....M. & C. C. of Baltimore.....

DISPOSITION OF APPEAL IN COURT OF APPEALS:

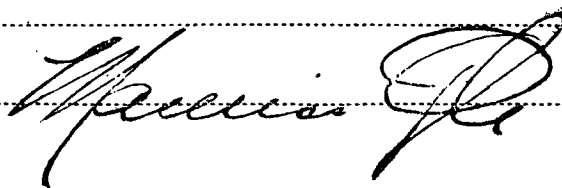
Decree affirmed, with costs -

TRANSCRIPT and EXHIBITS - 7 rolls and 1 pkg. photos

RETURNED TO ...Clerk Circuit Court for Anne Arundel Co.....

.....Court House - Annapolis, Md..... Date Aug. 29, 1956.....

BYMessenger.....

..........

REMARKS:

No. 195, OCTOBER TERM, 1955
(LEAVE BLANK)

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

IN THE CASE OF

H. Milton Wagner, Jr., Amelia W. Sutton, F.C. W. Mulligan et al

and Mercantile-Safe Deposit and Trust Co., etc.

Appellant s

VS.

M. and C. C. of Baltimore

Appellee

TO THE

COURT OF APPEALS OF MARYLAND

William L. Marbury ✓ - ~~John R. Cicero~~

Frank T. Gray
John G. Rouse, Jr. ✓ - ~~Frank T. Gray~~

FOR APPELLANTS

Thomas N. Biddison

Lloyd G. McAllister

John R. Cicero ✓

FOR APPELLEE

Filed February 24-1956
(LEAVE BLANK)

MAYOR AND CITY COUNCIL
OF BALTIMORE

VS.

H. MILTON WAGNER, JR.
AMELIA W. SUTTON,
MARGARET WAGNER,
HENRY M. WAGNER,
JOAN WAGNER,
HARRIET A. SUTTON,
ALAN C. SUTTON,
HARRY W. SUTTON,
FLORENCE C. W. MULLIGAN,
ROBERT B. WAGNER, JR.,
RICHARD V. S. WAGNER and
HESTER CORNER WAGNER and
MERCANTILE-SAFE DEPOSIT
AND TRUST COMPANY OF BALTIMORE,
Trustees under the Will of
ROBERT B. WAGNER
JOHN P. BRUNS

IN THE

CIRCUIT COURT

FOR

ANNE ARUNDEL COUNTY

NO. 4071 EQUITY

.....

DOCKET ENTRIES

- 1916 March 28 Bill of Complaint and Exhibit fld Supa issd. to
Baltimore City " Summoned &c
- 1916 April 10 Petition for leave to file Amended Bill filed and
Order of Court granting leave to file Amended Bill
- 1916 April 17 Order for App. filed
- 1916 May 9 Amended Bill and two Exhibit filed. "Service
admitted"
- 1916 June 13 Answer, Exhibits A. & B. & 25 Photos fd.
- 1916 Sept. 2 General Replication filed
- 1933 Jany. 4 Petition to withdraw 25 Exhibits (photographs)
marked 1L to 25L for use in Baltimore City, consent
& Order of Court granting Petition & receipt to the
Clerk of Court for A. A. Co, filed
- 1954 May 28 Petition to Substitute Parties Respondent and Order
of Court thereon fd.

1954 June 1 Petition to Appoint Guardian ad Litem and Order of Court thereon fd.

1955 Apr. 20 Petition for Authority to file Amended Answer and Order of Court thereon fd.

1955 Apr. 20 Amended Answer of Substituted Respondents fd.

1955 Apr. 22 Motion to enter Appearance of Thomas N. Biddison, City Solicitor, Lloyd G. McAllister, Asst. City Solicitor, and John R. Cicero, Asst. City Solicitor, as Solicitors for Complainant fd.

1955 Apr. 23 Request for Subpoenas Duces Tecum fd. Supa Duces Tecum issd. (for two Witnesses). Summoned Ambo.

1955 Apr. 25 Request for Subpoenas Duces Tecum fd. Supa. Duces Tecum issd. (for one Witness). Summoned

1955 Apr. 25 Request for Subpoena fd. Supa. issd. (for two Witnesses). Summoned Ambo.

1955 Apr. 25 Request for Subpoena fd. Supa issd. (for two Witnesses). Summoned Ambo 4/27/55.

1955 Apr. 26 Request for Subpoena Duces Tecum fd. Supa Duces Tecum issd. (for one Witness). Summoned.

1955 Apr. 28 Hearing held in open Court (Judge Macgill). Testimony taken. Plaintiff's Exhibits Nos. 1, 2 and 3 and Defendant's Exhibits Nos. 1, 2 and 3 fd. Stipulation and Agreed Exhibits Nos. 1, 2, 3, 4, 5, 6, 6a, 7, 8 and 9 fd.

1955 Oct. 27 Opinion and Decree fd.

1955 Nov. 21 Motion For Re-Hearing fd.

1955 Nov. 25 Notice of Appeal fd.

1955 Nov. 29 Answer to Motion for Re-Hearing fd.

1955 Dec. 29 Order of Court denying Motion for Rehearing fd.

1956 Jan. 25 Petition for Extension of Time to transmit Record to Court of Appeals, Consent and Order of Court thereon fd.

1956 Feb. 15 Testimony in Open Court Before Judge Macgill, fd.

1956 Feb. 24 Original papers transmitted to the Court of Appeals, Annapolis, Maryland.

Counsel for Plaintiff

T. N. Biddison
 L. G. McAllister
 J. R. Cicero

Pltf Sol. 10.00
 Def. Sol. 10.00
 Clerk 14.90
 Balto City Sheriff (ex) .90
35.80

Counsel for Defendant

W. L. Marbury
 F. T. Gray
 J. G. Rouse, Jr.
John J. Will
 Frank Cosnell

Clerk 113.75
 J. C. D., Sheriff 17.50
 J. W. A., Jr., Sheriff 2.50
 K. H. McC., Stenog. 15.00
 I. H., Stenog. 20.00
158.75

add'l Clerk 6.50
Transmittal to Court of Appeals 7.50 pd by Check Rouse & Morton 2/21/56

* 1916 June 13, Photos under separate cover.-1955 Apr. 28, Plaintiff's Exhibits Nos. 1, 2 and 3 and Defendant's Exhibits Nos. 1,2 and 3 same.

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STATE OF MARYLAND, Anne Arundel County, Set:

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, Clerk

MAYOR AND CITY COUNCIL
OF BALTIMORE

VS.

H. MILTON WAGNER, JR.
AMELIA W. SUTTON,
MARGARET WAGNER,
HENRY M. WAGNER,
JOAN WAGNER,
HARRIET A. SUTTON,
ALAN C. SUTTON,
HARRY W. SUTTON,
FLORENCE C. W. MULLIGAN,
ROBERT B. WAGNER, JR.,
RICHARD V. S. WAGNER and
HESTER CORNER WAGNER and
MERCANTILE-SAFE DEPOSIT
AND TRUST COMPANY OF BALTIMORE,
Trustees under the Will of
ROBERT B. WAGNER
JOHN P. BRUNS

:
:
: IN THE
: CIRCUIT COURT
: FOR
: ANNE ARUNDEL COUNTY
: NO. 4071 EQUITY
:

.....

DOCKET ENTRIES

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1916	April	10	Petition for leave to file Amended Bill filed and Order of Court granting leave to file Amended Bill
1916	April	17	Order for App. filed
1916	May	9	Amended Bill and two <u>Exhibit</u> filed. "Service admitted"
* 1916	June	13	Answer, Exhibits A. & B. & 25 Photos fd.
1916	Sept.	2	General Replication filed
1933	Jany.	4	Petition to withdraw 25 Exhibits (photographs) marked 1L to 25L for use in Baltimore City, consent & Order of Court granting Petition & receipt to the Clerk of Court for A. A. Co, filed
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MAYOR AND CITY COUNCIL
OF BALTIMORE

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IN THE
CIRCUIT COURT
FOR
ANNE ARUNDEL COUNTY
NO. 4071 EQUITY

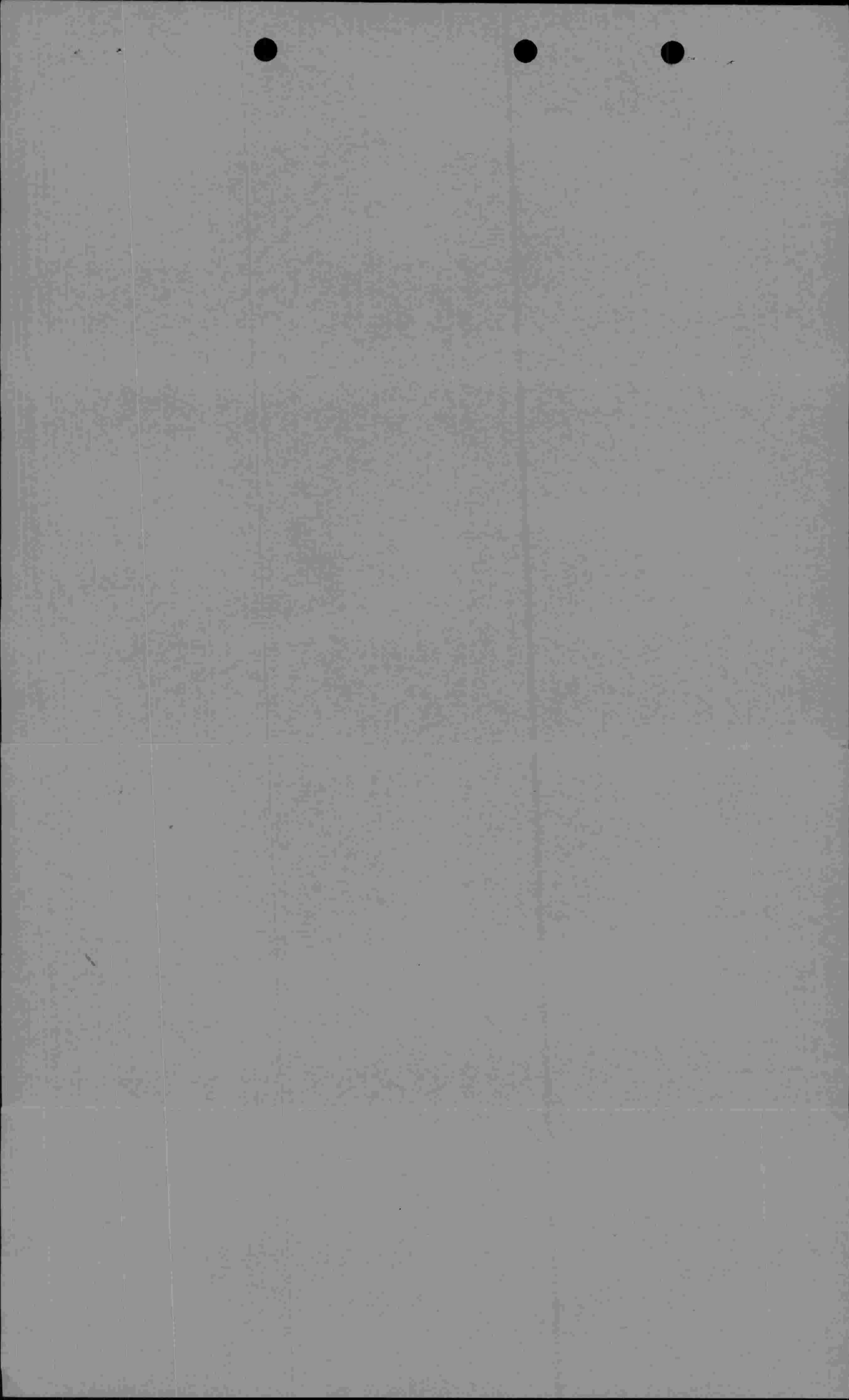
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Consent.....	136
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Testimony.....	138
Certification.....	139



MANDATE

Court of Appeals of Maryland

No. 195....., OCTOBER TERM, 1955....

H. Milton Wagner, Jr., et al
 vs.
 M. & C. C. of Baltimore

Appeal from the Circuit Court for Anne
 Arundel Co.
 Filed: Feb. 24, 1956
 July 30, 1956; Decree affirmed, with costs.
 Opinion filed. Op. Brune, C. J.

Appellant's Cost in the Court of Appeals of Maryland,

Clerk's Cost	\$	20.00	
Brief	\$	127.97	
Appearance Fee	\$	10.00	
$\frac{1}{2}$ Rec. Ext.	\$	233.96	\$391.93

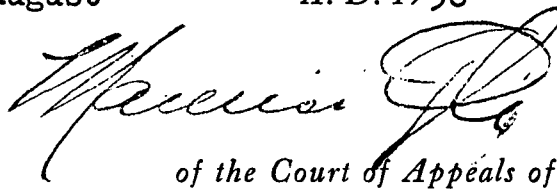
Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$	115.00	
Appearance Fee	\$	10.00	
$\frac{1}{2}$ Rec. Ext.	\$	233.96	358.96
			\$750.89

STATE OF MARYLAND, Sct:

I, Maurice Ogle, Clerk of the Court of Appeals of Maryland, do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this twenty-ninth day of August A. D. 1956

 Clerk
 of the Court of Appeals of Maryland.

FILED

1956 AUG 29 10 10

198155

Adelphi

No 4071 Equity

Circuit Court of Anne Arundel
County, in Equity.

Mayor and City Council
of Baltimore,

vs.

John P. Bruns.

481 Broadway Bldg

BILL OF COMPLAINT.

Mr. Clerk,

Please file

J. S. Field

City Solicitor,
Solicitor for the plaintiff.

Field vs. Marshall 1916

65

THIRD - That by the City Charter of 1898, Chapter 123 (Edition of 1915, page 13, subsection 8), it was given to the Mayor and City Council of Baltimore "To provide for the preservation of the navigation of the Patapsco river and tributaries, including the establishment of lines throughout the entire length of said Patapsco river and tributaries, beyond which lines no piers, bulkheads, wharf, pilings, structures, obstructions or extensions of any character may be built, erected, constructed, made or extended; to provide for improving, cleaning and deepening said river and tributaries, and the removal therefrom of anything detrimental to navigation or health; to provide for and regulate the stationing, anchoring and moving of vessels or other water craft, and to prevent any material, refuse or matter of any kind from being thrown into, deposited in or placed where the same may fall, or be washed, into said river or tributaries; to make surveys or charts of the Patapsco river and tributaries, and to ascertain the depth and course of the channels of the same; and when necessary in its judgment, to affix bouys or water marks for facilitating and rendering more safe the navigation thereof, to erect and maintain and to authorize the erection and maintenance of, and to make such regulations as it may deem proper, respecting wharves, bulkheads, piers and piling, and the keeping of the same in repair, so as to prevent injury to navigation or health; to regulate the use of public wharves, docks, piers, bulkheads or pilings, and to lease or rent the same, and to impose and collect dockage from all vessels and water craft lying at or using the same, and to collect wharfage and other charges upon all goods, wares, merchandise or other articles landed at, shipped from, stored on or passed over the same; and so forth:

FOURTH - Nevertheless on the 10th day of September, 1909 was issued out of the Land Office of Maryland and on the 10th day of September, 1909 sealed with the Great Seal by the Governor of Maryland, a Patent to John P. Bruns for Reed Bird Island containing 33 3/4 acres of land; on a survey made for him on a Special Warrant for one acre obtained out of the Land Office by said John P. Bruns on the 10th day of September, 1908, this tract said to be "an Island in the Patapsco river lying in Anne Arundel County aforesaid but being in fact a merely casual obstruction of mud floated up toward and against the 'Long' or Light Street Bridge over the middle branch of said Patapsco river from Light Street in Baltimore City to First Street in Brooklyn, Anne Arundel County and from time to time shifting hither and thither under the influence of the tide and at high tide is covered by water. a copy of said patent is filed herewith and marked Plaintiff's Exhibit A.

FIFTH - That under the Act of 1914, Chapter 267, the State Roads Commission was empowered to build a Bridge across the Patapsco river to take the place of the 'Long' or Light Street Bridge; and thereupon the Mayor and City Council of Baltimore entered into a Bond in the penalty of Fifty Thousand Dollars with the United States Government to remove the present bridge within six months after the new bridge is open to public traffic;

WHEREUPON the State Roads Commission, acting under the authority of the aforesaid Act of the General Assembly of Maryland, decided to build a new bridge from a point in Baltimore city at the Foot of Hanover street, spanning the Middle Branch of the Patapsco river to the Baltimore County shore, and another bridge from a point on the Baltimore County shore spanning the Patapsco river to the Anne Arundel County shore

at the present terminus of the Light Street Bridge; and in examining the premises it was discovered by the plaintiff's agents that the Patent herein set forth had been taken for land which is under the control of and already vested in the Mayor and City Council of Baltimore as in this Bill hereinbefore set forth:

To the End Therefore;

FIRST - That this Court will take cognizance of the matters and things concerning the premises.

SECOND - And will protect the plaintiff in the peaceable enjoyment and possession of its Constitutional and Statutory Rights in the premises, especially as against any claims or pretense of claims upon the part of the defendant.

THIRD - And that every supposed Patent for that pretended Reed Bird Island to the said John P. Bruns be declared to be null and void; and especially that the Patent heretofore issued out of the Land Office of Maryland on the 19th day of August, 1909 and sealed with the Great Seal by the Governor on the ^{10th} ~~28th~~ day of ^{September} August, 1909; Certified Copy of which Patent is filed with this Bill of Complaint marked 'Plaintiff's Exhibit A' - be cancelled:

FOURTH - And that the States Writ of Scire Facias issue out of this Court of Chancery directed to the sheriff of Baltimore City commanding him to make known unto the defendant that he be and appear before the Judges of this Court, in Equity, upon a day certain to be named therein to show if anything he can say why the Prayer of the plaintiff's Bill of Complaint ought not to be granted and decree thereupon put into execution.

FIFTH - And that your orator may have such other and further relief as its case may require.

May it please your Honor to grant unto your orator the writ of subpoena directed to said John P. Bruns residing in Baltimore City, commanding him to be and appear in this court at some certain day to be named therein and answer the premises and perform such decree as may be passed therein.

And as in duty bound,

S. S. Field - 2
City Solicitor, Solicitor
for the plaintiff.

STATE OF MARYLAND,
CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 27 day of March in the year 1916, before me, the subscriber, a Notary Public of the State of Maryland, in and for the city of Baltimore, aforesaid, personally appeared James F. Thrift, Comptroller of the City of Baltimore and agent of the Mayor and City Council of Baltimore, and made oath in due form of law that the matters and facts in the foregoing Bill are true to the best of his knowledge, information and belief, and he further certifies that he is the agent of the said body corporate and has full authority to make this affidavit.

WITNESS my hand and Notarial Seal.

Chas. Kender Jr.
Notary Public.

I hereby authorize and approve
the institution of the above suit.

John Herbert
Mayor.

No. 4071 Equity 3

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY,
IN EQUITY.

MAYOR AND CITY COUNCIL OF
BALTIMORE

VS.

JOHN P. BRUNS.

O R D E R

10th April 1916

Filed 10th April 1916

MARYLAND, SCT.,

THE STATE OF MARYLAND,

To *John L. Drums* *S.P. 3/29/16 #4*

of *Baltimore City* ~~County~~ GREETING,

You are Hereby Commanded That all excuses set apart, you personally be and appear before the Circuit Court of Anne Arundel County, sitting in Equity, to be held at the City of Annapolis, on the

Just Monday of *April* next, to answer the complaint of

Mayor and City Council of Baltimore

against you in said Court exhibited. Hereof fail not, as you will answer the contrary at your peril.

Witness, the Honorable WM. H. THOMAS, Chief Judge of the said Court, the

6 day of *March* 19*16*.

Issued the *28* day of *March* 19*16*.

G. Mills Clerk.

(*S. S. Field*)
Sec

Summoned and a copy of the
Bill of Complaint left with
John P. Bruns, on the 29th
day of March 1916, in
presence of Morris Finkelstein

Thomas F. McNulty
Sheriff

Exec D 90

... 24th Mch 1916
and forthwith delivered to the
Sheriff of Baltimore City.

Testy
J. C. Little, Clerk

EQUITY.

No. 4071

Mayor and City Council
of Baltimore

vs.

John P. Bruns
431 Murray Bldg,
Balt. Md.

per se.

Returnable ... Monday ... 1916

MAYOR AND CITY COUNCIL OF BAL-
TIMORE

VS.

JOHN P. BRUNS.

)
IN THE CIRCUIT

COURT FOR ANNE ARUNDEL

COUNTY, IN EQUITY.

TO THE HONORABLES, THE JUDGES OF SAID COURT:

Your orator complaining says:

That heretofore, to wit, on the *28th* day of March, 1916, it filed its bill of complaint in this court against a certain John P. Bruns, the defendant praying, amongst other things, that a patent granted to said John P. Bruns for Reed Bird Island be declared null and void as in said bill is more particularly set forth, to which the defendant has been summoned and that no other proceedings were had as by the same proceedings now in this Court will appear; that your orator has lately discovered other facts which it desires to allege by way of amendment (or supplement) to the aforesaid bill of complaint.

To the end, therefore:

That the plaintiff may be allowed to file an amended bill (or supplement) to the aforesaid original bill of complaint.

S. S. Field
City Solicitor. Solicitor
for the plaintiff.

It is hereby ordered this / 0 day of April, 1916, by the Circuit Court for Anne Arundel County, in Equity, that the plaintiff be allowed to file its amended bill (or supplement) to the original bill of complaint provided said amended bill

(or supplement) to the original bill of complaint be filed within thirty days from the date hereof and provided also that a copy of said amended bill (or supplement) to the original bill of complaint be served upon the defendant or his attorney.

John P. Bearhans
Judge.

WM. L. MARBURY
FRANK GOSNELL
GEO. WEEMS WILLIAMS
JESSE SLINGLUFF
WILLIAM L. RAWLS

LAW OFFICES
MARBURY, GOSNELL & WILLIAMS
MARYLAND TRUST BUILDING
CALVERT & GERMAN STREETS
BALTIMORE

TELEPHONE ST. PAUL 2587

CABLE ADDRESS
"EMGE"

2-H- 8524.

April 15th, 1916.

Subject: MAYOR & CITY COUNCIL OF BALTO. v. BRUNS.

George Wells, Esq.,
Clerk of Circuit Court
for Anne Arundel County,
Annapolis, Md.

Dear Sir:-

Inclosed please find order to enter appearance of John
J. Hill, Esq., and myself for the defendant in the above entitled
cause. Kindly acknowledge receipt, and file.

Yours very truly,

1 inclosure.

Frank Gosnell

Pa 4071 *copy*

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY IN EQUITY.

MAYOR AND CITY COUNCIL OF
BALTIMORE

VS.

JOHN P. BRUNS and
HARRY M. WAGNER.

AMENDED (or supplemental) BILL

Mr. Clerk:

Please file.

J. J. Freed
Atty. for plaintiff.

Service ^{of copy} accepted this ^{8th}
day of ^{May}, 1916 by

Marbury Small & Williams

Atty for defendant

Wm. S. May 1916

MAYOR AND CITY COUNCIL)
OF BALTIMORE)

VS.

JOHN P. BRUNS and
HARRY M. WAGNER.

IN THE
CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY, IN EQUITY.

AMENDED (or supplemental) BILL.

TO THE HONORABLES, THE JUDGES OF SAID COURT:

Your orator complaining says:

That heretofore, to wit, on the _____ day of
March, 1916, it filed its bill of complaint in this Court against
a certain John P. Bruns, praying amongst other things to declare a
patent for Reed Bird Island null and void, as is in said bill more
particularly set forth and that heretofore, to wit, on the ninth
day of April, 1916, this Honorable Court granted unto your orator
the right to file an amended (or supplemental) bill, as by the same
proceedings now in this Court will appear; that your orator has
lately discovered and now charges by way of amendment (or supple-
ment) to its aforesaid bill of complaint that:

FIRST: That this plaintiff is the municipal corporation named
in the constitution of Maryland and in the Laws Publica General and
Local thereof by this name, to wit, the Mayor and City Council of
Baltimore; and is and since the year 1888 always has been in
possession and ownership of the hereinafter mentioned Light Street
Bridge; and is and since the year 1888 always has been in statutory

control of the Patapsco river and all its tributaries.

SECOND: That by the laws of Maryland, Acts of 1856, Chapter 215, passed on the 10th day of March, 1856, one Richard O. Crisp was authorized to build, and shortly thereafter did build that bridge, over the River Patapsco from Ferry Bar in Baltimore City and County to Anne Arundel county, that is now the plaintiff's sole property; and by the City Code, Laws of Maryland of 1888, Section 824, - now Paragraph 839 of the City Charter - it was provided in these words: "All bridges crossing the Patapsco river from said City, including the bridge known as the 'Long' of Light Street Bridge shall be maintained and kept in repair for public use at the sole expense of the said City of Baltimore."

THIRD: That by the City Charter of 1898, Chapter 123 (Edition of 1915, page 13, subsection 8), it was given to the Mayor and City Council of Baltimore "to provide for the preservation of the navigation of the Patapsco river and tributaries, including the establishment of lines throughout the entire length of said Patapsco river and tributaries, beyond which lines no piers, bulkheads, wharf pilings, structures, obstructions or extensions of any character may be built, erected, constructed, made or extended; to provide for improving, cleaning and deepening said river and tributaries, and the removal therefrom of anything detrimental to navigation or health; to provide for and regulate the stationing, anchoring and moving of vessels or other water craft, and to prevent any material, refuse or matter of any kind from being thrown into, deposited in or placed where the same may fall, or be washed, into said river or tributaries; to make surveys and charts of the Patapsco river and tributaries, and to ascertain the depth and course of the channels of the same; and when necessary in its judgment, to affix bouys or water marks for facilitating and rendering more safe the navigation thereof, to erect and

maintain and to authorize the erection and maintenance of, and to make such regulations as it may deem proper, respecting wharves, bulkheads, piers and piling, and the keeping of the same in repair, so as to prevent injury to navigation or health; to regulate the use of public wharves, docks, piers, bulkheads or pilings, and to lease or rent the same, and to impose and collect dockage from all vessels and water craft lying at or using the same, and to collect wharfage and other charges upon all goods, wares, merchandise or other articles landed at, shipped from, stored on or passed over the same;" and so forth:

FOURTH: Nevertheless on the 10th day of September, 1909 was issued out of the Land Office of Maryland and on the 10th day of September, 1909 sealed with the Great Seal by the Governor of Maryland, a patent to John P. Bruns for Reed Bird Island containing 33 3/4 acres of land; on a survey made for him on a special warrant for one acre obtained out of the Land Office by said John P. Bruns on the 10th day of September, 1908, this tract said to be "an island in the Patapsco river lying in Anne Arundel county aforesaid" but being in fact a merely casual obstruction of mud floated up toward and against the 'Long' or Light Street Bridge over the middle branch of said Patapsco river from Light street in Baltimore City to First street in Brooklyn, Anne Arundel county and from time to time shifting hither and thither under the influence of the tide and being at high tide covered by water. A copy of said patent is filed herewith and marked "Plaintiff's Exhibit A".

FIFTH: That under the Acts of 1914, Chapter 267, the State Roads Commission was empowered to build a bridge across the Patapsco river to take the place of the 'Long' or Light Street Bridge; and thereupon the Mayor and City Council of Baltimore entered into a bond in the penalty of fifty thousand dollars with the United States Government to remove the present bridge within six months after the

new bridge is open to public traffic;

WHEREUPON the State Roads Commission, acting under the authority of the aforesaid act of the General Assembly of Maryland, decided to build a new bridge from a point in Baltimore City at the foot of Hanover street, spanning the middle branch of the Patapsco river to the Baltimore county shore, and another bridge from a point on the Baltimore county shore spanning the Patapsco river to the Anne Arundel county shore at the present terminus of the Long or Light Street Bridge; and in examining the premises it was discovered by the plaintiff's agents that the patent herein set forth had been taken for land which is under the control of and already vested in the Mayor and City Council of Baltimore as in this bill hereinbefore set forth.

SIXTH: That by deed dated the 23rd day of September in the year 1910, the said John P. Bruns, together with John McLeod and Minnie McLeod, his wife, attempted to convey unto Henry M. Wagner the so-called Reed Bird Island mentioned in these proceedings, a certified copy of said deed being herewith filed and marked "Plaintiff's Exhibit B"; and by reason of said conveyance the said Henry M. Wagner might be deemed a necessary party to these proceedings and is hereby made a party hereto.

SEVENTH: That the description for the said Reed Bird Island contained in the survey upon which said patent was granted, is materially erroneous, and contains two serious mis-statements, to wit:

- (a) "The above described land is not covered by navigable waters,"
- (b) "Improvements none,"

which statements are so far misleading and altogether wrong that (as shown by considering other parts of said description and the actual site of the premises) the said land is both covered by the navigable waters of the Patapsco river in which the tide ebbs and flows, and is also improved with the bridge and piling of the Long or Light Street Bridge

of your orator, whose property it is, which bridge is a public highway forming communication between Anne Arundel county and Baltimore City and is of sufficient strength for teams, horses, carriages, automobiles and street cars to cross and is an improvement which was purchased by the Mayor and City Council of Baltimore and the County Commissioners of Anne Arundel county for the convenience of the inhabitants thereof; and that the survey for said property began on the east side of the Long or Light Street Bridge. Certified copy of the return of said survey is filed herewith and Marked "Plaintiff's Exhibit C."

EIGHTH: That said statements and said survey are false and fraudulent and designed for the purpose of depriving your orator, the Mayor and City Council of Baltimore, of its rights in the said Patapsco river.

NINTH: That the said Mayor and City Council of Baltimore as the owner of the fee simple land on the Anne Arundel county side of said bridge is entitled as riparian owner to any land that may be made out of the said waters of the Patapsco river and that the grant of said patent will deprive it of access to and over its land upon the Anne Arundel county side of said bridge, when said bridge is removed as it will be an obstruction to the free use and enjoyment of said land and that said patent would, therefore, be a cloud upon the title of the Mayor and City Council of Baltimore to any accretion which may take place and to the land under said water.

To the End Therefore:

FIRST: That this Court will take cognizance of the matters and things concerning the premises.

SECOND: And will protect the plaintiff in the peaceable enjoyment and possession of its constitutional and statutory rights in the premises, especially as against any claims or pretense of claims upon the part of the defendants.

THIRD: And that every supposed patent for that pretended Reed Bird Island to the said John P. Bruns be declared to be null and void; and especially that the patent heretofore issued out of the Land Office of Maryland on the 15th day of August, 1909 and sealed with the Great Seal by the Governor on the 28th day of August, 1909, certified copy of which patent is filed with this bill of complaint marked "Plaintiff's Exhibit A" be cancelled.


FOURTH: And that said patent and said deed from John P. Bruns et al. to Henry M. Wagner be set aside and be declared null and void.

FIFTH: And that the States writ of scire facias issue out of this Court of Chancery directed to the sheriff of Baltimore City commanding him to make known unto the defendants that they be and appear before the Judges of this Court in Equity, upon a day certain to be named therein to show if anything they can say why the prayer of the plaintiff's bill of complaint ought not to be granted and decree thereupon put into execution.

SIXTH: AND that your orator may have such other and further relief as its case may require.

May it please your Honor to grant unto your orator the writ of subpoena directed to said John P. Bruns and Harry M. Wagner, residing in Baltimore City, commanding them to be and appear in this court at some certain day to be named therein and answer the premises and perform such decree as may be passed therein.

And as in duty bound,



City Solicitor, Solicitor
for the plaintiff.

STATE OF MARYLAND,

TO WIT:

CITY OF BALTIMORE,

I HEREBY CERTIFY that on this Sixth day of May, in the year 1916, before me, the subscriber, a Notary Public of the State

of Maryland, in and for the City of Baltimore aforesaid, personally appeared James F. Thrift, Comptroller of the City of Baltimore and agent of the Mayor and City Council of Baltimore, and made oath in due form of law that the matters and facts in the foregoing Amended (or supplemental) Bill, are true to the best of his knowledge, information and belief, and he further certifies that he is the agent of the said body corporate and has full authority to make this affidavit.

WITNESS my hand and Notarial Seal.

Frederic M. Richter

Notary Public.

~~I hereby authorize and approve
the institution of the above suit.~~

Mayor

No. 4071 Equity-6

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY IN EQUITY.

MAYOR AND CITY COUNCIL
OF BALTIMORE

VS.

JOHN P. BRUNS and
HARRY M. WAGNER.

PLAINTIFF'S EXHIBIT B.

Filed 9 May 1966

D E E D

From

John Peirce Bruns, et al.

to

Harry M. Wagner.

Land Records of Anne Arundel County,

Liber G.W.No. 83, folio 184.

THIS DEED, Made this 23rd day of September, in the year 1910, by and between John Peirce Bruns, of Baltimore City, State of Maryland, party of the first part, and John McLeod and Minnie McLeod, his wife, of Lansdown, in said state, parties of the second part, and Harry M. Wagner, of said City and State, of the third part.

WHEREAS said John McLeod hath an equitable interest in the land hereinafter described for the purpose of conveying, which he and his said wife join in this deed.

NOW, THEREFORE, THIS DEED WITNESSETH that, for and in consideration of the sum of \$1.00 and other good and valuable consideration, to him paid, the said John Pierce Bruns doth grant and convey unto the said Harry M. Wagner, his heirs and assigns, all that lot of land called Reed Bird Island, situate and lying in the Patapsco River in Anne Arundel County, State of Maryland, containing 33 $\frac{1}{2}$ acres, more or less, and more particularly in a grant or patent thereof from the State of Maryland, to the said John Pierce Bruns, dated the 19th day of August, 1909, and recorded in the Land Office of Maryland.

TOGETHER with the improvements thereon and the rights and appurtenances thereto belonging or appertaining.

TO HAVE AND TO HOLD the above granted property unto the said Harry M. Wagner, his heirs and assigns, forever, in fee simple.

AND the said John Pierce Bruns and John McLeod hereby covenant with the said Harry M. Wagner that they will warrant generally the property hereby conveyed, and they are seized of the land hereby conveyed and that they have done no act to encumber said property and that they will

execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the said John Pierce Bruns, John McLeod and Minnie McLeod, his wife, the day and year first above written.

Name John McLeod on first page inserted before signing.

Test:	John Pierce Bruns,	(Seal)
H. Estelle Fay.	John McLeod,	(Seal)
	Minnie McLeod,	(Seal)

STATE OF MARYLAND, *City Sect 1*
CITY OF BALTIMORE, *Notary*

I HEREBY CERTIFY that on this 23rd day of September, 1910, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared John McLeod and Minnie McLeod, his wife, and acknowledged the foregoing deed to be their act.

(Notary's Seal) M. Estelle Fay,
Notary Public.

STATE OF MARYLAND, *City*
CITY OF BALTIMORE, *Notary*

I HEREBY CERTIFY that, on this 23rd day of September, 1910, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared John Pierce Bruns, and acknowledged the foregoing deed to be his act.

(Notary's Seal) M. Estelle Fay,
Notary Public.

Recorded 2nd December, 1910

State of Maryland, Anne Arundel County, to-wit:-

I hereby certify that the foregoing is truly taken and copied from

Libber G-W- No 83 folio 184

One of the Land Records of Anne Arundel County.

In Testimony whereof I hereunto set my hand and affix the

seal of the Circuit Court for Anne Arundel County

this 22nd day of April in the Year Nineteen hundred

and sixteen-



Henry W. Lee

CLK-

No. 4071 *Boyd*

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY.

MAYOR AND CITY COUNCIL OF BAL-
TIMORE

VS.

JOHN P. BRUNS & HARRY M. WAGNER.

GENERAL REPLICATION

Mr. Clerk:

Please file,

J. J. Field
Solicitor for plaintiff.

Filed 2-24-11-1916

MAYOR AND CITY COUNCIL OF :
BALTIMORE

IN THE CIRCUIT

VS.

COURT FOR ANNE ARUNDEL COUNTY.

JOHN P. BRUNS and :

HARRY M. WAGNER. :

TO THE HONORABLES, THE JUDGES OF SAID COURT:

The plaintiff join issue on the matters alleged in the answer of the defendants in the above entitled cause so far as the same may be taken to deny or avoid the allegations of the bill.

S. S. Field
City Solicitor.
Solicitor for plaintiff.

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

Docket 6 No. 4071
Folio 66 Equity
Year 1916

MAYOR AND CITY COUNCIL
OF BALTIMORE

vs.

JOHN P. BRUNS and
HARRY M. WAGNER

PETITION TO SUBSTITUTE

PARTIES RESPONDENT

Order - May 28, 1934

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 28 May, 1934

Order filed 28 May, 1934

Mayor and City Council of Baltimore:

In the Circuit court for

vs

Anne Arundel County

John P. Bruns et al

in Equity

\$4071

To the Honorable the Judge of Said Court

Your petitioner is the defendant in the above entitled case having filed twenty five exhibits (photographs) with its answer and now desire to withdraw them marked as exhibits 1 L. to 25 L. for use in Baltimore City.

*W Lee Rawls -
Charles Ruzicka*
Attorneys for defendant

Authority is hereby granted to withdraw the exhibits aforementioned

Nicholas Green

I hereby consent to the passage of said order.

R. E. Lee Marshall (D)

Attorney for plaintiff.

Received 25 photos

Charles Ruzicka

*1904 First Natl Bank Bldg
Jan 4/33. Baltimore*

No. 4071 Equity 1/2

Order Jan. 4th 1933

Richard Young. 4th 1933.

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
vs.	*	FOR
JOHN P. BRUNS	*	ANNE ARUNDEL COUNTY
and	*	In Equity
HARRY M. WAGNER	*	Docket 6
	*	Folio 66
	*	Year 1916
	*	No. 4071
	*	
	*	
	*	

PETITION TO SUBSTITUTE PARTIES RESPONDENT

H. Milton Wagner, Jr., Amelia W. Sutton, Margaret Wagner, Henry M. Wagner, Joan Wagner, Harriet A. Sutton, Alan C. Sutton, Harry W. Sutton, Florence C. W. Mulligan, Robert B. Wagner, Jr., Richard V. S. Wagner, and Hester Corner Wagner, and Mercantile-Safe Deposit & Trust Company of Baltimore, Trustees under the will of Robert B. Wagner, by William L. Marbury, Frank T. Gray and John G. Rouse, Jr., their attorneys, petition the Court to substitute themselves as parties respondent in the above case in the place and stead of Harry M. Wagner and John P. Bruns, and as grounds for their petition say:

1. That the present case was originally filed in this Court on March 28, 1916, and as to the respondent Harry M. Wagner, was filed as an Amended (or Supplemental) Bill in this Court on May 9, 1916. This case is an action to test the validity of the record title to certain land known as Reed Bird Island located at the time of suit in Anne Arundel County, Maryland, which land was originally patented to the defendant John Peirce Bruns, and subsequently conveyed by said Bruns and others to Harry M. Wagner, defendant herein, as set forth in Respondents' answer heretofore filed.

2. That the said Harry M. Wagner died on June 30, 1926, a resident of Baltimore City, leaving a will, under which his title to the aforesaid property passed in accordance with the residuary clause of said will; following the death of Harriet C. Wagner, widow of the said Harry M. Wagner, on May 24, 1934, said residuary clause was construed by the Circuit Court of Baltimore in proceedings recorded among the records of said Court in Liber C.R.W. No. 351, folio 78, by decree of said Court of January 2, 1936, which held all of the residuary property of the decedent (except certain described property not involved here) passed equally to the children of the decedent living at the death of his wife, to wit: Robert B. Wagner, Lenore V. S. Wagner, Amelia W. Sutton and H. Milton Wagner, Jr., the latter two of whom are now living.

3. The said Robert B. Wagner died on October 28, 1943, a resident of Baltimore City, leaving a will, under which his interest in the aforesaid property passed in accordance with the residuary clause of said will, said residuary clause providing that all property so devised should pass to Hester Corner Wagner, who is now living, and Mercantile Trust Company of Baltimore, a body corporate, Trustees, in accordance with the terms of the trust thereafter described. The said Mercantile Trust Company of Baltimore is now known as Mercantile-Safe Deposit and Trust Company of Baltimore.

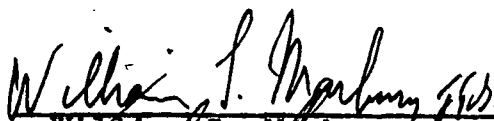
4. The said Lenore V. S. Wagner died on November 27, 1946, a resident of Baltimore City, leaving a will, under which her interest in the aforesaid property passed in accordance with the residuary clause of said will, said residuary clause providing that all property so devised should pass as follows, (1) one-third thereof to her sister Amelia W. Sutton; (2) two-thirds thereof to be divided per stirpes among the descendants of

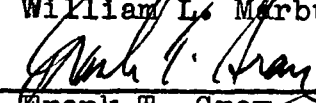
her brothers and sister. Such descendants so entitled are: (1) Children of Amelia W. Sutton; Harriet A. Sutton, Alan C. Sutton, Harry W. Sutton; (2) Children of H. Milton Wagner, Jr.: Margaret Wagner, Henry M. Wagner, Joan Wagner; (3) Children of Robert B. Wagner: Florence C. W. Mulligan, Robert B. Wagner, Jr., Richard V. S. Wagner. All of said children are now living.

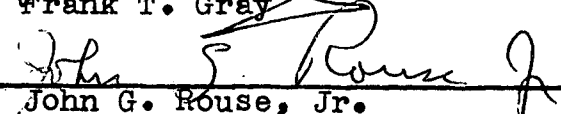
5. That, by deed dated December , 1940, a portion of the property known as Reed Bird Island, included in the present suit, was conveyed by the then owners to the Mayor and City Council of Baltimore, reserving to the present petitioners and their predecessors in title all their right, title and interest in and to the remaining portion of the said tract of land.

6. That by virtue of the above-described events all right, title and interest in and to the tract of land which is the subject of this suit, except that portion conveyed to the plaintiff as above-described, has passed to and is vested in the petitioners herein.

WHEREFORE, your petitioners pray that they be substituted as parties respondent in these proceedings as the successors in title to the original respondents herein.

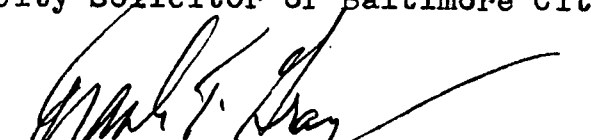


William L. Marbury


Frank T. Gray


John G. Rouse, Jr.
Attorneys for Petitioners

I CERTIFY that on this 27^d day of May, 1954, a copy of the foregoing Petition mailed to City Solicitor of Baltimore City, attorney for plaintiff.



Attorney for Petitioners

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
	*	
vs.	*	FOR
	*	
JOHN P. BRUNS	*	ANNE ARUNDEL COUNTY
and	*	
HARRY M. WAGNER	*	In Equity
	*	
	*	Docket 6
	*	Folio 66
	*	Year 1916
	*	No. 4071
	*	

* * *

ORDER

Upon the foregoing petition, it is, this *28th* day of *May*, 1954, by the Circuit Court for Anne Arundel County,

ORDERED that H. Milton Wagner, Jr., Amelia W. Sutton, Margaret Wagner, Henry M. Wagner, Joan Wagner, Harriet A. Sutton, Alan C. Sutton, Harry W. Sutton, Florence C. W. Mulligan, Robert B. Wagner, Jr., Richard V. S. Wagner and Hester Corner Wagner and Mercantile-Safe Deposit and Trust Company of Baltimore, Trustees under the will of Robert B. Wagner, be, and they are hereby substituted as parties respondent in these proceedings in the place and stead of John P. Bruns and Harry M. Wagner, original respondents herein.

Benjamin W. Nicholas

Judge

I CERTIFY that on this *1st* day of *June*, 1954, a copy of the foregoing Order mailed to City Solicitor of Baltimore, attorney for plaintiff.

John P. Rowe Jr.

Attorney for Petitioners

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IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
IN Equity
Docket 6 Year 1916
Folio 66 No. 4071

MAYOR & CITY COUNCIL OF
BALTIMORE

vs.

H. MILTON WAGNER, JR. et al

PETITION TO APPOINT

GUARDIAN AD LITEM

Order - June 1, 1954

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 1 June, 1954.

Order filed 1 June, 1954.

MAYOR & CITY COUNCIL OF BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al.

Respondents

* IN THE CIRCUIT COURT

* FOR

* ANNE ARUNDEL COUNTY

* In Equity

* Docket 6
* Folio 66
* Year 1916
* No. 4071

* * *

ORDER

Upon the foregoing Petition, it is, this *1st* day of *June*, 1954, by the Circuit Court for Anne Arundel County,

ORDERED, that Hester Corner Wagner be and she is hereby appointed Guardian ad litem for Richard V. S. Wagner, infant, in these proceedings, and she shall defend this action on behalf of the said infant as required by law.

Benjamin Richardson
Judge

I CERTIFY that on this day of , 1954, a copy of the foregoing Petition and Order mailed to the City Solicitor of Baltimore, attorney for the plaintiff.

Attorney for Respondent,
Richard V. S. Wagner

MAYOR & CITY COUNCIL OF BALTIMORE

Plaintiff

FOR ANNE ARUNDEL COUNTY

H. MILTON WAGNER, JR., et al.

In Equity

Respondents

Docket 6
Folio 66
Year 1916
No. 4071

* * *

PETITION TO APPOINT GUARDIAN AD LITEM

Richard V. S. Wagner, one of the respondents in the

above case, by William L. Marbury, Frank T. Gray and John G.

Rouse, Jr., petitions the Court to appoint Hester Corner Wagner

as his Guardian ad litem in these proceedings, and as grounds

for his petition says:

1. That by order of this Court dated May 28, 1954,

he was made a substituted party respondent in these proceedings,

having succeeded to a part of the right, title and interest in

the tract of land, which is the subject of these proceedings, of

the original respondents herein.

2. That he is an infant, eighteen years of age, having

been born on November 19, 1935.

3. That no guardian has ever been appointed for him

or for his affairs.

4. That Hester Corner Wagner is his mother and has no

interest adverse to his in these proceedings.

WHEREFORE, your petitioner prays that the said Hester

Corner Wagner be appointed his Guardian ad litem in these pro-

ceedings to answer and defend the said proceedings on his behalf.

William J. Marbury, Jr.

Frank T. Gray

John G. Rouse, Jr.

Attorneys for Respondent
Richard V. S. Wagner

MAYOR & CITY COUNCIL OF BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al.

Respondents

* IN THE CIRCUIT COURT

* FOR

* ANNE ARUNDEL COUNTY

* In Equity

* Docket 6
* Folio 66
* Year 1916
* No. 4071

* * *

O R D E R

Upon the foregoing Petition, it is, this *1st* day of *June*, 1954, by the Circuit Court for Anne Arundel County,

ORDERED, that Hester Corner Wagner be and she is hereby appointed Guardian ad litem for Richard V. S. Wagner, infant, in these proceedings, and she shall defend this action on behalf of the said infant as required by law.

Benjamin Richardson
Judge

I CERTIFY that on this day of , 1954, a copy of the foregoing Petition and Order mailed to the City Solicitor of Baltimore, attorney for the plaintiff.

Attorney for Respondent,
Richard V. S. Wagner

AMENDED ANSWER OF
SUBSTITUTED RESPONDENTS

MAYOR & CITY COUNCIL OF
BALTIMORE

vs.

H. MILTON WAGNER, JR., et al.

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY, IN EQUITY,
DOCKET 6, F. 66, Year 1916, No. 4071

ROUSE AND MORTON
18 WEST STREET
ANNAPOLIS, MARYLAND

LUCAS BROS., INC., BALTIMORE, FORM L 133

Filed 20 Apr, 1955

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
	*	Folio 66
	*	Year 1916
	*	No. 4071

* * * * *

AMENDED ANSWER OF SUBSTITUTED RESPONDENTS

The amended answer of H. Milton Wagner, Jr., Amelia W. Sutton, Margaret Wagner, Henry M. Wagner, Joan Wagner, Harriet A. Sutton, Alan C. Sutton, Harry W. Sutton, Florence C. W. Mulligan, Robert B. Wagner, Jr., Richard V. S. Wagner, and Hester Corner Wagner and Mercantile-Safe Deposit & Trust Company of Baltimore, Trustees under the will of Robert B. Wagner, substituted parties respondent herein, by William L. Marbury, Frank T. Gray and John G. Rouse, Jr., their attorneys, for an answer to the Amended (or supplemental) Bill filed in this case say:

FIRST. These respondents admit that the plaintiff is the municipal corporation as stated in paragraph FIRST of the Amended Bill. They further admit that the plaintiff, from the year 1888 until the year 1917 operated the Light Street Bridge as a public highway, but deny that the plaintiff had any ownership of the said bridge except such as was conveyed by a deed dated May 3, 1880 from Richard O. Crisp and wife and Richard Cromwell and wife, and by virtue of Chapter 98 of the Laws of Maryland of 1888 and Chapter 82 of the Laws of Maryland of 1918. The respondents deny that the plaintiff has been in statutory control of the Patapsco River or its tributaries except such

control as was conveyed to it by Chapter 123 of the City Charter of 1898.

SECOND. These respondents admit the allegations of paragraph SECOND of the Amended Bill, except that they deny that the said bridge is or has been the plaintiff's property except as mentioned above, and the respondents further allege that the plaintiff destroyed the said bridge in 1917.

THIRD. These respondents admit the allegations of paragraph THIRD of the Amended Bill.

FOURTH. In answer to paragraph FOURTH of the Amended Bill, these respondents admit the issuance of a patent to John P. Bruns on September 10, 1909, for Reed Bird Island, out of the Land Office of Maryland, and further admit that said patent was based on a survey made for John P. Bruns by virtue of a Special Warrant issued September 10, 1908, as more fully set forth in said patent and survey. These respondents deny that Reed Bird Island was or is a casual obstruction of mud or any other substance, and also deny that said Island shifted anywhere under the influence of the tide and that it was covered by water at high tide, but rather allege that said Island is and at all times relevant herein has been firm and fast land, an island in the Patapsco River, a substantial part of which is and at all times relevant herein has been exposed at high tide. These respondents admit that the Patapsco River is tidewater in the vicinity of Reed Bird Island.

FIFTH. In answer to paragraph FIFTH of the Amended Bill, these respondents deny that the State Roads Commission decided to build a bridge from the Baltimore County shore spanning the Patapsco River to the Anne Arundel County shore, but allege that the highway between said points was determined upon as, and was built as, two separate bridges, one from the Baltimore County

shore to Reed Bird Island, and another from said Island to the Anne Arundel County shore, said bridges being connected by a raised highway across said Island 1561.5 feet in length. Further, respondents deny that the property known as Reed Bird Island was or has been under the control of the plaintiff, and they deny that title to said property or any part of it is or ever has been vested in the plaintiff herein otherwise than by deed executed by Harry M. Wagner or his successors in title. The respondents admit the allegations of said paragraph FIFTH not inconsistent with allegations herein.

SIXTH. In answer to paragraph SIXTH of the Amended Bill, these respondents admit that by deed dated September 23, 1910, John P. Bruns did in fact convey unto Harry M. Wagner the property called Reed Bird Island, and that by virtue of said deed the said Harry M. Wagner became the legal owner of fee simple title to the said property. These respondents have become successors in title to Harry M. Wagner, as more fully set forth in the Petition to Substitute Parties Respondent heretofore filed in these proceedings. All allegations of said paragraph SIXTH of the Amended Bill inconsistent with the above stated facts are denied.

SEVENTH. In answer to paragraph SEVENTH of the Amended Bill, these respondents admit that the survey for Reed Bird Island stated, "The above described land is not covered by navigable waters," and "Improvements: none." They also admit that the waters of the Patapsco River ebb and flow with the tide, and that the said Light Street Bridge, at the time of said survey, was a public highway between Baltimore City and Anne Arundel County and crossed Reed Bird Island. These respondents also admit and allege that the waters of the Patapsco River, at the time of the

patent to Reed Bird Island, were navigable waters on all sides of Reed Bird Island. These respondents deny, however, that the description of Reed Bird Island as contained in said survey is in any way erroneous, misleading or incorrect. Specifically, they deny that the said Island was or is covered by the navigable waters of the Patapsco River, or any other navigable water.

Further, they deny that the Light Street Bridge crossing Reed Bird Island was an "improvement" to the said Island; and in any event they deny that the statement that there were no improvements could in any way be misleading, since the plat of the Island submitted with the survey showed that said Bridge crossed Reed Bird Island.

EIGHTH. These respondents deny all of the allegations of paragraph EIGHTH of the Amended Bill.

NINTH. In answer to paragraph NINTH of the Amended Bill, these respondents deny that the Mayor and City Council of Baltimore own the fee simple interest, or any other interest in or to the property known as Reed Bird Island, as riparian owner of other land or otherwise. These respondents further deny that the plaintiff has any right of access to and over Reed Bird Island except by way of such parts of said Island as are public highways; and they deny that the possession, ownership and occupancy of Reed Bird Island by the respondents has or will be an obstruction or hindrance to the free use of any land owned by plaintiff in any manner to which it may be lawfully entitled to use said land. Said respondents deny that the issuance of a patent upon Reed Bird Island is or can be a cloud upon the title of the plaintiff to land owned by it south of Reed Bird Island, or any accretions thereto to which it may be legally entitled.

TENTH. Further answering said Amended Bill, these respondents allege as follows:

When the State Roads Commission determined to construct a highway and bridges between the then Baltimore County and Anne Arundel County shores, across Reed Bird Island, as aforesaid, negotiations were undertaken between the State Roads Commission and Harry M. Wagner, for a right-of-way across Reed Bird Island. In due course the said Harry M. Wagner and wife executed a deed to the State of Maryland conveying a right-of-way for the purpose of a street or highway, reserving to the grantor the fee and reversion and the right of access to the State Road on each side thereof from his land, and the privilege of unloading material from the State Road upon his land for grading the same. Said deed is recorded among the Land Records of Anne Arundel County in Liber G.W. No. 125, folio 202. Said deed clearly recognizes Reed Bird Island as a distinct tract of land separated from the then Baltimore County shore by the main branch of the Patapsco River and separated from the then Anne Arundel County shore by another branch of the Patapsco River.

In 1940, after annexation by the City of Baltimore of the areas of Anne Arundel and Baltimore Counties in the vicinity of Reed Bird Island, the City of Baltimore determined to open Race Street across the south end of Reed Bird Island connecting to the above mentioned highway constructed by the State Roads Commission. The Commission for Opening Streets, in proceedings instituted by the City of Baltimore awarded damages for the Reed Bird Island portion of Race Street to the City of Baltimore, and from this ruling the successors in title to Harry M. Wagner appealed. In due course it was agreed between the appellants in those proceedings and the City of Baltimore that a deed for the portion of Reed Bird Island lying in Race Street should be given to the City of Baltimore by the successors in title to Harry M.

Wagner and the said appeal should be dismissed. In consideration, the City of Baltimore agreed that title to the balance of Reed Bird Island should be determined by prosecution of this case in the Circuit Court for Anne Arundel County. In accordance with the terms of said agreement, said deed was executed and delivered and said appeal was dismissed.

The said Harry M. Wagner was first assessed for Reed Bird Island taxes for the year 1912. Taxes were paid by him from 1912 through 1918 to Anne Arundel County, and from 1919 to 1928 to Baltimore City. In 1928 the Appeal Tax Court abated the assessment on Reed Bird Island and thereafter refused to accept further taxes. The said Harry M. Wagner collected rentals from certain billboard advertising companies for billboard space on Reed Bird Island from 1917 until 1928, at which time the City of Baltimore demanded that the owners of said billboards cancel any agreements with the said Harry M. Wagner.

Further answering the Amended Bill filed herein, these respondents allege that the title to Reed Bird Island is and at all times subsequent to September 10, 1909, has been vested in the said John P. Bruns, and his assignee Harry M. Wagner and successors in title to the latter, except insofar as they have by deed granted and conveyed parts of said Island to other parties; and these respondents allege that said Reed Bird Island was at the time of the filing of this case and at the time of the granting of the above mentioned patent to John P. Bruns, firm and fast land, a large and substantial part of which was at those times and for many years had been above water at high tide, the entire island as granted to the said John P. Bruns being above water at low tide, and the entire Island, at those times being surrounded by the navigable waters of the Patapsco River at both high and low tide.

These respondents deny that plaintiff has any right, title or interest in or to any of the property known as Reed Bird Island except such as may have been conveyed to it or to the State of Maryland by these respondents or their predecessors in title.

WHEREFORE, having fully answered the Amended Bill of Complaint filed herein, these respondents pray that the said Bill may be dismissed with costs.

AND as in duty bound, etc.

William S. Marbury *et al*

Frank G. Gray

John S. Rowe

Attorneys for Respondents

I CERTIFY that on this 12th day of April, 1955, a copy of the foregoing Amended Answer mailed to the City Solicitor of Baltimore, attorney for plaintiff.

Frank G. Gray

PETITION FOR AUTHORITY TO
FILE AMENDED ANSWER

MAYOR & CITY COUNCIL OF
BALTIMORE

vs.

H. MILTON WAGNER, JR., et al.

IN THE CIRCUIT COURT FOR ANNE
ARUNDEL COUNTY, IN EQUITY, DOCKET
6, FOLIO 66, YEAR 1916, NO. 4071
Order April 20, 1955

ROUSE AND MORTON
18 WEST STREET
ANNAPOLIS, MARYLAND

LUCAS BROS., INC., BALTIMORE, FORM L 133

*Filed 20 Apr, 1955
Order filed 20 Apr, 1955*

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
	*	Folio 66
	*	Year 1916
		No. 4071

PETITION FOR AUTHORITY TO FILE AMENDED ANSWER

H. Milton Wagner, Jr., Amelia W. Sutton, Margaret Wagner, Henry M. Wagner, Joan Wagner, Harriet A. Sutton, Alan C. Sutton, Harry W. Sutton, Florence C. W. Mulligan, Robert B. Wagner, Jr., Richard V. S. Wagner, and Hester Corner Wagner and Mercantile Safe Deposit & Trust Company of Baltimore, Trustees under the will of Robert B. Wagner, substituted parties respondent herein, by William L. Marbury, Frank T. Gray and John G. Rouse, Jr., their attorneys, petition the Court to permit them to file an Amended Answer to the Amended Bill of Complaint filed herein.

1. The original Answer to the Amended Bill was filed in these proceedings on June 13, 1916 by Harry M. Wagner, original respondent herein.

2. That since that time, said original respondent has died and the substituted respondents herein are successors to his right, title and interest in and to the property involved in these proceedings.

3. The substituted respondents have determined that, in view of facts as they are now known to these respondents and as they have developed since the filing of the original Answer herein, the said original Answer should be amended to state more accurately and completely the relevant facts as known to the substituted respondents.

WHEREFORE, these respondents pray that the Court pass an order authorizing them to file an Amended Answer herein.

William T. Marbury JTS

Charles T. Gray

John S. Rowe
Attorneys for Substituted
Respondents

I CERTIFY that on this 12th day of April, 1955, a copy of the foregoing Petition mailed to the City Solicitor of Baltimore, attorney for plaintiff.

Charles T. Gray

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
		Folio 66
	*	Year 1916
		No. 4071

ORDER

Upon the foregoing Petition, it is, this ^{20th} day of April, 1955, by the Circuit Court for Anne Arundel County,
 ORDERED that the substituted respondents herein are authorized to file an Amended Answer in these proceedings.

Benjamin Michaelson
 Judge

Exhibit No 4071

Mayor + City Council of
Bellevue

Re: [illegible]

vs.

H. Milton Morgan Jr. et al.

Appellant

Enterprise Bus Team

Filed 23 Apr, 1955

MAYOR & CITY COUNCIL OF BALTIMORE * IN THE CIRCUIT COURT
 Plaintiff * FOR
 vs. * ANNE ARUNDEL COUNTY
 H. MILTON WAGNER, JR., et al. * In Equity
 Respondents * Docket 6
 * Folio 66
 * Year 1916
 * No. 4071
 *

REQUEST FOR SUBPOENAS DUCES TECUM

Mr. Clerk:

Please issue subpoenas duces tecum to the following named individuals, requiring them to be present at the trial of the above entitled case before his Honor, Judge Macgill, in the Anne Arundel County Court House, Annapolis, Maryland, at 10:00 A. M., on Thursday, April 28, 1955, thereto testify as witnesses on behalf of the respondents:

Custodian of Records
 U. S. Corps of Engineers
 24th Street and Maryland Avenue
 Baltimore City, Maryland

requiring him to produce all records, plats, drawings, correspondence and other documents pertaining to the partial closing of the southernmost span of the Hanover Street Bridge across the main branch of the Patapsco River (approved by Secretary of War March 28, 1935) and the final closing of the remaining span of the southernmost section of the Hanover Street Bridge (approved by Secretary of War April 20, 1942). Corps of Engineers File No. 6371 (Baltimore Maryland - Patapsco River Hanover Street)-2.

Custodian of Records
 Bridge Division
 Department of Highways of the City of Baltimore
 Municipal Building
 Baltimore City, Maryland

requiring him to bring with him drawings of the short southernmost span of that section of the Hanover Street Bridge which

crosses the main branch of the Patapsco River, that is, the span connecting Reed Bird Island with the Brooklyn shore, together with the drawing dated March 23, 1933, with reference to certain test borings made at or about that time showing Reed Bird Island.

William T. Marbury

Frank T. Gray

John J. Roum L.
Attorneys for Respondents

17
No. 4071

Equity.

MAYOR AND CITY COUNCIL OF
BALTIMORE,
A Municipal Corporation

vs.

JOHN P. BRUNA,
HARRY M. WAGNER, et al.

MOTION TO ENTER APPEARANCE.

Filed 20 Apr, 1955.

EQUITY No. 4071

MAYOR & CITY COUNCIL
OF BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al.

Respondents

REQUEST FOR SUBPOENA

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 25th Apr., 1953

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
		FOR
Plaintiff	*	
vs.		ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
		Docket 6
Respondents	*	Folio 66
		Year 1916
	*	No. 4071

* * * * *

REQUEST FOR SUBPOENA

Mr. Clerk:

Please issue subpoenas to the following named individuals, requiring them to be present at the trial of the above entitled case before his Honor, Judge Macgill, in the Anne Arundel County Court House, Annapolis, Maryland, at 10:00 A.M., on Thursday, April 28, 1955, there to testify as witnesses on behalf of the Respondents:

John P. Helmer
306 Jeffrey Street
Brooklyn, Baltimore City, Maryland

Henry C. Bourke, Jr.
3717 South Hanover Street
Brooklyn, Baltimore City, Maryland

or

3806 Fifth Street
Brooklyn, Baltimore City, Maryland.

William L. Marbury

Frank T. Gray

John G. Rouse h.
Attorneys for Respondents

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 **DUCES TECUM** (See attached copies of Order)

w
g

CUSTODIAN OF RECORDS, U. S. Corps of Engineers, 24th Street and Maryland Avenue, Baltimore City, Maryland.

CUSTODIAN OF RECORDS, Bridge Division, Department of Highways of the City of Baltimore, Municipal Building, 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, 1955, issued the 23 day of April, 19 55. Returnable 10 o'clock A.M. Thursday, April 28, 1955.

John H. Hopkins, 3rd
Clerk
(William L. Marbury, Frank T. Gray and John G. Rouse, Attys.)

James L. ...
John C. ...
West 750

Received 25 day of ... 19...
and forthwith delivered to the
Sheriff of Baltimore City.
Test:
M. ...

EQUITY No. 4071

MAYOR & CITY COUNCIL
OF BALTIMORE
Plaintiff

vs.

H. MILTON WAGNER, JR., et al.
Respondents

REQUEST FOR SUBPOENAS
DUCES TECUM

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 23 Apr, 1955

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
		Folio 66
	*	Year 1916
	*	No. 4071

REQUEST FOR SUBPOENAS DUCES TECUM

Mr. Clerk:

Please issue subpoenas duces tecum to the following named individual, requiring him to be present at the trial of the above entitled case before his Honor, Judge MacGill, in the Anne Arundel County Court House, Annapolis, Maryland, at 10:00 A.M., on Thursday, April 28, 1955, there to testify as witness on behalf of the respondents:

Custodian of Records
 U. S. Corps of Engineers
 24th Street and Maryland Avenue
 Baltimore City, Maryland

requiring him to produce all records, plats, drawings, correspondence and other documents pertaining to the partial closing of the southernmost span of the Hanover Street Bridge across the main branch of the Patapsco River (approved by Secretary of War March 28, 1935) and the final closing of the remaining span of the southernmost section of the Hanover Street Bridge (approved by Secretary of War April 20, 1942). Corps of Engineers File No. 6371 (Baltimore, Maryland - Patapsco River Hanover Street)-2.

William L. Marbury

Frank T. Gray

John S. Rouse L
 Attorneys for Respondents

Circuit Court for Anne Arundel County

Term, 19

No. 4071 Equity.

Mayor & City Council Of Baltimore

vs.

H. Milton Wagner, Jr., et al.

To the Sheriff of Anne Arundel County:

You are hereby commanded to summon

HERMAN C. STOLL, 15 Hammerlee Beach Road, Anne Arundel County, Maryland.

BENJAMIN WOODWARD, 325 Cherry Lane (off Ordinance Road) Brooklyn Park, Anne Arundel County, Maryland.

S-4-27-55-S

Serve this

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, 1955. Issued the 25 day of April, 1955. Returnable 10 o'clock A.M., Thursday, April 28, 1955.

John A. Hopkins, 3rd, Clerk

70

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

RECEIVED

SHERIFF'S OFFICE - Anne Arundel Co.

APR 25 1955

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Edmond Carter 4/27/55
George W. Allen Jr.
Sheriff.

EQUITY No. 4071

MAYOR & CITY COUNCIL
OF BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al.

Respondents

REQUEST FOR SUBPOENA

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 25 Apr, 1955

MAYOR & CITY COUNCIL OF BALTIMORE	*	IN THE CIRCUIT COURT
Plaintiff	*	FOR
vs.	*	ANNE ARUNDEL COUNTY
H. MILTON WAGNER, JR., et al.	*	In Equity
Respondents	*	Docket 6
		Folio 66
	*	Year 1916
		No. 4071
	*	

REQUEST FOR SUBPOENA

Mr. Clerk:

Please issue subpoenas to the following named individuals, requiring them to be present at the trial of the above entitled case before his Honor, Judge MacGill, in the Anne Arundel County Court House, Annapolis, Maryland, at 10:00 A.M., on Thursday, April 28, 1955, there to testify as witnesses on behalf of the Respondents:

Herman C. Stoll
 15 Hammerlee Beach Road
 Anne Arundel County, Maryland

Benjamin Woodward
 325 Cherry Lane (off Ordinance Road)
 Brooklyn Park
 Anne Arundel County, Maryland

William L. Marbury

Frank T. Gray

John S. Rouse
 Attorneys for Respondents

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

John H. Hopkins, 3rd, Clerk 74

Received 27 day of 97
and forthwith delivered
Sheriff of Baltimore U

Test:
M. L. [Signature]

14071

James
John C. Adams
12/21
[Signature]

John H. Hopkins, 3rd, Clerk 74

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

Received 27 day of 97
and forthwith delivered
Sheriff of Baltimore

Test:

M. L. ...

4071

James
John C. ...
1897

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: ~~XXXXXXXXXX~~
To the Sheriff of Anne Arundel County:

You are hereby commanded to summon DUCES TECUM (See attached Copy or Order) ARTHUR C. PERKINS, Associate Engineer, Survey Department, State Roads Commission, 108 East Lexington Street, Baltimore, Maryland.

and him have here before the Judges of the said Court

to testify for Respondents.

Hereof, YOU ARE not to fail and fall 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, 1955. Issued the 26 day of April 1955.

Returnable 10 o'clock A.M., Thursday, April 28, 1955.

Circuit Court for Anne Arundel County

83

... BY THE ...

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 DUCES TECUM (See attached copy

or Order)

ARTHUR C. PERKINS, Associate Engineer, Survey Department,

State Roads Commission, 108 East Lexington Street, Baltimore,

Maryland.

and him 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, 1955. Issued the 26 day of April, 1955.

Returnable 10 o'clock A.M. Thursday, April 28, 1955.

REQUEST FOR SUBPOENA DUCES TECUM

MAYOR & CITY COUNCIL
OF BALTIMORE

Plaintiff

vs.

H. MILTON WAGNER, JR., et al
Respondents

In the Circuit Court for Anne
Arundel County, In Equity, Docket
6, Folio 66, Year 1916, No. 4071

ROUSE AND MORTON
ATTORNEYS-AT-LAW
ANNAPOLIS, MARYLAND

Filed 26 Apr. 1935

MAYOR & CITY COUNCIL OF BALTIMORE	:	IN THE CIRCUIT COURT
	:	
Plaintiff	:	FOR
	:	
vs.	:	ANNE ARUNDEL COUNTY
	:	
H. MILTON WAGNER, JR., et al.	:	In Equity
	:	
Respondents	:	Docket 6
	:	Folio 66
	:	Year 1916
	:	No. 4071
	:	

REQUEST FOR SUBPOENA DUCES TECUM

Mr. Clerk:

Please issue a subpoena Duces Tecum to the following named individual requiring him to be present at the trial of the above entitled case before his Honor, Judge James MacGill in the Anne Arundel County Court House, Annapolis, Maryland, at 10:00 A.M., on April 28, 1955, there to testify as a witness:

Arthur C. Perkins, Associate Engineer
Survey Department
State Roads Commission
108 East Lexington Street
Baltimore, Maryland

commanding him to appear with subpoena Duces Tecum and bring with him the original tracing of the location plan on Hanover Street Bridge, scale horizontal one inch to two hundred feet and scale vertical one inch to forty feet, approved for State Roads Commission by H. G. Shirley, Chief Engineer, August 21, 1914, now in files of Bridge Division of State Roads Commission, Hearst Tower Building, Baltimore, Maryland.

William L. Harburg
Frank T. Gray
John S. Roman L.
Attorneys for Respondents

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 high enough~~
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~~ ^{leaves} 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 ovetop and keep on building up.

105. 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.

106. 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:

Mr. ~~Gray~~: ^{he} 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

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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 ~~wax~~ ^{land} 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.

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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.

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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} ~~island~~?

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

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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

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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 Patapsco 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

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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.

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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

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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

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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

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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

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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.

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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?

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- 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?

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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~~ ~~Bridgeview~~ Island.

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

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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

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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

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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

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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.

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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