In The Circuit Court of Baltimore City

255

No. A-39107 A-276

LILLIAN WATERS

vs

McKAMER REALTY COMPANY and
BELAIR ROAD ENTERPRISES, INC.

1019-a

Williams & Murphy
Archie D. Williams
Juanita Jackson Mitchell
Sol. for Complainant

Walter C. Mylander, Jr.
Charles C. W. Atwater
Sol. for Respondent

19 59

APPEAL INDEX

Date	Clerk's Memorandum	No.
5/6/59	Bill of Complaint for a Declaratory Decree, etc. 1-4	1
"	Subpoena 5-6	2
6/17/59	Answer and Demurrer 7-11	3
11/19/59	Test. 560th Rule 12	4
12/18/59	Decree of Court 13	5
1/18/60	Order for Appeal 14	6
2/15/60	Petition for Extension of time for transmission of re-	7
	cord and Order thereon 15-16	
2/29/60	Depositions	8
3/17/60	Petition for extension of time for transmission of	9
	record and Order thereon 17-18	
4/12/60	Order of Court re consolidation of 19-20	10
	cases, &c.	

JULIA JONES

VS.

McKAMER REALTY CO.,
ET AL.

- - - - - - - - - - - - - -

LILLIAN WATERS

VS.

McKAMER REALTY CO.,
ET AL.

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY

(5)

(SECTION 2 OF 2 SECTIONS)

NO. 131

SEPTEMBER TERM, 1960

(Vol. 5 of ~~five~~ 6 vols.)

Hall of Records Commission
Department of General Services
State of Maryland

REQUEST FOR RECORDS

DESK NO. HR

1. Place completed request form in wooden tray on reference table.
2. Upon receipt of records requested, keep this slip in the record.
3. RETURN BOTH THE REQUEST FOR RECORDS AND THE RECORD TO THE REFERENCE TABLE BY 4:20 P.M.

To be filled in by researcher-please print

Type of record (wills, deeds, court minutes, etc.): 031

County (if given):

Date of Record: 1959

Volume (liber): page (folio):

Box: 1819 folder: H39107

Microfilm or record accession no. MdHR

Your Name (please print): Romaz Bordie

823-1250

Today's date: 8-24-83

To be filled in by staff only

Archivist's initials, retrieving: MM

Archivist's initials, returning:

Stack location: C1-5-6

No. of Vols.: No. of Items:

Volume in use (Photo Lab, Repair Rm., Desk #_____).

NO. 070936

JULIA JONES, ET AL.,	*	IN THE
PLAINTIFFS	*	CIRCUIT COURT
vs.		OF
McKAMER REALTY COMPANY, a body corporate of the State of Maryland, ET AL.,	*	BALTIMORE CITY
DEFENDANTS	*	Docket 1959 - Folio A-266 File No. A-39096; Folio A-276 - File No. A-39107

* * *

MEMORANDUM ON BEHALF OF THE DEFENDANTS

The above entitled cases were all filed on behalf of individual Plaintiffs who claim to be the owners of certain rights in individual lots in the Laurel Cemetery property. Each of the Bills of Complaint seeks to have this Court review the proceedings in the case entitled "McKamer Realty Company, a body corporate of the State of Maryland, Plaintiff, v. Anderson Enterprises, Inc., et al., Defendants" (1957 - A/878, File No. A37485), and to have this Court declare the Decree entered in that proceeding on June 10, 1958, which directed a sale of the real estate and the Decree entered on September 11, 1958, dismissing the Exceptions to the Ratification of the Sale made pursuant to the Decree of June 10, 1958, and the Auditor's Report and Account which was finally ratified and confirmed on March 20, 1959, all void and of no effect.

A-39107

A combination Demurrer and Answer has been filed on behalf of each Defendant to each of the Bills of Complaint. Counsel have agreed that the hearing on the Demurrer shall be held immediately prior to the hearing on the merits.

The proceedings at this stage involve two basic questions. The first question is the right of the Plaintiffs, on the basis of the Bills of Complaint filed by them, to have this Court reopen and re-examine the former proceedings. The second question to be decided by the Court, if the Court finds that grounds exist to reopen said proceedings and review them, will be the rights, if any, of the Plaintiffs which they are entitled to enforce in the previous proceedings.

I. The Plaintiffs Are Entitled To A Review Of The Proceedings In The Previous Case Only After Proof Of Fraud.

The Bill of Complaint in the Jones Case (39096) is an original Bill for Fraud, and the essential element which must be proved before the Court reviews the rights of the Plaintiff is the question of fraud on the part of these Defendants. The Bill of Complaint in the Waters Case (39107) is a Bill of Review brought under Rule 682 of the Maryland Rules, which restates Article 16, Sec. 151 (Code 1951). This section was first enacted as Chapter 7, Laws of 1773, and was re-enacted as Chapter 88 of the Laws of 1795. The effect of the statute and the distinction between an original Bill for Fraud and a Bill of Review were noted in the case of Luckett v. Jay,

12 G. & J., 69 a.p. 83.

> "The sound and proper construction of the law of 1795, chap. 88, will not warrant such a proceeding, nor is there anything in the language of this Court which was intended to give countenance to the idea, that they designed to open afresh, between the parties, the litigation in the original controversy. The language of the Act of 1795 manifestly discriminates between a proceeding before, and after, a decree has taken place against a non-resident. Before the decree has passed, the language authorizing the action of the Court is broad and comprehensive. It is, 'there shall in all respects be the same proceedings before a decree, as if the defendant or defendants had appeared regularly on the return of a subpoena.' After the decree has passed, the language is more restrictive, and clearly warrants nothing more than a review of the decree itself, according to the established principles of equity jurisprudence. The terms used, in substance are, that any person being a non-resident, against whom a decree shall be passed, may appear in the Chancery Court within a limited period, 'and require a review of the same,' and the Chancellor shall proceed to an examination of the matters in dispute, and to a final decree, in the same manner as if the defendant had originally appeared; it was therefore evidently not the intention of the Legislature to give to the party the same latitude of controversy in both cases, but to limit and confine the party, after a decree had been made against him, to such remedial justice, as a technical bill of review might be competent to afford; and to a defendant in default, such a proffered measure of relief, could, we think, afford no reasonable cause of complaint. It is moreover to be remembered, that according to the established principles of Chancery practice a bill of review is the appropriate remedy to correct or alter a decree, either for error apparent, or by reason of the discovery of new and relevant matter, after the decree has been passed; and that an original bill is never proper to be resorted to, except where the decree is to be impeached on the ground of fraud."

Numerous allegations of fact are made in the Bills of Complaint concerning alleged rights of the Plaintiffs which they allege were illegally taken away from them in the prior proceeding, but most of these allegations

are immaterial unless the Court finds that the Decree was obtained by fraud or there is error apparent on the face of the Decree and that such Decree is not binding on these Plaintiffs.

The proceedings in the Case of McKamer Realty Company vs. Anderson Enterprises, Inc. will be offered in evidence. The papers in that case and the docket entries show the following series of events:

In The U. S. District Court

December 31, 1952 - Voluntary Petition in Bankruptcy, in the U S. District Court for the District of Maryland, of New Laurel Cemetery Company. H. Carl Butler was appointed Trustee.

March 5, 1957 - Order of the U. S. District Court authorizing the Trustee to sell the real estate of the New Laurel Cemetery Company after due advertisement of the sale.

June 27, 1957 - Deed of New Laurel Cemetery Company land, recorded among the Land Records of Baltimore City in J.F.C. No. 185, folio 385, from H. Carl Butler, Trustee, to McKamer Realty Company.

In The Circuit Court of Baltimore City

December 10, 1957 - Bill of Complaint of McKamer Realty Company vs. Anderson Enterprises, Inc. and other known and unknown lot owners in Laurel Cemetery filed in the Circuit Court of Baltimore City. (97A/878 File No. A37185).

December 14, 1957 - Order of Publication.

February 2, 1958 - Certificate of Publication filed.

March 21, 1958 - Appearance of Anderson Enterprises, Inc. and its Answer filed.

April 14, 1958 - Decree Pro Confesso entered and proceedings referred to an Examiner.

May 27, 1958 - Testimony and additional testimony taken before William C. Baxter, Examiner and Master, filed together with the Report of the Examiner and Master.

June 10, 1958 - Decree directing the sale of the real estate and appointing Edward A. Anderson, Trustee to make the sale and establishing the terms and conditions of the sale.

July 17, 1958 - Trustee's Report of Sale filed. Exhibits are (1) Report of Contract with a responsible undertaker for the removal and reinterment of the bodies in Laurel Cemetery and the removal and reerection of the tombstones; (2) Proposed Contract of Sale between Edward A. Anderson, Trustee, and Belair Road Enterprises, Inc.

July 17, 1958 - Order Nisi entered on Report of Sale.

August 18, 1958 - Exceptions of Belair Road Enterprises, Inc. to Ratification of Sale.

August 19, 1958 - Certificate of Publication as to Report of Sale.

September 2, 1958 - Motion for Hearing.

September 10, 1958 - Order of Court dismissing Exceptions to Ratification of Sale and finally ratifying and confirming the sale.

January 27, 1959 - Report of Trustee filed.

March 9, 1959 - Auditor's Report and Account filed and Order Nisi entered thereon.

March 20, 1959 - Auditor's Report and Account finally ratified and confirmed.

All Decrees have been enrolled pursuant to Rule 671 of the Maryland Rules and, therefore, the Court has no authority to reopen any of said Decrees except upon the proof that such Decrees were entered by fraud, or for errors of law apparent on the face of the Decree or for newly discovered matter since the Decree. No allegations are made of newly discovered matters. Millers Equity Procedure, Sections 287 - 295; Luckett v. Jay, Supra. See also

Pugh v. Waclawski, 211 Md. 346; Herbert V. Rowles, 30 Md. 271; Richardson v. Richardson, 217 Md. 316.

The revisory power of the Court over an enrolled Decree as stated in Rule 625 of the Maryland Rules applies "only in case of fraud, mistake or irregularity". This rule merely restates in substance the rule of common law. Pumphrey v. Grapes, 215 Md. 573.

Plaintiffs state as a conclusion that the original Bill of Complaint pursuant to which the property was sold "fraudulently" alleged that an extensive search had been made to ascertain persons having an interest in the property, whereas the actions of the Defendants in that case were to conceal from the Plaintiffs in these cases, and others similarly situated, the pendency of the proceedings.

This is an allegation of actual fraud on the Court and is the only, and the essential allegation of fact to be proved before the facts of the prior proceeding should be examined.

Evidence on this point is admissible at this stage of the proceeding, but evidence on the other allegations of fact are inadmissible at this stage of the proceeding.

The other questions which these Plaintiffs endeavor to raise concerning the sufficiency of the testimony in the prior proceeding are not properly pleaded at this time and are not admitted by the Demurrer of the Defendants. Millers Equity Procedure, Section 295.

II. The Prior Proceedings Were Constitutional And In Accordance With The Statutory Authority Exercised Under The Police Power Of The State.

The Plaintiffs assert that the action of this Court in the prior proceedings was invalid because it violated their legal rights established under the following:

A. The Equal Protection clause of the Fourteenth Amendment to the Constitution of the United States.

B. The Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

C. Article 3, Section 33 of the Constitution of Maryland, in that Article 16, Section 120 (Code 1957, formerly Section 124A Code of 1959, Chapter 630, Acts of 1957), is a special law.

D. The Contract clause of Article 1, Section 10 of the Constitution of the United States.

E. The Ex Post Facto law provision of Article 1, Section 10 of the Constitution of the United States.

The allegations of the Bills of Complaint which seek to raise these questions of law essentially refer to the validity of the statute itself, and not to any wrongful actions except the failure to give actual notice.

The Statutory Proceedings Comply With The Requirements Of Due Process.

It has been established in Maryland that "due process" as used in the Fourteenth Amendment to the United States Constitution, has the same meaning as "the law of the land", in Article 23, of the Maryland Constitution. Solvuca v. Ryan, 131 Md. 265, 270; Baltimore Belt R. R. Co. v. Baltzell, 75 Md. 94;

Public Service Comm. v. N. C. Rwy. Co., 122 Md. 355. Therefore, we shall discuss "due process" rather than the Maryland Constitutional phase, though cases under both are equally applicable.

This argument of the Plaintiffs' ignores the established principle that the police power of the state when not exercised arbitrarily or discriminatorily is not limited by the concept of due process.

> "All uses of property which are injurious to the health, comfort, safety and welfare of society may be prohibited under the sovereign power of the state, even though the exercise of such power results in inconvenience or loss to certain persons. In those cases, individual rights are subordinate to the higher rights of the public. The exercise of this police power is an essential attribute of sovereignty." Walker v. Co. Comm., 208 Md. 72.

This principle is thoroughly established by the decision of the Supreme Court of the United States. A leading case on the exercise of the police power of the state for the termination of an otherwise legal use of property is that of Hadacheck v. Sebastian, 239 U. S. 394. In that case a brick yard had been operating for many years in an area which was subsequently annexed to the City of Los Angeles. Clay deposits were conceded to be worth $800,000.00. The Supreme Court held valid an Ordinance forbidding the continuance of brick manufacturing in that district. The Court found this exercise of the police power was justified, stating:

> "A vested interest cannot be asserted against it (the Government) because of conditions once obtaining. To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress, and if in its march private interests are in the way they must yield to the good of the community." (239 U. S. 410).

The particular application of the police power to the regulation of cemeteries has been thoroughly established. Many cases upholding this exercise of the police power were noted in the memorandum filed by the Trustee at the time of the hearing on the Exceptions to the Ratification of the Sale in the prior proceeding. (That memorandum was adopted by the Court as its opinion). The Court's attention is called to that memorandum and, particularly, the case of Masonic Cemetery Association v. Gamage, (C.C.A. 9th C.) 38 F.2d 950; 71 A.L.R. 1027; certiorari denied, 282 U. S. 852.

The note in A.L.R. to the Masonic Cemetery Association Case collects numerous cases which support the conclusion of the editors in 10 Am. Jur., Cemeteries, Sec. 20:

> "The right that land devoted to use as a cemetery be so maintained is subject to the reasonable exercise of the police power. Where land becomes no longer suitable for the use to which it was dedicated, on account of the surrounding circumstances, the discontinuance of such use may be required by the legislature or a municipality, in the promotion of the public health or welfare.
>
> "It is generally held that every owner of a cemetery lot takes subject to the contingency that it may become offensive to the residence of many people in the vicinity, that its use may be prohibited under laws for the suppression of nuisances, and that the legislation under the police power, may require the removal of all bodies and the reinterment elsewhere."

Notice By Publication Is Sufficient For Due Process

The leading case on sufficiency of notice by publication is that of Pennoyer v. Neff, 95 U. S. 714. In that case Mr. Justice Field, speaking for the Court said:

"Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem --- . It is true that in a strict sense, a proceeding in rem is one taken directly against property and has for its object the disposition of the property, without reference to the title of individual claimants; but in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein." (95 U. S. 714, 727).

Further cases on this point are noted in the Trustee's memorandum.

The conclusion is beyond question that the State has the absolute power to provide for notice by publication in any case involving the title to land within, its borders, and if such notice is duly given in accordance with the statute jurisdiction attaches regardless of whether the non-resident receives actual notice.

"When the requisites have been complied with, the Court will not listen to any evidence that the party has not, or could not actually receive the notice or make his appearance.

"The Courts act upon the presumption of notice which they will not allow to be rebutted." Miller Equity Procedure, Sec. 20; Dorsey v. Thompson, 37 Md. 24 a. p. 44/

Procedure In Prior Case Not Invalid Under Article III, Section 33 of Constitution Of The State of Maryland.

Plaintiffs allege that the prior action of the Court under Section 120 of Article 16, (Code 1957) (Section 124-A 1951 Code, Ch. 630 Acts 1957) is invalid because the Act of the Legislature is a special law for which provision has been made by a "general" law, namely, Section 119 of Article 16 (Code 1957).

This argument ignores the settled construction of Section 33 of Article III of the Maryland Constitution that the term "special law" means "a special law for a particular case" or "what are more commonly called private Acts, for the relief of particular named parties" and not that "the framers of the Constitution intended to foreclose the sovereign the right to pass special legislation to serve a particular need, to meet some special evil, or to promote some public interest, for which the general law is inadequate." Jones v. House of Reformation, 176 Md. 43, 55-57.

Even so, the proceedings would be valid if the authority of the Court were based upon the authority of Section 119 of Article 16 or Section 120 of Article 16, because the actions are in compliance with both.

Plaintiff s Never Had A Fee Simple Title To The Burial Lots, Nor Even An Easement, But Only A Revocable License.

The interest of an "owner" of a burial lot in a cemetery was analyzed in the Trustee's memorandum previously referred to. It has been established in Maryland to be only a "revocable license" and not even an easement, much less a fee title. Partridge v. First Ind. Church, 39 Md. 631, 637. supra This case was cited recently in Hill Sand & Gravel Company, Inc. v. Pallotine Fathers House of Studies, Inc., 220 Md. 526, No. 30 September Term, 1959, filed October 22, 1959, Daily Record, November 17, 1959, as follows:

"There are cases holding that where a private graveyard is established and clearly marked out, and markers maintained, an implied reservation or easement is created. Hines v. State, 149 S. W. 1058 (Tenn.); Heiligman v. Chambers, 338 P. 2d 144 (Okla. 1959). But in Partridge v. First Ind. Church, 39 Md. 631, 637, it was held that a public burial ground may be abandoned, and that the right of burial and visitation is not an easement but a revocable license."

The Relief Asked by Plaintiffs Is Inappropriate To Taker's Rights.

The Plaintiffs ask that the sale be set aside, that an injunction restraining the Defendants from entering upon the "Plaintiffs' real estate" be issued, that the Defendants be restrained from using the property for any purpose other than as a burial ground, that the Defendants be required to remove any structures erected on the land.

The Defendant, Belair Road Enterprises, Inc., purchased the property at a judicial sale, from the Trustee appointed by this Court, it paid the purchase price, including the cost of the Trustee's contract with an undertaker of relocating the bodies and re-erecting the tombstones, the cost of purchasing a new location, Trustee's commission, counsel fees of Defendants and Trustee, and all court costs. These funds have been paid over and disbursed pursuant to the final order of this Court and the property has been conveyed by the Trustee to the purchaser. The Defendant, McKamer Realty Company, no longer has any interest in the property.

Neither the Plaintiffs nor the Defendant, Belair Road Enterprises, Inc.

can be restored to their former positions. The final Decrees of this Court have been fully executed and the Defendants who have acted on the faith of such Decrees may not be prejudiced by such Decrees being reversed or varied. Maryland Rules, Rule 690.

The title of the purchaser at a judicial sale is perfected upon ratification. Spindler v. Atkinson, 3 Md. 409; Bolgiano v. Cooke, 19 Md. 375.

If each of the Plaintiffs could completely prove the allegations of their Bills, to what relief are they entitled? The language of the decision in Partridge v. First Ind. Church, 39 Md. 631, states it exactly.

> "But if in the course of time it should become necessary to vacate the ground as a burying ground, all that he could claim, in law or equity, would be that he would have due notice and the opportunity afforded to him of removing the bodies and monuments to some other place of his own selection, or that, on his failing to do so, such removal should be made by others. He accepted the grant or license subject to this necessary condition." (39 Md. 637-638).

Further, if the Plaintiffs claim damages the amount of each claim in controversy is below the jurisdiction of the Court under the provisions of Article 16, Section 118. The testimony (which is uncontradicted) shows the lots were sold originally for $10 to $30, and the proceedings show the Plaintiffs have no equity in the sales proceeds in any event. Partridge v. First Ind. Church, supra.

Conclusion:

I. The only basis for the review by this Court of the Decrees and the proceedings in McKamer Realty Company vs. Anderson Enterprises, Inc. on the Bill of Julia Jones is a finding that the Decrees were obtained by fraud.

can be restored to their former [illegible]. [illegible] of [illegible]

have been fully executed and the [illegible] to who have [illegible]

and/or [illegible] may not be [illegible] and/or [illegible] [illegible]

Marshland Dunes, [illegible] 610.

The title of the [illegible] is [illegible] and is [illegible]

[illegible] [illegible] v. [illegible], [illegible] [illegible]

If each of the Plaintiffs could [illegible] prove the [illegible]

[illegible], to what relief are they entitled? [illegible]

[illegible] v. First Loc. Church, [illegible] [illegible] [illegible]

"Not if [illegible] course of [illegible] [illegible]

the ground as a [illegible] [illegible] [illegible]

equity, would be that [illegible] [illegible]

afforded to [illegible] [illegible]

other place of its own [illegible] [illegible]

area removal would be [illegible] [illegible]

[illegible] and just to [illegible] [illegible] [illegible]

Further, if the [illegible] [illegible]

[illegible] controversy is below the [illegible] of the Court under the [illegible]

of Article 10, Section 11. The [illegible] (which is a [illegible]) [illegible]

[illegible] were [illegible] [illegible]

Plaintiffs have no equity [illegible] [illegible]

First Loc. Church, supra.

Conclusion:

[illegible] The [illegible] for [illegible]

[illegible] [illegible] v. [illegible]

[illegible]

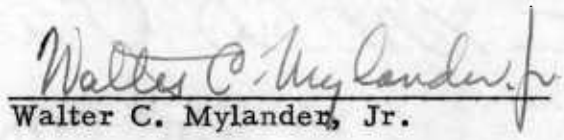
II. The only testimony admissible on this question relates to the allegations that the Defendants wilfully deceived the Court.

III. The Bill of Review brought by the Plaintiff, Lillian Waters, as a non-resident, under Rule 682 of the Maryland Rules, raises only the question of error of law apparent on the face of the record.

IV. Article 16, Section 120, of the Maryland Code , 1957, is a valid exercise of the police power of the State of Maryland.

Therefore, the Bill of Complaint of Lillian Waters, Case No. A-39107, and the Bill of Complaint of Julia Jones, Case No. A-39096, should be dismissed.

Respectfully submitted,



Walter C. Mylander, Jr.

Charles C. W. Atwater
Solicitors for Defendants.

Which said appeal being by the Court here also granted, it is thereupon ordered by the Court here, that a Transcript of the Record of Proceedings in the cause aforesaid be transmitted to the Court of Appeals of Maryland, under the rules / thereof *, and the same is transmitted accordingly.*

Test:

Henry J. Rupperger
Clerk.

In Testimony, *that the aforegoing is truly taken from the Record and Proceedings of the Circuit Court of Baltimore City, in the therein entitled cause.*

I hereunto set my hand and affix the Seal of the Circuit Court of Baltimore City aforesaid, this 12th *day of* July *A. D., 19* 60

Henry J. Rupperger
Clerk of the Circuit Court of Baltimore City.

COSTS

PLAINTIFF'S COSTS	123.50
STENOGRAPHER'S COSTS	26.00
DEFENDANTS COSTS	------

NOTE: These proceedings consolidated with case entitled "Julia Jones vs. McKamer Realty Co., et al." as per Order of Court dated April 12, 1960.

Fd. 6 May 1959

A-276
1959

LILLIAN WATERS 550 W. 158th Street, Apt. 3-D New York 32, New York Complainant	*	IN THE
vs.	*	CIRCUIT COURT
McKAMER REALTY COMPANY c/o Clement R. Mercaldo, Resident Agent, 404 Munsey Building Baltimore 2, Maryland	*	OF
and	*	BALTIMORE CITY
BELAIR ROAD ENTERPRISES, INC. c/o Horold J. Kaufman, Resident Agent, 1231 Munsey Building Baltimore 2, Maryland Defendants	*	

* * * * * * *

BILL OF REVIEW

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Comes now Lillian Waters, by Juanita Jackson Mitchell, Archie D. Williams, and WILLIAMS & MURPHY, her attorneys, and complaining respectfully, says:

1. That on or about August 1, 1855 A. R. Carroll acquired fee simple title through a deed, duly recorded at the Laurel Cemetery Company's Office in Baltimore City to the following described real estate situated in Baltimore City:

Lot No. 255, Section "A" of the Laurel Cemetery

That on or about December 12, 1912 the said A. R. Carroll assigned said deed to your Complainant, and that ever since the said December 12, 1912 your Complainant has enjoyed peaceful possession of said cemetery lot, and that the bodies of your Complainants father, brother, and infant child have been burried in said lot.

2. That on the 11th day of October 1939 the New Laurel Cemetery Company, a Maryland corporation, acquired title to the aforementioned Laurel Cemetery, subject to the ownership rights of your Complainant.

3. That on or about the 31st day of December 1952 The New Laurel Cemetery Company filed its petition in Voluntary Bankruptcy in the United States Federal District Court of Maryland,

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

A-39107 (1)

and was thereafter duly adjudged a bankrupt, that on or about the 27th day of June 1957, Joseph Kaiser, Esquire, one of the referees of the said Federal Court was appointed trustee and pursuant to said Order of the Court conveyed the above described Laurel Cemetery property by a deed to the Defendant, McKamer Realty Company for and in consideration of $100.00, that the Order of Court approving said sale expressly reserved unto your complainant her rights and title to her said cemetery lot.

4. That on or about December 16, 1957 the Defendant, McKamer Realty Company filed its' Bill in this Honorable Court (Docket 97A, Folio 878) for a sale of said cemetery property under the provisions of Article 16, Section 120 of the Annotated Code of Maryland, and made Anderson Enterprises, Inc., et al, Defendants. Thereafter on or about June 10, 1958 this Honorable Court passed an Order for the sale of said cemetery property free and clear of the property rights of your Complainant.

5. That your Complainant is a non resident of the State of Maryland, and is now, and has been for many years prior to the filing of this Bill, a resident of the State of New York, and she now brings this action under authority of Rule 682 of the Maryland Rules of Procedure.

6. That your Complainant was made a party to the action hereinbefore referred to by designation as a member of a class, but she never had any notice, constructive or otherwise, of the pendancy of the suit, and was therefore precluded from making a timely defense.

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

7. That your Complainant has valid defenses to the suit heretofore brought by the Defendant, McKamer Realty Company, and that such defenses should be considered by this Honorable Court so that justice may be done, and the rights of your Complainant protected.

8. That the action of this Honorable Court in the aforementioned case should be reviewed, and the Decree set aside because such action and Decree proceeded from a Maryland Statute which is invalid and without force and effect for the following reasons:

and was thereafter duly adjudged a bankrupt, that on or about the 27th day of June 1927, Joseph Ostner, Bankrupt, one of the referees of the said Federal Court was appointed Trustee and pursuant to said order of the Court conveyed the above described lateral dead-end property by a deed to the defendant, Lackawanna Realty Company for and in consideration of $10.00. That the Owner of Court approving said sale expressly reserved unto your complainant her rights and title to her said dead-end lot.

4. That on or about December 16, 1927 the defendant, Lackawanna Realty Company filed their bill in this Honorable Court (docket 274, folio 274) for a sale of said dead-end property under the provisions of Article 10, Section 120 of the Annotated Code of Maryland, and Code Maryland Annotated, Inc., et al, Defendants. Thereafter on or about June 19, 1928 this Honorable Court passed an order for the sale of said dead-end property free and clear of the property rights of your Complainant.

5. That your Complainant is a bona fide resident of the State of Maryland, and is, and has been for many years prior to the filing of this Bill, a resident of the State of New York. She now brings this action under authority of Rule 222 of the Maryland Rules of Procedure.

6. That your Complainant was made a party to the action hereinbefore referred to by designation as a member of a class, but she never had any notice, constructive or otherwise, of the pendency of the suit, and was therefore prevented from making a timely defense.

7. That your Complainant has valid defenses to the suit heretofore brought by the defendant, Lackawanna Realty Company, and that such defenses should be considered by this Honorable Court so that Justice may be done, and the rights of your Complainant protected.

8. That the action of this Honorable Court in the aforementioned case should be restored, and the decree set aside because such action and decree proceeded from a misplaced burden which is invalid and without force and effect for the following reasons:

(a) The said statute is in contravention of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in that it permits the taking of lot owners property within Baltimore City when the cemetery is only 75% abandoned while similaryl circumstanced lot owners outside of Baltimore City may not be so deprived.

(b) The said statute is in contravention of the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that it permits the taking of Complainants property without notice and opportunity to defend against such taking.

(c) The said statute is in contravention of Article III, Section 33 of the Maryland Constitution in that it is a Special Law upon a subject for which provision had been made by an existing General Law.

9. That the Defendant, Belair Road Enterprises, Inc., is the purchaser of the said cemetery property pursuant to the said Decree of this Honorable Court, and the said Belair Road Enterprises, Inc., has now entered upon the siad cemetery property and proceeded to misuse said property in derogation of the rights of this Complainant.

WHEREFORE, your Complainant respectfully prays:

(a) That this Honorable Court review the action heretofore taken in the case of McKamer Realty Company vs. Anderson Enterprises, Inc., et al, and consider the case upon its' merit in view of the defenses hereinbefore enumerated by this Complainant.

(b) That this Honorable Court set aside the Decree heretofore passed in the case of McKamer Realty Company vs. Anderson Enterprises, Inc.

(c) That this Honorable Court pass a Decree ordering and directing the Defendants herein to restore the property of this Complainant to the status it had prior to the passage of said Decree.

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

(d) That this Complainant may have appropriate damages for the injury done to her property.

(e) That she may have such other and further relief as may be appropriate.

Lillian Waters
Complainant

Juanita Jackson Mitchell
JUANITA JACKSON MITCHELL
1239 Druid Hill Avenue
Baltimore 17, Maryland

Archie D. Williams
ARCHIE D. WILLIAMS for
WILLIAMS & MURPHY
2669 Pennsylvania Avenue
Baltimore 17, Maryland
Attorneys for Complainant

STATE OF MARY LAND

CITY OF BALTIMORE

Personally appeared before me, a notary public in and for the City and State aforesaid, this 2nd day of May, 1959 was Lillian Waters and she made oath in due form of law that the matters and facts set forth in the aforegoing Bill are true and correct to the best of her knowledge and belief.

Rose Hatchill
NOTARY PUBLIC
MY COMMISSION EXPIRES May 4-55

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

EQUITY SUBPOENA

The State of Maryland

To McKamer Realty Company
c/o Clement R. Mercaldo, Resident Agent,
404 Munsey Building
Baltimore 2, Md.

and

Belair Road Enterprises, Inc.
c/o Horold J. Kaufman, Resident Agent,
1231 Munsey Building,
Baltimore 2, Md.

of Baltimore City, Greeting:

WE COMMAND AND ENJOIN YOU, That all excuses set aside, you do within the time limited by law, beginning on the first Monday of June next, cause an appearance to be entered for you and your answer to be filed to the complaint of

Lillian Waters, 550 W. 158th Street, Apt. 3-D
New York 32, New York

against you exhibited in the Circuit Court of Baltimore City.

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

WITNESS, the Honorable EMORY H. NILES, Chief Judge of the Supreme Bench of Baltimore City, the 4th day of May, 1959

Issued the 6th day of May, in the year 1959

Henry J. Pilgenger Clerk

MEMORANDUM: You are required to file your answer or other defense in the Clerk's Office, room 410, in the Court House, Baltimore City, within fifteen days after return day, named in the above subpoena. Personal attendance in Court on the day named is not necessary, but unless you answer or make other defense within the time named, complainant (s) may obtain a decree pro confesso against you, which upon proper proof may be converted into a final decree for the relief demanded.
(General Equity Rule 11)

A-39107 (2)

RECEIVED
SHERIFF'S OFFICE
MAY 7 3 03 PM '59
BALTIMORE CITY, MD.

P 93

CIRCUIT COURT

A-276
19 59 Docket No. .....

LILLIAN WATERS

vs.

McKAMER REALTY CO., ET AL

Subpoena To Answer Bill Of Complaint

No. 2685

No. A-39107

(2)

Filed 11 day of May, 19 59

Juanita Jackson Mitchell
Archie D. Williams Solicitor. s
Williams & Murphy

Address.

Summoned McKamer Realty Company, a corporation, by service on Clement R. Mercaldo, Resident Agent, and a Copy of the Process with a Copy of the Bill of Complaint left with said Resident Agent. Also summoned Belair Road Enterprises Incorporated, a corporation, by service on Harold J. Kaufman, Resident Agent, and a Copy of the Process with a Copy of the Bill of Complaint left with said Resident Agent on the 5th day of May 1959 in the presence of William Fowler. Also Notice of said summons left at the principal office of said corporations.

Joseph C. Deegan
Sheriff

Fees $7.40

a 276/1959

Fd. 17 June 1959

LILLIAN WATERS	*	IN THE CIRCUIT COURT
Plaintiff	*	
vs.		OF
McKAMER REALTY COMPANY, et al.	*	
		BALTIMORE CITY
Defendants	*	

* * * * * * * * * * *

ANSWER AND DEMURRER

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The answer of McKamer Realty Company and Belair Road Enterprises, Inc., both Maryland corporations, Defendants, to the Bill for Review hereinbefore exhibited against them, respectfully says:

FIRST: They deny that on August 1, 1855, A. R. Carroll acquired a fee simple title by any legally sufficient deed to the property described in said paragraph or that any such title has been assigned to the Plaintiff. The Defendants have no knowledge of any burial rights which the Plaintiff or her predecessors in title may have acquired, and, accordingly, in accordance with Maryland Rule 372 a. 2., deny the allegations of said paragraph.

SECOND: The Defendants admit that on October 11, 1939, the New Laurel Cemetery Company, a Maryland corporation, acquired title to the tract of land known as Laurel Cemetery in fee simple, subject to the burial rights of certificate holders under certificates issued by the Laurel Cemetery Company since the year 1852. The Defendants deny, however, ownership rights of the Plaintiff as alleged in said paragraph.

A-39107 (3)

THIRD: The Defendants admit the allegations of the third paragraph of the Bill for Review except that they deny that Joseph Kaiser, Esquire, one of the Referees of said Federal Court, was appointed Trustee, and they aver, on the contrary, that H. Carl Butler, Esquire, was so appointed and was the Trustee who conveyed the property by deed to the Defendant, McKamer Realty Company, subject to certain burial rights therein. Defendants again deny that Plaintiff had any title in and to said cemetery lot.

FOURTH: The Defendants admit the allegations of the fourth paragraph of said Bill.

FIFTH: The Defendants have no knowledge of the matters alleged in the fifth paragraph of said Bill.

SIXTH: The Defendants admit that the Plaintiff was made a party to the action hereinbefore referred to by designation as a member of a class. They deny the allegation of said paragraph that Plaintiff never had any constructive notice of the pendency of the suit, and they further deny that she was precluded from making a timely defense.

SEVENTH: Answering the seventh paragraph of said Bill, these Defendants deny that the Plaintiff or any other person affected had any defense to the Bill of Complaint referred to, and they state, on the contrary, that the rights of the Plaintiff and all others interested in the proceedings therein mentioned have been fully protected and provided for by the Decree of this Court in said proceedings according to the terms and tenor of valid laws of the State of Maryland, being codified as Article 16, Sections 119 and 120, of the Code of Public General Laws, 1957 Edition.

EIGHTH: Answering the eighth paragraph of said Bill, these

Defendants deny that the case referred to should be reviewed or that the Decree therein should be set aside. They deny the alleged invalidity of the enactment from which it proceeded.

NINTH: Answering the ninth paragraph of said Bill, the Defendant, Belair Road Enterprises, Inc., admits that it is the purchaser of the said cemetery property pursuant to the said Decree of this Honorable Court, and that it has, pursuant to its rights under its Deed to said property, now entered upon the said cemetery property, which, however, prior to such entry, has been cleared of all graves, stones and markers, the bodies having been disinterred and such markers having been removed by the said Trustee pursuant to the Order of this Court under its direction. Further answering said paragraph, Defendant, Belair Road Enterprises, Inc., denies that it has misused or could, under such circumstances, misuse said property in derogation of the rights of the Plaintiff or anyone else who formerly held rights therein.

D E M U R R E R

TENTH: Further answering said Bill for Review in accordance with the Maryland Rules, these Defendants demur to the said Bill and to each and every part and paragraph thereof and for reasons therefor state:

(1) That the Bill fails to state a cause of action either at law or in equity.

(2) That the Bill is bad in substance and insufficient at law.

(3) That the Bill fails to include as exhibits filed therewith the documents therein referred to.

(4) That the Bill fails to show by any sufficient allegation the

devolution of the alleged title to the Plaintiff.

(5) That the Bill fails to show any rights of the Plaintiff.

(6) That the Bill on its face fails to set forth any facts constituting fraud, mistake, surprise or any circumstances which could compel the Court to set aside the Decree in the proceedings therein referred to.

(7) That the Bill attacks the constitutionality of the Act of 1957, Chapter 630 (Annotated Code of Maryland, 1957 Edition, Article 16, Section 120), and it does not appear on the face of the Bill that notice is given to the Attorney General thereof.

(8) That the Plaintiff, on the face of the Bill, is guilty of laches.

(9) That the proceedings sought to be reviewed accomplished the removal and relocation of a cemetery as a measure for the health, safety and welfare of the public, and that said purposes have been fully accomplished, and it does not appear upon the face of the Bill for Review that the removal of said cemetery could now be reversed or corrected or that the purchaser of the property, which was formerly occupied as a cemetery, was other than a bona fide purchaser for value or that its title could be now divested.

(10) And for other reasons to be shown at the hearing hereof.

WHEREFORE, these Defendants pray that they may be hence dismissed with their proper costs.

AND, as in duty bound, etc.

Clement R. Mercaldo
President - McKamer Realty Company

Walter C. Mylander, Jr.

Lloyd G. McAllister
Vice President - Belair Road Enterprises, Inc.

Charles C. W. Atwater
Attorneys for Defendants
1213 Fidelity Building
Baltimore -1, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 1959, a copy of the foregoing Answer and Demurrer was mailed to Mrs. Juanita Jackson Mitchell, 1239 Druid Hill Avenue, Baltimore -17, Maryland, and to Archie D. Williams, Esquire, and Messrs. Williams & Murphy, 2669 Pennsylvania Avenue, Baltimore -17, Maryland, Attorneys for Plaintiff.

Walter C. Mylander, Jr.

Walter C. Mylander, Jr.
Of Counsel for Defendants
1213 Fidelity Building
Baltimore -1, Maryland

//

Fd. 19 November 1959

PETITION AND ORDER TO TAKE TESTIMONY UNDER 560th RULE

LILLIAN WATERS Plaintiff *vs.* McKAMER REALTY COMPANY, et al. Defendants	IN THE **CIRCUIT COURT** — OF — BALTIMORE CITY Docket 1959 - Folio A-276 File No. A-39107

To the Honorable the Judge of the
Circuit Court of Baltimore City:

The Defendants ~~plaintiffs~~ in this case respectfully shows unto your Honor:

THAT they desires to examine orally, in open Court and in the presence of your Honor, certain witnesses who can testify to the facts and matters relevant to the allegations in the Bill of Complaint filed in this case.

Your petitioner/s therefore prays your Honor to pass an order, according to the Statutes for such case made and provided.

And as in duty bound will ever pray.

Charles C. W. Atwater

Solicitor for ~~Plaintiff~~ Defendants

Upon the foregoing Petition and Application it is this 19th day of November, A. D. 19 59, Ordered that the petitioner have leave to take testimony as prayed and that the testimony to be offered be taken as required by the 560th Rule of this Court. ~~And it is further Ordered that a copy of this petition and order be served on the ..... or h Solicitor, on or before the ..... day of ....., 19 ....~~

Henry J. Rippinger Clerk

I HEREBY CERTIFY that a copy of the foregoing Petition and Order was mailed to each of the following, Solicitors for Plaintiffs, this 19 day of November, 1959:

Mrs. Juanita Jackson Mitchell
1239 Druid Hill Avenue
Baltimore 17, Maryland

Archie D. Williams, Esquire
Messrs. Williams & Murphy
2669 Pennsylvania Avenue
Baltimore 17, Maryland

A-39107 (4) 12

Charles C. W. Atwater

Juanita Jackson Mitchell
Archie D. Williams
Williams & Murphy

Walter C. Mylander, Jr.
Charles C. W. Atwater

CCWA:bc 12/18/59 1-5

fil 18 December 1959

LILLIAN WATERS,	*	IN THE
Plaintiff		CIRCUIT COURT
	*	
vs.		OF
McKAMER REALTY COMPANY, ET AL., a body corporate of the State of Maryland,	*	BALTIMORE CITY
		Docket 1959 - Folio A-276
	*	File No. A-39107
Defendants		
	*	

DECREE OF COURT

The above entitled case having come on for hearing, testimony having been taken in open Court and Counsel having been heard for the respective parties, it is this 18th day of December, 1959, by the Circuit Court of Baltimore City:

ORDERED, ADJUDGED and DECREED that the Bill of Complaint be and it is hereby dismissed with prejudice; the costs to be paid by the Plaintiff.

Joseph Warnken

Judge

A 39107 (5)

Jaf

Fd. 18 January 1960

Lillian Waters

vs.

McKamer Realty Co et al

IN THE

CIRCUIT COURT

OF

BALTIMORE CITY

1959/A-276

Mr. Clerk:

Please enter an appeal on behalf of Plaintiff

from the Decree passed on the 18th day of December 1959 to the Court of Appeals of Maryland.

Archie D. Williams

Solicitor for Appellant.

State of Maryland, Baltimore City, to wit:

I hereby certify, that on this ..... day of ..... 19....., before me, the Subscriber, Clerk of the Circuit Court of Baltimore City, personally appeared

and made oath in due form of law that this appeal is not made for the purpose of delay.

Clerk of the Circuit Court of Baltimore City.

14

A-39107 (6)

Circuit Court

.....
19 Docket No.....

.....

.....

vs.

.....

.....

ORDER FOR APPEAL

No.....

Filed.....19.....

Fd. 15 February 1960

LILLIAN WATERS	*	IN THE
Complainant	*	CIRCUIT COURT
vs.	*	OF
McKAMER REALTY COMPANY, ET AL	*	BALTIMORE CITY
Defendants	*	Docket 1959 A-276

* * * * * * *

PETITION FOR EXTENSION OF TIME FOR TRANSMISSION OF RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Comes now Lillian Waters, by Juanita Jackson Mitchell, Archie D. Williams, and WILLIAMS & MURPHY, her attorneys, and for Petition for Extension of Time for Transmission of Record, Says:

1. That prior to December 18, 1959 she filed her Bill of Review in this Honorable Court asking that this Honorable Court Review Its' Decree in the case of McKamer Realty Company vs. Anderson Enterprises, Inc., Et Al., and that on December 18, 1959 a hearing was held on said Bill at which time said Bill was dismissed. From this action an appeal has been taken to the Court of Appeals of Maryland.

2. That there is now pending before this Honorable Court the case of Mamie E. Kennard, Et Al vs. McKamer Realty Company, Et Al upon which a hearing has been held, but as yet no decision has been rendered. That the Kennard case and the instant case both grow out of the same transaction, and involve some of the same law and facts, and that it is anticipated that these cases should be consolidated upon appeal.

WHEREFORE, your complainant respectfully pray:

(a) That this Honorable Court issue an Order extending the time for transmitting the record to the Court of Appeals of Maryland so that an opportunity may be had to consolidate upon appeal.

(b) Such other and further relief as may be requisite.

AND, as in duty bound, etc.

Archie D. Williams

Archie D. Williams
Attorney for Petitioner

LAW OFFICES
WILLIAMS & MURPHY
2659 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

A-39107 (7)

LILLIAN WATERS	*	IN THE
Complainant	*	CIRCUIT COURT
vs.	*	OF
McKAMER REALTY COMPANY, ET AL	*	BALTIMORE CITY
Defendants	*	Docket 1959 A-276

* * * * * * *

ORDER

Upon the aforegoing Petition, it is hereby Ordered this 15th day of February 1960 by the Circuit Court of Baltimore City that the time for transmission of the record to the Court of Appeals of Maryland in the matter of Lillian Waters vs. McKamer Realty Company, Et Al be, and the same is hereby extended for 30 days.

JUDGE

I Consent to the passage of this Order
Archie D. Williams
Atty for Plaintiffs

I Consent to the passage of this Order

Edward C. Gluckler
of Counsel for Defendants

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

Fid. 29 - February 1960

STENOGRAPHIC RECORD

IN THE CIRCUIT COURT OF BALTIMORE CITY

IN THE MATTER OF

A-276/1959

LILLIAN WATERS

vs.

McKAMER REALTY COMPANY, et al.

JULIA JONES

vs.

McKAMER REALTY COMPANY, et al.

Before Warnken, J.

December 18, 1959

(INDEX INSIDE)

A-39107 (8)

TRANSCRIPT FROM NOTES OF

CLARENCE P. GOETZ

Official Court Reporter

EQUITABLE BUILDING
BALTIMORE, MD.

OFFICE AND HOME
TELEPHONES

IN THE CIRCUIT COURT OF BALTIMORE CITY

LILLIAN WATERS	:	
vs.	:	
McKAMER REALTY COMPANY, et al.	:	
---	:	Before Warnken, J.
JULIA JONES	:	
vs.	:	
McKAMER REALTY COMPANY, et al.	:	

December 18, 1959.

Appearances:

Mr. Archie D. Williams, Solicitor for Lillian Waters.

Mr. Paul J. Cockrell, Solicitor for Julia Jones.

Messrs. Walter C. Mylander, Jr., and Charles C. W. Atwater, Solicitors for defendants in both cases.

THE COURT: Both of these cases virtually involve the same question and that is, very briefly stated,

the rights of the Plaintiffs, as relatives or assignees or some capacity, to be undisturbed with respect to whatever interest they had in what has been referred to as the Laurel Cemetery. Particularly they challenged the validity of the proceeding in this court under which the Laurel Cemetery was sold and provision made for removing the bodies or remains of any persons buried there and the monuments moved to some other cemetery, more or less for and on account of whomever had the right in the particular grave or the particular removed bodies rested. That decree went through all of the steps in an equity proceeding and has long since become enrolled, and now these two bills as I understand it, are bills of review. I have had the impression for some years back that a bill for review primarily was usually based on some allegation of fraud in the original proceeding. I believe it is also possible to show that there was an irregularity apparent on the face of the proceeding or mistake apparent on the face of the proceeding. But, as I understand the principles relating to that subject matter, such a bill cannot be filed or maintained for the purpose of merely

the rights of the plaintiffs, as relatives or assignees or some capacity, to be undisturbed with respect to what even interest they had in what has been referred to as the burial cemetery. Particularly they challenged the validity of the trade line in this court under which the burial cemetery was sold and provision made for removing the bodies or remains of any persons buried there and the monuments moved to some other cemetery, more or less for and on account of whatever had the right in the particular graves or the particular reserved burial reached. That degree went through all of the steps in an equity proceeding and has long since become crystalized, and now these two bills as I understand it, are bills of review. I have had the impression for some years back that a bill for review primarily was usually based on some allegation of fraud in the original proceeding. I believe it is also possible to show that there was an irregularity, apparent on the face of the proceeding or mistake apparent on the face of the proceeding. But, as I understand the principles relating to that subject matter, such a bill cannot be filed or maintained for the purpose of merely

relitigating matters which were involved or could have been involved under the pleadings and issues and nature of the proceeding that was settled by a decree that is now being attacked.

Is that about stating the situation, gentlemen?

MR. WILLIAMS: If your Honor please, I think that comes pretty close to stating our position. In the case of Lillian Waters we have proceeded under Rule 682, which authorizes a non-resident who had no notice to bring a bill of review within twelve months after the decree had been passed.

THE COURT: You mean to say that Rule 682 is intended to make an exception to the laws and rules and principles that are applicable to orders of publication in order to give notice to non-residents?

MR. WILLIAMS: I think, your Honor, that Rule 682 basically establishes a time limit upon which a non-resident might come in and ask that a proceeding be reviewed. But, at the same time, they would be required to show either that there was some error in law apparent on the face of a decree or that there was some irregularity or

relitigating matters which were involved or could have been involved under the pleadings and issues and nature of the proceeding that was settled by a decree that is now being attacked.

Is that about stating the situation, gentlemen?

MR. WILLIAMS: If your Honor please, I think that comes pretty close to stating our position. In the case of Lillian Waters we have proceeded under Rule 682, which authorizes a non-resident who had no notice to bring a bill of review within twelve months after the decree had been passed.

THE COURT: You mean to say that Rule 682 is intended to make an exception to the laws and rules and principles that are applicable to orders of publication in order to give notice to non-residents?

MR. WILLIAMS: I think, your Honor, that Rule 682 basically establishes a time limit upon which a non-resident might come in and ask that a proceeding be reviewed. But, at the same time, they would be required to show either that there was some error in law apparent on the face of a decree or that there was some irregularity or

fraud. Ordinarily for a bill of review, fraud is not necessary, as I understand it.

THE COURT: It is almost always the basis of the proceeding, a later filed proceeding though. All this rule says is that the non-resident shall have the right to file a bill of review at any time within twelve months from the date of the decree.

MR. WILLIAMS: Yes, sir.

THE COURT: That does not say that he does not have to meet the demands of law and equity or principles that relate to the right to maintain after it is filed.

MR. WILLIAMS: Yes, sir. I don't contend that that is an absolute right, that they don't need anything more than to be a non-resident, that the bill must show there is some error of law apparent in the proceedings, and we have alleged here that the statute under which the decree was passed is unconstitutional, and certainly that would be an irregularity that is apparent.

THE COURT: I suspect if it is unconstitutional, all the proceedings of this court would be void and of no effect, wouldn't they?

fraud. Ordinarily for a bill of review, fraud is not necessary, as I understand it.

THE COURT: It is almost always the basis of the proceeding, a later filed proceeding though. All this rule says is that the non-resident shall have the right to file a bill of review at any time within twelve months from the date of the decree.

MR. WILLIAMS: Yes, sir.

THE COURT: That does not say that he does not have to meet the demands of law and equity on principles that relate to the right to maintain what it is filed.

MR. WILLIAMS: Yes, sir. I don't contend that that is an absolute right, that they don't need anything more than to be a non-resident, that the bill must show there is some error of law apparent in the proceedings, and we have alleged here that the statute under which the decree was passed is unconstitutional, and certainly that would be an irregularity that is apparent.

THE COURT: I suppose if it is unconstitutional, all the proceedings of this court would be void and of no effect, wouldn't they?

MR. MYLANDER: I think we can concede that, that the validity of the purchaser's title at least depends upon the constitutionality of these proceedings to give the Court basic jurisdiction.

THE COURT: We are agreed on that then.

MR. WILLIAMS: Yes, sir. Then if we will proceed from that point, of course it would not require the taking of any testimony to test the constitutionality.

THE COURT: I understand that, but I don't want to take two bites at this. In the other bill there are a good many allegations of fraud which are pretty general. If you have any testimony to support those allegations of fraud and concealment, I suggest that you put it on now.

MR. COCKRELL: If your Honor please, as to that we also contend that because of the irregularity aspects in the case of Julia Jones, we feel under the provisions of Rule 682 of the Rules of Procedure, they give the Court revisory power over judgment after the decree has been enrolled.

THE COURT: For how long?

MR. COCKRELL: It does not say, it is indefinite.

MR. WIANDER: I think we can concede that, then the validity of the purposes title at least depends upon the constitutionality of these proceedings to give the Court basic jurisdiction.

THE COURT: We are agreed on that then.

MR. HILLIARD: Yes, sir. Then if we will proceed from that point, of course it would not require the taking of any testimony to test the constitutionality.

THE COURT: I understand that, but I don't want to take two bites at this. In the other bill there are a good many allegations of fraud which are pretty general. If you have any testimony to support those allegations of fraud and concealment, I suggest that you put it on now.

MR. COCKRELL: If your Honor please, at to that we also contend that because of the improvidently respects in the case of Julia Jones, we feel under the provisions of Rule 220 of the Rules of Procedure, that give the Court residuary power over judgment after the decree has been entered.

THE COURT: For how long?

MR. COCKRELL: It does not say, it is indefinite.

THE COURT: It does not last forever, does it? Isn't that merely declaratory of a bill of review?

MR. COCKRELL: It says after the expiration of a period of 30 days after the entry of a judgment, thereafter pursuant to motion filed within said period the Court shall have revisory power and control over such judgment. After the expiration of such period, the Court shall have revisory power and control over such judgment only in case of fraud, mistake or irregularity.

THE COURT: That is just declaratory of what is required in order to maintain a bill of review.

MR. COCKRELL: Right, but there is no limitation on the period.

THE COURT: I do not know of any specific limitation period that is applicable to a bill of review outside of the customary one in equity of laches, do you?

MR. MYLANDER: If your Honor pleases, all the older cases stated that a bill for review could only be brought within the time of appeal. At the time that this case spoke, there was an appeal of nine months and one of the later cases, after the appeal time was reduced to 60

THE COURT: It does not last forever, does it? Isn't that merely declaratory of a bill of review?

MR. GOCKNELL: It says after the expiration of a period of 60 days after the entry of a judgment, thereafter pursuant to motion filed within said period the Court shall have revisory power and control over such judgment. After the expiration of such period, the Court shall have revisory power and control over such judgment only in case of fraud, mistake or irregularity.

THE COURT: That is just declaratory of what is required in order to maintain a bill of review.

MR. GOCKNELL: Right, but there is no limitation on the period.

THE COURT: I do not know of any specific limitation period that is applicable to a bill of review outside of the customary one in equity of laches, do you?

MR. MCLAUGHLIN: If Your Honor please, all the older cases stated that a bill for review could only be brought within the time of appeal. At the time that this rule spoke, there was an appeal of nine months and one of the latter cases, after the appeal time was reduced to 60

days, then 30 days, stated that -- they did not decide that the time had been reduced by the reduction of the appeal time, but they inferentially stated that the time still remained at nine months. There has not been an expression of the Court of Appeals on that for a long time. However, the distinction between that time and the statutory limitation or the rule limitation of twelve months, which was merely declaratory or merely replaced old section 151 of Article 16, was discussed in Luckett vs. Long, 12 Gill and Johnson, and apparently that has been in effect since 1792 by statute, and since the new rules, by rule. I think it is quite clear that the intention of that rule is to enlarge the nine month rule for common law as to non-residents. That is, twelve months as to non-residents and nine months as to others by virtue of the common law precedence.

THE COURT: The final order in the case ratifying the auditor's account was in March of 1959, as I understand it. There was a decree directing the sale, of course, in June, 1958, report of sale filed in July, 1958, an order nisi, exceptions, motion for hearing, order of

United States Court of Appeals
Ninth Circuit

---

ours, then it here, stated that -- they did not decide that the time had been reduced by the reduction of the appeal time, but they informentially stated that the time would remained six nine months. There has not been an expression of the court of appeals on that for a long time. However, the distinction between that time and the statutory limitation of the rule limitation of twelve months, which was merely declaratory of merely replaced old section 1291 of Article 16, was discussed in Lockett vs. Long, 16 Cir. and Johnson, and apparently that has been in effect since 1928 by stands, and since the new rules, by rule. I think it is quite clear that the intention of that rule is to enlarge the nine month rule for common law as to non-realizable. That is, twelve months as to non-realizable and nine months as to others by virtue of the common law procedures.

THE COURT: The final order in the case validating the bondholder's account was in March of 1959, as I understand it. There was a decree directing the sale, of course, in June, 1959. Report of sale filed in July, 1959, an order nisi, exceptions, motion for hearing, order of

court dismissing exceptions to ratification September 10th, and finally ratifying and permitting the sale. That is September 10, 1958. These proceedings were filed here, both of them, in May, 1959. I don't think there is any question of limitations involved.

MR. MYLANDER: We don't press that theory. I was merely answering the Court's question academically. I think at least the ratification of the sale and the auditor's account would be subject to review, if it falls within the Court's power, by virtue of the allegations of fraud, irregularity or mistake.

THE COURT: You are safe thus far, then, on the question of limitations, I think, unless you have something to suggest otherwise.

MR. COCKRELL: Yes, I do have something else to suggest as to limitation. I think the question of irregularity here really goes to the jurisdiction of the court. We are going on the ground of irregularity based on lack of due notice, that the notice given --

THE COURT: I understand your point in that respect. I am merely trying to get the matter straightened

court dismissing exceptions to notification September 10th, and finally ratifying and permitting the sale. That is September 10, 1898. These proceedings were filed here, both of them, in May, 1898. I don't think there is any question of limitations involved.

MR. WHARTON: We don't press that theory. I was merely answering the Court's question academically. I think at least the notification of the sale and the auditor's account would be subject to review, if it falls within the Court's power, by virtue of the allegations of fraud, irregularity or mistake.

THE COURT: You are safe thus far, then, on the question of limitations, I think, unless you have something to suggest otherwise.

MR. CONNOR: Yes, I do have something else to suggest as to limitation. I think the question of irregularity here really goes to the jurisdiction of the court. We are going on the ground of irregularity based on lack of due notice, that the notice given --

THE COURT: I understand your points in that respect. I am merely trying to get the matter straightened

out so we can have the argument on those matters and get them decided. What I am interested in now is the testimony that you have the right to produce showing fraud or concealment that has been alleged in the bill. Are you ready to produce that?

MR. MYLANDER: Or do you rely on it?

THE COURT: Are you relying on fraud and concealment?

MR. COCKRELL: Your Honor, we are relying, sir, on the irregularity aspect.

THE COURT: See if I am right in stating what your position is. Your position is that, taking the proceeding as a whole and every part thereof, done and undone, from beginning to end, it constitutes in law a fraud or concealment with respect to your clients of what was being done or proposed to be done, is that what your point is?

MR. COCKRELL: Generally.

THE COURT: Therefore, you are not producing any additional testimony other than is disclosed by the papers in the file of that case.

MR. COCKRELL: Well, I want to put the Plaintiff

on the stand and introduce her testimony. Her testimony will be introduced in addition to what is already in the record.

THE COURT: All right, then, produce her.

MR. MYLANDER: Do I understand at this time that the entire record in the original case is in evidence? Are you offering it?

MR. COCKRELL: I would like to offer it in evidence.

THE COURT: Very well. Is that agreeable to you?

MR. MYLANDER: Yes.

THE COURT: Very well. That will be received in evidence.

MR. ATWATER: We will ask the clerk to bring in the papers in that case.

Thereupon--

JULIA JONES,

the Complainant, produced in that behalf, having been duly sworn according to law, was examined and testified as follows:

on the stand and introduce her testimony. Her testimony will be introduced in addition to what is already in the record.

THE COURT: All right, then, produce her.

MR. MYLANDER: Do I understand at this time that the entire record in the original case is in evidence? Are you offering it?

MR. COCKRELL: I would like to offer it in evidence.

THE COURT: Very well. Is that agreeable to you?

MR. MYLANDER: Yes.

THE COURT: Very well. That will be received in evidence.

MR. ATWATER: We will ask the clerk to bring in the papers in that case.

Thereupon--

JULIA JONES,

the Complainant, produced in that behalf, having been duly sworn according to law, was examined and testified as follows:

BY THE REPORTER:

Q What is your name?

A Julia Jones.

Q What is your address?

A 831 Fulton Avenue.

DIRECT EXAMINATION

By Mr. Cockrell:

Q Mrs. Jones, you are the Plaintiff in this case seeking relief in this case?

A Yes, sir.

Q Have you had any connection in the past with the Laurel Cemetery case?

A No, sir.

Q I will restate the question. Have you ever had any interest, by deed or in any other manner, in the Laurel Cemetery case?

A Yes, sir.

MR. MYLANDER: I object. We think she should produce the deed if she has one.

THE COURT: It is a little broad. Does she have the paper?

BY THE REPORTER:

Q What is your name?

A Julia Jones.

Q What is your address?

A 821 Hulton Avenue.

DIRECT EXAMINATION

BY Mr. Cockrell:

Q Mrs. Jones, you are the plaintiff in this case seeking relief in this case?

A Yes, sir.

Q Have you had any connection in the past with the Laurel Cemetery case?

A No, sir.

Q I will restate the question. Have you ever had any interest, by deed or in any other manner, in the Laurel Cemetery case?

A Yes, sir.

MR. MULAHEY: I object. We think she should produce the deed if she has one.

THE COURT: It is a little proof. Does she have the paper?

MR. COCKRELL: Yes, sir.

THE COURT: We might as well get it out now.

MR. COCKRELL: I would like to introduce it in evidence as Plaintiff's Exhibit 1.

MR. MYLANDER: No objection.

(Document referred to received in evidence as Plaintiff's Exhibit 1.)

Q Will you explain to the Court under what circumstances you acquired this deed and from whom?

MR. MYLANDER: I object.

THE COURT: This is dated July 9, 1921. What do you mean by "under what circumstances she got it"? She bought it and paid for it, is that what you mean?

MR. COCKRELL: That's right, your Honor, that is what I want to establish.

THE COURT: That is established by the deed, which contains "in consideration of Thirty Dollars." Of course, that in itself proves she paid $30 for it.

MR. COCKRELL: Well, it is in evidence but I want to establish by her own testimony the circumstances under which she got it and the understanding she received from

MR. COCKERELL: Yes, sir.

THE COURT: We think we will get it out now.

MR. COCKERELL: I would like to introduce it in evidence as Plaintiff's Exhibit.

MR. WYMAN: No objection.

(Document referred to marked Plaintiff's Exhibit 1.)

Q. Will you explain to the Court under what circumstances you acquired this deed and from whom?

MR. WYMAN: I object.

THE COURT: This is dated July 2, 1921. What do you mean by under what circumstances did you get it? One bought it and paid for it, is that what you mean?

MR. COCKERELL: It's right some place. That is what I want to establish.

THE COURT: That is established by the deed, which contains "in consideration of Ninety Dollars." Of course, that is itself proves she paid $90 for it.

MR. COCKERELL: Well, is it in evidence that I want to establish by her own testimony the circumstances under which she got it and the understanding she received from

this title, things of that nature.

MR. MYLANDER: We think that is irrelevant.

THE COURT: I don't know that any understanding she got from somebody back in 1921 that is not incorporated in this paper would be very important.

MR. COCKRELL: Very well, your Honor.

Q Mrs. Jones, did you purchase the deed yourself?

A Yes, sir.

Q Has anyone been buried in that portion of that lot?

A My brother, John Wesley Johnson.

Q When was he buried in that lot?

MR. MYLANDER: If the Court please, I object to all of this as being irrelevant to the issue now before the Court.

THE COURT: I am inclined to think it is, but there isn't much to it. Let's get it. Who is buried in the lot?

THE WITNESS: My brother, John Wesley Johnson.

THE COURT: When was he buried?

THE WITNESS: He was buried in 1921, I think, or

1922 -- 1921 he was buried, the same year I bought the lot.

THE COURT: Anybody else buried there?

THE WITNESS: No, sir.

THE COURT: And his name is what?

THE WITNESS: John Wesley Johnson.

Q (By Mr. Cockrell) Did you make any provision for keeping that plot of ground -- did you make any provision for keeping that plot of ground in good condition?

(Question objected to.)

A Yes, I did.

THE COURT: He just asked whether she did and she said yes. I don't see that that is harmful. Go ahead.

Q When was the first time that you received any notice that your right in Laurel Cemetery had been damaged or infringed upon?

A I never received any --

MR. MYLANDER: If the Court pleases, we object.

THE COURT: The framing of your question is objectionable to counsel.

MR. ATWATER: Your Honor, we also object to the

1922 -- 1923 he was buried, the same year I bought the lot.

THE COURT: Anybody else buried there?

THE WITNESS: No, sir.

THE COURT: And his name is what?

THE WITNESS: John Andrew Johnson.

Q (By Mr. Cockrell) Did you make any provision for keeping that plot of ground -- did you make any provision for keeping that plot of ground in good conditions (question objected to.)

A Yes, I did.

THE COURT: He just asked whether she did and she said yes. I don't see that that is harmful. Go ahead.

Q When was the first time that you received any notice that your plot in Laurel Cemetery had been damaged or injured, ever

A I never received any --

MR. HEARNES: If the Court please, we object.

THE COURT: The framing of your question is objectionable to counsel.

MR. HEARNES: Your Honor, we also object to the

substance as well.

MR. MYLANDER: I would suggest if we could have an exception to the whole line of questioning inasmuch as it does not bear on the question of fraud, we will not annoy the Court by these outbursts.

THE COURT: I will take it subject to exception and that will protect everybody.

MR. MYLANDER: Right.

Q When did you receive notice or any knowledge of anything out of the ordinary affecting your rights in Laurel Cemetery?

A I read it in the paper this year, in the spring of the year, where it had been bulldozed and bodies taken to Carroll County.

Q Had anyone contacted you prior to that time with regard to what would take place?

A No, nobody contacted me.

Q Do you read The Daily Record?

A I buy it every day but I didn't read it.

Q I mean The Daily Record, the lawyers' paper?

A No, I don't read the lawyers' paper.

substance as well.

MR. MYLANDER: I would suggest if we could have an exception to the whole line of questioning inasmuch as it does not bear on the question of fraud, we will not annoy the Court by these outbursts.

THE COURT: I will take it subject to exception and that will protect everybody.

MR. MYLANDER: Right.

Q When did you receive notice or any knowledge of anything out of the ordinary affecting your rights in Laurel Cemetery?

A I read it in the paper this year, in the spring of the year, where it had been bulldozed and bodies taken to Carroll County.

Q Had anyone contacted you prior to that time with regard to what would take place?

A No, nobody contacted me.

Q Do you read The Daily Record?

A I buy it every day but I didn't read it.

Q I mean The Daily Record, the lawyers' paper?

A No, I don't read the lawyers' paper.

Q After you found out what had taken place, did anybody in charge of the cemetery or in any way connected with the cemetery contact you with regard to your rights?

A I really doesn't think there was anybody connected with the cemetery because I went there several times, I have never seen anybody, and I have taken out scissors and cut my rose bush and pulled up grass. I have never seen anybody after Mr. Giles died, and I don't know when he died.

Q Who was Mr. Giles?

A He was the gravekeeper at one time when I first bought the lot.

Q When was the last time you were out there?

A In 1953.

Q Did you always go out yourself or have someone with you?

A No, I always went myself.

THE COURT: Did you find out what had been done with your brother's body?

THE WITNESS: No, sir, I did not.

THE COURT: You did not undertake to find out

Q After you found out what had been going, did anybody in charge of the cemetery or in any way connected with the cemetery contact you with regard to your rights?

A I really doesn't think there was anybody connected with the cemetery because I went there several times. I have never seen anybody, and I have taken out saplings and cut my rose bush and pulled up grass. I have never seen anybody after Mr. Giles died, and I don't know when he died.

Q Who was Mr. Giles?

A He was the gravedigger at one time when I first bought the lot.

Q When was the last time you were out there?

A In 1954.

Q Did you always go out yourself or have someone with you?

A No, I always went myself.

THE COURT: Did you find out what had been done with your brother's body?

THE WITNESS: No, sir, I did not.

THE COURT: You did not undertake to find out

anything about that?

THE WITNESS: I haven't been out there since I heard they had bulldozed it up and taken them away.

THE COURT: You just did not look into it at all.

THE WITNESS: No, sir.

Q (By Mr. Cockrell) You say your brother was buried in there. Was there enough ground --

A For three graves.

Q And that left two more graves?

A Two more, yes, sir.

MR. COCKRELL: No further questions.

MR. MYLANDER: No questions.

(Testimony of the witness concluded.)

MR. MYLANDER: The exception stands as to the entire testimony offered I presume.

THE COURT: Very well, I will rule on it at the end of the case. Have you any further testimony, gentlemen?

MR. WILLIAMS: If your Honor please in the Waters case -- we skipped along pretty fast -- and I don't know whether it is conceded by the Defendant that Mrs. Waters is

anything about that?

THE WITNESS: I haven't been out there since I heard they had bulldozed it up and taken them away.

THE COURT: You just did not look into it at all.

THE WITNESS: No, sir.

Q (By Mr. Cantrell) You say your brother was buried in there. Was there enough ground --

A For three graves.

Q And that left two more graves?

A Two more, yes, sir.

MR. GOODKNIGHT: No further questions.

MR. WHARNSBY: No questions.

(Testimony of the witness concluded.)

MR. WHARNSBY: The exception stands as to the entire testimony offered I presume.

THE COURT: Very well, I will rule on it at the end of the case. Have you any further testimony, gentlemen?

MR. WILLIAMS: If your Honor please in the Nabors case --we skipped along pretty fast -- and I don't know whether it is conceded by the defendant that Mrs. Nabors is

a non-resident and that she has an interest in the matter. If that isn't conceded, then I will put her on to establish that fact only.

THE COURT: Do you want to admit that she was and is a non-resident of Maryland?

MR. MYLANDER: We will concede that she was a non-resident of Maryland.

THE COURT: Well, you have that then.

MR. WILLIAMS: The only other thing is that she has an interest in the whole matter.

MR. MYLANDER: We don't admit that.

THE COURT: If she has a deed there, why don't you get it, show it to counsel, and they will be willing to let you put it in evidence with the same force and effect as if she had been sworn and testified.

MR. MYLANDER: We have no objection to the introduction of this paper, if they can show the devolution of it, it is all right.

Thereupon--

LILLIAN WATERS,

the Complainant, produced in that behalf, having been duly

a non-resident and that she was an interest in the matter. If that issue succeeded, then I will not rely on the establish that fact only.

CHR. COURT: Do you want to admit that she was and is a non-resident of Maryland?

MR. MCLAUGHLIN: We will concede that she was a non-resident of Maryland.

THE COURT: Well, you have that then.

MR. WILLIAMS: The only other thing is that she has an interest in the whole matter.

MR. MCLAUGHLIN: We don't admit that.

THE COURT: If she has a deed there, why don't you get it, have it so recorded, and they will be willing to let you put it in evidence with the same force and effect as if she had been sworn and testified.

MR. MCLAUGHLIN: We have no objection to the introduction of this paper, if they can show the devolution of it, if it is all right.

Thereupon--

WILLIAM MACFEE,

the correlativant, produced in chief behalf, having been duly

sworn according to law, was examined and testified as follows:

BY THE REPORTER:

Q What is your name?

A Lillian Waters.

Q What is your address?

A 550 West 158th Street, New York City 32.

DIRECT EXAMINATION

By Mr. Williams:

Q Mrs. Waters, there has been introduced in evidence a deed from the Laurel Cemetery to A. R. Carroll, dated August 1, 1805, it says here, and I am sure that is an error because Laurel Cemetery was not in existence. It is very probable that this printing was made prior to the filling out of the deed and they just did not change the year. Whether it was 1855 we are not sure. Would you tell his Honor how you came into possession of this deed, what were the circumstances under which you got it?

A My father died and we had Holland's as our undertaker, and he sold us this lot.

THE COURT: When did your father die?

sworn according to law, was examined and testified as follows:

BY THE REPORTER:

Q What is your name?

A William Waters.

Q What is your address?

A 550 West 158th Street, New York City 32.

DIRECT EXAMINATION

By Mr. Williams:

Q Mrs. Waters, there has been introduced in evidence a deed from the Laurel Cemetery to A. R. Carroll, dated August 1, 1805, it says here, and I am sure that is an error because Laurel Cemetery was not in existence. It is very probable that this printing was made prior to the filling out of the deed and they just did not change the year. Whether it was 1855 we are not sure. Would you tell his Honor how you came into possession of this deed, what were the circumstances under which you got it?

A My father died and we had Holland's as our undertaker, and he sold us this lot.

THE COURT: When did your father die?

THE WITNESS: 1912.

THE COURT: What was his name?

THE WITNESS: James Martin. In 1916 I lost a child and she was buried there. In 1922 my brother died, James Martin, and was buried there.

Q On the occasion of all of these deaths, did you take this deed with you to the cemetery in order to bury the person?

A It was given to the undertaker, yes.

Q Did you ever experience any difficulty over using the plot?

A None whatever, no.

Q Did you know Mr. Carroll at all, A. R. Carroll?

A No, I did not. It was gotten through the undertaker.

Q Did you make any investigation to find out anything about Mr. Carroll?

MR. MYLANDER: I object.

A Well, I was young at the time and wasn't interested I guess. I knew we had a deed to the cemetery.

MR. MYLANDER: If your Honor pleases, if I may

THE WITNESS: 1918.

THE COURT: What was his name?

THE WITNESS: James Martin. In 1918 I lost a child and she was buried there. In 1922 my brother died, James Martin, and was buried there.

Q On the occasion of all of these deaths, did you take care of the deceased in order to bury the person.

A It was given to the undertaker, yes.

Q Did you ever experience any difficulty over using the plot?

A None whatever, no.

Q Did you know Mr. Carroll et al, A. M. Carroll?

A No, I did not. It was another through the undertaker.

Q Did you make any investigation to find out anything about Mr. Carroll?

MR. KOLCHMAN: I object.

A Well, I was young at the time and weren't interested I guess. I knew we had a deed to the cemetery.

MR. KOLCHMAN: If your Honor please, if I may

have an exception again to all this testimony.

THE COURT: Yes, I will take it subject to exception.

Q Have you had continuous possession of this deed since that time?

A Yes, I have had.

Q Have you ever experienced any difficulty with visiting the Laurel Cemetery?

A None whatever.

Q And did you, on and after December 13, 1912, treat this particular plot as your own?

A Why sure. We had a tombstone put up there too.

MR. WILLIAMS: I have no further questions.

MR. MYLANDER: No questions. I note an exception and move to strike the whole testimony.

THE COURT: When were you last out there?

THE WITNESS: I think it was in 1925 or 1927, one of the two.

THE COURT: You are married, are you?

THE WITNESS: I am a widow.

THE COURT: Have you children?

have an exception again to all this testimony.

THE COURT: Yes, I will take it subject to exception.

Q Have you had continuous possession of this deed since that time?

A Yes, I have had.

Q Have you ever experienced any difficulty with visiting the Laurel Cemetery?

A None whatever.

Q And did you, on and after December 12, 1912, treat this particular plot as your own?

A Why sure. We had a tombstone put up there too.

MR. WILLIAMS: I have no further questions.

MR. MYNANDER: No questions. I note an exception and move to strike the whole testimony.

THE COURT: When were you last out there?

THE WITNESS: I think it was in 1925 or 1927, one of the two.

THE COURT: You are married, are you?

THE WITNESS: I am a widow.

THE COURT: Have you children?

THE WITNESS: I have one son.

THE COURT: Is he married?

THE WITNESS: Yes, living in Baltimore.

THE COURT: Has he any children?

THE WITNESS: Three children.

THE COURT: When did you learn that something had been done at the cemetery?

THE WITNESS: My son sent me cuttings out of the Afro-American.

THE COURT: When was that?

THE WITNESS: I think it was in May or April.

THE COURT: Of what year?

THE WITNESS: Of this year.

THE COURT: This year or last year?

THE WITNESS: In May of 1959.

THE COURT: 1959?

THE WITNESS: Yes.

THE COURT: What did you do then?

THE WITNESS: I contacted my lawyer in New York and he got in touch with Lawyer Williams here.

THE COURT: Do you know whether these bodies which

you say were buried in this lot have been moved to another place?

THE WITNESS: I was not notified.

THE COURT: And so far as you are concerned, you don't know whether they have been moved or not, is that right?

THE WITNESS: No, but --

THE COURT: I mean so far as you are personally concerned.

THE WITNESS: No.

THE COURT: And you personally never made any investigation to find out or try to find out.

THE WITNESS: Well, after I read what I did, that they were being hauled away like stones and mortar and dirt and bulldozers were digging up the ground, which was almost a disgrace to humans --

THE COURT: That still does not answer the question I asked. You did not do anything to personally investigate the matter to find out whether they had been put in graves in another cemetery or not.

THE WITNESS: Well, I think I would have been no-

you say were buried in this lot have been moved to another place?

THE WITNESS: I was not notified.

THE COURT: And so far as you are concerned, you don't know whether they have been moved or not, is that right?

THE WITNESS: No, but --

THE COURT: I mean so far as you are personally concerned.

THE WITNESS: No.

THE COURT: And you personally never made any investigation to find out or try to find out.

THE WITNESS: Well, after I read what I read, that they were being hauled away like stones and rubber and dirt and bulldozers were digging up the ground, which was almost a disgrace to humans --

THE COURT: That still does not answer the question I asked. You did not do anything to personally investigate the matter to find out whether they had been put in graves in another cemetery or not.

THE WITNESS: Well, I think I would have been no-

tified if they had.

THE COURT: That isn't the point. You did not personally undertake to investigate to find out what the facts about it were, is that right or not?

THE WITNESS: That's right.

THE COURT: That is all I want to know.

(Testimony of the witness concluded.)

THE COURT: Have you any more testimony, gentlemen?

MR. WILLIAMS: No, sir, I have no other testimony, your Honor.

THE COURT: Do you?

MR. MYLANDER: No testimony on behalf of the Defendants.

THE COURT: Then I suppose we are ready for any discussion that you wish to engage in.

MR. COCKRELL: Before I start the discussion, I would like to get permission to get the previous record. If I had the bound volume from the Record Office --

THE COURT: What do you mean?

MR. COCKRELL: The record has been printed and

tified it they had.

THE COURT: That isn't the point. You'd not personally undertake to investigate to find out what the facts about it were, is that right or not?

THE WITNESS: That's right.

THE COURT: That is all I want to know.

(Testimony of the witness concluded.)

MR. DOYLE: Have you any more testimony, Gentlemen?

MR. WILLIAMS: No, sir, I have no other testimony, Your Honor.

THE COURT: Do you?

MR. DEFAUGHT: No testimony on behalf of the defendants.

THE COURT: Then I suppose we are ready for any discussion that you wish to engage in.

MR. CONNELL: Before I start the discussion, I would like to get permission to get the previous record. If I had the bound volume from the Record Office--

MR. COURT: What do you mean?

MR. CONNELL: The record has been printed and

placed in a bound volume and it includes all the testimony that took place in the previous hearing. I would like to use that to direct the Court's attention to certain passages.

THE COURT: What do you mean it has been printed and put in a bound volume?

MR. MYLANDER: I think Mr. Cockrell refers to the Judicial Library in which proceedings are recorded through which title passes.

THE COURT: Yes, but they don't record the testimony.

MR. MYLANDER: Normally when title passes through an equity proceeding, the whole proceedings, including the testimony, are incorporated.

THE COURT: I had not the slightest idea they ever put the testimony in those books in the Clerk's offices.

MR. COCKRELL: May I get the Court's permission to obtain it?

THE COURT: Yes, or you may use this one.

MR. COCKRELL: There are certain things I want the Court to follow me on.

placed in a bound volume and it contains all the testimony that took place in the previous hearing. I would like to ask to direct the Court's attention to certain passages.

THE COURT: What do you mean it has been printed and put in a bound volume?

MR. MYLANDER: I think Mr. Cooper(?) refers to the judicial library in which proceedings are recorded through which this passes.

THE COURT: Yes, but they don't record the testimony.

MR. MYLANDER: Normally when this passes through an equity proceeding, the whole proceedings, including the testimony, are incorporated.

THE COURT: I had not the slightest idea they ever put the testimony in bound books in the Clerk's office.

MR. COCKRELL: May I get the Court's permission to obtain it?

THE COURT: Yes, if you may use this one.

MR. COCKRELL: There are certain things I want the Court to follow me on.

MR. MYLANDER: It is an archaic.

(After argument)

Warnken, J. (Orally):

I cannot see that there is any constitutional invalidity in these cases. Of course, a lot of the discussion about this matter appeared in the press and is still in people's minds, but that had no effect in the consideration of legal questions which must be decided according to the applicable legal principles. We are therefore only concerned in these cases with legal principles, and I cannot find anything here that would justify me in setting aside the decree passed in the former proceeding in which all these points were actually made before Judge Carter and ruled on by him.

Therefore I will have to sign a decree dismissing the present Bills.

MR. WILKINSON: It is an objection.

(After argument)

Warren, J. (Orally):

I cannot see that there is any constitutional invalidity in the case. Of course, a lot of the discussion about this matter appeared in the press and is still in people's minds, but that had no effect in the consideration of legal questions which must be decided according to the applicable legal principles. We are therefore only concerned in these cases with legal principles, and I cannot find anything here that would justify me in setting aside the decree passed in the Lower proceeding in which all these points were actually made before judge Carter and ruled on by him.

Therefore I will have to sign a decree dismissing the present bills.

Fd. 17 March 1960

LILLIAN WATERS	*	IN THE
Complainant	*	CIRCUIT COURT
vs.	*	OF
McKAMER REALTY COMPANY, ET AL	*	BALTIMORE CITY
Defendants	*	Docket 1959 A-276

* * * * * * *

PETITION FOR EXTENSION OF TIME FOR TRANSMISSION OF RECORD

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Comes now Lillian Waters, by Juanita Jackson Mitchell, Archie D. Williams, and WILLIAMS & MURPHY, her attorneys, and for Petition for Extension of Time for Transmission of Record, Says:

1. That prior to December 18, 1959 she filed her Bill of Review in this Honorable Court asking that this Honorable Court Review Its' Decree in the case of McKamer Realty Company bs. Anderson Enterprises, Inc., Et Al., and that on December 18, 1959 a hearing was held on said Bill at which time said Bill was dismissed. From this action an appeal has been taken to the Court of Appeals of Maryland.

2. That there was at that time pending before this Honorable Court the case of Mamie E. Kennard, Et Al vs. McKamer Realty Company, Et Al upon which a hearing has been held and the case dismissed. An appeal is being taken from this Decree. That the Kennard case and the instant case both grow out of the same transaction and involve some of the same law and facts, and that it is anticipated that these cases should be consolidated upon appeal.

WHEREFORE, your complainant respectfully prays:

(a) That this Honorable Court issue an Order extending the time for transmitting the record to the Court of Appeals of Maryland so that an opportunity may be had to consolidate upon appeal.

(b) Such other and further relief as may re requisite.

AND, as in duty bound, etc.

Archie D. Williams
Archie D. Williams
Attorney for Petitioner

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

A-39107 (9)

O R D E R

UPON the aforegoing Petition, it is hereby Ordered this 17 day of March 1960 by the Circuit Court of Baltimore City that the time for transmission of the record to the Court of Appeals of Maryland in the matter of Lillian Waters vs. McKamer Realty Company, Et Al. be, and the same is hereby extended for thirty days from this date.

Anselm Sodaro
JUDGE

LAW OFFICES
WILLIAMS & MURPHY
2669 PENNSYLVANIA AVENUE
BALTIMORE 17, MD.
LA. 3-5011

CCWA:bc 4/12/60 1-9

Fd. 12 April 1960

MAMIE E. KENNARD, et al.	*	IN THE CIRCUIT COURT
vs.		OF
McKAMER REALTY COMPANY, et al.	*	BALTIMORE CITY
		1959/A-267

---

	*	
JULIA JONES		IN THE CIRCUIT COURT
vs.	*	OF
McKAMER REALTY COMPANY, et al.		BALTIMORE CITY
	*	1959/A-266

LILLIAN WATERS	*	IN THE CIRCUIT COURT
vs.		OF
McKAMER REALTY COMPANY, et al.	*	BALTIMORE CITY
		1959/A-276

---

*

ORDER OF COURT

The Motion of the Plaintiffs to Consolidate the Record on Appeal of the three above-entitled cases having come on for a hearing and the Motion and the Answer thereto whereby the Defendants consent to the Consolidation of the cases of "Julia Jones v. McKamer Realty Company, et al." and "Lillian Waters v. McKamer Realty Company, et al.", but oppose the consolidation of the record of those two cases with the record in the case of "Mamie E. Kennard, et al. v. McKamer

A-39107 (10)

Realty Company, et al." having been read and considered, and counsel having been heard, it is this 12 day of April, 1960, by the Circuit Court of Baltimore City:

ORDERED:

That the Records on Appeal in the cases of "Julia Jones v. McKamer Realty Company, et al." (Docket 1959A-266) and "Lillian Waters v. McKamer Realty Company, et al." (Docket 1959-A 276) be consolidated.

IT IS FURTHER ORDERED that the Motion to Consolidate the Record in the case of "Mamie E. Kennard, et al. v. McKamer Realty Company, et al." (Docket 1959A-267) with the records in the cases of "Julia Jones v. McKamer Realty Company, et al." (Docket 1959A-266) and "Lillian Waters v. McKamer Realty Company, et al." (Docket 1959A-276) be and it is hereby denied.

Judge

I HEREBY CERTIFY that on this 12th day of April, 1960, a copy of the foregoing Order of Court was mailed to each of W. A. C. Hughes, Jr., Esquire, 1803 Pennsylvania Avenue, Baltimore 17, Maryland, Mrs. Juanita Jackson Mitchell, 1239 Druid Hill Avenue, Baltimore 17, Maryland, Archie D. Williams, Esquire, Williams & Murphy, 2669 Pennsylvania Avenue, Baltimore 17, Maryland, Paul J. Cockrell, Esquire, and Tucker R. Dearing, Esquire, 627 North Aisquith Street, Baltimore 2, Maryland, Dallas F. Nicholas, Esquire, 14 East Pleasant Street, Baltimore 2, Maryland, and Julius P. Robinson, Esquire, 208 East Lexington Street, Baltimore 2, Maryland, Attorneys for Plaintiffs.

Of Counsel for Defendants