

RICHARD E. SUMMERS, et al * No. 20,385 EQUITY
vs. * IN THE CIRCUIT COURT FOR
JOHN B. FUNK, et al * FREDERICK COUNTY, MARYLAND

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OPINION AND DECREE

This proceeding arises on Petition of the Executors of the Estate of Grace Summers, late of Frederick County, deceased, for a Declaratory Judgment clearing title to the real estate owned by the decedent at the time of her death.

The Executors had entered into a written contract of sale of the decedent's dwelling located on the south side of Alternate Route #40 West at Old Braddock in Frederick County. The contract-purchasers' title search disclosed that two State Roads Commission Plats had been recorded in the Clerk's Office in 1951 at a time when the State Roads Commission planned on taking certain parts of the Summers property and other properties in the neighborhood. Although this plan of the Commission was abandoned, the plats remain on record and show the Commission right of way running through the front part of the Summers dwelling. The purchasers considered this a cloud on title and refused to buy under the contract, so the Executors Petitioned this Court to remove the cloud on title and declare that the Executors have marketable title to the whole dwelling and the land appurtenant thereto.

The State Roads Commission Answered the Petition by submitting to the jurisdiction of this Court, citing their deed from the Turnpike Company and claiming a sixty-six foot right of way from Baltimore City to Boonsboro.

Testimony was taken, memoranda filed by the Petitioners and the case submitted without further argument.

The Petitioners being in possession and therefore not entitled to the legal remedy of ejectment, Equity will entertain jurisdiction.

The Summers family has been in possession of the dwelling and the land appurtenant thereto since they bought at Trustee's sale on February 22, 1890 in No. 5670 Equity wherein the property was described in the Printer's Certificate and Sale Advertisement as:

"1st. 20 1/2 acres of land, lying on the turnpike road, improved with a large two-story BRICK HOUSE with two-story back building, basement and cellar....."

Summers' predecessor in title was Daniel Baugher whose deed (dated April