

30, 1841 from Emanuel Smith and wife, recorded in Liber H.S. #13, Folio 254) included "also the brick building with 20.5 acres of land thereto belonging, it being the same as bequeathed by the late Jacob Smith to Jacob and Emanuel Smith, being the same as held, possessed and occupied by the said Emanuel Smith." The Will of Jacob Smith, dated June 1, 1816 and recorded in Liber H.S. #2, Folio 322, devised "to Jacob and Emanuel my brick dwelling which I now occupy with 20.5 acres of land....".

Being in Possession, the Summers family has title good against all except those who can show a better title. Stanton v. Lapp, 113 Md. 540; 77 A. 672; New Windsor v. Stocksedale, 95 Md. 196, 52 A. 596; Tyson v. Shueey, 5 Md. 540; American Law of Property, Vol. III, par. 15.1 and 15.17.

The State Roads Commission can have no better title than the Turnpike Company had and deeded to the Commission as follows:

"...do hereby grant, convey, release, and quit claim unto the State Roads Commission all our right, title, interest and estate whatsoever in, to and over the bed of the Baltimore and Frederick Turnpike Road as now located between its terminus in Baltimore City and its terminus in Boonsboro, Washington County, Maryland."

This deed (dated December 21, 1910 and recorded in Liber H.W.B. #294, Folio 361) also reserved to the Grantor Turnpike Company "all real estate outside of the bed of said turnpike road".

Under this deed, the Commission obtained only (1) the Turnpike Company's right, title and interest; (2) to and over the bed of the Turnpike Road as located in 1910 and (3) no real estate outside of the bed of said turnpike road.

The term "roadbed" is not synonymous with "right of way. St. Louis-San Francisco Ry. Co. v. King, 50 S.W. 2d 99 (Mo.) "Roadbed" or "bed of said turnpike road" means "that portion of the road which was constructed and used for travel". Rouse v. St. Paul Fire and Marine, 219 S.W. 690 (MO). Regardless of the interpretation placed on that part of the Commission deed, however, it is obvious that under this deed the Commission got no better title than the company had before it.

Turning now to the company title, the legislation creating the company gave it a franchise and the right to take certain land. "The right to occupy streets is a franchise; the actual occupation of them in that way pursuant to the franchise is the exercise of an easement. A distinction must be marked between the right to do the thing and the interest acquired in the soil by the exercise of that right." 23 Am. Jur. 716