

It said, what??
The Metes and Bounds description as an art form...

Legal descriptions: they are our stock in trade, but are we sure of our interpretation of that old prose? The oldest form of written land definition, metes and bounds descriptions have been litigated many times, often with surprising results. So, are you confident that that legal description you just wrote will be interpreted by everyone the way you intend? This session will explore the five cases of the longsuffering Inloes, who, in the 1850s, ended up prevailing in a bizarre twist. Then we'll dive into *U.S. v. Gallas*, a case that should strike terror into the heart of every scrivener. Come witness the carnage—if you can stand it!

Joel M. Leininger
S.J. Martenet & Co., Inc.

The Inloes' Cases

Five different cases spanning 15 years and amounting to 195 pages of appellate Court opinion

Wilson v. Inloes, 11 Gill & J. 351 (Md. 1840)

Casey v. Inloes, 1 Gill 430 (Md. 1844)

Wilson v. Inloes, 6 Gill 121 (Md. 1847)

Hammond v. Inloes, 4 Md. 138 (1853)

Peterkin v. Inloes, 4 Md. 175 (1853)

“that all improvements, of what kind soever, either wharfs, houses, or other buildings that have or shall be made out into the water, or where it usually flows, shall (as an encouragement to such improvers) be for ever deemed the right, title and inheritance of such improvers, their heirs and assigns for ever.”

– *Chapter 9, Acts of 1745*

“[The City] is authorized to contract with [the owners] of property in the Cove to fill up their lots as far into the water as the Board of Health may deem necessary.”

– *City of Baltimore Ordinance 1823 c. 19*

Wilson v. Inloes –1 (1840)

Wilson claims under patent Mountanay's Neck (1737)

Inloes claims under patent Fells Prospect (1761)

Casey v. Inloes (1844)

Casey also sues the Inloes for ejectment, but in this case the Inloes discover that *another* patent may play a role in the dispute.

Bold Venture (1695), patented by Capt. John Oulton

Wilson v. Inloes – 2 (1847)

Bold Venture is where???

Hammond v. Inloes (1853)

The extension of BaltimoreTown to this area in 1773

Oulton has got to be dead. Really.

Peterkin v. Inloes (1853)

What happened to the Oultons?

Quotable Quotes from *Wilson v. Inloes*, 6 Gill 121 (Md. 1847)

"The general rule is, that if there be a peremptory call to an object of length by a course and distance line, and the object can be reached by gratifying the distance, but violating the course, or by conforming to the course and disregarding the distance, the course must control the distance; the termination of the line being thereby fixed with greater certainty." p. 153

"It is also undeniably established by authority, that if the beginning tree of a tract of land is lost, and the lines thereof have courses and distances, and one of them is a known boundary, that the beginning of the tract may be found by reversing the courses, and expending the number of perches on the anterior lines." p. 156

"Land so granted, when the boundaries are all known, is capable of two modes of location. The one by running the lines to the boundaries called for, without regard to the courses and distances; the other is to run the land according to its courses and distances, without reference to its boundaries. Both these modes of running are in perfect consistency with every thing appearing on the face of the grant. But lest there should be a diversity in the results, thus obtained by different means, and, in order, as is supposed, to give greater certainty to the locations of grants of land, and to give them that operation which shall be most beneficial to grantees, the courts of this State have determined that in all locations of lands the first mentioned mode of running shall, if practicable, be conformed to; but if that be impracticable by reason of an inability, from any cause to prove its boundaries, the land shall be located by running its lines according to their courses and distances." p. 157

"According then to the doctrine contended for by the appellants as to *Bold Venture*, if in any of the surveys mentioned, a beginning or boundary thereof may be lost, the whole tract of land is utterly lost, being incapable of true location, by any running of the course and distance lines, reversely or progressively. To such a discovery the case before us has certainly given birth. Of it the venerated founders and expounders of the land law of Maryland, never appear to have caught a glimpse; or so many thousands, tens of thousands, or perhaps hundreds of thousands of acres of land, would not have been held for perhaps a century in opposition to such principle by citizens of this state, who never dreamed of a taint or defect in their titles." p. 158

"There is not a shade or difference between the weight to be ascribed to a call for a boundary, or matter of description thereof, when referred to as the beginning of a tract of land, or as the terminus of one its lines. Under like circumstances, the obligation

to gratify the same is equally imperative in both cases; there is, in this respect, no priority or preference between them." p. 165

"It would be productive of great injustice and ruinous consequences to land-holders, if juries were authorized to make whatever allowance for variation their crude notions on the subject might suggest—unaided and uncontrolled by experience, or the lights of science." p. 168

"But there is another objection to the instruction, which should have caused its rejection by the court. It introduces a novel and extraordinary principle in the ejectment law of Maryland, which might lead to endless confusion, uncertainty, and litigation, as to the locations of lands. If to produce accordance between a line and its call, you can change the running of the next preceding line, you may, upon the same principle, change the running of every antecedent line of the tract; and such changes will be in direct conflict with the express terms of the grant, and without any settled rule of law to govern them; but according to the notions of each person interested as the best or most expedient changes, by which the accordance, he desires, may be effected. Such an innovation upon the sound, safe, principles of the ejectment law of Maryland has never received the sanction of this court; nor, it is believed, of any of the judicial tribunals of this State;—nor is it hazarding too much to say, that it is confidently expected that it never will." p. 170

U.S. v. Gallas, 269 F.Supp 141 (D.Md. 1967)

The Waltman tract initially a rectangle, but with the southeast corner missing

Corps of Engineers needs to install waterlines and obtains an easement

Full surveys made; descriptions written; easements acquired

Waltman's Conveyance to Hanson mentions the easement

Hanson's conveyance to Gallas does not mention the easement

1. What the court focus on in analyzing the facts?
2. The government relied on *Wilson v. Inloes* for part of its argument. Which part?
3. What else did the government argue in construing the description?
4. The interpretative arguments failing, what were the government's final two arguments?

of the city, he shall order such airings, cleansings, &c., at the Lazaretto as he shall deem necessary; but if such vessel or vessels are found in a safe and clean condition, all such vessels as shall be coasting vessels from the eastward of Cape Charles, and coasting vessels from the southward, laden with naval stores and lumber only, shall be permitted, at the discretion of the Health Officer, to pass up into any part of the basin without restriction; and all other vessels arriving as aforesaid in a safe and clean condition as aforesaid, shall receive a permit in writing to pass up to the south side of the basin, not less than two hundred yards from any wharf on the north side of the basin, from whence they are to report themselves to the Commissioner of Health for the district in which such vessel shall be moored; and no vessel after having moored at the south side of the basin shall unload any part of her cargo without permission first being had from such Commissioner of Health; and it shall be the duty of said Commissioner of Health to examine the cargo and vessel, and give a permit to such vessel to unload her cargo at any wharf of the city to the eastward of Harbaugh's wharf, or in lighters, at his discretion, and cause the vessel to be well cleansed in such manner as he may deem necessary before she shall be permitted to come to any of the wharves or docks of the city; provided, always, that no Commissioner of Health shall exercise a discretion in permitting the unloading of any cargo arriving from the West Indies, New Orleans, Florida, South Carolina, Georgia, the Gulf of Mexico, or South America, at any wharf on the north side of the basin or harbor, or on the south side thereof to the westward of Harbaugh's wharf. This section shall be in force from the first day of May to the first day of November, in each and every year, and any captain, master or consignee, or other person, violating the provisions of this section, shall forfeit and pay the sum of three hundred dollars for each and every offence.

Further duties of the Health Officer.

Coasting vessels in a safe and clean condition from the east of Cape Charles, and coasting the southward laden with naval stores and lumber only may be permitted to pass up into any part of the basin; other vessels first to obtain a permit, &c.

5.—And be it enacted and ordained, That every public or private armed vessel sailing under a commission, or vessel having more than fifteen passengers, arriving from sea, shall land their ballast and empty their water casks, and cleanse the same while at quarantine or at the Lazaretto wharf, so that their timber boards may be taken up and the timbers well cleansed and approved of by the aforesaid officer before such vessel shall be permitted to come to any wharf or dock within the limits of the city, and shall be furnished by the aforesaid officer with a permit to that effect; provided, no vessel shall be liable to the provisions of this section whose ballast shall consist of salt, and each and every captain, master or person or persons who shall violate this section shall pay a penalty of five hundred dollars.

6.—And be it enacted and ordained, That the Health Officer at the time he may grant such permit as aforesaid to any vessel arriving from a foreign port or coastwise, shall demand and receive from the captain or commander of such vessel the following sums of money, to wit: From each captain or commander of a ship, six dollars, and no more; from each master or commander of a brig or brigantine, four dollars; from each master or commander of a schooner or sloop, two dollars, for each and every voyage, and it shall be the duty of the Health Officer to pay over all money so by him collected to the Register of the City in the same manner as all other money is paid that is collected by the Harbor Master, deducting therefrom the sum of ten per cent. as a commission for collecting.

Duties of the Commissioners of Health, subject to a provision.

This section to be in force from the 1st May to the 1st November in every year. Penalty for violating this section.

6.—And be it enacted and ordained, That the Health Officer to collect and pay over to the Register certain monies to be collected by him from the captains or commanders of all vessels entering the port, after deducting ten per cent. as his commission.

Approved March 11th, 1823.

No. 19.

An ordinance for the improvement of the Cove.

Whereas, the proprietors of property binding on Wilk's street, Bond, Thames and Queen streets, and extending into the water from the east line of Har-

ford street to Point street, are desirous of contracting with the city authorities to fill their respective lots or pieces of ground as aforesaid, for the purpose of removing the nuisance.

City Commissioners and Wardens of the Port authorized to make contracts with the proprietors of property on the cove for filling up their lots, under certain conditions and provisions.

1.—Be it enacted and ordained by the Mayor and City Council of Baltimore, That the City Commissioners and Wardens of the Port, with the approbation of the Mayor, be, and they are hereby, authorized to contract with the proprietor or proprietors of property in the aforesaid cove, to fill up their lots as far into the water as the Board of Health may deem necessary, with sand taken from Jones' Falls, at fifty cents per scow load; provided, as much sand can be obtained from said falls as may be necessary to complete the work; but should the quantity of sand prove insufficient then the contract to cease and be null and void, the owners of the property paying for as much work as shall then be done.

More provisions in the event of an application from the aforesaid proprietors.

2.—And be it further enacted and ordained, That in the event of an application from the proprietors of the above mentioned property, to the City Commissioners and Wardens of the Port, to make a new contract for filling up their property, that they be authorized to make a new one upon such terms as will indemnify the city for the actual cost thereof; provided, however, the aforesaid contract or contracts reserve to the corporation the right of filling up the remainder of said cove whenever the future interests of the city, in the opinion of the corporation shall require the same.

Further directions and duties to be attended to by the aforesaid Commissioners and Wardens.

3.—And be it further enacted and ordained, That in case any owner or owners of the property above mentioned, be unable to pay the expense of filling up the same, or should such owner be a minor, having no guardian, or if having a guardian, such guardian shall neglect or refuse to pay the expense of filling up the property of such minor or minors,

that it shall be the duty of the City Commissioners and Wardens of the Port to require from such owner, if not a minor, a deed to the Mayor and City Council of Baltimore, conveying to them a fee simple interest, if such owner have a fee simple estate or a leasehold interest, if such owner have only a leasehold interest therein for such portions of the property of such owner, so to be filled up, not less than one half thereof, as shall be agreed upon by and between the owner of such property and the City Commissioners and Wardens of the Port, prior to commencing the filling up of the property of such owner; and in case the owner be a minor having no guardian, or having a guardian, in case such guardian shall neglect or refuse to pay the expense of filling up the lot of such minor, then, and in that case the expense of filling up such property of such minor, shall be a tax to be levied by the City Commissioners and Wardens of the Port, on the property so to be filled up, and a lien thereon, until the sum assessed be paid with interest from the time of such assessment.

In case the said proprietor or owner of property neglects and having no guardian.

4.—And be it enacted and ordained, That in case the City Commissioners, in case of the neglect or refusal of any proprietor or proprietors of the property aforesaid, to contract with the City Commissioners and Wardens of the Port, as aforesaid, the aforesaid Commissioners, with the approbation of the Mayor, shall proceed to fill up the same, and the expense of filling up the said lots shall be a tax to be levied by the City Commissioners on the property so to be filled up, and a lien thereon until the sums assessed be paid with interest from the time of such assessment, and such proprietor or proprietors shall be also liable to any act and debt or assumption for the amount of the expense incurred in filling up the property of such proprietor or proprietors.

The City Commissioners, in case of the neglect or refusal of the Mayor, authorized to fill certain lots in case of the neglect or refusal of the proprietors to do the same.

Further duties of the City Commissioners and Port Wardens.

5.—And be it enacted and ordained, That the City Commissioners and Wardens of the Port, shall, on the first Monday of January, eighteen hundred and twenty-four, and on the same day in each and every year, until the aforesaid work is completed, make out an estimate of the expense incurred by the corporation in filling up the lot or lots of each and every proprietor of ground aforesaid, and they shall place such amount or estimate of expense in the hands of the City Collector for the time being, who shall proceed forthwith to collect the same in the same manner as the city taxes are collected, from the respective owner or owners of property so filled up, which sums of money the Collector shall pay over when collected to the Register of the City, after deducting three and a half per centum commission therefrom.

The City Commissioners and Port Wardens authorized to Register for certain sums of money in anticipation; provided such sums shall not exceed \$2,500 in any one year.

6.—And be it enacted and ordained, That the City Commissioners and Wardens of the Port, with the approbation of the Mayor, are hereby authorized to draw on the Register of the City for such sum or sums of money as may be necessary to carry the provisions of this ordinance into effect; provided, such sum or sums of money shall not exceed two thousand five hundred dollars in any one year, the same to be paid out of the harbor appropriation.

Approved March 11th, 1823.

No. 20.

A further additional supplement to the ordinance entitled "An ordinance to appoint City Commissioners, and prescribing their duties."

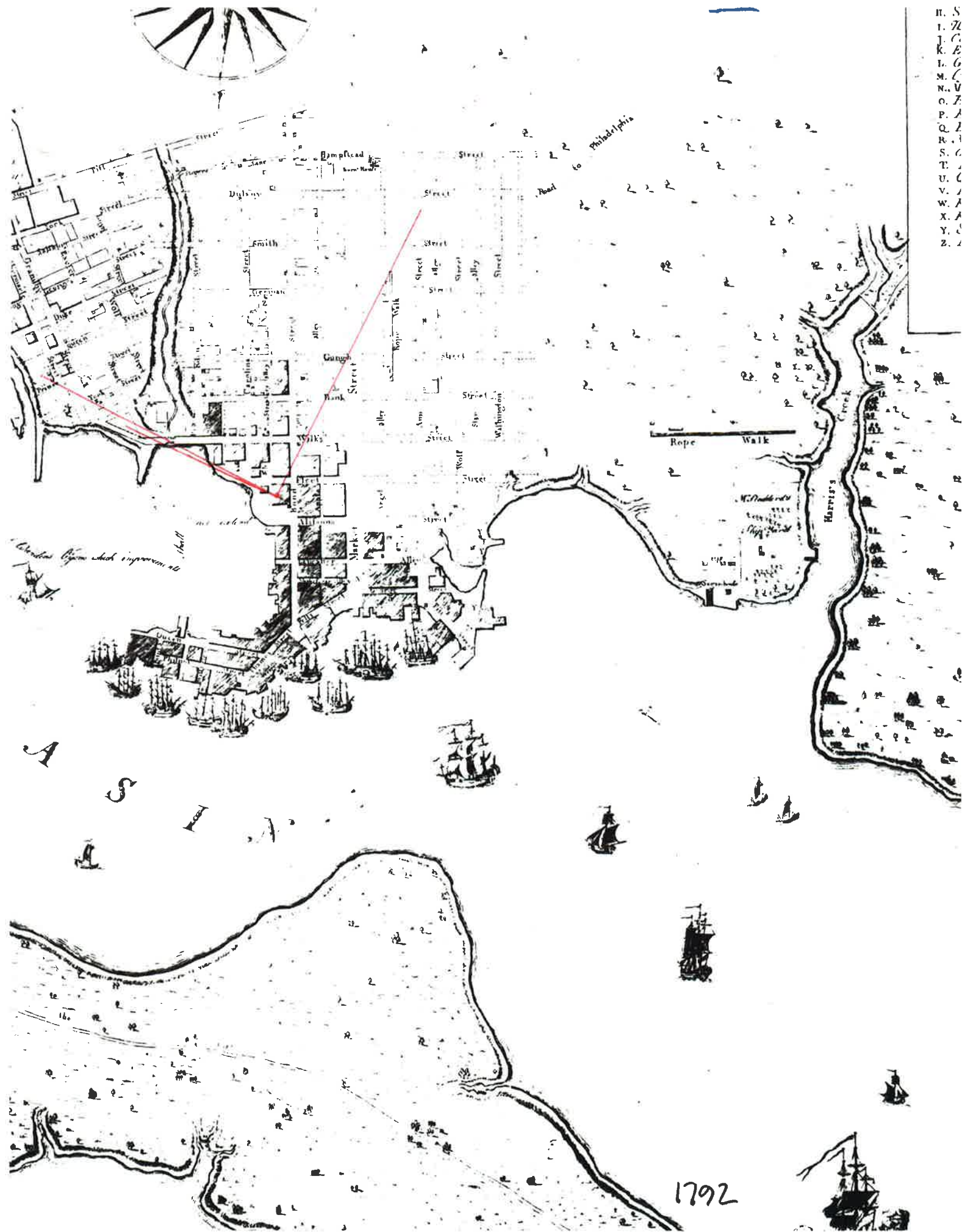
Whereas, doubts have arisen upon the construction of an ordinance to which this is a supplement; therefore,

1.—Be it enacted and ordained by the Mayor and City Council of Baltimore, That before the City Commissioners proceed to the paving of any unpaved street, lane or alley in the City of Baltimore, or of part of any unpaved street, lane or alley, the assent of the majority of the proprietors of a ground fronting on said street, lane or alley must be obtained, or have obtained the assent of the proprietors of a majority of the ground binding on such street, lane or alley, or the part thereof intended to be paved.

2.—And be it enacted and ordained, That when City Commissioners receive an application for paving to be done in any unpaved street, lane or alley, or any part of such street, lane or alley, that it shall be the duty of said commissioners to give such application, as also seven days public notice by advertisement in one or more newspapers printed in the City of Baltimore, of the fact of such application, as also of the time and place when said City Commissioners intend to meet for the purpose of determining on such application.

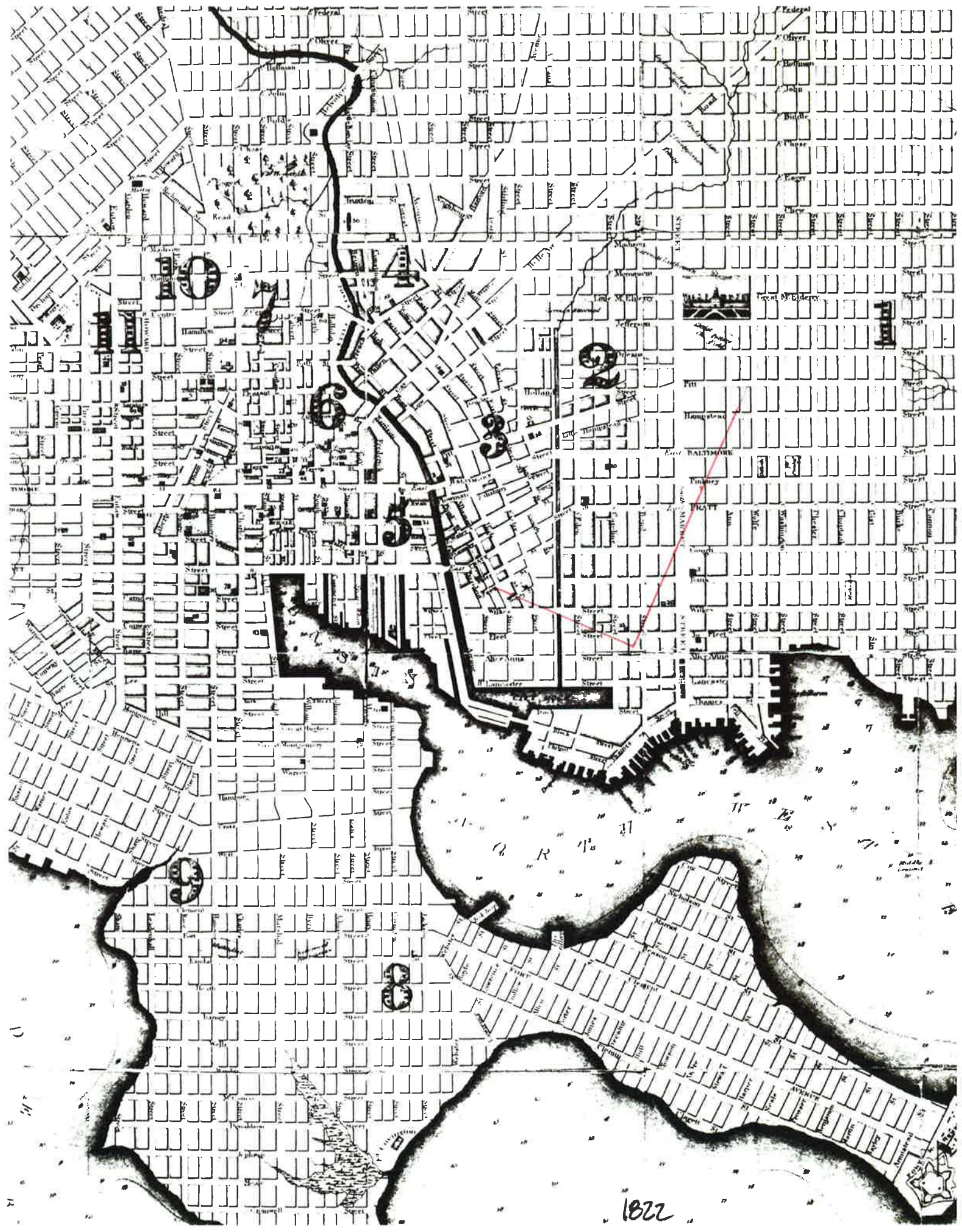
3.—And be it enacted and ordained, That it shall be the duty of said City Commissioners before they proceed to pave any unpaved street, lane or alley, or any part of any unpaved street, lane or alley, to examine and ascertain that the assent in writing of the proprietors of a majority of the ground binding and fronting on such street, lane or alley, or the part thereof to be paved, hath been obtained.

4.—And be it enacted and ordained, That the City Commissioners, with the approbation of the Mayor, be first obtained and testified in writing on the list of the names of proprietors hereinafter mentioned, may proceed to pave any unpaved street, lane or alley, or any unpaved part of a street, lane or alley, having first complied with the requisites herein before directed.



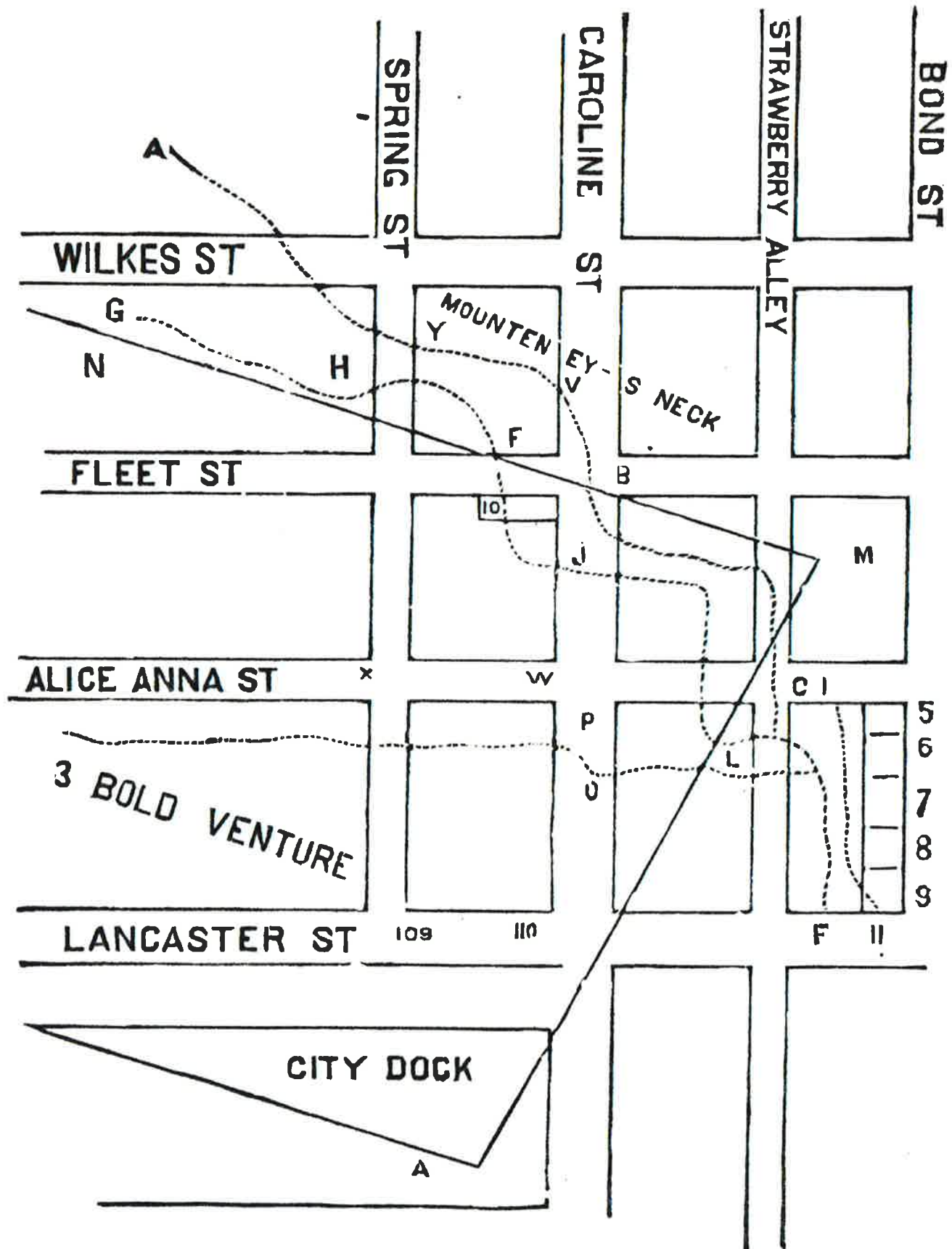
H. S.
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 K. G.
 L. C.
 M. V.
 N. Z.
 O. A.
 P. I.
 Q. J.
 R. K.
 S. L.
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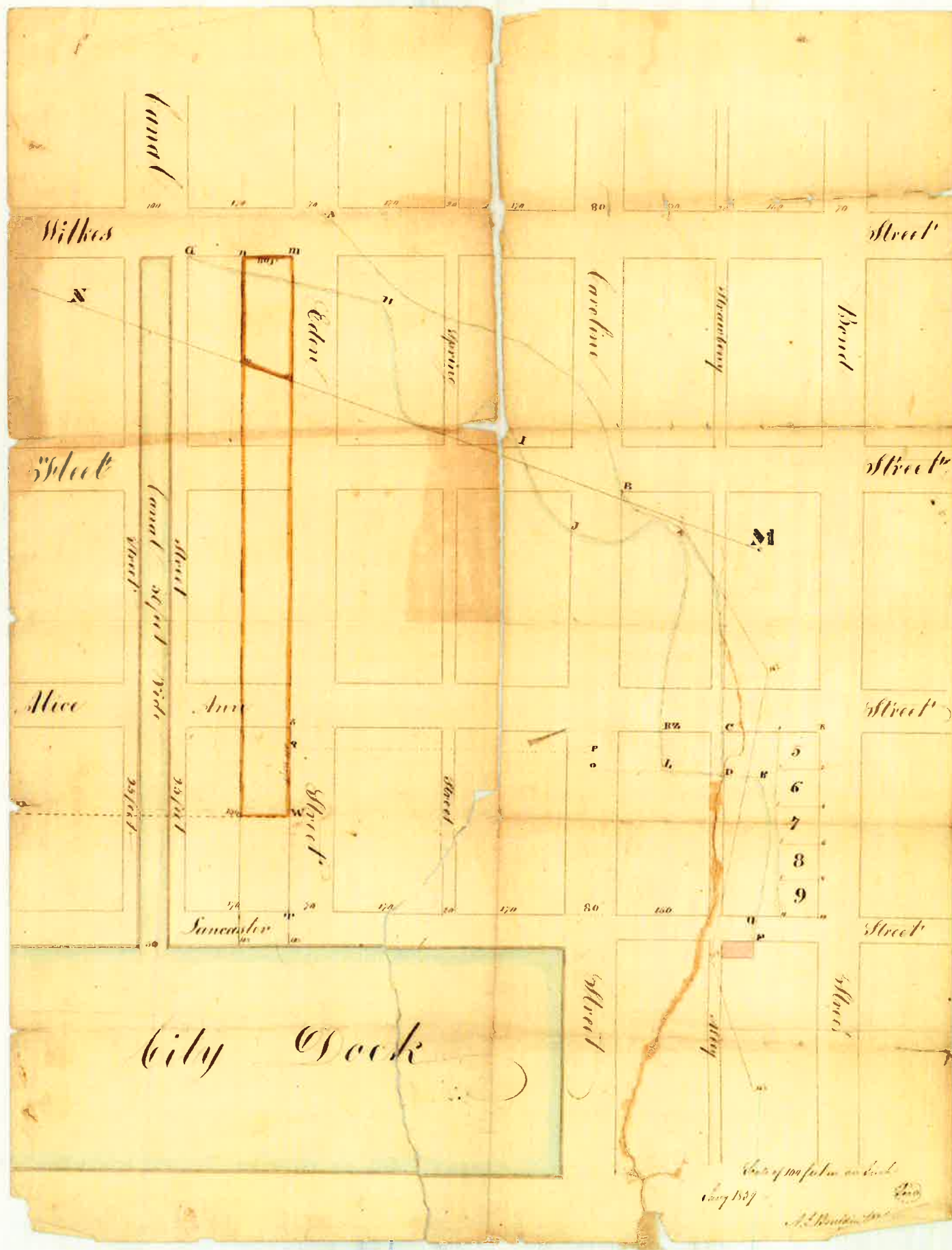
1792



1822

seen February, 1900.



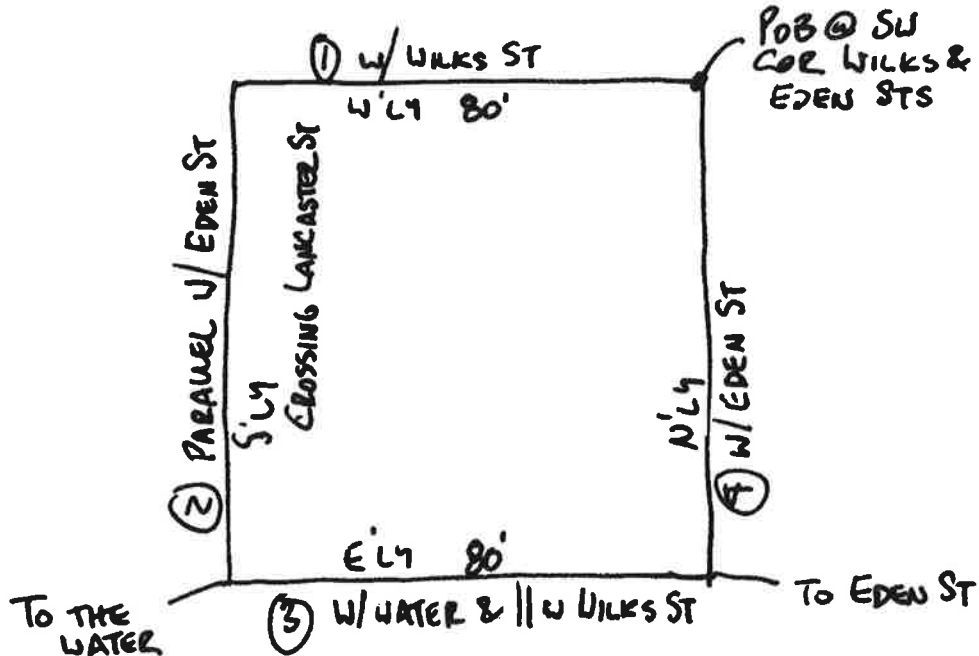


DESCRIPTIONS

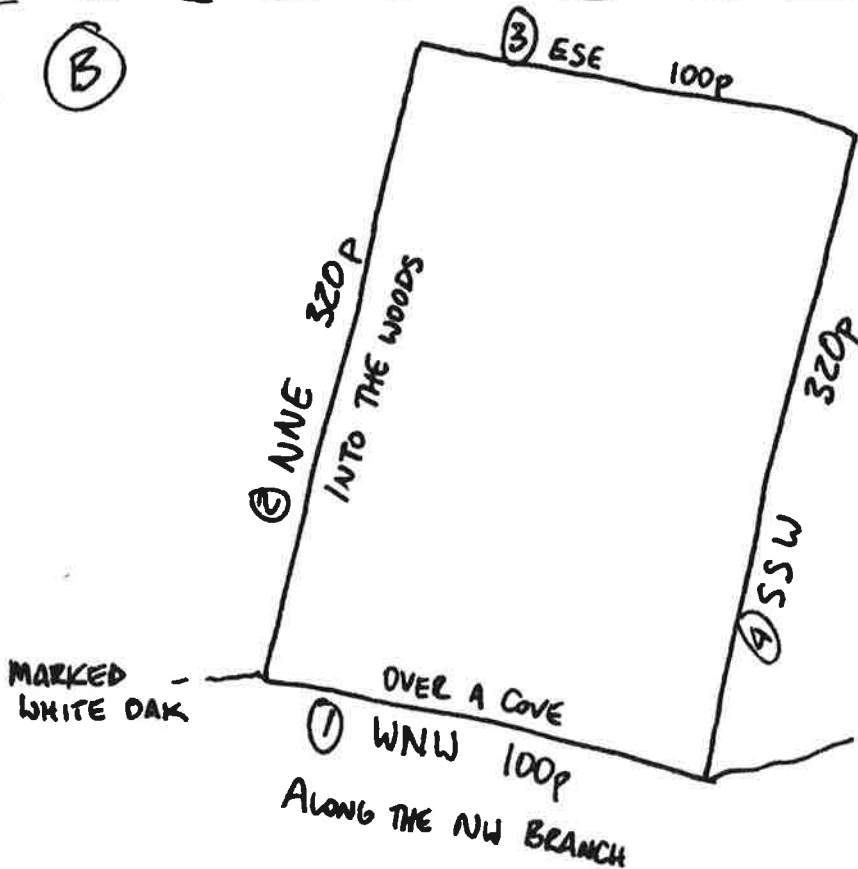
WILSON V. INLOES
 6/6/12

①

④



③



"MOUNTENAY'S NECK"

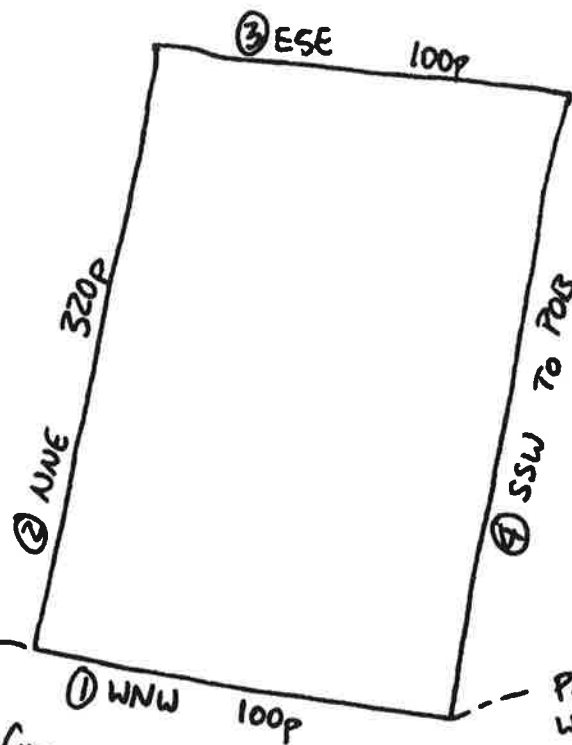
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ZOO Act

WILSON V. INLOES

(2)

(C)



"MOUNTENAY'S NECK"

ESCHEAT PATENT

7/12/1737

200 AC±

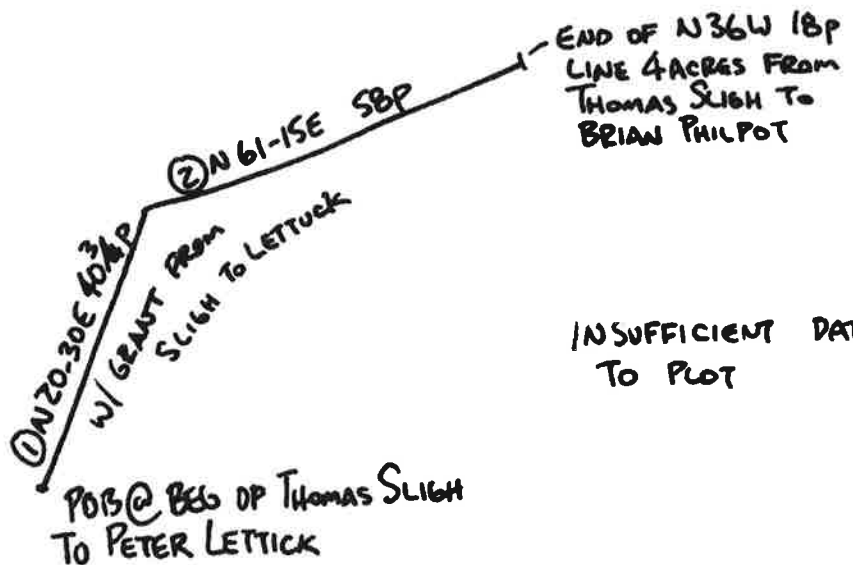
BOUNDED RED
OAK
NEAR PLACE WHERE
THE SECOND BOUNDED
TREE STOOD

(UP THE NW BRANCH & OVER
THE MOUTH OF A CREEK)

POB @ BOUNDED
WHITE OAK ON THE N/S
NW BRANCH PATAPSCO RIVER &
NEAR THE MOUTH OF A SMALL
BRANCH DESCENDING INTO THE
NW BRANCH, WHICH TREE WAS
BOUNDED BY COMMISSIONERS APPOINTED
TO EXAMINE EVIDENCES CONCERNING
THE BOUNDS OF SAID LAND, AT THE
PLACE WHERE THE ORIGINAL TREE STOOD

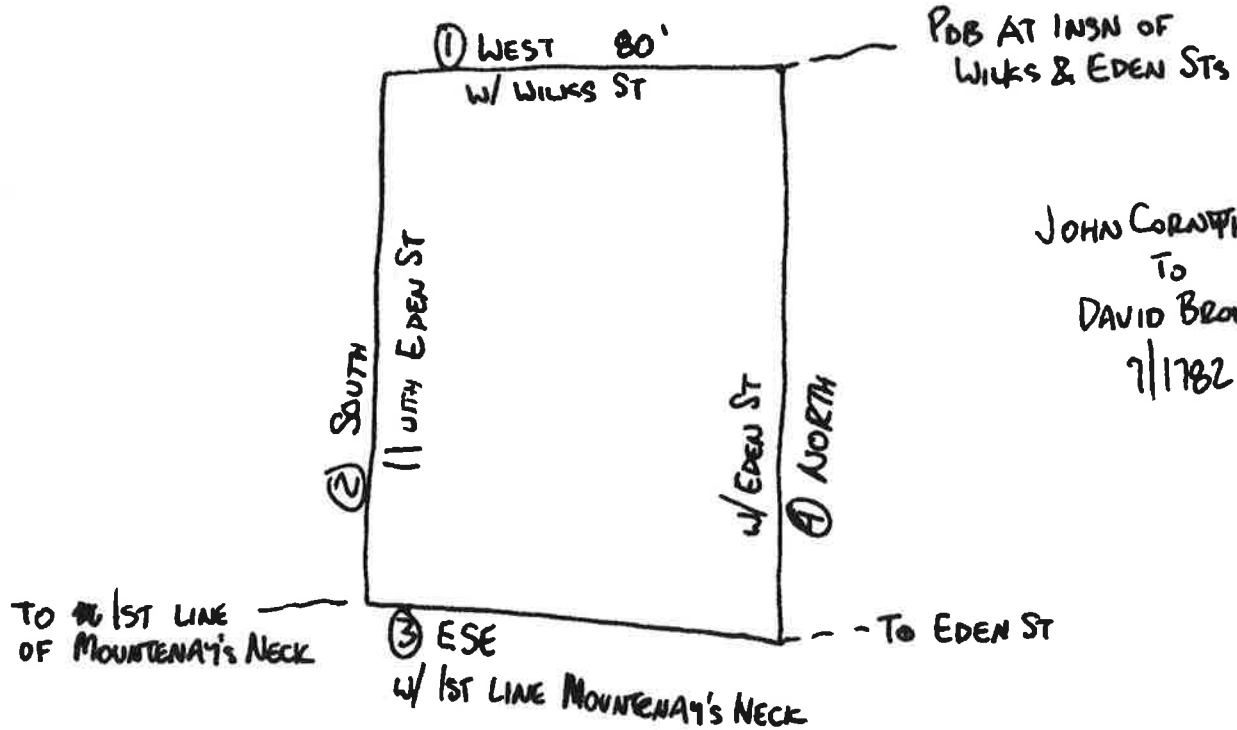
(D)

THOMAS SLIGH
TO
CHARLES WEISENTHAL
7/25/1760

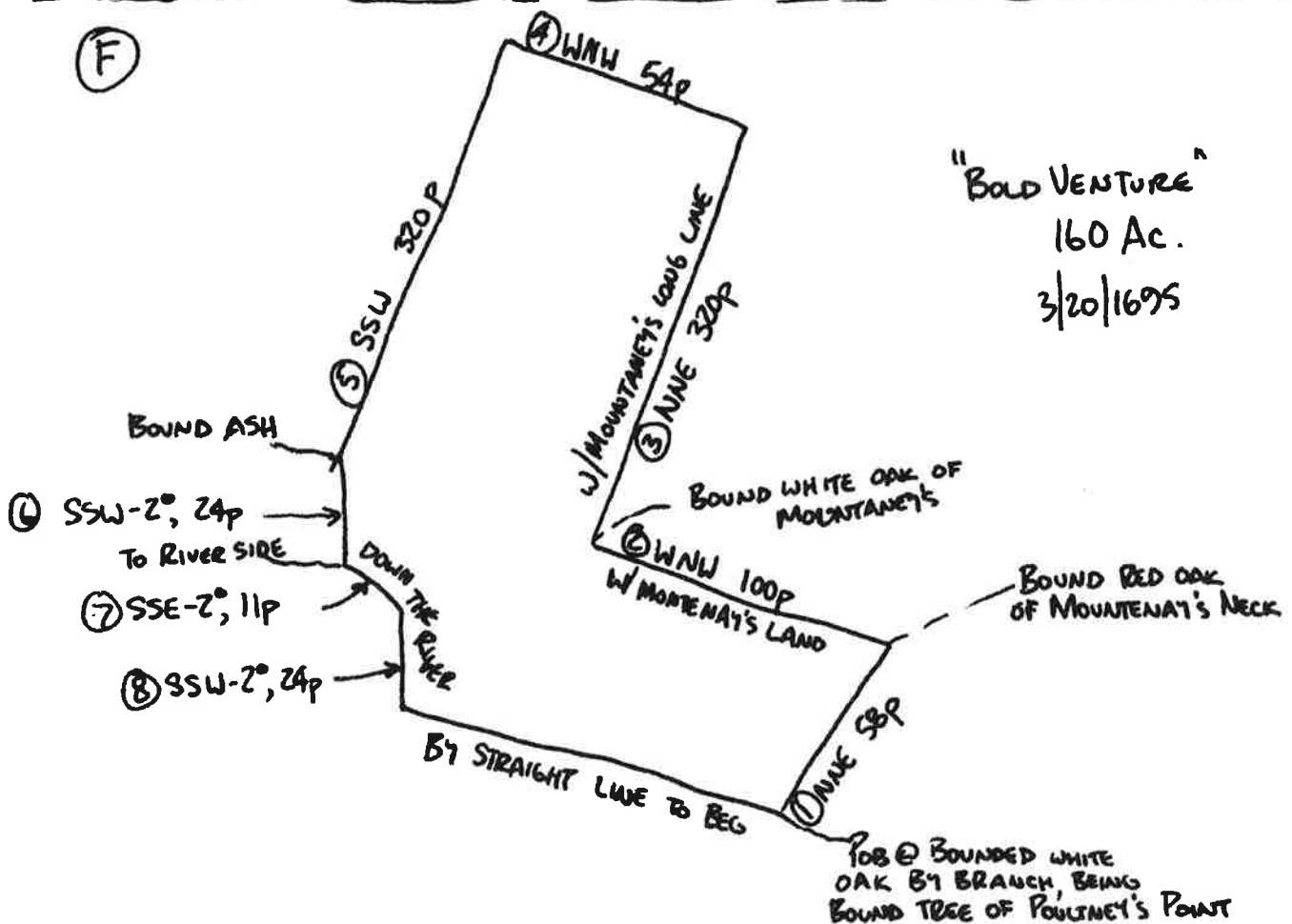


INSUFFICIENT DATA
TO PLOT

(E)

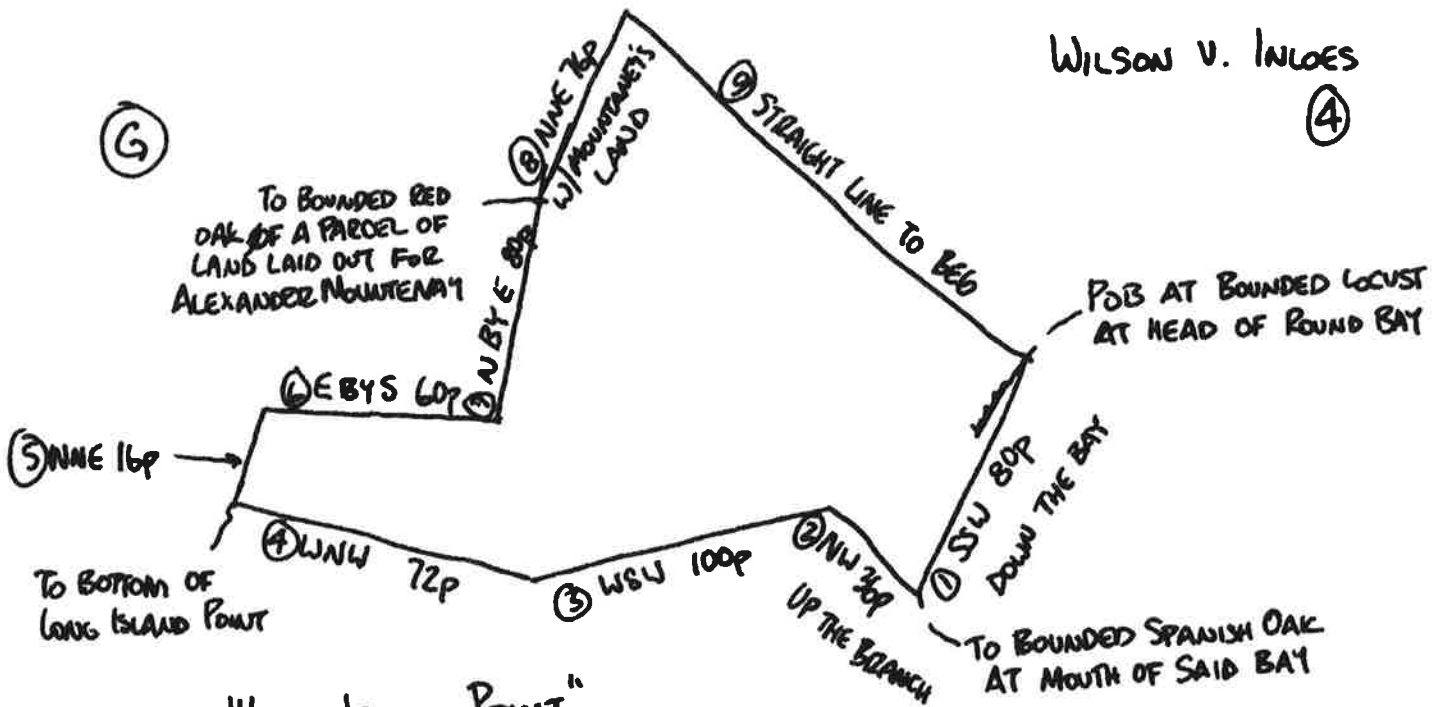


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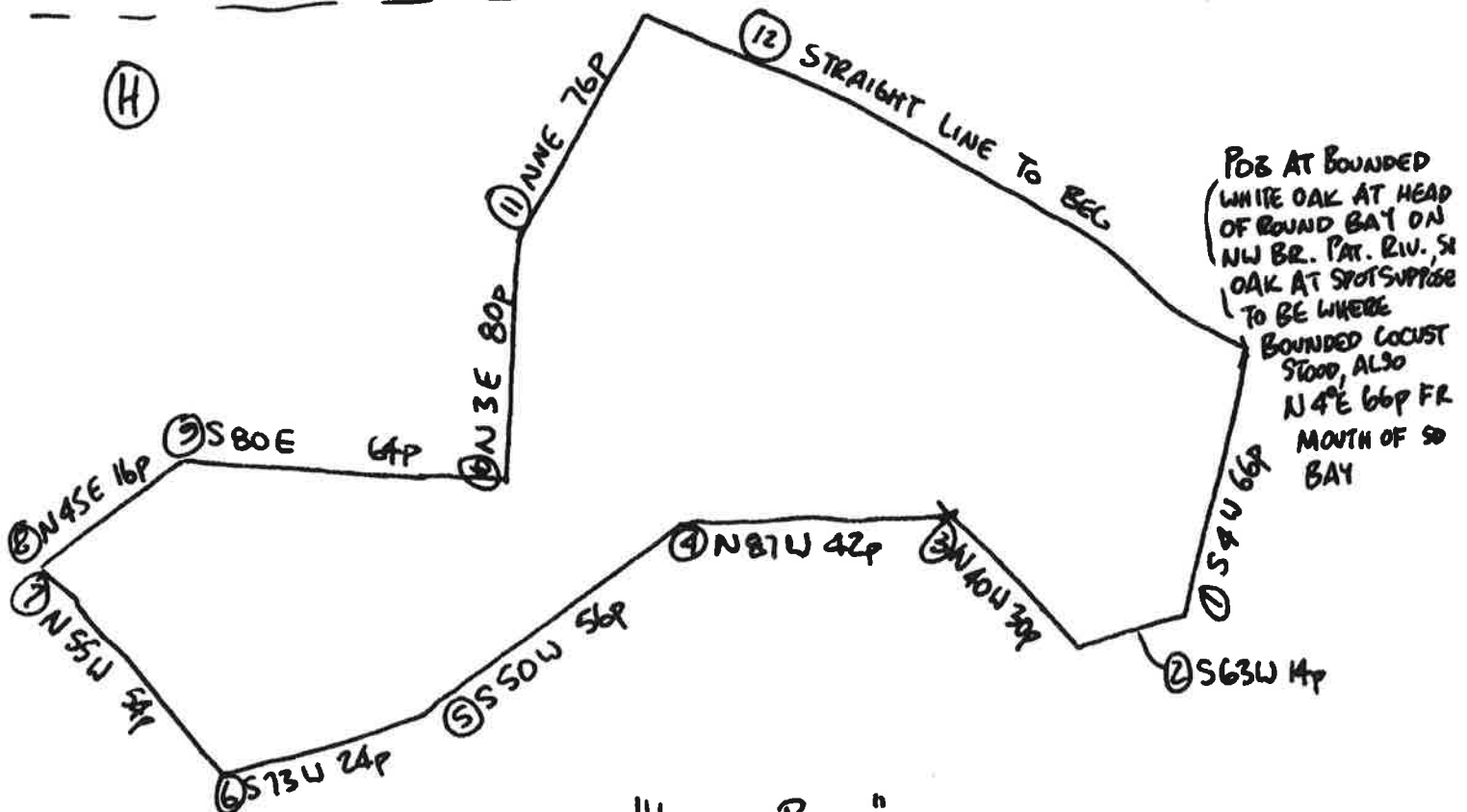
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(G)



"LONG ISLAND POINT"
100 AC±
7/10/1671

(H)



"ISLAND POINT"
85 AC±
2/20/1733

an Act of Assembly of this Province entitled an Act for amending and repairing the Public Roads in Baltimore County, made at a Session of Assembly begun and held at the City of Annapolis the first Day of November one thousand seven hundred and sixty six be and is hereby revived and continued in full force from and after the End of this present session of Assembly for and during the Term of two years and to the End of the next Session of Assembly which shall happen after the End of the said two years.

Liber R. G.
1773
County re-
vived and
continued.]

By the Lower House of
Assembly June 26.th 1773.
Read and assented to
Signed by Order
Jn.^o Duckett Cl. Lo. Ho.

On Behalf of the right
Honourable the Lord
Proprietary of this Prov-
ince I will this be a Law
Rob.^t Eden

By the Upper House of
Assembly June 26.th 1773.
Read and Assented to
Signed by Order
U Scott Cl. Up. Ho.

the great Seal
in Wax Appendant

No. 4 An Act for the Enlargement of Baltimore Town.

Whereas sundry Inhabitants of Baltimore County by their humble Petition to this general Assembly have set forth that there are about Eighty Acres of Land lying on the East and South East part of Baltimore Town very commodiously situated and convenient to be laid out into Lots and made part of the said Town therefore humbly pray that it may be enacted [Preamble.]

And be it enacted by the Right Honourable the Lord Proprietary by and with the Advice and Consent of his Governour and the upper and lower Houses of Assembly and the Authority of the same That the Commissioners of the said Baltimore Town and Jonathan Plowman Isaac Vanbebber and John Deaver who are hereby appointed Commissioners for the Purposes herein mentioned or the Major part of them do with the Consent of the Proprietors of the said Eighty Acres of Land or thereabouts by Virtue of this Act at any time they shall see convenient before the Twentieth day of October next cause the said eighty Acres of Land or thereabouts to be surveyed and laid out into Lots, Streets lanes and Alleys, in such manner as to them shall seem convenient and any Person or Persons that shall Build or improve on the said eighty Acres of Land or thereabouts after the same shall be laid out into Lots as by former Laws relating to the said Town are directed and purchase the same from the Proprietor or Proprietors shall have an absolute Estate of Inheritance in any Lot or Lots so to be built and purchased but the Purchaser or Purchasers of any part of the said Eighty Acres or thereabouts are hereby left to agree with the Proprietor or Proprietors thereof and not otherwise to have Title to any the said new Lot or Lots to be laid out in Virtue of this Act. [Commissioners of Baltimore Town &c. with the Consent of the Proprietors of Eighty Acres of Land, to cause the same to be laid out into Lots, Streets, &c.]

And whereas there are divers Streets, Lanes, and Allies already laid out on part of the said Eighty Acres of Land or thereabouts

Liber R. G. It is hereby enacted that the same be confirmed and that nothing in this Act shall extend or be construed to extend to authorize or empower the said Commissioners or any of them to alter or change the same; and that the said Streets, Lanes, and Alleys already laid out, not to be altered.]¹⁷⁷³ out, not to be altered.]

[Commissioners to cause a Survey and Plat to be made and recorded amongst the County Records, &c.] And be it further enacted that the Commissioners aforesaid or the Major part of them shall on or before the first Day of December next cause a correct and accurate Survey and Plat to be made of the said Eighty Acres of Land or thereabouts and of all the Lots Streets Lanes and Alleys which are now laid out on the same and which shall be hereafter laid out in Virtue of this Act and the said Plat shall by the order and Direction of the Justices of Baltimore County cause to be recorded amongst the Records of the said County on or before the first Day of April next there to remain as Evidence of the Boundaries Situation and Location of the said Lots and of the Streets Lanes and Alleys aforesaid and that when the same shall be done the said Eighty Acres of Land or thereabouts shall be and are hereby declared to be part of Baltimore Town aforesaid to all intents and purposes whatsoever as fully and amply as if included Originally therein and have the same immunities and privileges as the rest of the said Town has or by former Laws ought to have

Saving to his most Sacred Majesty his Heirs and Successors and all Bodies Politick and Corporate and all others not mentioned in this Act their several and respective Rights.

By the Lower House of
Assembly June 28.th 1773.
Read and Assented to.

Signed by Order
Jn.^o Duckett Cl. Lo. Ho.

On Behalf of the right
Honourable the Lord
Proprietary of this Province I Will this be a Law.
Rob.^t Eden

By the Upper House of
Assembly June the 28.th
1773 Read and Assented
to

Signed by Order
U Scott Cl. Up. Ho.

the great Seal
in Wax appendant

No. 5 An Act to prevent counterfeiting the paper Money of other Colonies
[Preamble.] Whereas the want of a sufficient Quantity of circulating Specie to

Answer the Purposes of Commerce or the Exigencies of Government hath induced this and most others of the British Colonies in America to circulate certain Paper Notes as the Representative of Specie to pass in payments for limited Periods when the Redemption is provided for the counterfeiting of which is usually made Felony in the respective Governments where they are emitted but it is supposed that sundry evil minded persons have lately established Presses in some of the Colonies for preparing Counterfeits of the paper

racial discrimination in the assignment of teachers and other personnel.¹⁰

[15] The thrust of the argument of both the NAACP and the Civil Rights Division is the unwillingness or inability on the part of the School Board to set forth in a written plan such factors as deadlines, timetables and percentage goals for faculty and staff desegregation. Having disapproved of percentage goals as an essential to the avoidance of racial discrimination, we turn to deadlines and timetables. Certainly any reasonable-minded person would say, in light of the progress made in 1966-67, "Let the School Board have at least three years to work out the problem." Sometimes, however, reasonable-minded persons are difficult to find. The School Board regularly reports to this Court as to its progress in racial desegregation. Presumably it will continue to do so. Copies of these reports are furnished counsel for the NAACP and Civil Rights Division. In due time all faculties will be integrated but, after only one year's experience, this Court declines to require the fixing of any deadline or timetable. The Court is confident that all faculties will be integrated (at least to the extent that HEW *presently* requires) by the 1970-71 school year. This may be the Court's timetable but should not be referred to in any order to be entered as, in the opinion of the Court, it is wholly unnecessary.

The School Board of the City of Norfolk has a thankless task. Serving without compensation and devoting countless time and effort in endeavoring to comply with the law and, at the same time, maintaining a quality education program, the Board is justly entitled to commendation from the citizens of Norfolk, irrespective of race. There is no hope that they will ever satisfy the NAACP or the Civil Rights Division. Like the judge of this court, they must accept

criticism from anyone as graciously as possible, but continue to follow the law as best they can. The Board has made great strides since the dark school-closing days of 1958-59. The members are determined that there shall be no repetition of this tragic error which, of course, was not brought about by the action of the Board. Irrespective of what others may say or do, the present judge of this court will continue to have confidence in their judgment and integrity.

Counsel for the School Board will advise the Court with reasonable promptness as to any modification of the plan for 1967-68 and, as modified, the plan will be approved.



269 F. Supp 141 (D. Md. 1967)

UNITED STATES of America
v.

William A. GALLAS.
Civ. A. No. 17030

United States District Court
D. Maryland.
May 29, 1967.

Ejectment action by government which sought legal and equitable relief from alleged encroachment by defendant on 35-foot-wide easement for water pipeline. The District Court, Northrop, J., held that where, through error in easement grant, government's easement ran through property on different path than its pipeline actually followed, but error was caused by government which drafted easement deed, subsequent purchaser could not reasonably be required to have knowledge of it when he

10. Unlike Oklahoma City, the School Board of the City of Norfolk has a widely diversified instructional and supervisory personnel working in and out of the central administration offices and not assign-

ed to specific schools. Apparently no complaint on this score is registered by the NAACP and the Civil Rights Division.

built his house which encroached over the pipeline and that where owner had not received compensation for government's acquiring portion of his land by physical taking and no compensation had been deposited into court, government did not have title to the land on basis of process of physical taking and could not maintain action of ejectment in Maryland.

Dismissed.

1. Easements ⇨61(10)

Where confusion will be avoided and a multiplicity of suits forestalled, equity court in Maryland can locate right-of-way.

2. Courts ⇨262

Federal court could properly grant whatever relief was required, whether legal or equitable.

3. Deeds ⇨38(8)

Line of adjacent tract, if known and established, can be a call in a deed as a natural monument.

4. Boundaries ⇨3(3)

Natural monument prevails over artificial monument if there is some conflict between the two.

5. Boundaries ⇨4

Southeast corner of grantor's property could properly be classed as a "natural monument" where it was formed by known and established boundary lines.

See publication Words and Phrases for other judicial constructions and definitions.

6. Boundaries ⇨5

Post is an "artificial monument".

See publication Words and Phrases for other judicial constructions and definitions.

7. Deeds ⇨111

Basic premise for application of rules for interpretation of deeds is presence of some ambiguity in wording of description and need to reconstruct a survey as best one can.

8. Boundaries ⇨1, 3(3)

Without real possibility of varied interpretations of deed, there is no need to consider order of preference for monuments or other rules for interpretation, for purpose of such directives is simply to express truth of common experience as where error is most likely to occur.

9. Deeds ⇨115

Distance call in deed referring to post in southeast corner of property of grantor was not ambiguous, where there was only one southeast corner in deed that description could meaningfully refer to, and the corner as a monument would not be disregarded simply because it no longer encompassed the post as contended by government which asserted that its easement for water pipeline had been encroached by defendant who asserted that pipeline had not been located in the easement acquired.

10. Deeds ⇨111

Words of description in deed must be taken to mean what they say.

11. Deeds ⇨100

Evidence ⇨452

Where there is latent ambiguity in deed and parties do not agree on an interpretation, parol evidence and other external sources may be used to discern true intent of drafters.

12. Easements ⇨42

When an easement is acquired by express grant, extent of rights thereby granted must necessarily depend upon proper construction of grant or that part of it by which easement was created.

13. Easements ⇨40

Primary rule for construction of contracts generally, applicable to construction of grant of easement, is that court should ascertain and give effect to intention of parties at time contract was made, if that be possible.

14. Easements ⇨22

Maryland recording statute applies to grants of easements. Code Md.1957, art. 21, §§ 1-28.

15. Vendor and Purchaser $\hookrightarrow$ 231(1)

Rationale of recording statute is to alert purchasers of land to interests of others in such land. Code Md.1957, art. 21, §§ 1-28.

16. Boundaries $\hookrightarrow$ 6

Reverse course may be used to find actual location of property described in unclear manner.

17. Boundaries $\hookrightarrow$ 6

Where description of easement for water pipeline of government was perfectly understandable and, from description of starting point of easement on his predecessor's land, defendant could locate course of easement through his land, defendant was not required to run a reverse survey to determine location of pipeline easement.

18. Easements $\hookrightarrow$ 21

Government must be held to language it used in drafting easement to land subsequently purchased by defendant sued in ejectment by government which contended that his house encroached on easement.

19. Easements $\hookrightarrow$ 22

Where, through error in easement grant, government's easement ran through property on different path than its pipeline actually followed, but error was caused by government which drafted easement deed, subsequent purchaser could not reasonably be required to have knowledge of it when he built his house which encroached over the pipeline resulting in ejectment suit by government.

20. United States $\hookrightarrow$ 126

Where owner of land had not received compensation for government's acquiring portion of his land by physical taking and no compensation had been deposited into court, government did not have title to the land on basis of process of physical taking and could not maintain action of ejectment in Maryland. 28 U.S.C.A. §§ 1346(a), 1491.

21. Ejectment $\hookrightarrow$ 10

One holding title by adverse possession can maintain ejectment.

22. Adverse Possession $\hookrightarrow$ 46

Where government had been in possession of land around underground pipeline for less than 20 years when defendant moved onto land over pipeline in act of construction of his house, defendant's movement cut off sole possession by government and prevented government from maintaining possession for prescriptive period in Maryland and government did not gain title to land by adverse possession, precluding it from maintaining ejectment action.

Thomas J. Kenney, U. S. Atty., and Theodore R. McKeldin, Jr., Asst. U. S. Atty., Baltimore, Md., and James E. Clubb, Lands Division, Department of Justice, Washington, D. C., for plaintiff.

C. Rider Brandau, Jr., and J. Francis Ford, Baltimore, Md., for defendant.

NORTHROP, District Judge.

The United States has brought a civil action titled a Complaint in Ejectment in which it seeks legal and equitable relief from the alleged encroachment by the defendant on a thirty-five foot wide easement owned by the government. Jurisdiction is invoked under 28 U.S.C. § 1345 (1963). The easement in question was conveyed to the plaintiff in 1942 as part of the route for a twenty-four inch water pipeline installed in Harford County, Maryland, to service the armed forces installation at the Edgewood Arsenal. The plaintiff requests a declaration by the court that the defendant has no interest in the easement; an order that he remove his house from the easement; an injunction against any future interference; and an award of costs. The defendant in his answer admits that his house is over the pipeline but denies that he is encroaching on the easement owned by the plaintiff, contending that the pipeline does not run through the easement at all, but through other property.

The origins of this case are found in the land records of Harford County of some forty-eight years ago. On

February 3, 1919, T. Earl Hanson gave a mortgage to Robert Archer on a tract of about 79.82 acres of farm land, which he owned in fee. At some subsequent time Hanson sold a portion, 105 feet wide and 315 feet deep, in the southeast corner of the tract to Elmer P. Meredith, but no deed was ever recorded for this sale. Meredith then sold his land to Harry and Elizabeth Zeigler in another unrecorded transaction.

These events all occurred prior to March 4, 1921, for on that date a deed for the entire 79.82 acre tract was recorded in which T. Earl Hanson and his wife passed title to the property to John Delbo and his mother Margaret. The Zeigler land was inadvertently included in this sale. To clear up the confused state of the titles, a deed dated January 18, 1921, was recorded on March 22, 1922, in Liber D.G.W. No. 178, Folio 61 of the Harford County Land Records in which the Zeiglers were conveyed their previously purchased property by Meredith and his wife, the Delbos, T. Earl Hanson and Robert Archer.

The Delbos later suffered a foreclosure on the farm by Archer, and the latter sold the approximately 78 remaining acres of the tract to Jacob and Fenie Waltman in a deed recorded on April 25, 1923. This deed specifically excepted the Zeigler property in the following language:

"NOW THEREFORE IN CONSIDERATION of the premises and the sum of ten dollars (\$10.00) the said Robert Archer, Attorney as aforesaid, does hereby grant, bargain and sell and convey unto the said Jacob P. Waltman and Fenie Waltman, his wife, the real estate reported as sold to the said Jacob P. Waltman, as aforesaid consisting of seventy eight (78) acres, more or less, situated in the First Election District of said County, and being all the real estate conveyed by said mortgage and also by said T. Earl Hanson to John Delbo and Margaret Delbo, by his deed dated 26th of February 1921 and of record

among said Land Records in Liber J.A.R. No. 173, folio 2, *except so much thereof conveyed by said John and Margaret Delbo to Harry Zeigler and wife by their deed of record among said Land Records in Liber D.G.W. No. 178, folio 61.*" [Emphasis added.]

The deed from Archer to the Waltmans was recorded in Liber D.G.W. No. 181, Folio 419 in the Land Records of Harford County.

The land records pertaining to the tract lay undisturbed for some years following this flurry of activity. Not until 1942 was another document recorded, and that is the deed at the eye of the present legal hurricane. A deed of easement was given by the Waltmans to the plaintiff United States dated November 27, 1942, and recorded in Liber G.C.B. No. 275, Folio 395 of the Harford County records. This was one of a number of easements acquired by the government to enable it to lay the Edgewood water pipeline. The deed from the Waltmans granted the plaintiff a permanent water pipe easement on a certain described portion of their land, giving the grantee the right to construct, operate, maintain, repair, patrol, and remove the pipeline. The description of the land covered by the easement is as follows:

"Beginning from the center line thereof at a point in the dividing line between the lands of the Grantor herein and the lands of Mary A. Norris and on the South line of a private lane said point being S 76° 37' W 797.4 feet from a post set in the Southeast corner of the property of the Grantor and proceeding thence N 6° 30' 10" W 257 feet; thence N 17° 38' 30" E 1302.5 feet; thence N 5° 38' 40" E 192.5 feet to a point in the dividing line between the lands of the Grantor herein and the lands of Sydney D. Peyerley, said point being S 77° 5' W 46.7 feet from a stake planted in the Northeast line of the Grantor's property, said easement being of a uniform width of 35 feet and containing approximately 1.4

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Acres, more or less. BEING part of the land described in a deed dated April 21, 1923 from Robert Archer, Attorney, to Jacob P. Waltman and wife, and recorded among the Land Records of Harford County, Maryland, in Liber D.G.W., No. 181, Folio 419."

To bring the chain of title down to date requires mention of only two other transactions. By a deed dated September 30, 1950, and properly recorded the Waltmans conveyed about 14 acres in the south central area of their farm to Thomas E. Hanson and his wife. A confirmatory deed between these parties dated March 15, 1967, was later recorded covering the same property. Both of these deeds make reference to the 1942 easement acquired by the United States.

Finally, by a deed dated November 4, 1960, and properly recorded, the Hansons conveyed to William A. Gallas, the defendant, a one-acre portion of their property. The description in the deed of the land purchased by Gallas is as follows:

"Beginning for the same, at a point in the middle of Hanson Road, being in the North 6° 45' West line of the whole tract, of which the land now being described is a part, which by Deed dated March 15th, 1957, and recorded among the Land Records of Harford County in Liber G.R.G. No. 478, Folio 158, was conveyed by Jacob P. Waltman and wife to Thomas E. Hanson and wife, and running thence, binding on the outline of said conveyance, North 6° 45' West 25.00 feet to an iron pipe on the North side of said Road, thence still North 6° 45' West 185.00 feet to an iron pipe, thence leaving the outline, and running for new dividing lines, through and across the land of the Grantors, South 81° 15' West 210.00 feet to an iron pipe, thence South 6° 45' East 185.00 feet to an iron pipe on the North side of the aforesaid Road, thence still South 6° 45' East 25.00 feet to the middle of said Road, thence binding on the middle of said Road, as the

same is now paved and improved, North 81° 15' East 210.00 feet to the beginning, containing One (1) acre, more or less, as surveyed by Glen C. Deaton, Registered Surveyor, October 5th, 1960;

"Being a part of the land conveyed by and described in a Confirmatory Deed from Jacob P. Waltman and Fenie Waltman, his wife, to the said Thomas E. Hanson and Helen E. Hanson, his wife, dated March 15th, 1957, and recorded among the Land Records of Harford County in Liber G.R.G. No. 478, Folio 158."

No mention of any easement was made in this document, although the acre Gallas bought, situated along the southern boundary and in the easterly half of the original Waltman tract, includes a part of the Waltman farm through which the easement passed.

Having purchased his one-acre plot, Gallas proceeded to build a house. On September 13, 1962, Gallas discovered that his almost completed home was square astride the Edgewood water pipeline. He stopped the construction activity at that time, and about three months later the Army Corps of Engineers required him either to move his house or to relocate the pipeline around it at his own expense. The defendant has pursued neither of these alternatives; the house still stands where it was built. The plaintiff has therefore brought this ejectment proceeding.

There is no doubt that the house cannot safely remain over the pipeline, and the parties have stipulated that if the easement is where the pipeline is in fact located, the plaintiff is entitled to the removal of the house as an encumbrance. The stipulation is supported by the testimony of James F. Lawrence, the Chief Facilities Engineer in this area for the Army Corps of Engineers. Mr. Lawrence testified that due to the shortages caused by World War II, the original pipe had been installed with material not ordinarily used. The substituted material makes the pipe more sensitive

to disturbances above it and more likely to rupture.

[1,2] This court is thus faced with a relatively simple question: Is the house situated on the easement acquired by the plaintiff in 1942 from Jacob and Fenie Waltman? If the answer is yes, then the house is an encumbrance and must be moved. If the answer is no—i. e., if the easement is located somewhere other than where the pipe is laid—then the defendant can leave his house where it now stands.¹

The resolution of this question initially turns on the meaning of the words of description in the grant of easement from the Waltmans. The essential phrase in dispute is the first distance call, which reads

"Beginning from the center line thereof at a point in the dividing line between the lands of the Grantor herein and the lands of Mary A. Norris and on the South line of a private lane said point being S 76° 37' W 797.4 feet from a post set in the Southeast corner of the property of the Grantor.
* * * " [Emphasis added.]

The government has argued strenuously that this call should be read from

a post which allegedly stood in the southeast corner of the original tract owned by Hanson in 1919 prior to the sale of the 105 foot strip to Meredith. The plaintiff has admitted that the post was in fact on property never owned by Waltman, but urges that that is of no matter, as the phrase "Southeast corner of the property of the Grantor" is merely descriptive of the general area in which the post could be found.² The plaintiff further informed the court that the post does not now exist, although no one is certain when it was removed. There seems to be little question, however, that there was a post erected at the ancient corner where four long-established farms met, i. e., the southeast corner of Hanson's 1919 estate. Following the reading recommended by the government would put the easement along the existing pipeline.

The defendant has argued with equal vigor to the contrary, claiming that the controlling monument for the call is the actual southeast corner of the 1942 Waltman tract, adjacent to the Zeigler property. He states that the reference to the corner is plain and unambiguous; that a post may or may not have been in that corner at one time; that a post

1. While in the past there has been considerable controversy over the power of a court of equity in Maryland to locate a right of way, it now seems settled that where confusion will be avoided and a multiplicity of suits forestalled, an equity court can so act. *Fox v. Paul*, 158 Md. 379, 148 A. 809, 68 A.L.R. 520 (1930). With the distinction between law and equity virtually abolished in the federal judicial system, *Wright, Federal Courts* § 67 (1963), this court feels it can properly grant whatever relief is required in this case, be it legal or equitable.

2. The government supports this stage of its argument with the case of *Wilson v. Inloes*, 6 Gill (Md.) 121 (1847). This is a lengthy and complicated decision exemplary of the great heritage of the law of property in Maryland. It involved, among other items, the location of a call from a then non-existent tree by the side of a branch, which call was one boundary line of the piece of property

in litigation. The Court of Appeals of Maryland held on this point that the reference to the branch was merely descriptive of the general locality of the tree, not an imperative call locating a specific spot where the tree stood. The court noted that the tree could have occupied "any one of ten thousand different spots by the branch side. * * *" 6 Gill (Md.) at 152, and then followed the reverse course from a known monument at the other end of the boundary line to locate where the tree should have been.

The ruling in *Wilson* is not apposite to the present case. There is no dispute here over the placing of the now lost post. Rather, the court has been asked to choose between a post which apparently had stood in a corner not belonging to the grantor and a corner belonging to the grantor in which apparently no post stood. There never were ten thousand different corners in which the post might have been placed.

is a transitory structure at best; and that, in any case, the presence or absence of a post in the corner he claims should control is of no significance. Adopting the defendant's reading of the description places the easement 105 feet due west of the line the government has advocated and recognizes that while Gallas' house is on the pipeline, it is *not* on the easement.

[3, 4] There are countless rules enunciated to guide courts in adjudicating disputes over descriptions and boundaries. See, e. g., *Wood v. Hildebrand*, 185 Md. 56, 42 A.2d 919 (1945); 12 Am.Jur.2d Boundaries §§ 64-76 (1964). Some pertinent ones are that the line of an adjacent tract, if known and established, can be a call in a deed as a natural monument, *Dundalk Holding Co. v. Easter*, 195 Md. 488, 73 A.2d 877 (1950); *Wood v. Hildebrand*, supra; *Ramsay v. Butler, Purdum & Co.*, 148 Md. 438, 129 A. 650 (1925); *Hill v. McConnell*, 106 Md. 574, 68 A. 199 (1907); and that a natural monument prevails over an artificial monument if there is some conflict between the two, *New York & T. Land Co. v. Votaw*, 150 U.S. 24, 14 S.Ct. 1, 37 L.Ed. 983 (1893); 12 Am. Jur.2d Boundaries, op. cit. supra, § 68 and cases cited therein.

[5, 6] If the court were to apply these principles to the present case, several conclusions would appear. The southeast corner of the grantor's property can properly be classed a natural monument, for it is formed by known and established boundary lines. A post, on the other hand, is an artificial monument erected by human hands. *Tiffany, Real Property* § 444 (2d ed. 1920). As noted above, were the post now standing, it would be 105 feet east of the true corner of the property Waltman owned in 1942, and the use of one monument would produce a different starting point for the easement than the use of the other monument. The rules stated in the cases direct that in this situation the natural monument, the corner, takes precedence.

[7, 8] Unfortunately, this case cannot be decided merely by examining the appropriate rules for the interpretation of deeds. The basic premise for the application of these rules is the presence of some ambiguity in the wording of a description and the need to reconstruct a survey as best one can. Without a real possibility of varied interpretations, there is no need to consider the order of preference for monuments, etc., for the purpose of such directives is "simply [to] express the truth of common experience as to where error is most likely to occur", *Wood v. Hildebrand*, supra, 185 Md. at 60, 42 A.2d at 921.

[9] The court agrees with the defendant that there is no ambiguity in the 1942 deed, and, hence, there is no need to bottom this opinion on the principles delineated. The terms of the easement referring to the southeast corner of Waltman's property are "obviously unambiguous" and should be given their "plain and ordinary meaning", *Buckler v. Davis Sand & Gravel Corp.*, 221 Md. 532, 537, 158 A.2d 319 (1960). The only difficulty with the description is that there is no post in the corner where, according to the description, a post is supposed to be. This, however, is not unusual; posts, fences, and similar structures often disappear from the land for a variety of reasons. The corner as a monument cannot be disregarded simply because it does not now encompass a post.

The reference to the corner presents no problems of location. Waltman's property in 1942 was shaped like a large rectangle with the small rectangular Zeigler tract cut out of the southeast corner. Thus, there existed a southernmost southeast corner and an easternmost southeast corner of the Waltman farm, at the southwest and northeast corners, respectively, of the Zeigler tract. However, the easternmost southeast corner was 315 feet back from the private lane mentioned in the description and an equal distance from the dividing line between the Waltman farm and the

holdings of Mary A. Norris along which the measurement to the easement was to be made. The only southeast corner that the deed's description could meaningfully refer to, as between the two corners noted, is the southernmost one.

[10] There is no question in the court's mind that it would be totally unwarranted to read the first call as referring to the original southeast corner of the 1919 tract. The words of description must be taken to mean what they say, and where the deed speaks of the "Southeast corner of the property of the Grantor", it cannot be held reasonably to speak of a corner that the grantor *never owned*. Anyone reading the deed of easement from the Waltmans would have to assume that the reference to the corner was made with the knowledge of the Ziegler tract's existence. Any other assumption would be founded in ignorance.

The court therefore holds that the southernmost southeast corner of the Waltman tract of 1942 is the controlling monument for the location of the start of the easement. Measuring the stated distance of 797.4 feet from the corner along the dividing line between the Waltman and Norris farms, the beginning of the easement lies 105 feet west of the present location of the pipeline.

[11-13] It should be noted that many of the cases dealing with problems similar to the one here have involved attempts by the courts to implement the intent of the parties to the original deeds.³ Judge Horney of the Court of Appeals of Maryland set forth this approach succinctly in *Buckler v. Davis Sand & Gravel Co.*, *supra*, at 537, 158 A.2d at 322:

"When an easement is acquired by an express grant, as was the case here,

the extent of the rights thereby granted must necessarily depend upon a proper construction of the conveyance or that part of it by which the easement was created. The primary rule for the construction of contracts generally—and the rule is applicable to the construction of a grant of an easement—is that a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible."

The application of this principle is well and good in the great number of cases wherein the opposing parties are the same as the parties to the original deed or grant. See, e. g., *Burroughs v. Milligan*, 199 Md. 78, 85 A.2d 775, 28 A.L.R. 2d 243 (1952), in addition to the *Buckler*, *Wood and Dundalk Holding Co.* cases previously cited. However, its utilization here would ignore the equities of the situation; we are dealing with a third party who knows nothing of the transaction but what he can learn from the documents on file in the county land records office. This is quite different from a disagreement between two subscribers to a deed—or their successors—about what they meant by the words they used in the instrument.

The more relevant law affecting this opinion can be found in the Maryland Recording Statute, art. 21, §§ 1-28, Ann. Code of Md. (1966), and the cases interpreting it. The origin of the present law is chapter 14 of the Acts of Assembly of 1766, Laws of Maryland, 1765-1784 (1787), 61 Archives of Maryland 233-35 (1944). This act was the first broadly inclusive recording statute in Maryland, amending an earlier provision to cover all conveyances of interests in land and establishing a system of court acknowl-

3. When there is latent ambiguity in a deed and the parties do not agree on an interpretation, the law has adopted the use of parol evidence and other external sources to discern the true intent of the drafters. *Burroughs v. Milligan*, *infra*; *Clarke v. Lancaster's Lessee*, 36 Md. 196 (1872); 25 Am.Jur.2d, Easements and Licenses § 23 (1966).

The court realizes that the intent of the government in 1942 was to acquire the strip of Waltman's land through which the pipe was ultimately laid. Waltman's intention was undoubtedly to convey to the government the land that it wanted.

edgment and alphabetical registration for freehold estates of a duration greater than seven years. The terms of the legislation are remarkably similar to the present law.

[14] The Court of Appeals of Maryland stated the purpose of the 1766 statute in *Hays v. Richardson*, 1 Gill & J. (Md.) 366, at 384 (1829):

"The language of its provisions comprehends the privilege attempted to be conferred by the instrument before us, and the policy of the law, the interests and convenience of the public, forbid that we should restrict its operation. In no other way can the leading object of the legislature, the 'securing the estates of purchasers' be effected; their design was, that all rights, incumbrances, or conveyances, touching, connected with, or in any wise concerning land, should appear upon the public records. If parol or unrecorded licenses of the character of that in controversy were tolerated, frauds and losses upon purchasers would be innumerable as may readily be imagined. A man might pay and receive a deed with all the solemnities of law, and covenants which could be devised (short of a general warranty which is rarely given) for a hundred acres or more of valuable meadow land, without the knowledge of the semblance of a right in any one by which its value could be imagined; on the next day he may learn that his purchase is a mockery; that his neighbour under an oral license, from some remote proprietor of the property purchased, (of which the vendor was ignorant) is about to inundate every foot of it by the erection of a mill-dam below, his remedy can no where be had."

See also *United States Ins. Co. v. Shriver*, 3 Md.Ch. 381 (1851); *South Baltimore Harbor & Improvement Co., etc. v. Smith*, 85 Md. 537, 543, 37 A. 27 (1897); and *Tiffany*, op. cit. supra, § 567. The present statute clearly has the same breadth and purpose as the law of

1766, *Bourke v. Krick*, 304 F.2d 501 (4th Cir. 1962), and applies to grants of easements, *Nohowel v. Hall*, 218 Md. 160, 146 A.2d 187 (1958); *Mayor and City Council, etc. v. Brack*, 175 Md. 615, 3 A.2d 471, 120 A.L.R. 543 (1939); *Dawson v. Western Md. R. Co.*, 107 Md. 70, 93, 68 A. 301, 14 L.R.A.,N.S., 809 (1907).

[15] Keeping in mind that the rationale of the recording statute is to alert purchasers of land to the interests of others in such land, the court turns again to the facts of this case. The government has readily admitted that its agents surveyed the properties over which the Edgewood pipeline ran, platted the path of the easement, examined the land records, and drew up the deeds of easement. Once the Waltman deed was signed and recorded, it served to give notice to any subsequent purchasers of the existence of the easement. *Tiffany*, op. cit. supra, § 567, at 2181. Thus, the defendant Gallas was chargeable with knowledge of the course of the pipeline as described in the 1942 deed.

However, as is evident from the analysis of the easement description set out above, the deed does not accurately inform the reader of the location of the pipeline. The government has argued that Gallas had notice of the entire contents of the deed and should have realized that the start of the easement could not be where the deed appears to place it. This realization comes, the plaintiff claims, from a platting of the easement across the full Waltman farm and the discovery that if the easement begins 105 feet west of the Waltman-Zeigler corner and the noted courses and distances are followed, it cannot end 46.7 feet southwest of a stake set in the northeast line of Waltman's land. The government concludes that the true course of the easement—one that follows the pipeline—should have been ascertained by running the course backwards.

[16, 17] The law fully supports the use of a reverse course to find the actual location of property described in an un-

clear manner. *Newbold v. Condon*, 104 Md. 100, 64 A. 356 (1906); *Wilson v. Inloes*, supra. When the description seems perfectly understandable, though, it would hardly be reasonable to require one reading the description to check its accuracy by plotting courses and distances backwards on a plat. Further, the starting point of the easement on the Waltman land is the only description concerning us here, for from that one description the defendant could locate the entire course of the government's easement through his property. The easement runs in a straight line past the back boundary of the Gallas tract, taking a turn to the northeast just beyond that boundary.

The court therefore cannot agree with the plaintiff that the defendant should have run a reverse survey in this case. Gallas can equitably be held to have done no more than locate the apparent path of the easement on his own property; there is rarely reason to ask the purchaser of one piece of land to determine the course of an easement through the lands of others. Without laying out the easement's complete path, the apparent incongruity would not appear, and since Gallas would never have had reason or purpose to do that, he would never have been aware of any error. The fact that Gallas claimed to be ignorant of the easement at all is of no matter, for we have been speaking in terms of constructive notice by recording.⁴

[18,19] To recapitulate, the court finds that the plaintiff must be held to the language its agents chose to use in drafting the Waltman grant. That language constructively notified the defend-

ant that the easement ran through his property on a different path than the pipeline actually followed. The error was apparently caused by ignorance of the Zeigler purchase on the part of the person drawing the deed; the government's agent must have thought Waltman owned the same tract Hanson possessed in 1919. In any event, the mistake was the plaintiff's, and the defendant cannot reasonably be required to have knowledge of it.⁵

[20] Two other legal questions remain to be considered. The government has attempted to convince the court that it has acquired the land through which the pipeline runs by a process of physical taking, under the law as enunciated in *United States v. Dow*, 357 U.S. 17, 78 S. Ct. 1039, 2 L.Ed.2d 1109 (1958). Mr. Justice Harlan, writing for the Court, noted in that case that the federal sovereign could take property by actual physical seizure, after which the owner would have to seek compensation under the Tucker Act, 28 U.S.C. §§ 1346(a) and 1491 (1963), 357 U.S. at 21, 78 S.Ct. 1039. However, Mr. Justice Harlan also stated, *id.* at 21-22, 78 S.Ct. at 1044,

"[I]n both classes of 'taking' cases—condemnation and physical seizure—title to the property passes to the Government only when the owner receives compensation, * * * or when the compensation is deposited into court * * *."

Neither of these events has occurred, so by the law of *Dow*, the government does not yet have title to the land from which it is seeking to eject the defendant. Without holding legal title, the plaintiff

4. Thomas E. Hanson, from whom Gallas bought his land, testified at the hearing in this matter that he told the defendant there was a pipeline running under the Gallas property near the western boundary line. Gallas denied he was ever told anything about the pipe. Even if Hanson's testimony is believed, Gallas still did not know the actual location of the water line; Hanson ap-

parently thought it was at the same location the court has found set out in the deed, i. e., 103 feet west of the plaintiff's pipeline.

5. The government's industrial engineer, Edgar L. Gray, agreed with the defendant's surveyor, Edwin J. Kirby, Sr., that he would have drafted the description differently.

cannot maintain the action of ejectment in Maryland. *Corey v. Carback*, 201 Md. 389, 94 A.2d 629 (1953); *Green v. Pennsylvania R. Co.*, 141 Md. 128, 118 A. 127 (1922); *Joseph v. Bonaparte*, 118 Md. 591, 85 A. 962 (1912).

[21, 22] The last problem presented is that of adverse possession. One holding title by adverse possession can maintain ejectment, *Joseph v. Bonaparte*, supra. Thus, the plaintiff might be able to sustain its case on this basis; however, here, too, the government cannot succeed. An ancient requirement of adverse possession is that the possession by the claimant be open and notorious, *Goen v. Sansbury*, 219 Md. 289, 149 A.2d 17 (1959), giving presumptive notice of the adverse possession to the true owner, *Beatty v. Mason*, 30 Md. 409 (1869). It is highly questionable if the plaintiff's possession of a pipeline buried in the ground and without surface markings on the defendant's property was of such a character. Further, claimant must maintain his adverse possession for at least twenty years, *Goen v. Sansbury*, supra; *Cox v. Forrest*, 60 Md. 74 (1882); *Lee v. Hoye's Lessee*, 1 Gill (Md.) 188 (1843). Possession for any lesser period is insufficient. *Stinchcomb v. Realty Mortgage Co.*, 171 Md. 117, 188 A. 790 (1937). In the present case, the government was in unchallenged possession of the land around the pipeline from November of 1942 to the time Gallas began to build his house, which was at least some time before September, 1962. Gallas' movement onto the land over the pipeline in the act of the construction of his house effectively cut off the sole possession by the plaintiff, *Goen v. Sansbury*, supra, and prevented the plaintiff from maintaining possession for the prescriptive period. The plaintiff has not gained title to the land by adverse possession.

Therefore, since the plaintiff did not acquire title to the land in dispute by purchase or in any other fashion, the court must dismiss its suit in ejectment.

GREAT AMERICAN INSURANCE COMPANY, a corporation, Plaintiff,

v.

H. C. EVANS, doing business as Evans Van & Storage Company, and Lloyd E. Hildebrand, doing business as Valley Elevator Company, Defendants.

Civ. No. 8313.

United States District Court
N. D. California, N. D.

June 1, 1967.

Action by building lessors' insurer against elevator maintenance contractor who was engaged by lessee and who negligently performed maintenance contract for indemnification for amount paid by insurer on judgment obtained against lessors, lessee, and contractor by estate of lessee's employee fatally injured while using elevator. The District Court, Oliver J. Carter, J., held that under California law, insurer was entitled to indemnity on theory of contractual relationship impliedly giving rise to right of indemnity because lessors were third-party beneficiaries of the elevator maintenance contract and also on theory of noncontractual indemnity because of imputation of contractor's negligence upon the lessors.

Judgment for plaintiff and against defendant elevator maintenance contractor in the sum of \$40,000.

1. Indemnity ⇨13(1)

The right to implied indemnity exists under California law.

2. Contribution ⇨5

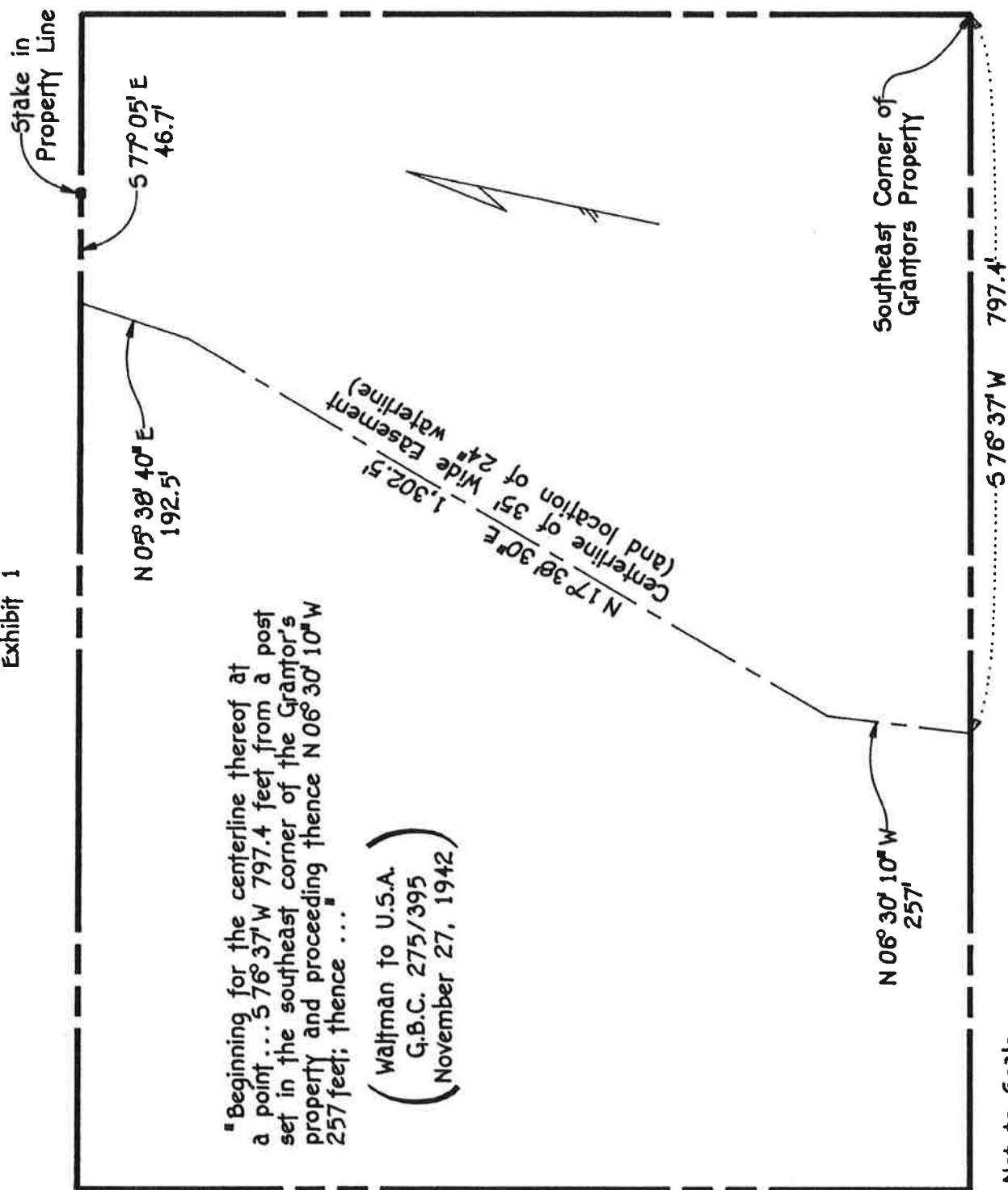
Indemnity ⇨1

The right of "contribution" presupposes common liability shared by joint tort-feasors on pro rata basis, whereas the right of "indemnity" shifts entire loss upon real wrongdoer because of some special relationship existing between two tort-feasors.

See publication Words and Phrases for other judicial constructions and definitions.

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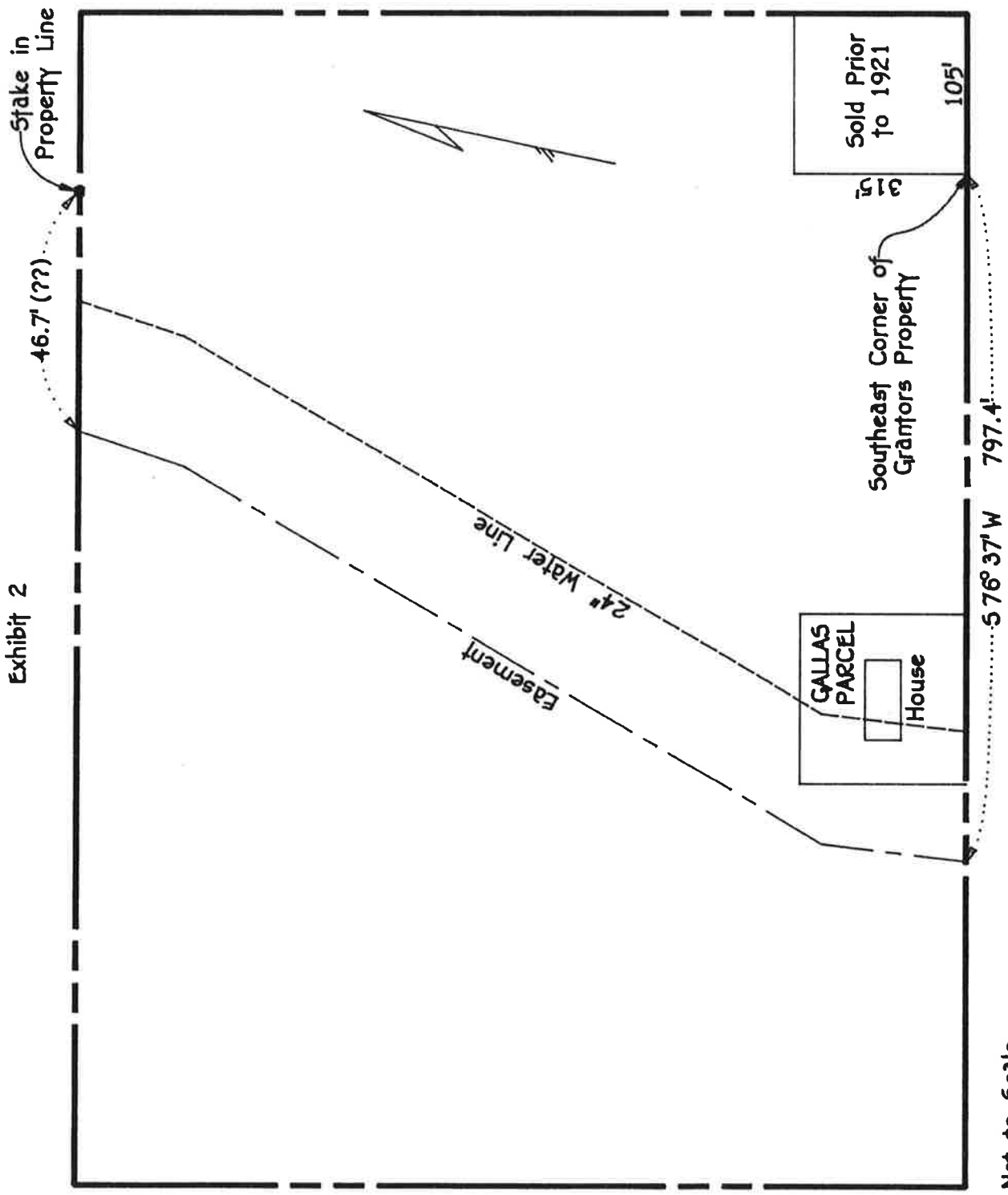
Exhibit 1



Where the Government insisted the Easement was

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Exhibit 2



Not to Scale

Where Gallas insisted the Easement was