

Mayor and City Council of Baltimore v. Baltimore and Philadelphia Steamboat Company, 65 A. 353, 104 Md. 485 (Dec. 19, 1906)
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I. INTRODUCTION

*Mayor and City Council of Baltimore v. Baltimore and Philadelphia Steamboat Company*¹ concerns the condemnation by the City of Baltimore of properties owned by the Baltimore and Philadelphia Steamboat Company ("BPSC"). After the Great Fire of 1904, which destroyed most of the Baltimore business district, the City embarked on an effort to make various urban improvements. Among other things, the City endeavored to widen Pratt Street fifty feet to the south by condemning wharves at the corner of Light and Pratt Streets that were owned and leased by the Steamboat Company.² The Burnt District Commission awarded the Company minimal damages for the property that was condemned, and instead assessed benefits against the Company for the widening of Pratt Street.³ The Company appealed to the Baltimore City Circuit Court, where Judge Henry Stockbridge essentially reversed the Commission awards, giving the Company much more compensation than it initially received. Both the City and the Company cross-appealed. The Maryland Court of Appeals rendered its decision on December 19, 1906, affirming Stockbridge's awards.

The case represents a microcosm of the improvement efforts in Baltimore following the fire. The litigation pursued by the Steamboat Company shows how property owners posed an obstacle to urban improvements. Christine Rosen discusses this in *The Limits of Power: Great Fires and the Process of City Growth in America*,

¹ 65 A. 353 (1906).

² See Diagram, attached.

concluding that the progressive nature of Baltimore, which had developed prior to the fire,⁴ helped the City to overcome various obstacles to change, including private property ownership and political deadlock.⁵

In addition, the case presents issues concerning the condemnation value of waterfront property, particularly the value of certain riparian rights and the question of whether they are to be included in the fair market value of the property. Furthermore, the case exemplifies property owner's use of provisions in the Maryland Constitution that prohibited the City from taking title to condemned land until the owners had exhausted their right to appeal.⁶ The case may have played a role in sparking the development of "quick-take" statutes that allow a municipality to take title to such lands faster than before.

II. THE GREAT FIRE

The Great Fire of Baltimore began Sunday Morning, February 7, 1904 in the basement of the John E. Hurst Company.⁷ The Hurst Company was a wholesale dry goods firm located at the south side of German Street at Liberty Street.⁸ Although the cause was never confirmed, it is believed that the cigar ashes from a passerby fell through

³ *BPSC*, 65 A. at 353.

⁴ James B. Crooks, *The Baltimore Fire and Baltimore Reform*, Maryland Historical Magazine, Vol. 65 (Maryland Historical Society 1970). Crooks describes how the progressive nature of Baltimore City government began during the administration of Mayor Thomas G. Hayes. "In sum, political reform began substantially before the fire in 1895. Not only had city government been made honest and efficient, but the city had a new charter drafted in 1898 and direct primary elections introduced in 1902 to choose party candidates. Additional reforms followed the fire, such as direct election of United States Senators and legislation to abolish corrupt campaign practices. But the momentum had begun well before 1904 and the relationship between the fire and political reform in Baltimore was minimal." *Id.* at 4.

⁵ CHRISTINE M. ROSEN, *THE LIMITS OF POWER: GREAT FIRES AND THE PROCESS OF CITY GROWTH IN AMERICA*, (Cambridge University Press, 1986).

⁶ *Id.* at 293.

⁷ *Id.* at

⁸ *Id.* at 249.

the grates in the sidewalk, igniting blankets in the basement.⁹ By the time fire engines arrived at the building, it exploded,¹⁰ thereby spreading embers to the roofs of nearby buildings.¹¹ Initially, winds carried the embers of the fire to the northwest, but Sunday night the winds shifted, pushing the fire to the southeast, toward the harbor and the Jones Falls.¹² According to Harold Williams, "a last-ditch effort was made along the Falls with thirty-seven fire engines ... Carried by the northwest wind, sparks started dangerous blazes on the east side of the stream in the vicinity of Union Dock but these were contained and conquered. The Great Fire was under control by 5 p.m. Monday."¹³

In total, the fire consumed almost 140 acres in the central business district. It destroyed 86 city blocks containing 1,526 buildings, burned out more than 2,400 businesses, including 20 banks, 8 large hotels, nine newspapers, as well as countless smaller businesses.¹⁴ ¹⁵ It was a defining moment for the city and its inhabitants because the destruction was of such magnitude that it provided an opportunity for the rebirth of the urban spirit.¹⁶ The sheer exhaustion that encompassed the fighting of the fire and the

⁹ Notes from the Baltimore Fire Tour, presented by the Maryland Fire Museum Historian Wayne Schaumberg, February, 2003.

¹⁰ The explosion was so strong that a passerby, Mr. Ball, "was cut on both hands and a hole was cut through his hat by flying fragments of glass." THE BALTIMORE SUN, *Twenty-Four Blocks Burned in Heart of Baltimore*, February 8, 1904. Vol. CXXXIV, No. 84.

¹¹ ROSEN, *supra* note 5 at 249.

¹² HAROLD A. WILLIAMS, BALTIMORE AFIRE, 4.

¹³ *Id.*

¹⁴ ROSEN, *supra* note 5 at 249.

¹⁵ By most accounts, no lives were lost in the fire. Indeed, the commemorative plaque which stands at the Port Discovery children's museum (formerly the Market Street fish market) notes under the category "Lives Lost" the figure "None." Now, however, it is fairly clear that at least one person perished as a direct result of the fire. See Brennen Jensen, *Lives Lost: One*, Baltimore City Paper, September 3-September 9, 2003. Apparently the Baltimore Sun dated February 17, 1904 contained an article with the headline: *One Life Lost in Fire*. The article described how the "charred remains" of a "colored man" were pulled from the basin at Bowley's Wharf. The body was never identified. Thus, Jensen suggests, "maybe the downtown plaque needs editing: You could simply scrape the first "N" from the word "None." *Id.*

¹⁶ This was noted by Williams, who called a chapter in his book "Re-birth." See WILLIAMS, *supra* note 12 at 55. "Looking back fifty years it is difficult to determine what intangible force drove people on in the face of disaster and ruin. It could have been any of a great many things. But, most likely, it was something

immediate aftermath eventually gave way to a renewed sense of purpose for the people of Baltimore.¹⁷

The fire was a turning point for the city in several ways. First, the fire literally wiped the slate clean by demolishing most of the buildings in the business district, which had been the original Baltimore Town. This mass destruction provided an opportunity for the city to make much-needed urban improvements.¹⁸ Streets could be widened, parks could be built, sewers dug, running water piped to city dwellings, and buildings fireproofed. Plans for improvements were being made while the fire still burned.¹⁹ As noted by Harold Williams, "out of the ashes of an old city, through the courage and resourcefulness of its people, a new and greater Baltimore was in the making."²⁰ Second, the fire provided a change in city leadership when Democratic Mayor Robert McLane²¹

compounded of faith, resolution, and spirit- the same kind of spirit that fired the Baltimoreans of another century to beat back the British at North Point and Fort McHenry." *Id.*

¹⁷ For example, H.L. Mencken, then an editor at the *Herald*, spent the time immediately after the fire in a frenzy trying to get his burned-out paper published in Washington D.C., and Philadelphia. See H.L. MENCKEN, *NEWSPAPER DAYS 1899-1906*, (Alfred A. Knopf 1975). He described his experience in this way: "It was brain-fagging and back-breaking, but it was grand beyond compare - an adventure of the first chop, a razzle-dazzle superb and elegant, a circus in forty rings. When I came out of it at last I was a settled and indeed almost a middle-aged man, spavined by responsibility and aching in every sinew, but I went into it a boy, and it was the hot gas of youth that kept me going." *Id.* at 277-278.

¹⁸ See WILLIAMS, *supra* note 12 at 5: "The fire- first regarded as the greatest misfortune ever to strike Baltimore- really did more for the city than any other single act in its entire history... It would have been difficult, if not impossible, to obtain consent of the citizens to tearing out the very heart of Baltimore- no matter how splendid the plans for rebuilding might have been. But the obliging fire did it in one great swoop- making possible a new start for the twentieth century."

¹⁹ Harold Williams notes that "while fires still burned sporadically in the devastated section... the businessmen met to plan for the future." See WILLIAMS, *supra* note 12 at 4 .

²⁰ See WILLIAMS, *supra* note 12 at Foreward.

²¹ Mayor McLane was the youngest Mayor in the history of Baltimore City. His uncle, Robert M. McLane, was Governor of Maryland and Minister to France under President Cleveland. Mayor McLane attended Johns Hopkins University, graduating at the age of 19. He graduated from the University of Maryland School of Law and was admitted to the bar in 1899. In 1903 he defeated Republican Frank C. Wachter by a small majority to win the mayoralty. After the fire, he created a temporary Citizen's Emergency Committee to suggest improvements, and then appointed members to the Burnt District Commission. He died on May 30, 1904, shortly after marrying Mary Van Bibber on May 14, 1904. Archives of Maryland, Biography of Robert M. McLane (1867-1904), MSA SC 3520-12492.

committed suicide shortly after the fire. McLane was succeeded by E. Clay Timanus,²² the head of the Republican Second Branch of the City Council.²³ By most accounts, Timanus did a good job of following through on the many improvements sought by McLane, but this change in leadership undoubtedly contributed to the overall sense of new beginnings arising out of the Great Fire.

III. THE BACKGROUND OF THE CASE

A. THE BURNT DISTRICT COMMISSION

The Burnt District Commission ("BDC") was created in order to concentrate control of the improvement process in the executive branch of the city government. This was the most bureaucratic, least democratic branch of government.²⁴ The Commission was formed to plan and execute all of the improvements,²⁵ and ironically it was first proposed by Richard M. Venable, an attorney representing the Steamboat Company in the case.²⁶

The creation of the Commission streamlined the improvement process, which had been slowed by political wrangling between the Democratic First Branch and the Republican Second Branch of the City Council. Its framers made sure that it enhanced

²² According to James Crooks, Timanus was "neither a planner nor a reformer, but fortunately he picked his advisors wisely." *Id.* at 14. One of his advisors was City Solicitor William Cabell Bruce, a self-proclaimed progressive. In a 1912 speech to the Maryland State Bar Association, Bruce stated: "Personally, I am a liberal, even a progressive, and in its properly regulated sphere I am disposed to impose few restraints upon popular action..." REPORT OF THE SEVENTEETH ANNUAL MEETING OF THE MARYLAND STATE BAR ASSOCIATION, at Cape May Hotel, Cape May, N.J. July 1912, 88 (Maryland State Bar Association 1912).

²³ See *Mayor M'Lane's Career Ends With Pistol Shot*, The Baltimore Sun, May 31, 1904. Archives of Maryland, Biography of Robert M. McLane (1867-1904), MSA SC 3520-12492.

²⁴ ROSEN, *supra* note 5 at 267.

²⁵ *Id.* BDC was legislatively enabled on March 11, 1904. *Id.* at 268-269.

²⁶ ROSEN, *supra* note 5 at 269. Venable, a civic leader in Baltimore who later headed the Park Board, was concerned that even the streamlined BDC would slow down improvement plans. Even so, he represented the Steamboat Company in its case against the city, undoubtedly realizing that the litigation was postponing the widening of Pratt Street. *Id.* For biographical information on Venable, see note 58 *infra*.

the power of the supporters of improvements. For example, they gave the Democratic Mayor McLane power to appoint supporters of the improvements to the Commission.²⁷

McLane appointed the four members of the Burnt District Commission. They were Sherlock Swann,²⁸ Charles K. Lord,²⁹ Reuben Foster,³⁰ and John T. Graham.³¹ From the start, the BDC used untraditional tactics to make things difficult for opponents of the improvements. For example, as soon as the enabling legislation creating the BDC was passed, they adopted the Citizens' Emergency Committee's list of improvement recommendations "in toto." This move allowed the BDC to skip the public hearings that normally preceded the adoption of such public works plans.³² In all, the progressive reformers in Baltimore spurred the City and the BDC to employ a less democratic, from-

²⁷ *Id.*

²⁸ Sherlock Swann was the Chairman of the BDC. His grandfather, Thomas Swann, was Mayor of Baltimore from 1856-1860 and Governor of Maryland from 1866-1869. His uncle, Ferdinand C. Latrobe, was Mayor of Baltimore intermittently for several terms from 1875 through 1895. At the time of the fire, Swann was a two-term member of the Democratic First Branch City Council. *See* BALTIMORE: ITS HISTORY AND ITS PEOPLE, BY VARIOUS CONTRIBUTORS, Vol. II, Biography, (Lewis Historical Publishing Co. 1912). "When the commission first went into office the press criticized it in a most scathing manner, and especially was Colonel Swann pointed out as utterly incapable of carrying out the work, but it was not long before editorials in all papers were loud in their praise of him and the able manner in which he and his colleagues were performing their arduous task." *Id.* Swann was a man of great foresight who saw the fire as an opportunity for the city to make much-needed changes. He left the doors of his office at the BDC wide open so that anyone who wanted to see him could just walk right in. Later he served as head of the board of police commissioners. *Id.*

²⁹ Charles King Lord was a well-known Baltimore businessman. A native New Yorker, he served as President of the Consolidation Coal Company and vice-president of the Baltimore and Ohio Railroad. A HISTORY OF THE CITY OF BALTIMORE: ITS MEN AND INSTITUTIONS, BIOGRAPHICAL SKETCHES OF LEADING CITIZENS (*Baltimore American*, 1902).

³⁰ Reuben Foster, a Pennsylvania native and former lieutenant in the Union army, served as president of the Chesapeake Steamship Company until 1909. He consolidated the old York River Steamboat Company and the Powhatan Steamboat Company. Mainly his ships ran between Baltimore and Richmond, and along the Chesapeake. In 1896 Foster opened up an additional line to Old Point and Norfolk, known as the "Chesapeake Line." Thus, it appears that while his business interests competed somewhat with the BPSC, his focus was on trade with the south, whereas the BPSC concentrated on trade between Baltimore and Philadelphia. DAVID H. CARROLL AND THOMAS G. BOGGS, MEN OF MARK IN MARYLAND, Vol. III (B.F. Johnson, Inc. 1911).

³¹ John T. Graham owned Graham & Co., a real estate development firm on St. Paul street. Primarily he dealt with the buying and selling of houses, farms, ground rents, and mortgages. He was director of the Druid Hill Building and Loan Association. BALTIMORE: THE GATEWAY TO THE SOUTH, (Mercantile Advancement Co. 1898).

³² ROSEN, *supra* note 5 at 270.

the-top-down approach to government decision making.³³ For example, while the BDC did hold a public hearing on harbor improvements, Mayor McLane used the opportunity to describe the benefits of the redevelopment, effectively ignoring alternative suggestions from leading business interests.³⁴

B. THE BALTIMORE AND PHILADELPHIA STEAMBOAT COMPANY

The Baltimore and Philadelphia Steamboat Company operated from 1844-1935. It was established by John S. Shriver,³⁵ and was operated by the Shriver and Cadwalader families. The Company originally ran freight up the Chesapeake and Delaware Canal, but at the time of the 1876 Centennial Exposition in Philadelphia, a demand arose for passenger service, and by 1919 the boats were furnished with 70 or 80 staterooms.³⁶ The Company docked boats at the intersection of Light and Pratt Streets, and tickets could be purchased at the ticket office on 204 Light Street. The Company owned several lots on Light Street, many of which were leased to other businesses.³⁷ Furthermore, the Company leased a wharf on the south side of Pratt Street from the City for approximately \$3,600 per year.³⁸

The Company was involved in a series of legal disputes throughout its operation.³⁹ The earliest reported case appears to be a claim by the City against the

³³ *Id.*

³⁴ *Id.* at 273.

³⁵ See *The Municipal Journal*, November 12, 1919 (Enoch Pratt Library). The Shriver family controlled the Baltimore interests. The first president, John S. Shriver, was succeeded by General George Cadwalader, of Philadelphia, then J. Alexander Shriver, of Baltimore, and then John Cadwalader, of Philadelphia. *Id.*

³⁶ *Id.*

³⁷ According to the Burnt District Commission, The Baltimore and Philadelphia Steamboat Company owned the following addresses on Light Street: 200, 202, 202 ½, 204, 210, and 212. BDC Document from City Archives titled: "Tenants: Light Street, Pratt to Camden," RG 17, S 3, Box 8, Folder 165.

³⁸ *BPSC*, 65 A. at 353.

³⁹ The other reported cases were *Washington--Southern Nav. Co. v. BPSC*, 263 U.S. 629 (1924), *BPSC v. State Tax Commission*, 145 A. 770 (Md. App. 1929), *In re BPSC*, 302 Pa. 364 (Pa. Sct. 1931), and *BPSC v. Norton*, 284 U.S. 408 (1932).

Company for back taxes, filed on April 5, 1904.⁴⁰ In that case the City sought unpaid taxes on the Company's capital stock⁴¹ for the years 1899, 1900, 1901, 1902, 1903, and 1904 seeking a total of \$20,000.⁴² The case was settled for \$13, 753.71, but it indicates that the mood between the City and the Company may not have been congenial when the Company filed Exceptions to the BDC's awards on May 5, 1905.

A letter from Thomas F. Cadwalader⁴³ to the Burnt District Commission dated June 21, 1904 sets the stage for the legal conflict to come.⁴⁴ Written prior to the filing of Exceptions, it discusses plans to widen Pratt and Light Streets, and it shows the company's indignation with the condemnation proceedings. Cadwalader protested against the benefits assessed against the Company and suggested a solution: if the City would allow the Company, at its own expense, to extend its wharf on Pratt Street 240 feet further east than existed before the fire, this would offset the damages due to the Company for the condemnations. Cadwalader continued:

Now if it is proposed, in addition to such sum, to make us pay for problematical benefits supposed to accrue from the Light Street plan, the balance is of course destroyed. *The proposition is a plain matter of business and comes down to this: You take our property and you take so much of it as to ruin the remainder for our purposes. If you, that is, the*

⁴⁰ Mayor and City Council of Baltimore v. Baltimore and Philadelphia Steamboat Company, 1904. Maryland State Archives, Box 457 "Box 555 No. 72" (MSA T 545, 3/32/11/7).

⁴¹ In 1900, the Company had 13,139 shares of capital stock at \$13.50 each, for a value of \$177, 399. By 1903, the Company had 13, 162 shares of capital stock at \$16.43 each, for a value of \$216, 346. *Id.*

⁴² The total taxes due equaled approximately \$14,667, in addition to interest and penalties. *Id.*

⁴³ Thomas F. Cadwalader, along with Richard M. Venable, represented the BPSC in this matter. For biographical information, see note 57 *infra*.

⁴⁴ Baltimore City Archives, Burnt District Commission Documents, RG 17, S 3, Box 8, Folder 167.

city, will grant us a right that can cost it nothing but which will save to us the use and value of that part of our property not condemned, then we will release it, the City, from our claims for the injury of the property left us.⁴⁵ (Emphasis added)

C. THE CONDEMNATION AWARDS AND EXCEPTIONS

According to the opinions from the Baltimore City Court⁴⁶ and the Court of Appeals, the BDC awards were as follows:

- (1) Lot A-- \$17,000 to the City *and* the Steamboat Company.
- (2) Lot B-- \$30,000 to the City.
- (3) Lot 313-- \$658 benefits assessed against the Company.
- (4) Lot 314-- \$885 benefits assessed against the Company.⁴⁷

Neither the City Court nor the Court of Appeals indicated how the award for Lot A was divided between the City and the BPSC. This information does appear, however, in the Exceptions filed by the BPSC on May 5, 1905.⁴⁸ According to that document, the Company received \$1 for its interest in Lot A.⁴⁹ This is far below the \$25,000 that the

⁴⁵ *Id.*

⁴⁶ *See Baltimore City Reports, Volume II, Comprising Opinions of the Various Courts of Baltimore City Since January 1899*, published by *The Daily Record*, 388-391.

⁴⁷ Presumably, benefits were assessed against lots 312 and 313 because: (1) Lot 312, entirely composed of water, would now be directly abutting Pratt Street on the north, presumably making it more valuable; (2) Lot 313 would now be at the corner of Pratt and Light Streets, apparently an advantageous position.

⁴⁸ Baltimore City Archives, City Solicitors Papers, Box 26, Envelope Number 2930.

⁴⁹ The Exceptions document laments that "the award of nominal damages to the exceptant for the said property is no just compensation to the said exceptant for its said property, but amounts to an arbitrary and unconstitutional seizure of said property." *Id.* Perhaps the BDC assumed that the widening of Pratt Street would cause such benefit to lots 312 and 313 that it would offset any damages incurred by the condemnation of lots A and B. On the other hand, the BDC documentation of owners and renters on Light Street shows the designation "\$1" listed in the upper left corner of every address except 200 Light Street and 204 Light Street, which were both owned by the BPSC. This may show that the BDC intended to compensate these owners only \$1 for the destruction of their warehouses pursuant to the widening of Light

Company indicated it would accept "as liquidated damages for the 55 feet of waterfront taken for the purpose of widening Pratt Street."⁵⁰ In the Exceptions document, the Company further argues the unfairness of the awards for Lot B,⁵¹ Lot 312, and Lot 313.⁵²

D. THE CASE IN BALTIMORE CITY COURT

Judge Henry Stockbridge⁵³ heard the case without a jury on August 29, 1905, and delivered his ruling on January 25, 1906. Judge Stockbridge set aside the assessment of benefits against the Company for lots 312 and 313,⁵⁴ because the only evidence offered

Street, because their lots were merely being moved east and not being completely taken. The lots consisting of Lot A, however, were completely taken by the widening of Pratt Street because they could not be moved east and there is no evidence showing that they were shifted south.

⁵⁰ Source: BPSC Meeting Minutes from March 12, 1905. From the Pennsylvania Historical Society, Cadwalader Collection, 1659-1933, #1454. In March 1905, the Company was undoubtedly preparing for the trial in Baltimore City Court, which began in August of 1905. The minutes suggest that the Company hoped for even more than \$25,000 damages for the Light Street waterfront condemnation because it conditioned that amount on the City awarding the Company the lease of "260 odd feet on Pratt Street to meet the required construction of the new pier." This squares roughly with the letter written by Cadwalader on June 21, 1904, *supra* note 42.

⁵¹ The BPSC argues that the taking of Lot B with no damages "is inadequate and insufficient compensation to said Exceptant for its estate, right, title, interest, property, easement, user and enjoyment, in, to and of, ... Lot B." *Id.*

⁵² The BPSC argues that "the said condemnation, opening and widening of Pratt Street, so far from benefiting the said lot No. 313 is of great injury to the same, and tends to lower the value thereof, by the condemnation of the adjacent property ... Lot A, which, with said Lot No. 313, forms one continuous parcel of ground, wharf, and bulkhead..." "That the proposed action of the said Commission will not only deprive the protestant of a large portion of this valuable property without other than nominal compensation, but may permanently impair the marketable value and utility of the remainder, and will greatly interfere with its use and enjoyment by the protestant; and for damage and injury thus inflicted the net result of the action of the said Commission is that the said protestant must pay \$657. net to the Mayor and City Council of Baltimore in addition to being deprived of its property for nothing." *Id.*

⁵³ Judge Stockbridge was born in Catonsville, Maryland, attended Williston Seminary in Massachusetts, and then Amherst College, graduating in 1877. He attended University of Maryland Law School, graduating and passing the bar in 1878. In the early years of his practice, in addition to practicing law with his father, Mr. Stockbridge, Senior, he worked at the *Herald* from 1882-1883, and 1887-1889, and later worked as an editor of the *Baltimore American*. CLARENCE H. FORREST, OFFICIAL HISTORY OF THE FIRE DEPARTMENT OF THE CITY OF BALTIMORE: TOGETHER WITH BIOGRAPHIES AND PORTRAITS OF EMINENT CITIZENS OF BALTIMORE, (Williams and Wilkins 1898). Stockbridge served on the Maryland Court of Appeals from 1911-1924.

⁵⁴ See *Baltimore City Reports, Volume II, Comprising Opinions of the Various Courts of Baltimore City Since January 1899*, published by *The Daily Record*, 388-391.

was by witnesses for the BPSC, which "tended to negative the idea of any benefit whatever to result to the lot on which it was assessed."⁵⁵

Regarding Lots A and B, Judge Stockbridge found it easier to consider them as one contiguous lot, for which he awarded the BPSC roughly \$28,000. The breakdown of damages awarded to the BPSC was as follows:

- (1) \$25, 062.50 for the franchise right of wharfage, the right of BPSC to dock its own vessels at such wharf, and right of access to such wharf over navigable water.
- (2) \$1,500 for improvements made by the BPSC to the Light Street wharf.
- (3) \$400 for improvements made by the BPSC to the Pratt Street wharf.
- (4) \$5 nominal damages to the City.⁵⁶

Stockbridge discussed the rights of the Steamboat Company as compared to the rights of the City to the Pratt Street side of the harbor. Historically, the City had no rights until 1817, when an act empowered the City to acquire rights by condemnation to build a highway (Pratt Street) and public wharf. One of the issues before the Court of Appeals was a debate over which party had superior rights in the water dating back to the prior owners who had wharfed out their land from the west to create Light Street or from the north to create Pratt Street. This issue arose unavoidably due to the inherent conflict of rights associated with a concave shoreline, as still exists at the corner of Pratt and Light Streets. Stockbridge found that the rights of the City and Steamboat Company were equal in this respect, and the Court of Appeals affirmed.⁵⁷ Finally, Stockbridge denied the

⁵⁵ *Id.* at 388.

⁵⁶ *Id.* at 391.

⁵⁷ *BPSC*, 65 A. at 358, 360.

BPSC's claim for "consequential damages" from the condemnation. The company had argued that as a consequence of the condemnation, their remaining lots were injured.⁵⁸

IV. THE CASE

The Court of Appeals decision, authored by Judge Samuel D. Schmucker,⁵⁹ affirmed the decision of the Baltimore City court. Thomas F. Cadwalader⁶⁰ and Richard

⁵⁸ Stockbridge noted that "It has been settled by a long line of decisions that when property is taken in the exercise of the right of eminent domain, the only damages which can be properly claimed or awarded are the actual damages suffered for the property taken. To go beyond that would be to embark on a sea of speculation and conjecture, where there is no possible guide or standard for the establishment or limitation of any award." *See supra* note 51 at 391.

⁵⁹ Judge Samuel Davies Schmucker was the son of Rev. Samuel S. Schmucker, a Lutheran reverend, and Mary C. Steenbergen, a descendant of William Gooch, one of the early colonial governors of Virginia. Judge Schmucker was born in Pennsylvania in 1844 and died in Baltimore in 1911. He graduated from Pennsylvania College in 1863 and from New York City University Law School in 1865. He was elected to the bench in 1899. He was known as a man of "strict integrity and unflinching devotion to duty." Among other things, he served as president of the Bar Association of Baltimore, and as president of the board of trustees of the Baltimore Orphan Asylum. Upon his death, the *Baltimore Sun* noted that "As a judge he was painstaking, industrious, able and absolutely fair-minded and impartial. In writing his opinions and making his decisions, it is said of him that he seldom noticed the names of the parties to the suit, the subject matter and the questions involved being the only features of the case which concerned him." SOURCE: *BALTIMORE: IT'S HISTORY AND IT'S PEOPLE*, BY VARIOUS CONTRIBUTORS, Vol. III- Biography (Lewis Historical Publishing Company 1912).

⁶⁰ Thomas Francis Cadwalader served as legal counsel to the Steamboat Company, which was owned and operated by his family. His father, John Cadwalader, was president of the BPSC. In 1901, Cadwalader graduated from the University of Pennsylvania with Phi Beta Kappa honors. He studied law at the University of Maryland and was admitted to the bar in 1904. Thus, this case occurred very early on in his legal career. In 1936 he was selected as Maryland manager for the presidential campaign of Col. Henry Breckinridge against President Roosevelt. Cadwalader was a member of the Association for the Defense of the Constitution, a Maryland anti-New Deal group, and served as director of the Southern Committee to Uphold the Constitution. In 1943 he was elected trust officer of First National Bank. He was associated with the law firm of Marbury, Gosnell, and Williams. In addition, Cadwalader was instrumental in creating Baltimore City's first Legal Aid Bureau. Born in 1880, he died on February 26, 1970 at the age of 89 after being attacked in his downtown office. He is buried in Greenmount Cemetery. Source: Enoch Pratt Library, Maryland Room, biographical files, *Baltimore Daily*, March 5, 1970, *Baltimore Sun*, August 6, 1943, April 5, 1936, *The Daily Record*, February 26, 1970. In 1927 Cadwalader delivered a speech entitled "Sovereignty" to the Maryland Bar Association, which, while not mentioning the case at hand, did show his view that sovereignty of the State and the Federal Governments derives not solely from the people but from a handful of "so-called delegates" who used their money or ambition to become elected. He stated that the power of eminent domain never belonged to or was exercised by the people, "yet we repeat like parrots, that the people are the sole source" of sovereign powers. REPORT OF THE THIRTY-SECOND ANNUAL MEETING OF THE MARYLAND STATE BAR ASSOCIATION, held at the Hotel Traymore in Atlantic City, N.J., June 23, 24, and 25, 1927 (Maryland State Bar Assoc. 1927). Cadwalader's less-than-optimistic views on sovereignty are understandable considering the undemocratic, from-the-top-down strategies employed by the City and the BDC in order to speed up the improvement process in post-fire Baltimore. See ROSEN, *supra* note 5 at 272.

M. Venable⁶¹ represented the Steamboat Company. Baltimore City was represented by Joseph S. Goldsmith⁶² and Edgar Allan Poe,⁶³ under the direction and supervision of City Solicitor William Cabell Bruce.⁶⁴ The case was decided on December 19, 1906, by Judges Schmucker, McSherry, Boyd, and Pearce.⁶⁵

The Court of Appeals addressed each of the eight prayers offered by the Steamboat Company in the Baltimore City Court. Schmucker noted that the main issue in the case concerned the respective water rights of the City as owner of Pratt Street and the wharf, and the BPSC as the owner or lessee of a portion of the Light Street Wharf.⁶⁶ All the land involved in the controversy, including Pratt Street and Light Street, was originally covered by the harbor and was filled in from the north and west by the owners

⁶¹ Richard Morton Venable (a.k.a. "Major" Venable) was a prominent Baltimore attorney. He was born in Virginia and graduated from Hampden Sydney College in 1857. He studied mathematics and engineering at the University of Virginia for two years until the Civil War, when he enlisted in the Confederate Army, eventually becoming Major of Artillery and Engineers. After the war, he spent two years at Washington and Lee University in Lexington, VA, where he taught math and studied law, graduating in 1868. Interestingly, he studied law at Washington and Lee at the same time that Andrew Hunter Boyd, a Judge in the case at hand, was an undergraduate. They undoubtedly knew each other from their days in Lexington, because of the small atmosphere of the town and university. In addition, they both probably knew Robert E. Lee, who was president of the college at the time.

⁶² Joseph S. Goldsmith served as assistant city solicitor from 1903 to 1911. "He worked very hard during the period following the great fire in Baltimore at the head of the title department of the city solicitor's office. He was busy at this task almost day and night, sparing himself in not the slightest degree, in order to make thoroughly accurate records and prevent any discrepancy in property titles, and also took part in much important litigation in which the city was involved." He attended Johns Hopkins University and studied Law at the University of Maryland, graduating in 1890. *TERCENTENARY HISTORY OF MARYLAND, Vol. II* (The S.J. Clarke Publishing Company 1925).

⁶³ Edgar Allan Poe was the son of John Prentiss Poe, and grandson of Neilson Poe, a second cousin of poet Edgar Allan Poe. He graduated from Princeton University in 1891 after having been Captain of the football and lacrosse teams. Poe graduated from the University of Maryland School of Law in 1893. From 1900-1907 he served as deputy state's attorney and states attorney for Baltimore City. From 1908-1911 he served as deputy city solicitor and city solicitor. Poe served as Attorney General of Maryland from 1911-1915. Archives of Maryland, Biographical Series, MSA SC 3520-1515.

⁶⁴ William Cabell Bruce was a progressive reformer. *See supra* note 23. He worked with the Baltimore Reform League before being appointed city solicitor by Mayor Robert McLane. He drafted enabling acts to permit the floating of bond issues to finance the post-fire improvements. In 1922 Bruce was elected to the U.S. Senate, fighting against prohibition, lynching, and the Ku Klux Klan. He won a Pulitzer Prize for his *Benjamin Franklin Self-Revealed* (1917). *DICTIONARY OF AMERICAN BIOGRAPHY, Supplement 4: 1946-1950* (American Council of Learned Societies 1974).

⁶⁵ *BPSC*, 65 A. at 353.

⁶⁶ *Id.*

of adjacent lots under Acts in 1745, 1796, 1801, and 1805.⁶⁷ The part of Pratt Street concerned in the case was created by an Act of 1817, and the City thus acquired the wharf and riparian rights of the former owners of the land condemned to build the street.⁶⁸

The Court first addressed the prayers that were granted by Judge Stockbridge. The first prayer asserted that the owners of the lots on the west side of Light Street who filled out their land to the east side of Light Street, acquired the right to keep wharves and load and unload vessels and moor and dock vessels to their respective wharves. The Court of Appeals held this prayer was properly granted because it did not claim any sole or superior right. The Court noted that in previous cases it was held that although the owners who filled out their land did not acquire a technical fee in it, they did acquire a perpetual use of it, otherwise known as a "license or franchise."⁶⁹

The second prayer asserted simply that the Steamboat Company was the owner of the "property and rights" conveyed to it by its predecessors in title to the Light Street lots. The Court of Appeals held that this prayer was properly granted.

The fourth prayer asserted that neither the owners of the lots on the west side of Light Street who filled them out, nor their successors in title could be deprived of their wharfage rights and privileges without their consent, *unless* by condemnation. The Court of Appeals held that this prayer was properly granted.⁷⁰

The seventh prayer argued that the Steamboat Company was not estopped by its lease of the Pratt Street wharf from asserting its rights to moor and dock vessels on that

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *BPSC*, 65 A. at 356.

⁷⁰ *Id.*

dock.⁷¹ The Court of Appeals held that this prayer was properly granted because the Steamboat Company was simply asserting any rights it had in the waters of the basin incident to its ownership of the Light Street Wharf, and this could not be estopped by its lease of the Pratt Street Wharf.⁷²

The discussion of the fifth prayer is the most often cited section of the case.⁷³ It asserted that the Company could use such wharves and the land under them as the Court shall find that it extended into the basin under permits from the city, subject to the limitations or restrictions contained in the permits or imposed by law.⁷⁴ The Court of Appeals held that this prayer was properly granted, noting that:

It is well settled that, although the state is said to be the owner of the navigable waters within its boundaries, it holds them, not absolutely, but as a quasi trustee for the public benefit and to support the rights of navigation and fishery, to which the entire public are entitled therein, and, although the state can make a valid grant or privileges or interests in or over those waters, such grants are subject to the public rights of navigation and fishery.⁷⁵

Next, the Court turned to a discussion of the rejected prayers. The third prayer asserted that the Steamboat Company had superior rights to the City to moor and dock vessels on the south side of Pratt Street because the Steamboat Company's predecessors

⁷¹ *Id.*

⁷² *Id.*

⁷³ This language is cited in such cases as *Anne Arundel County v. City of Annapolis*, 721 A. 2d 217 (Md. Dec. 10, 1998).

⁷⁴ *BPSC*, 65 A. at 356.

⁷⁵ *Id.*

in title had acquired such exclusive rights in 1796, 1801, and 1805, thus the City could not have acquired such rights in 1817. The Court of Appeals held that this prayer was properly rejected.⁷⁶ The Court could not agree with the Steamboat Company that the Legislature in 1796, 1801, and 1805 had intended to grant the owners of the Light Street lots rights superior to those vested in the owners of land bounding those waters on the north.⁷⁷ The Court declared that this would be a "violent assumption,"⁷⁸ and held that a "rational and just construction" of these acts showed that the Legislature intended to grant concurrent rights to the owners of the wharves on Light and Pratt streets.⁷⁹

The sixth prayer asserted the Steamboat Company's theory of consequential damages, although not specifically denoted as such. The Company argued that the court should consider any injury to the remaining part of the wharf and dockage rights not condemned, citing the condemnation Act of 1904,⁸⁰ which contained broad language concerning damages. The Court of Appeals held that this prayer was properly rejected, because although the language of the Act did provide a relatively broad measure of fixing damages, the Company's prayer was not specific enough in describing the advantages and disadvantages it sustained. Further, the Court of Appeals held that the Company was not injured by the rejection of this prayer because Judge Stockbridge took into consideration

⁷⁶ *Id.* at 357.

⁷⁷ In a City Solicitor memorandum accompanying the BPSC's Exceptions document, the City argued just the opposite, contending that "the wharf rights along the South side of Pratt Street are superior to those along the East side of Light Street, by reason of priority of grant from a common owner, as well as because of advantage of location." The City did appear ready to compromise, however, recognizing that "the extent of ownership of such rights is somewhat in doubt." "It appears advisable for the purpose of effecting the compromise to concede to the Company some rights along the east side of Light Street, *even as far North as the South side of Pratt Street*, subject, nevertheless, to the understanding that the City has a somewhat better title to the use of the South side of Pratt Street, than the Company has to the East side of Light Street, when it is undertaken to adjust their conflicting rights." (Emphasis added) *See supra* note 45.

⁷⁸ *BPSC*, 65 A. at 357.

⁷⁹ *BPSC*, 65 A. at 358.

⁸⁰ Sections 8, 9, c. 87, pp. 147, 149. (358)

all of the proper elements of advantage and disadvantage. The Court of Appeals noted that Judge Stockbridge properly refused to allow any damages for the loss of emoluments from wharfage because no evidence of their value was presented, but that Stockbridge properly treated the right to moor and dock vessels on the Light Street wharf as a "distinctly valuable right" for which compensation was allowed.⁸¹

In a separate objection, the Company urged the Court to consider "consequential damages," or the collateral effects of the condemnation of part of a lot on the remaining portion of the property. The Court of Appeals stated that, assuming under the Act of 1904 that a court must take this into consideration, Judge Stockbridge awarded such damages (unbeknownst to him)⁸² when he set aside the benefits to the remaining properties assessed against the Company by the BDC. By setting aside the benefits, Judge Stockbridge essentially awarded consequential damages by saving the Company from paying the assessed benefits to the remaining lots.⁸³

V. ANALYSIS

A. THE CASE IN CONTEXT OF REBUILDING BALTIMORE

This case illustrates the difficulties encountered by the Burnt District Commission in determining the value of the properties condemned. For example, the harbor area posed unique problems due to a multitude of wharf rights, riparian rights, easements, and other property interests.⁸⁴ In addition, many of the properties condemned had not changed hands in many years, so past sale prices offered little help in determining present

⁸¹ *BPSC*, 65 A. at 359.

⁸² *See supra* note 54, where Judge Stockbridge specifically disallows the award of consequential damages.

⁸³ *BPSC*, 65 A. at 359.

⁸⁴ *ROSEN, supra* note 5 at 292.

values.⁸⁵ This was the case with the BPSC's lots on Light Street. For example, the Company had leased 200 Light Street to George Godfrey since 1875 for an annual rent of \$2,000.⁸⁶ It appears that the BDC determined values of the Company's Light Street warehouses by calculating the rents paid to the Company by the tenants. This explains why Thomas F. Cadwalader in a letter to Sherlock Swann, Chairman of the BDC, stated that: "The leases were in all cases made before the fire, and may afford a standard for judging the value of the properties at that time. ... *The rentals were going up steadily before the fire.*"⁸⁷ (Emphasis added)

This case also shows how property owners used condemnation provisions in the Maryland Constitution to delay the taking of their land. The Maryland Constitution allowed property owners to retain ownership of condemned property until they had exhausted their right to appeal the condemnation in court.⁸⁸ Unlike other states, Maryland law did not allow a municipality to take possession of condemned land early by posting bond before cash exchanged hands.⁸⁹ This changed with the adoption in 1913 of a "quick-take" provision in the Maryland Constitution.⁹⁰

The Baltimore and Philadelphia Steamboat Company represents the private property interest in post-fire Baltimore, and the difficulties the City experienced in taking title to condemned properties. According to Rosen, four "progressive-minded" property

⁸⁵ *Id.* at 292.

⁸⁶ The lease was set to expire on January 1, 1909. BDC Document, *see supra* note 34. George Godfrey apparently owned Godfrey's Cigars and Tobacco at 200 Light Street, as evidenced by a photograph in Mark B. Miller's book *BALTIMORE TRANSITIONS: VIEWS OF AN AMERICAN CITY IN FLUX*, 22 (Johns Hopkins University Press 1998). According to the BDC document, Godfrey claimed \$5,000 damages for the condemnation of his rental interest in lot A (Lot A appears to have encompassed 200, 202, and part of 204 Light Street warehouses and wharfs. BDC Document, *see supra* note 34).

⁸⁷ Letter, Dec. 7, 1905, Thomas F. Cadwalader to Sherlock Swann. Baltimore City Archives, Burnt District Commission materials, RG 17, S 3, Box 8, Folder 168.

⁸⁸ ROSEN, *supra* note 5 at 293.

⁸⁹ *Id.*

owners donated the first four pieces of land the BDC acquired.⁹¹ After that, however, property owners resisted turning over their land, many demanded excessive prices, and many others refused to sell at all.⁹²

Rosen argues that city officials overcame these impediments to improvements by dealing with them in non-traditional ways. They used a "surrender" clause in the enabling legislation of the BDC to negotiate the voluntary surrender of land before condemnation proceedings were concluded.⁹³ In addition, the BDC tried to dissuade property owners from demanding exorbitant prices for their lots by appealing to their civic pride, publishing a "Roll of Honor" which listed all the people who voluntarily sold or surrendered their land.⁹⁴ As a last resort, they threatened landowners with higher taxes based on the inflated prices they demanded for their properties.⁹⁵

In all, Rosen notes that it took only nine months for the BDC to acquire the 443,770 square feet of land needed for the twelve street widenings, excluding a few appeals, such as the one at hand. Thus, *Mayor and City Council of Baltimore v. Baltimore and Philadelphia Steamboat Company* represents an outlier in the grand scheme of rebuilding Baltimore. On the whole, the post-fire improvement process in Baltimore was more successful than similar endeavors in Chicago and Boston because of the progressive planning involved.⁹⁶ The innovations discussed above allowed the BDC

⁹⁰ MD Const. 40 A

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.* at 294.

⁹⁴ ROSEN, *supra* note 5 at 295.

⁹⁵ *Id.*

⁹⁶ *Id.*

to "undercut property owner's and businessmen's power to delay and block threatening change."⁹⁷

B. DAMAGES AND BENEFITS

Some light can be shed on the legal principles applied in the case by examining legal materials of the day. In June 1904, Albert Cabell Ritchie⁹⁸ published *Law of Municipal Condemnation in Maryland* through King Brothers' Press, a publisher located at 413 East Lexington Street. As noted in the Preface, Ritchie intended to "present the practice and procedure in Maryland with reference to the condemnation of land by Municipal Corporations, together with all decisions of the Court of Appeals upon the subject."⁹⁹

Ritchie's book provides context for the legal arguments and actions taken by the City during condemnation of the wharves at Pratt and Light Street. For example, in discussing the assessment of damages and benefits, Ritchie noted that when a leasehold interest is damaged by the opening of a street through the demised land, a lessee's measure of damages is the fair market value of his interest in that portion of the property that will remain after the opening or widening of the street is completed.¹⁰⁰ This may explain why the BDC only offered the Steamboat Company \$1 for its interest in the public wharf south of Pratt Street,¹⁰¹ because after the street widening, the entirety of that

⁹⁷ *Id.*

⁹⁸ At the time, Ritchie was employed as Assistant City Solicitor. His subsequent career path included such positions as Attorney General from 1915-1919, and Governor of Maryland from 1920-1935. Archives of Maryland, Biographical Series, MSA SC 3520-1480.

⁹⁹ ALBERT CABELL RITCHIE, *LAW OF MUNICIPAL CONDEMNATION IN MARYLAND*, King Bros., June 15, 1904, Preface. Ritchie showed a practical foresight in noting that: "a considerable part of the land necessary for the opening, straightening and widening of streets, and for the improvement of the water front, in the district devastated by the recent conflagration, will doubtless have to be acquired by condemnation proceedings." *Id.*

¹⁰⁰ *Id.* at 69.

¹⁰¹ *See supra* note 49.

City wharf would cease to exist. Perhaps the Commissioners reasoned that because the widening of Pratt Street would completely engulf the public wharf, the Steamboat Company would have no leasehold interest left to assert.¹⁰²

Judge Stockbridge, however, took a more practical stance. His view was that the City's wharf was merely shifted 50 feet to the south, while the Steamboat Company lost 50 feet of water frontage on Light Street that could not be replaced. Stockbridge took this insight under consideration in deciding to essentially reverse the awards given by the BDC.¹⁰³

Furthermore, Ritchie's own book noted that the burden of proving benefits lay with the City: "the burden is not upon the property holder to prove that his property is not benefited as much the City Claims it is."¹⁰⁴ Even so, Stockbridge reversed the BDC awards because the only evidence presented on the issue was from witnesses for the Steamboat Company, "and all of it tended to negative the idea of any benefit whatever to result to the lot on which it was assessed."¹⁰⁵

In sum, Ritchie's book provides valuable clues for understanding the legal history of the Baltimore Fire by comprehensively presenting all Maryland condemnation jurisprudence up to that time.

C. QUICK TAKE PROVISION OF THE MARYLAND CONSTITUTION

Article III, Section 40A of the Maryland Constitution, proposed in 1912 and ratified in 1913, provides authorization for the "quick taking" of property by the City of Baltimore when it seeks to obtain land for public use, and allows the City to enter upon

¹⁰² *Id.*

¹⁰³ *See supra* note 54 at 390, where Stockbridge notes that the Pratt Street lease was "an element of value, but dependent as to the quantum of its value upon the length of the term of the lease."

¹⁰⁴ RITCHIE, *supra* note 99, at 71.

property after its appraised value has been paid or tendered and bond given for any excess which may be found by a jury.¹⁰⁶ This provision is codified in the Code of Public Local Laws of Baltimore City, § 21-16 (1969, 1977, Cum. Supp.). It is likely that these quick take provisions in the Maryland Constitution and the Baltimore City Code arose from problems posed to the City by private property owners like the BPSC in the aftermath of the fire.¹⁰⁷ Direct proof of such an assertion is scarce, but a few years following the adoption of 40A, Maryland constitutional scholar Alfred S. Niles noted that it "would seem to be a valuable provision against unnecessary delay, while maintaining all reasonable safeguards."¹⁰⁸

Niles continued: 40A provides "an effective guarantee that private property shall not be taken for public use without due compensation, while at the same time

¹⁰⁵ See *supra* note 54 at 388.

¹⁰⁶ Section 40A provides in pertinent part: "...but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide that such property may be taken immediately upon payment therefore to the owner or owners thereof by the State or by the Mayor and City Council of Baltimore, or into court, such amount as the State or the Mayor and City Council of Baltimore, as the case may be, shall estimate to be the fair value of said property, provided such legislation also requires the payment of any further sum that may subsequently be added by a jury..."

¹⁰⁷ The Steamboat Company apparently was aware of the delays it was causing, as evidenced by the June 1904 letter, *supra* note 44. Speaking of the Company's offer to purchase a longer section of wharf on Pratt Street in return for a diminution in the amount of benefits assessed against the Company by the BDC, Cadwalader wrote: "If these [benefits] are assessed for the Light Street improvement, why not also for the Pratt Street? If that too is to be done, our proffered compromise of claims becomes still more one-sided, we may have to withdraw it, *much as we should regret to interfere with the progress of the improvements*, and simply stand on our rights and demand cash value for the taking of our property and destruction of our business." Cadwalader concluded: "we therefore ask you to reconsider your assessment of benefits against us, and withdraw the same subject to our reaching an agreement with the Mayor and City Council, whereby all claims of the City or its agents the Burnt District Commission, or of ourselves against the same may be settled and compromised to our mutual advantage, and *so that the progress of the work may not be vexatiously [sic] delayed.*" *Id.* Cadwalader wanted to set off benefits against damages, a practice that was endorsed in Ritchie's book, "even though this may altogether extinguish the amount of damages awarded." RITCHIE, *supra* note 99 at 76.

¹⁰⁸ ALFRED S. NILES, MARYLAND CONSTITUTIONAL LAW, 1915, 201.

providing that necessary public works may not be impeded or prevented by the obstinate refusal of owners of property to dispose of their rights..."¹⁰⁹

Such a provision would have facilitated improvements in post-fire Baltimore. Ritchie's book shows that at the time, "entry or taking before payment or tender" was unlawful.¹¹⁰ Ritchie further noted that property owners had the right to retain possession of their property "until the damages are constitutionally ascertained, and paid or tendered ... Until then, the street cannot be opened or used, and an entry to grade or to prepare the ground for that purpose, would be illegal, and the person so entering would be liable to an action for [trespass] damages."¹¹¹ On a similar note, Ritchie stated that "parties must be secured in their right to jury trial before property is taken."¹¹² Thus, the power of quick take would have been an invaluable resource to the many civic leaders who saw their vision of urban improvements slowed by the inevitable backlog of litigation over property rights.

Article III Section 40A is unique because in comparison to the several articles in the Maryland Constitution granting powers of eminent domain to Baltimore City, it is the only one that allows quick taking.¹¹³ Lois Macht suggested in 1958 that such quick take powers "were developed early in our history, in the days when condemnation rarely meant displacing people from homes or businesses."¹¹⁴ She was right that the procedures

¹⁰⁹ *Id.*

¹¹⁰ RITCHIE, *supra* note 99 at 18.

¹¹¹ *Id.*

¹¹² *Id.* at 58. Ritchie cited the case of *American Telephone and Telegraph Company v. Pearce*, 71 Md. 535, which held that the Legislature could not authorize the construction of telegraph lines over private property and afterwards require the property owners to seek legal recourse for damages. *Id.*

¹¹³ The other provisions of the Maryland Constitution that grant the power of eminent domain to Baltimore City are Article 11B pertaining to Land Development; Article 11C pertaining to Off Street Parking; and Article 11D pertaining to Port Development. See LOIS MACHT, CONDEMNATION IN MARYLAND, Research Report Number 31, Research Division of the Legislative Council of Maryland, 1958, 17.

¹¹⁴ *Id.*

were developed many years ago, but as evidenced by the case of the BPSC, many businesses were indeed displaced after the Great Fire.

VI. CONCLUSION

The Fire of 1904 had far reaching consequences for the City of Baltimore. Not only did it rekindle the progressive spirit of municipal government, but the litigation that ensued provided an opportunity to review and revise property law and in particular, the concept of eminent domain. The jurisprudence of the day did not provide an ideal framework for a fast-paced redevelopment of the City, but Baltimore's urban planners nevertheless accomplished most of their goals in a relatively short time.¹¹⁵ Furthermore, as evidenced by the case of the Baltimore and Philadelphia Steamboat Company, counsel on both sides understood that their litigation would delay municipal improvements.¹¹⁶ Thomas Cadwalader, in particular, seemed open to any compromise that would prevent a prolonged legal dispute.¹¹⁷ It soon became clear, however, that the legal process was the only way to resolve the fundamental issues in valuation of the Company's waterfront lots.

The conflict between private property owners and Baltimore City improvements continues to this day, most recently over the West Side redevelopment project. Much of the debate has concerned the public taking of private land for private use. For example, in 1999, 127 properties including small businesses were displaced to develop a 100-block area on the West Side.¹¹⁸ In addition, construction for the West Side redevelopment has

¹¹⁵ ROSEN, *supra* note 5 at 295.

¹¹⁶ *See* note 107, *supra*.

¹¹⁷ *Id.*

¹¹⁸ Vaishali Honawar, *State Is Tops in Eminent Domain; Process Abused, Study Contends*, The Washington Times, May 1, 2003. The issue of taking private land for private use was present in the post-fire litigation. Some waterfront property owners argued that because the City was going to lease their property, that this constituted an unlawful "private use." In *Dyer v. Mayor and City Council of Baltimore*,

slowed traffic on streets and blocked roads and sidewalks, resulting in loss of business for some merchants in those areas, due to a lack of parking for their customers.¹¹⁹

One can only wonder if the current state of construction mirrors the atmosphere in post-Fire Baltimore. Phrases like "war zone of construction" and "chaos" are used to describe the current improvements.¹²⁰ "Drivers and walkers curse and honk at each other in turn."¹²¹ Perhaps large billboards should be created to show frustrated motorists and pedestrians what Baltimore looked like immediately after the fire. Then they might understand that the current construction is minimal compared to the comprehensive rebuilding effort undertaken by the Burnt District Commission, during an age of much less technological sophistication. Lastly, maybe another billboard could show Baltimoreans what Pratt Street looked like at rush hour a century ago, without the benefit of an extra 50 feet.¹²²

140 F. 880 (1905), the Court held that because the City was making money from the properties, this was an acceptable "public use."

¹¹⁹ Stephen Kiehl, *As Buildings Go Up, Traffic Slows Down In the Heart of the City*, Baltimore Sun, July 18, 2003.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² See photograph entitled "Rush Hour From Hell," in Mark B. Miller's book BALTIMORE TRANSITIONS, *supra* note 86 at 22, which shows a clogged and congested Pratt Street circa 1900.

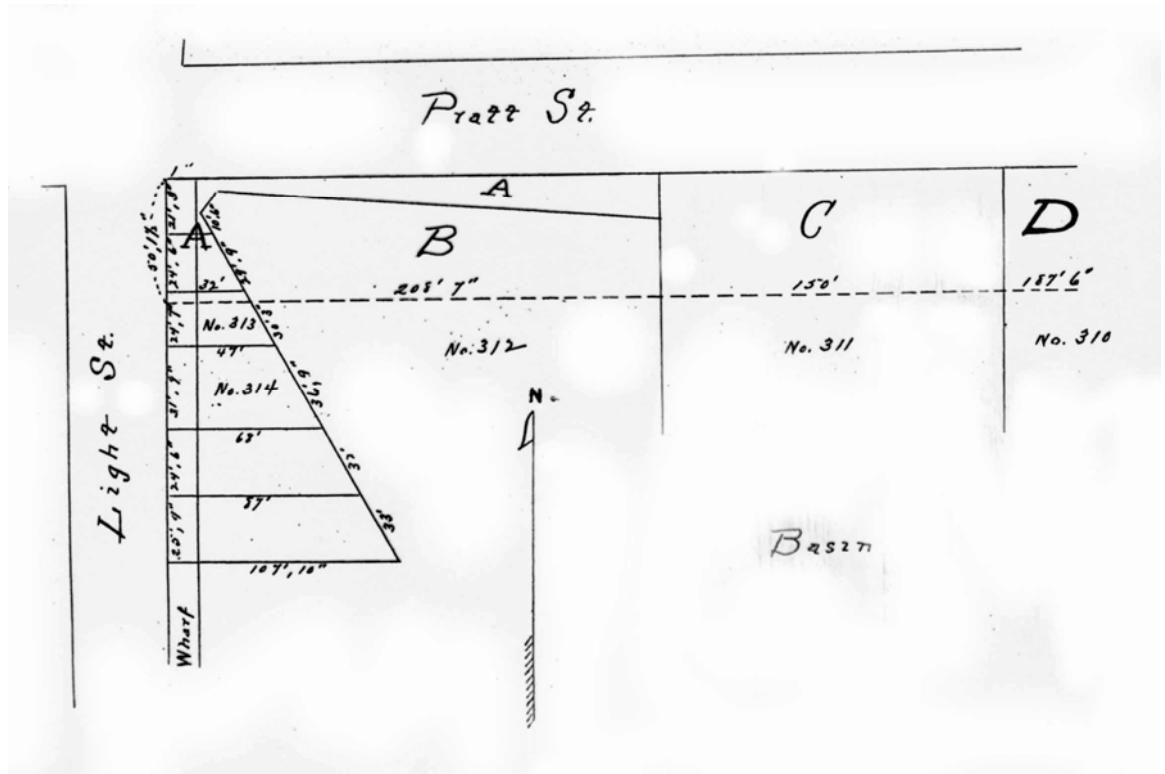


Diagram of Pratt and Light Street



Post Fire – 1



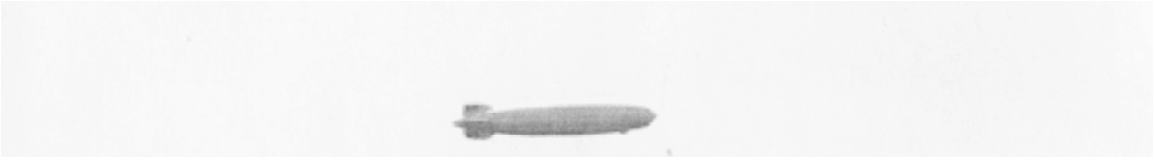
Post Fire – 2

**PRATT AND LIGHT STREETS
LOOKING WEST, CIRCA 1900**

RUSH HOUR FROM HELL: A classic photo often erroneously dated 1906 or later, it should encourage commuters who become unglued while stuck in bumper-to-bumper JFX or Beltway traffic to count their blessings. Before the widening of Pratt and Light in 1905, streetcars, horses, the B&O Railroad and later automobiles all competed for the right-of-way on Pratt Street. Little wonder that Pratt and Light remained for over 50 years the most congested point in Baltimore. The circa 1800 row of warehouses along the Light Street wharf exhibited the kind of exquisite symmetry found in once fashionable residential architecture like Pascault Row on Lexington Street. The only waterfront warehouses of their design to survive the fire, they were demolished for the widening of Light Street. Up until the early 1950s, when the city dismantled the piers, erected Sam Smith Park and extended Calvert Street south on landfill, the harbor basin's water line extended up to the present intersection of Pratt and Light. Steam dredging machines in the 19th century had deepened the channel basin so large ships could dock there. *Peale Museum*



Pratt and Light Streets - circa 1900



Pratt and Light Street – circa 1930



**PRATT AND LIGHT STREETS
LOOKING WEST, 1994**

LUNCH HOUR FROM 100 EAST PRATT STREET:

The author caught a free-flowing, liberated Pratt and Light around noon from the 100 East Pratt building's gravel-surfaced roof. Rush hour here can still cause horns to beep and blood pressure to rise, but at least the horses and trains are gone. Commerce and industry thrived here through the 1940s, then declined as water trucking began to cut into the steamboat transport industry and business moved further down the Patapsco. Inner Harbor redevelopment of the Pratt-Light waterfront included an ambitious landfill bulkhead project that in 1970 added 100 feet of rock and granite landfill to the western shoreline. Brick promenade at southeast corner of Pratt and Light, an area under water in the earlier view, was completed in 1972. The RTKL-designed C&P Telephone Building (1977) at southwest corner occupies former site of the National Biscuit Company. The \$50 million, 1979 Baltimore Convention Center seen just west of it further boosted Baltimore's status as a tourist city and became the catalyst for a hotel-building boom. Convention Center construction took off nationwide after 1970, a time when only 15 cities could accommodate trade shows of 20,000 people. Fifteen years later, 150 cities could.

Pratt and Light Street - 1994