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Record No. 5024

In the Supreme Court of Appeals of Virginia at Richmond

S. D. MAY, STATE HIGHWAY COMMISSIONER, ETC.

v.

EARL S. WHITLOW, ET AL

FROM THE CIRCUIT COURT OF LUNENBURG COUNTY

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing council on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5024

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of May, 1959.

S. D. MAY, STATE HIGHWAY COMMISSIONER, ETC.
Appellant,

against

EARL S. WHITLOW, ET AL., Appellees.

From the Circuit Court of Lunenburg County

Upon the petition of S. D. May, State Highway Commissioner of Virginia, an appeal and supersedeas is awarded him from a decree entered by the Circuit Court of Lunenburg County on the 16th day of December, 1958, in a certain proceeding then therein depending wherein Earl S. Whitlow and others were plaintiffs and the petitioner was defendant; no bond being required.

RECORD

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page 92 }

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ORDER.

These several petitioners, by counsel, and the defendant, by counsel, having come this day to be further heard and it appearing to the Court that the pleadings and issues in these several cases are identical, it is ordered that the said cases be consolidated and that they be hereafter heard together unless for good cause shown a severance be granted.

And the defendant having tendered for the judgment of the Court its plea designated "Plea to the Jurisdiction" and the petitioners having objected to the said plea upon the grounds that the same was not filed within the time specified by the Rules of Court and upon the further ground that the defendant having answered the petition and submitted to the jurisdiction of the Court under said Rules, is prohibited from filing said plea, which objections of the petitioners the Court doth overrule, to which action the petitioners duly excepted.

And the Court having heard argument of counsel thereon doth sustain the defendant's "Plea to the Jurisdiction" and doth grant the Petitioners leave to amend their respective petitions to which action of the Court in sustaining said "Plea to the Jurisdiction" the petitioners respectively except and the defendant excepts to the Court granting leave to amend; and the petitioners without waiving their exceptions heretofore noted, moved the Court to amend the respective petitions in each of these cases by adding to each petition the following additional paragraphs and language:

page 93 } 4. Petitioner alleges that prior to the entry by the State Highway Commissioner upon property of your petitioner and the construction of a new and wider highway thereon, there existed a public easement for a public road for a width not exceeding 30 feet upon property immediately adjacent to and in front of the property of your petitioner.

5. Your petitioner alleges that the Highway Commissioner has entered upon, taken and converted to public use property owned by your petitioner lying between the western edge of said 30 foot wide easement for a public road as it theretofore

existed and the western edge of the present right of way as laid out by the said Highway Commissioner and his agents for the new and wider highway; and doth further allege that the exact dimensions of the area so taken and owned by your petitioner is peculiarly within the knowledge of the Highway Commissioner and is not known to your petitioner with such exactness as to be able to supply a metes and bounds description thereof nor is said information presently available to your petitioner but is peculiarly within the knowledge of the Highway Commissioner because by the taking of said area and the construction thereof of a new highway the exact location of the western line of the old public easement for the old public road has been obliterated and made difficult of exact determination.

6. That no condemnation proceedings have been instituted for the acquisition of the said property; that no deposit has been made as required in such cases by the Highway Commissioner; that no agreement has been made by the owners thereof with the Highway Commissioner for the purchase of said property and that the same has been taken and the residue of the petitioner's property damaged without just compensation and in derogation of petitioner's rights secured by the Constitution of Virginia.

And the petitioners move the Court to amend the prayer of each petition filed in each of these cases by adding thereto the following language:

Petitioner prays in the alternative that the Court treat this petition as an application for mandamus and that a writ of mandamus may be issued by this Honorable Court directed to F. A. Davis, State Highway Commissioner, commanding him to institute and to prosecute to a conclusion condemnation proceedings for the acquisition of the land of your petitioner in accordance with the laws of the Commonwealth in such cases made and provided for the ascertainment of just compensation for land of the petitioner taken as aforesaid and the damage, if any, to the residue of petitioner's land.

page 94 } Upon consideration whereof, the Court doth grant each of the petitioners leave to amend the petition in each of these respective cases in accordance with the said motion and doth adjudge that each of said petitions shall be treated as though the foregoing language were set forth therein in *haec verba,* to which action of the Court there is no exception.

And the Court doth continue these cases to be further heard

together on the 12th day of August, 1958 at 10:00 A. M. and both parties are directed to be prepared on said date to offer such evidence as they may wish the Court to consider with respect to all issues raised in the petitions as amended and in the pleadings; and leave is granted the defendant to file any responsive pleading to the said amended petition on or before the 28th day of July, 1958.

We ask for this order.

W. E. NEBLETT
J. SEGAR GRAVATT
Counsel for Petitioners

PEYTON G. JEFFERSON
Counsel for Defendant

Enter: July 15, 1958.

G. E. MITCHELL, JR.
Judge.

* * * * *

page 99 }

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SUGGESTED STIPULATION OF FACTS.

Filed: 8/12/58.

G. E. M., JR., Judge.

In order to save the court and counsel time and in order to make a better record, it is suggested that we agree upon the following, to-wit:

1. That the record title of the petitioners herein to the land that they are claiming is based upon conveyances from T. D. Bragg and wife and their alienees, which conveyances describe the lots in question by reference to plats of the Bragg residence site, one of which is dated March 25, 1909, and recorded in Deed Book 54, page 496, and the other of which is dated November 22, 1910, and recorded in Deed Book 55, page 382; and both of said plats and all of the conveyances in the chain of title shall be considered as a part of the record herein

and copies thereof certified by the clerk of this court may be hereafter filed herein at the convenience of counsel. The petitioners on the other hand do not admit either of the plats have been recorded according to law, and the petitioners contend that the said plats have not been recorded legally or in such a manner as to have any effect upon the issues in this case. They may be introduced for the purpose of the Court in determining what their effect may be.

2. That the plat of the E. J. Flippo farm dated February, 1919 and recorded in Plat Book 1, page 115, be likewise considered a part of the record herein and that a copy thereof certified by said clerk may be later filed herein for convenience of Counsel. Reserving the right to raise any question with respect to the proper recordation or accuracy, relevancies, or legal effect thereof the petitioners agree to the foregoing.

page 100 } 3. That the land claimed by the respective petitioners herein is shown on said plats as lots fronting on the north or northwest side of Court Street, all of which belonged to T. D. Bragg prior to the aforesaid subdivisions and up until the time that they were conveyed off by T. D. Bragg to the petitioners or into their respective chains of title.

4. That the land in question is in the County of Lunenburg, Virginia, and that the state highway known as State Highway No. 49 and 40 which leads from Victoria to Lunenburg Court House has been a public highway and has been used by the public as such for at least sixty years, without specifying its width or its exact location at any time during said period.

5. That approximately 24 months ago the State Highway Department engaged in construction operations for the widening of the aforesaid road and did in fact do construction work on the northwest side thereof which involved the physical alteration of land which is claimed by the petitioners herein; that said physical alteration was done without any compensation to petitioners and without any condemnation suits being instituted against them, and it is this widening which petitioners contend involves a wrongful taking of their property.

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page 101 }

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STIPULATION OF FACTS.

Filed 21/16/58.

G. E. M., JR.

In order to save the court and counsel time and in order to make a better record, it is suggested that we agree upon the following, to-wit:

1. That the record title of the petitioners herein to the land that they are claiming is based upon conveyances from T. D. Bragg and wife and their alienees, which conveyances describe the lots in question by reference to plats of the Bragg residence site, one of which is dated March 25, 1909, and recorded in Deed Book 54, page 496, and the other of which is dated November 22, 1910, and recorded in Deed Book 55, page 382; and both of said plats and all of the conveyances in the chain of title shall be considered as a part of the record herein and copies thereof certified by the clerk of this court may be hereafter filed herein at the convenience of counsel. The petitioners on the other hand do not admit either of the plats have been recorded according to law, and the petitioners contend that the said plats have not been recorded legally or in such a manner as to have any effect upon the issues in this case. They may be introduced for the purpose of the court in determining what their effect may be.

2. That the plat of the E. J. Flippo farm dated February, 1919, and recorded in Plat Book 1, page 115, be likewise considered a part of the record herein and that a copy thereof certified by said clerk may be later filed herein for convenience of counsel. Reserving the right to raise any question with respect to the proper recordation or accuracy, relevancies, or legal effect thereof the petitioners agree to the foregoing.

3. That the land claimed by the respective petitioners herein is shown on said plats as lots fronting on
page 102 } the north or northwest side of Court Street, all of which belonged to T. D. Bragg prior to the aforesaid subdivisions and up until the time that they were conveyed off by T. D. Bragg to the petitioners or into their respective chains of title.

4. That the land in question is in the County of Lunenburg, Virginia, and that the state highway known as State Highway No. 49 and 40 which leads from Victoria to Lunenburg Court House has been a public highway and has been used by the public as such for at least sixty years, but this

stipulation does not specify its width or its exact location at any time during said period.

5. That approximately 24 months ago the State Highway Department engaged in construction operations for the widening of the aforesaid road and did in fact do construction work on the northwest side thereof which involved the physical alteration of land which is claimed by the petitioners herein; that said physical alteration was done without any compensation to petitioners and without any condemnation suits being instituted against them, and it is this widening which petitioners contend involves a wrongful taking of their property.

The foregoing stipulation was agreed upon by all parties and is made a part of the record herein.

G. E. MITCHELL, JR.
Judge

Approved:
J. SEGAR GRAVATT
DON P. BAGWELL

page 103 }

* * * * *

G. E. M., JR.

September 24, 1958.

Mr. J. Segar Gravatt,
Blackstone, Va.

Mr. W. E. Neblett,
Lunenburg, Va.

Mr. Peyton Jefferson,
Lunenburg, Virginia.

Mr. Don P. Bagwell,
Halifax, Virginia.

Re: Earl S. Whitlow, et al. & Combined Cases
v. State Highway Commissioner.

Gentlemen:

It is my opinion that the State Highway Commissioner

should be required to condemn the portion of the right of way, (thirty feet), in question in the caption suits.

It is my opinion that a sixty, (60), foot right of way was dedicated by the Bragg plats of 1909 and 1910 and by the deeds referring thereto conveying the lots to the now present owners. The Bragg subdivision dedicated forty-five feet and the Flippo Farm fifteen feet to make the dedication of sixty feet. It is clear that a dedication does not have to be by a correctly acknowledged and recorded plat or deed; but, may be by acts, verbal declarations, conduct expressed or implied by the owner of the land. *Paramount Communities Inc., et al.* v. *Abramson,* 183 Va. 922; 33 S. E. (2nd) 771, Syllabus 2 & 3, at page 773 (3).; Cox Manual for Title Examiners in Virginia page 143, section 97, Unrecorded Dedication; 63 ALR 670 Common Law Dedications.

The more difficult question is how much of the dedicated sixty feet did the State accept, and was the dedication, or offer, withdrawn before 1957 when the State widened its right of way to sixty feet.

It is my opinion that the County and later the State accepted only thirty feet of the dedicated right of way. Fifteen feet from the Flippo Farm and fifteen feet from the Bragg subdivision. The State maintained a clearly defined thirty foot right of way through this property from the time of the dedication to 1957. The petitioners acting in light of what the State had accepted withdraw the offer of the thirty feet not used by the State, by their conduct, line markers, hedges, trees, fences, yards, and the spacing of their houses, etc., before 1957 when the State opened a sixty foot road through the property. Cox's Manual for Title Examiners in Virginia states the rule thusly: Page 143, "Acceptance-
page 104 } Until the dedication is accepted by or for the public it is a mere offer which may be withdrawn at any time, if no private interests have been acquired on the fairh of the dedication, 96 Va. 34, 30 S.E. 444."

City of Norfolk v. *Nottingham,* 96 Va. 34; 30 S. E. 444, "That a dedication of land to the use of the public, whether expressed or implied, may be revoked before it has been formally accepted by competent authority, or others have upon the faith of its being induced to act as to render its revocation unjust is recognized by the courts".

City of Danville v. *Anderson,* 189 Va. 662; 53 S. E. (2d) at page 798 the court says, "Appellee has failed to establish any acceptance, use or control by the county of any easement in excess of 30 ft. The ancient landmarks definitely negative acceptance of any wider area".

Chambers v. *Roanoke Industrial & Agricultural Ass'n. et*

al. 68 S. E. 980, syllabus 5, "A dedication by recording a map of land as streets in an addition to a city was inchoate as to unopened streets, and was abrogated as to an unopened street 75 feet wide, where it was fenced 65 feet wide for several years, and has been so maintained by the public and those interested."

It is my opinion that the dedication until accepted was revocable, or so much of it as was not accepted, was revokable at the instance of Bragg or his grantees acting in unison.

Mr. Gravatt or Mr. Neblett will please draw the proper order and send it to me for entry.

With best personal regards, I am

Sincerely,

G. E. MITCHELL, JR.

Filed January 5, 1959.

J. T. W., JR., Clerk.

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page 106 }

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ORDER.

These actions having been consolidated came on to be heard upon the amended petitions and upon the answer of the Highway Commissioner thereto on the 12th day of August, 1958, and all matters of law and of fact being submitted to the court, the court did on said date proceed to hear the evidence *ore tenus* and thereupon the case was continued to August 30, 1958, for argument upon the law and the facts, and the court having taken the case under advisement on said date to further consider its opinion, did on the 24th day of September, 1958, by letter, advise counsel for all parties of its opinion, and the same is filed herewith, marked "Exhibit Court's Letter of Opinion"; and

The court being of the opinion that the Bragg plats of 1909 and 1910 and the deeds referring thereto conveying the lots involved herein constituted a dedication of 60 feet of right-of-way which was revocable until accepted, 45 feet of which right-of-way came from the Bragg property and 15 feet of

which came from the Flippo property, the court doth so adjudge; and

The court being further of the opinion that the public authorities accepted 30 feet of the right-of-way so dedicated, 15 feet of which came from the Flippo property and 15 feet from the Bragg property, doth so adjudge; and

The court being of the opinion that the dedication by the plats of 1909 and 1910, as aforesaid, of the ad-
page 107 } ditional area was withdrawn and revoked under the facts as shown in the evidence in this case before the same was accepted by the public authorities, the court doth so adjudge, order and decree.

And it appearing to the court that Samuel D. May has been duly appointed Commissioner of Highways of the State of Virginia in the place and stead of F. A. Davis, the court doth adjudge, order and decree that the said Samuel D. May, as Commissioner of Highways of the State of Virginia, be made party defendant herein in the place and stead of the said F. A. Davis and that this action shall proceed against the said Samuel D. May as Commissioner of Highways of the State of Virginia.

The court doth further adjudge, order and decree that a writ of mandamus be awarded as prayed for in the amended petition and the defendant, Commissioner of Highways of the State of Virginia, is ordered and directed to make a bona fide effort to acquire by purchase, as provided by law, so much of the property of the petitioners herein as is required for highway purposes lying outside of the 30-foot way herein adjudged to have been dedicated to and accepted by the public, and in event said highway commissioner is unable to acquire said property by purchase, he is ordered and directed to institute and prosecute to a conclusion condemnation proceedings for the acquisition thereof and for the determination of just compensation to the owners thereof for land taken for highway purposes by said commissioner lying outside of the 30-foot way herein adjudged to have been dedicated and accepted by the public, and for a determination of the damages, if any, to the residue of the property of said owners.

And the defendant, Highway Commissioner of the State of Virginia, excepts to the judgment of the court, as hereinabove set forth, and to the action of the court in awarding the petitioners a writ of mandamus, as herein set forth.

And the court doth file herein on this date the stipulation of the parties hereto by counsel which has been
page 108 } signed by the judge of this court and makes the same a part of this record in this case, and pursuant thereto the court doth hereby provide and order that

there shall be filed herein as a part of this record certified copies of the following instruments, to-wit:

A. All of the deeds of conveyance from T. D. Bragg (or his successors in title) into the chains of title of the various petitioners purporting to convey the lots of petitioners involved herein.

B. The two plats of the Bragg residence site and the Flippo plat which are referred to in the aforementioned stipulation.

And further by stipulation of counsel before the court on this date, it is ordered that there shall be filed herein a skeleton abstract tracing the title of the lots which are the subject matter of this suit from the aforesaid conveyances from T. D. Bragg (or his successors in title) to the present petitioners, which abstract upon being filed by the court shall be for the purposes of this suit deemed adequate proof of the transfers herein described.

And the defendant having indicated an intention to appeal, the execution of this order is stayed and suspended for ninety days from this date.

Enter 12/16/58.

G. E. M., JR., Judge.

Seen:

J. SEGAR GRAVATT
Attorney for Petitioners

DON P. BAGWELL
of Counsel for Defendant

* * * * *

page 109 }

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Filed in the Clerk's Office, Jan. 15, 1959.

J. T. WADDILL, JR., Clerk.

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page 110 }

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NOTICE TO APPEAL AND ASSIGNMENT OF ERROR.

In all of the above styled cases which have been combined by an order herein, Samuel D. May, State Highway Commissioner of Virginia files with the Clerk of said court this, his Notice of Appeal and Assignments of Error and notifies the other parties to this combined suit that he will seasonably file a petition for Appeal and Supersedeas to the adverse final judgment entered herein on December 16, 1958, and hereby assigns, and will assign in its petition the following assignments of error, to-wit:

1. The court erred in holding that the dedication of the sixty (60) foot right-of-way involved herewith was revocable.
2. The court erred in holding that said dedication or any part thereof was withdrawn and/or revoked.
3. The court erred in adjudging and ordering that a writ of mandamus be awarded against the defendant herein.
4. The court erred in ordering and directing the defendant to make a *bona fide* effort to acquire by purchase so much of the property of the petitioners herein as is required for highway purposes lying outside of the 30-foot right-of-way herein adjudged to have been dedicated to and accepted by the public.
5. The court erred in ordering and directing the defendant, in the event he is unable to acquire said property by purchase, to institute and prosecute to a conclusion condemnation proceedings for the acquisition thereof and for the determination of just compensation to the owners thereof for land taken for highway purposes by said commissioner lying outside of the 30-foot right-of-way herein adjudged
page 111 } to have been dedicated and accepted by the public, and for a determination of the damages, if any, to the residue of the property of said owners.
6. The court erred in granting any relief to the petitioners herein and in failing to dismiss their petitions.

SAMUEL D. MAY, STATE HIGHWAY COMMISSIONER OF VIRGINIA
By: DON P. BAGWELL
Of Counsel for the Defendant

Francis C. Lee
Ass't Attorney General
Richmond, Virginia; and

Peyton G. Jefferson
Attorney at Law
Lunenburg Court House, Virginia; and

Tuck, Bagwell, and Dillard
Attorneys at Law
Halifax, Virginia

Attorneys for Samuel D. May
State Highway Commisisoner of Virginia

* * * * *

page 3 } Note: Court convenes at 10:00 a.m., August 12, 1958. Thereupon Court and counsel retire to Chambers, where counsel agree upon a certain written stipulation of facts which is filed herein; counsel for the defendant excepts to the ruling of the Court insofar as it in any way limits the requirements of the petitioners in establishing their own record title in this case. Court and counsel then return to the courtroom and the hearing begins as follows:

* * * * *

page 10 } J. W. BLACKBURN,
introduced in behalf of the petitioners, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Neblett:
Q. Mr. Blackburn, will you please state your name, residence, and occupation, sir?

The Court: You will admit his qualifications, will you not, as a civil engineer?
Mr. Jefferson: Yes, sir.

Q. Just your name.
A. J. W. Blackburn, Kenbridge, Virginia, Surveyor.

J. W. Blackburn.

Q. We will stop right there. Mr. Blackburn, how long have you been surveying in and around Victoria, and the town of Victoria?

A. Approximately twelve years.

Q. Are you more or less familiar with the property in that particular area?

A. Yes, sir.

Q. Did you make a survey of the petitioners' property in reference to a plat that you found in the Clerk's Office, the so-called "Bragg Residence Site?"

A. Yes, sir.

page 11 } Q. What did your plat show there in reference to certain property taken by the State Highway Department from the petitioners in this suit? Do you have a copy of it?

A. I have two plats. One before the highway was built, and one after the new highway was built.

Q. Which is the plat that you made before the highway was built, is this the one?

A. This one. That is simply a copy of the old "Bragg Residence Site", with the pavement as it existed at that time shown on the map.

Q. When was it that you made that plat, do you recall, Mr. Blackburn?

A. It was in June, 1956.

Q. Was that before the State Highway began its construction?

A. Yes, sir.

The Court: That was taken from one of the records?

Mr. Neblett: This was taken from the record. We would like to file this as an exhibit.

The Court: We will mark it Exhibit A in order to keep the record straight.

Q. Is this the plat, or would you rather have your copy here?

A. Sir?

page 12 } Q. Is that the plat that you made?

A. In '56, yes, sir. June, '56.

Q. In 1956?

A. Yes, sir.

Q. Did you locate the old county road there at that time?

A. I located the pavement.

Q. The pavement?

J. W. Blackburn.

A. As it existed.
Q. Will you please state—

Mr. Jefferson: Located what?

A. The pavement. The paved area of the road.

Q. Do you recall, how wide was the pavement at that time?
A. Yes, sir. It was 18 to 20 feet.
Q. About how wide was the road from bank to bank?
A. I don't remember exactly, it varied.
Q. Did you also locate the distances and widths of the lots that extended along that old county road?
A. Yes, sir.
Q. How did you locate the road and the lots in reference to monuments and so forth, Mr. Blackburn?
A. This is the same map. It just has some monuments indicated on it. (Taking a duplicate copy of Exhibit A) My first point was at the corner of High Street and Rod Avenue, which was an iron pin.

page 13 } Q. Where is that point?
A. This point—

Mr. Bagwell: This plat he is testifying from should be introduced so that it can be in the file.
Mr. Neblett: You mean this specific one here should be introduced?
Mr. Bagwell: Yes, sir.
The Court: Put Exhibit A at the top of it.

Note: Exhibit A is marked on top of the plat by the witness.

A. At the corner—Do you want verification of those land marks?

Mr. Gravatt: Yes, sir.

A. This was two years ago and I have to refer to my notes. In referring to the iron pins, do you want me to use these letters in here, sir?

Mr. Gravatt: Yes, sir.

A. At the point marked "A"—

J. W. Blackburn.

Q. Do you want to use this one?

A. It's the same I guess. The old iron pin, Mr. Wade Winn, who lives across the street from there, stated to me that he saw the surveyor place the original wooden stakes—

page 14 } Mr. Bagwell: We object, Your Honor, to the testimony as to what somebody told him. It is purely hearsay. If he has the witness he should bring him here.

Mr. Gravatt: We have him. We think it is proper testimony none-the-less.

The Court: I believe it is proper. A surveyor has to go ahead with the history obtained as a doctor would do.

Mr. Bagwell: We except to the ruling of the Court.

The Court: He will make it up by bringing the witness.

A. Mr. Winn stated to me that he removed the wooden stake and placed this iron pin in the same hole.

The Court: The iron pin was there when you went there?

A. Yes, sir. I saw that—I might point out that B, between 6 and 8 on High Street, is a fence posts. Also point C, between lots 8 and 10 on High Street, was a fence post.

Mr. Winn stated that these posts were set at the point where the surveyor set stakes.

Let's see, D, E and F. D—

page 15 } The Court: Let me see. This is High Street you are speaking of, that is not Court Street, is it?

A. No, sir. Court Street is out here. This is Court Street down here.

The Court: I see.

A. Yes, sir. D is an iron pin on the alley back of lots 13 and 15 in block 6 of the "Bragg Residence Site", and E is an iron pin at the corner of the alley and Bragg Avenue.

F is an iron pin at the corner of High Street and Bragg Avenue.

Mr. Howard Bragg stated that his father, now deceased, had shown him these points. These pins were there as being lot corners.

Point G is a rock. This is not very substantiated, but was

thought by local residents to be a corner. They are all land marks in this division, accepted by use and occupancy.

By using these points, lining them up, turning your angle there and measuring the stated distances over, this line was established, which would be what we call the west line of Court Street, as near as I could by using this old plat.

Now this plat is not a direct copy of the plat on record. It is from here, from Bragg Avenue southwest, south. From here it's the same, except there is a difference in this page 16 } angle here. Where is the original plat?

Mr. Gravatt: Lying right over there.

Note: A Deed Book is brought before the witness.

A. This is the rough thing copied out of the court house. See, the original plat shows this practically straight right there. Further land marks that I found would establish this point from—

The Court: You say "this point". That doesn't make very good sense in the record. Could you fix it more definitely so the record will be clearer.

A. (Continuing) I was able to establish the corner of Bragg Avenue and Court Street from a monument found south of Bragg Avenue. We found here, at West Street and Court Avenue, point H, an old buggy axle hub which we dug up and found there. Mr. John Jackson saw me dig this up, and he told me it was there. He will testify that was the corner of Court Street.

It's an iron pin here at I ,which is gone now.

The corner of Mutual Avenue and Court Streets.

These monuments agree very closely for distances. The discrepancy is the angle.

The Court: The angle at Bragg Avenue and Court Streets?

page 17 } A. Yes, sir. The original map shows it straight on across. On the plat marked "A", we have a slight curve and then going that way. Is there anything else?

Q. Do those land marks, A, B, C, D, E, F and G agree so far as the angles and distances of the plat of 1910?

A. Very closely.

J. W. Blackburn.

Q. Now, Mr. Blackburn—

The Court: Which lots are we interested in here now? These lots here?

Mr. Gravatt: We are interested in every lot, Judge.

A. Except that one.

The Court: Except that one?

A. This is Mr. Worsham's.

The Court: We are interested in all these others across here?

Mr. Gravatt: All the way out to the end of sub-division lots shown on here. All the way from here back to here.

Q. Mr. Blackburn, how do the streets and alleys correspond to the occupancy of the different parties there so far as the lots are concerned in reference to that plat?

A. Well, the street and alleys back here correspond to the property as I established the line of Court Street.

page 18 } Q. Do the fences and the hedges and so forth indicate the streets and alleys as you have indicated them here in these plats?

A. Yes, sir, with reference to High Street and the alley between High and Court.

Q. Are most of these streets and alleys open here?

A. This street is not open all the way. It has been open, but it's grown up in this bottom.

Q. What street is that?

A. High Street.

Q. How about the alley here in blocks 5 and 7, is that open?

A. Part of the way.

Q. Now this, what is this avenue here?

A. Rod.

Q. Rod Avenue. How far does that Rod Avenue extend back on west, so to speak, do you recall?

A. Well, back to Mr. Winn's house at High Street, the corner of High and Rod Avenue, but it's not really open, it's just a driveway.

Q. This other street, what is it?

A. Shade Avenue. I don't believe that is open.

Mr. Bagwell: Your Honor, I don't want to inconvenience

anyone at all, but I am going to need these other
page 19 } plats to cross examine this surveyor.

The Court: Which ones are they?

Mr. Bagwell: The ones in the Clerk's Office.

The Court: It is after 12 o'clock. We will let them get through and then we will take a recess until 1 o'clock.

Are you all through?

Mr. Gravatt: No, sir.

Mr. Bagwell: I thought they were. Excuse me.

By Mr. Neblett: (Continuing)

Q. Mr. Blackburn, I believe you completed another survey?

A. Yes, sir.

Q. When was that survey made?

A. April, 1958.

Q. Was that after this construction work had been completed?

A. Yes, sir.

Q. What property, if any, does that plat show that the Highway Department took of the petitioners in this case?

The Court: We will make that Exhibit B. That will take care of the record.

page 20 } Note: The above mentioned plat is now marked Exhibit B by the witness.

Mr. Jefferson: Before he answers your question, you asked him what property the plat shows that the Highway Department took of the petitioners, which is a conclusion. I think he should state the facts upon which he *basis* this plat.

The Court: He may show what he considered.

Q. Just state the facts there so far as the property of the petitioners are concerned.

A. The boundary of Court Street was established in the same manner as explained in this Exhibit A. The highway right-of-way line was taken from their markers, right-of-way monuments. This dotted line represents the new highway line. This long mark and two dots. This solid line represents the original, according to my thinking, line of Court Street. Do you want me to enumerate what is taken here?

Q. Yes, sir, I wish you would.

J. W. Blackburn.

A. Block 7, lot 9—Just enumerate the lots?

Mr. Gravatt: That's right.

A. Lot 11, 13, 15; Block No. 5: Lots 1, 3, 5, 7, 9, 11, 13, and 15; Section marked reserved; Block No. 1: Lots 1, 3, 5, and 7.

The Court: What is that 9 on there, which is page 21 } not included, is that the Worsham property?

A. Yes, sir, that is Mr. Worsham's property.
Q. State the extent it extended into those lots, Mr. Blackburn, if you don't mind.
A. Are you going to put all of this in the record?
Q. Yes, sir.
A. The northern line—

Mr. Gravatt: I do not think it is necessary to go into such detail as to how much of each lot is taken.
The Court: It can be worked out from the plat.
Mr. Gravatt: That's right.

A. I thought I would explain this, Judge—

The Court: We can agree on that later on, anyway. We can get that straight. Does it make any difference to the defendant, Mr. Bagwell?
Mr. Bagwell: I do not see a bit of need of it at all at this point. We are wasting time. If the plat is correct it shows that we are taking something along the given lots, and the plat shows which ones, and we can look at it any time and see.

By Mr. Neblett: (Continuing)
Q. I think you testified down to West Avenue page 22 } here, Mr. Blackburn.
A. No, I got all the way to Lot 7.
Q. This West Avenue, is that open?
A. Yes, sir.
Q. This Mutual Avenue, is that open?
A. No, sir.
Q. Where is the extent of the original T. D. Bragg property so far as Mutual Avenue is concerned?
A. It's the south line of Mutual Avenue.

J. W. Blackburn.

Q. Is Mutual Avenue actually in existence?
A. No, sir.
Q. Here is "RW" monument here, what does that refer to?
A. Right-of-way monument set by the Highway Department.
Q. How many right-of-way monuments are there on that plat?
A. Let's see, I found one, two, three, four, five, and this was the right-of-way stake. The monument was on the other side of the road. It hadn't been set over there. But the stake was there.
Q. Mr. Blackburn, about how far is this so-called Court Street, or old county road, from the corporate limits of the town of Victoria?
A. Do you mean at what point?
Q. Here at the furtherest point, Mutual Avenue.
page 23 } A. It's not very far. I can't tell you off hand.
Q. It is some distance there, is it not, from Mutual Avenue and the town, corporate limits of the town of Victoria?
A. Yes, sir.
Q. Do you know whether or not the corporate limits extend down on the south side of this old county road?
A. The corporate limits? From the corporate limits?
Q. Yes, sir.
A. I do not, no, sir.

Mr. Bagwell: Did I understand him to say, to indicate all this lies out of the corporate limits?

A. I think so.

The Court: That was my understanding.

Q. Mr. Blackburn, did Mr. T. D. Bragg own sufficient land, as shown by these plats, to dedicate a 60 foot right-of-way?
A. No, sir.

Mr. Bagwell: Let me make sure I understand that question.

A. No, sir. I couldn't say, knowing that.

J. W. Blackburn.

Mr. Bagwell: Excuse me, let me make sure I understand, the witness retracted the answer?

A. I retracted an answer.

page 24 } By Mr. Gravatt:

Q. Well what did your survey show there, Mr. Blackburn, in reference to the width of this original—

The Court: If you have any question, Mr. Gravatt, it is perfectly all right. I do not think it makes any difference.

Mr. Bagwell: We have no objection.

By Mr. Gravatt: (Continuing)

Q. I want to get this straight, Mr. Blackburn: According to your experiences and based upon the land marks that you have testified to here, are you satisfied that you have correctly located the lots as shown on these two plats, the lots in question?

A. Yes, sir.

Q. If those lots are correctly located according to the land marks that you found, was there sufficient land in front of those lots owned by Mr. Bragg to dedicate a 60 foot street?

A. I don't know what Mr. Bragg owned back at that time, but there was not sufficient land without encroaching on the property across the highway.

Q. You could not get a 60 foot wide street without encroaching upon the lots in the manner that you have indicated on the plat made April, 1958?

A. Yes, sir.

page 25 } Q. Is that correct?

A. Correct.

Q. This plat, and I believe the plats that have been referred to as having been recorded in the Clerk's Office by Mr. Bragg, indicates a street called Mutual Avenue. What is the width shown on the Bragg plat of Mutual Avenue, that is the plat which is supposed to have been recorded in the Clerk's Office, what is the width of Mutual Avenue?

A. 50 feet.

Q. Did Mr. Bragg own that 50 feet at all?

A. No, sir.

Q. Who did own it?

A. Mr. Willie Bragg.

Q. So that Mr. T. D. Bragg undertook to dedicate on these

old plats a strip of land called Mutual Avenue that he did not own?

A. Yes, sir.

Q. If that was his intention in the first place?

A. Yes, sir.

Q. How did the use as indicated by the establishment of fences, the building of dwelling houses, out-buildings, hedges, and the like, conform to the lines of the lots as set out on the plat marked Exhibit A?

A. I think I answered that question once. They did conform.

page 26 }

* * * * *

Q. Mr. Blackburn, I believe you spoke of a designation there as "I" on Exhibit A—

A. Yes, sir.

Q. —as having been marked by an old iron pin?

page 27 } A. That is correct.

Q. Did you ever see that pin there on any occasion?

A. Yes, sir.

Q. Had you ever made any surveys with reference to that pin as to any lots in that particular area?

A. Yes, sir.

Q. What became of that pin, have you any idea?

A. I don't know. I guess it was disturbed during the construction of the new highway.

Q. Has it been seen since the new construction has taken place?

A. Not to my knowledge.

Q. Do you recall when was it, or about when was it that you used it for survey?

A. It was quite a number of years ago, certainly six, when I surveyed Mr. Worsham's property and two lots just to the west of there, I believe it was.

CROSS EXAMINATION.

By Mr. Bagwell:

Q. Will you open your map and look at it in your testimony? Now, Mr. Blackburn, this pin that you have just referred to, so I will make sure I understand what you are

J. W. Blackburn.

talking about, show me where that one is.

page 28 } A. (Showing point on plat).

Q. This pin is the point you have marked as "I", on the corner of what is shown as Lot No. 9, here, is that correct?

A. Mutual Avenue. Yes, sir.

Q. When did you locate that?

A. I didn't locate it. I found it.

Q. When did you find it?

A. I found it in June, '56, and also prior to that. I don't know how many years.

Q. When you say you didn't locate it, you mean you didn't locate it with any reference to any plat or anything?

A. The pin was there. Yes, sir. That's right.

Q. You located it to be at this very point that you put with reference to this plat here?

A. Yes, sir. I checked these distances down here to that, and they checked within a few inches of the stated distances.

Q. It was at the, which corner would that be, the south?

A. Southeast.

Q. Southeast corner of Lot No. 9 in Block No. 1, as shown on this plat?

A. No, it would be the northeast corner, wouldn't it? North is this way.

page 29 } Q. In any event—Well, it would be the northeast, I guess. That is correct. That's right, sir.

A. Yes, sir.

Q. This Block No. 1, what plat did you take that from?

A. This came from the plat of 1910.

Q. There were two plats, were there not?

A. Yes, sir.

Q. Did this come from the first one, or the second one?

A. The second one.

Q. Are you sure of that?

A. I think so. Do you have the plats here? We stipulated that this part wasn't a copy, before, Mr. Bagwell.

Q. This wasn't, this part wasn't a copy of the second plat?

A. It couldn't be on account of your angle here.

Q. But it was a copy of the first plat, was it not?

A. The angles don't look the same.

Mr. Gravatt: Where is the other plat?

J. W. Blackburn.

Mr. Bagwell: I will put it on in course of time. It is right over here. I am examining the witness.

Q. Do I understand you to state that this marker
page 30 } right here represents the same location as this point here?

A. Yes, sir.

Q. Why didn't you use this plat here?

A. I didn't use any plat for this part. I used the measurements, and that is the only thing I used.

Q. Do you know whether that marker was put there with reference to the first survey, under the first plat, or whether it was put there with reference to the second plat?

A. I don't know who put it there.

Q. You do not know with reference to which survey it was put there, do you?

A. No, sir.

Q. Are these two surveys consistent wtih each other?

A. No, sir.

Q. Did you know that when the second survey was made that one lot had to be left out of this area here by the subdivider because there is plainly not enough allowance there made for Mutual Avenue?

A. Mutual Avenue is on both of them, isn't it?

Q. Did you know there is one less lot on the second plat than there is on the first?

A. No, sir. I don't know whether I knew it at that time. I don't know it right now.

Q. Well, let's see. (Counsel refers to Deed
page 31 } Book)

Q. I ask you if there isn't one less lot in your plat here, and in the second plat that was recorded with reference to the Bragg property, than there is in the original plat of the Bragg property that is dated 1909?

A. That is correct.

Q. Then apparently between the first plat and the second plat there was an adjustment of something like 50 feet with reference to where this corner was, and with reference to where Mutual Avenue was, was there not?

A. Yes, sir.

Q. Apparently in the second survey, that you say yours corresponds with here, insofar as frontage is concerned, the line was drawn back actually 50 feet over from where it was in the first survey to give the necessary allowance for Mutual Avenue?

J. W. Blackburn.

A. There is still no allowance for it.
Q. But it did drop back one lot, did it not?
A. Yes, sir.
Q. And the dropping back of one lot would tend to pull Mutual Avenue over 50 feet, would it not?
A. Yes, sir.
Q. You do not know whether the stake that you found was placed there in the course of the first survey or the second survey, or at what time it was placed there, is that
page 32 } right?
A. That is correct.
Q. All you know it was there about six years ago?
A. That's right.
Q. It is my understanding that substantially this area shown on your Exhibit A, extending, we will say, southward from Block 1 does correspond to the 1910 plat that you refer to as recorded in Deed Book 55 page 382?
A. I state from the south line of Bragg Avenue.
Q. From the south line of Bragg Avenue. The reason the rest of it did not correspond is that you found the angulation of the street was not correct, is that right?
A. Yes, sir.
Q. Let's deal now with these blocks here with this property insofar as it's—The difference does not consist of any difference in the outer boundaries, does it?
A. No, sir.
Q. So I would assume that your plat insofar as outer-boundary is concerned purports to show what the 1910 plat shows?
A. Yes, sir.
Q. You did not run this outer boundary, did you, on the ground, did you, Mr. Blackburn?
A. No, sir.
Q. You did not run it?
A. I ran this outer boundary.
page 33 } Q. You ran the boundary from around—
A. 7 and 5.
Q. Down High Street then, and—
A. From here. I didn't run that part of it.
Q. But you made no effort to go around the outer boundary of the property involved?
A. Well, this thing goes way on back there, doesn't it?
Q. Well, I just asked you.
A. That's right.
Q. What you did, in fact, was to take this 1910 plat and

you made a copy of it from the record, and then you attempted to go and tie in with these certain points that you have marked, this A, B, C, as letters, here on this plat?

A. I did not attempt to. I did it.

Q. You did?

A. Yes, sir.

Q. You tied it in there with this A, B, C, and D, and so forth?

A. Uh huh, down to here.

Q. What, if any, points have you found on the highway, Mr. Blackburn, besides this "I" that you have testified to over there in Block 1?

A. Nothing but this "H."

page 34 Q. There were no other land marks over in this area here?

A. No, sir, I didn't find any land marks there on the front.

Q. Except what you have specifically pointed out. Now these, these that you have marked there on this plat, they were partly iron pins and partly posts?

A. Yes, sir.

Q. You have, yourself, no knowledge as to when any of them were put there?

A. No, sir.

Q. Or by whom?

A. Except by hearsay.

Q. You have no actual knowledge as to which plat they may have been placed with reference to whether it was the 1910 plat, in any instance, or the 1909 plat, do you?

A. It seems to me when the 1909 plat, didn't that show a 60 foot street? I believe it did. High Street is 60 feet wide, which would make me—This is 50 feet wide. That would make me think that these stakes were set with reference to this being a 50 foot street. That's the only indication I have that these were set according to the 1910 plat.

Q. The only indication that you have that these markers relate in reference to the 1910 plat is that as these lines are laid out here there is a 50 foot distance between

page 35 the F point and the continuation of the line that is on A, B, and C points?

A. That's right.

Q. Your plat, all of your platting and all of your calculations have been done in an effort to establish and reconcile the 1910 plat and not the 1909 plat, is that correct?

A. It seemed to me from the land marks existing that you

J. W. Blackburn.

couldn't possibly reconcile the 1909 plat. These lots are laid off on an angle, if I remember correctly. There is no way in the world that you could reconcile the use of occupancy of the cater-bias lots with the way the land is actually used.

Q. In other words, the two surveys cannot be reconciled, is that not correct?

A. That's right.

Q. If you would have used one, it is impossible to have used the other and establish your lines?

A. That is correct.

Q. All the building on these lots, and all improvements, do appear to front approximately perpendicular and parallel with Court Street in conformity with the later plat instead of on an angle in conformity with the prior plat, isn't that correct?

A. That is correct, yes, sir.

page 36 } Q. You did know that part of the owners actually acquired their land under conveyance of the first plat rather than under the second, did you know that when you made your survey?

A. I don't believe I knew it. I have heard it since.

Q. There is nothing on the physical ground that would indicate any following or observance of the first plat?

A. Insofar as these two plots are concerned, not that I could see.

Q. What about in other places?

A. It's just down here. I don't know about that.

Q. I notice here that you do not have any courses or distances on here.

A. This was simply a copy of the way it was in the book.

Q. It is simply a copy of it, the plat, in the Deed Book, wherein you have placed it on paper and have endeavored to locate the front of it by tying in with points that you found, which you took to be corners, that were placed there at some previous time?

A. That is correct.

Q. The way you attempted to locate the front line was by locating these back points and then projecting your front line the distances called for in the plat of 1910?

A. That is correct.

page 37 } Q. In all of this, all of these lots, this area here: Blocks 5, 6, 7, and 8, are simply lifted precisely off of the 1910 plat?

A. That's right.

Q. Without surveying on your part?

J. W. Blackburn.

A. That's right. Yes, they are just on there. These were surveyed.

Q. When you lifted all of this off the plat, why didn't you lift the representation of the 60 foot street as is shown on those plats?

A. Because I didn't think it was there.

Q. This right here, what we have before us is the plat you are referring to as taking this from by drawing from it, isn't that right?

A. (Nodding head affirmatively.)

Q. Blocks 5, 6, 7 and 8 are these blocks 5, 6, 7 and 8 here, isn't that right?

A. Yes, sir.

Q. This plat does show Court Street, which is shown by figures, to be 60 feet, isn't that right?

A. That is correct.

Q. But you did not show that on your map?

A. No, sir.

Q. Also the other plat, the 1909 plat also shows a 60 foot right-of-way on which these lots front, does it not?

page 38 } A. I believe so.

Q. Mr. Blackburn, you have given no courses of distances, or figures at all with reference to what you show as the pavement of Court Street, or Route 40 and 49, on here, have you?

A. No, sir.

Q. What you did you located these blocks that you took off of the record with reference to these points and projected the front end so that the fronts of blocks 5 and 7 are purely speculative and altogether arrived at by calculating distances from these back points, isn't that right?

A. No, sir.

Q. How were they arrived at?

A. They are speculative only in that we were speculating at these points. If these points are good, they are not speculative at all.

Q. I understand, but that is my question: They are speculative to the extent that they are projected for the distances given by the 1910 plat.

A. That is correct. Yes, sir.

Q. In other words, if this was, this 1910 plat, if this is the correct point, if that is the correct location of these lots, then by speculating it and by proper draftsmanship, the front point would be here?

J. W. Blackburn.

A. Yes, sir.

page 39 } Q. There is nothing here along the area here to indicate the front line, is there, along the front of blocks 5 and 7?

A. No, sir.

Q. This pavement that you have shown here, I believe that is not to scale, is it?

A. Yes, sir.

Q. You say 18 to 25 feet. It looks like about 30 feet to me here.

A. If that's not 20 feet, what is it?

Q. I will not argue with you, Mr. Blackburn.

A. I am not arguing with you. You seem to be quibbling.

Q. Is this a 50 foot lot here?

A. Yes, sir.

Q. Isn't that road here at least half, or a little more than half of this?

A. I don't know. The scale is one inch equals one hundred feet. Each one of these little marks is ten feet (Indicating on scale). That don't exactly scale true, but, see, the blue printing can change that. Scaling it exactly 50, and this scales 20, the pavement. According to my notes it runs anywhere from 18, 19, 20, to 22 feet.

Q. Is this location and the course of this pavement, is it precisely and exactly located on this map, or is

page 40 } this an estimated course and distances?

A. This was located by actual measurement. The line of this street was established from these various land marks. The instrument was set up here, a 90° angle was turned, and we set this point. Then we set a stake at each one of these and measured the distance from each one of those stakes to the edge of the highway.

By Mr. Gravatt:

Q. I would like to get the answer of that question so that any person reading your answer can understand what you said with relation to this plat. You said you set your instrument up here and took measurements back here.

A. That's right.

Q. Identify the point you set your instrument up, and what measurements you took, and where you put your stakes, and so forth.

A. We established, I believe it was a center line of High Street by using the monuments referred to previously. Then by turning 90° angle, sighting back toward Rod Avenue,

measuring the proper distances as given by the 1910 plat, established the corner of Bragg Avenue and Court Street. Thence by setting up at that point, turning another 90° angle and measuring off the stated lot distances for blocks 7 and 5, we set stakes along this line until we got to Rod Avenue.

Q. What line?

page 41 } A. Along the line of Court Street. Then to check our figures, we checked back from Rod Avenue and Court Street to he corner of Rod Avenue and High Street. Then we located the pavement by measuring from these stakes at each lot and thereby—

Q. That is the stakes on the front down Court Street?

A. Yes. The front line of Court Street.

By Mr. Bagwell: (Continuing)

Q. Could you identify the side lines of these properties fronting on Court Street, were the side lines subject to easy identification, or not?

A. Not all the way. No, sir. I think there are some fences in there.

Q. Are the side lines such as you would find them consistent with this plat, or are there some inconsistencies?

A. No, sir, not that I know.

Q. You do not know whether it was consistent?

A. It has been two years since I went into that.

Q. I understand. I just want to get it clear: You will not state definitely whether or not the side lines are consistent with this plat?

A. No, sir.

Q. Could it be that some of them are consistent

page 42 } with this plat, and some of the other lines are consistent with the earlier 1909 plat?

A. No, sir.

Q. I understand you mean you couldn't say?

A. I know they are not. You asked me awhile ago if they were all more or less parallel, or perpendicular to this layout.

Q. If they all more or less appeared to be?

A. Yes, sir.

Q. Now I wish to ask you this, Mr. Blackburn: We have here before us the 1909 plat as recorded. Referring specifically to block 5 here of the 1909 plat, which I believe corresponds generally in location to block 5 as shown here on this plat, does it not?

A. Yes, sir.

J. W. Blackburn.

Q. These lots are 200 feet deep as shown on this plat. Don't they have the same depth, actually, as these?

A. That is correct.

Q. But these lots on the 1909 plat are laid off—what would you call it, at not at a right 90° angle to Court Street, but whereas the 1910 plat is.

A. That is correct.

Q. If a party purchased a lot under the 1909 plat, and the rear corners of the lots were located correctly under the 1909 plat at the rear, the rear corners, while they page 43 } would be 200 feet from the front corner on Court Street, they would not be 200 feet perpendicularly from Court Street, would they?

A. That is correct.

Q. Therefore, if the property owner purchased under the 1909 plat, and his lots were correctly located at the rear, and he knew where they were at the rear, and he later held to those rear lines but observed, as we have indicated the lots are being observed, perpendicular lines to Court Street, in order to get his 200 feet, he would have to go out into Court Street some distance, would he not?

A. Yes, sir. Not very far, I don't think.

Q. Wouldn't it be about 25 or 30 feet?

A. I don't know what the angle is.

Q. Take your scale. I believe it is 150 feet to the inch. Would you take your scale for us, Mr. Blackburn, and will you take a corner down right there and switch it from the angle it is to perpendicular and see how far if the man got his 200 feet would carry him into Court Street.

A. What scale is this thing?

The Court: That is a blue print. I don't know if it is actually to scale or not.

A. That scales almost a hundred. 15 feet.

Q. To make sure we have it clear: If a property owner having his rear corner properly located and identi- page 44 } fied and sold to him under the 1909 plat, had so moved his side lines from the established rear corner as to make it perpendicular to Court Street, to have gotten the 200 feet he would have gone approximately 15 feet into Church Street as shown on this plat?

A. Approximately.

Q. And, of course, you have no way of knowing whether such a mistake was ever made or not.

J. W. Blackburn.

A. No, sir. Except from these other monuments. Of course they would have to be changed, too.

Q. I believe that it is necessarily true that if certain conveyances were made with reference to the old plat, with reference to the 1909 plat, and later on the conveyances were made with reference to the 1910 plat, that the properties involved would have the same common front line to Court Street, but they would have different side lines, and they would have different rear lines, would they not?

A. I don't know.

Q. Well, let's see now. It seems to me—Here are the two plats. They both show the 60 foot Court Street, there is no difference in the two plats with reference to the frontage line, is there? They are both laid out as following Court Street, are they not, sir?

A. There would be a difference in the width of them on the premise of the lots being 50 feet in width on
page 45 } askew and 50 feet in width square across.

Q. I understand there would be a difference in actual true width, but there would be no difference in the location of the line, of the front line, would there be?

A. I don't know. I don't know what they did. I don't see how anyone would know.

Q. In other words, isn't it true that the only consistency with reference to these two plats, as relates to these frontage lots that we are concerned with, is that the two plats are consistent in that they have the same southerly boundary on Court Street, but that all boundaries with each other are inconsistent on the two separate plats?

A. As far as the plats show, yes.

Q. That means that if part of the lot were conveyed with reference to one plat and part to another, there is bound to be an over-hang of the side lines where one goes on an angle and the other goes perpendicular?

A. Yes, sir.

Q. There is also bound to be a varying in the depth at the rear?

A. Yes, sir.

Q. The true depth. You have described certain markers there. You have described all the markers that you found in the neighborhood that you could specifically identify, have you not?
page 46 } A. Yes, sir.

Q. What, if any, fences are there, Mr. Blackburn? You mentioned some fences.

J. W. Blackburn.

A. There is a fence here on High Street, or part of a fence.

Q. Show me where it is.

A. I believe it is right here. I don't remember.

Q. Could you, as best you can, mark with your pencil where it is so that we can identify it?

A. I don't believe so. I remember these two posts were here, but I haven't looked at that since, really to look at it, since '56.

Q. Posts B and C?

A. Yes, sir.

Q. You have an impression of a small piece of fencing somewhere with reference to them?

A. Yes, sir.

Q. That is the only fencing that you know about?

A. No, sir. There is some more fence, I think.

Q. Can you tell us where?

A. No, sir.

Q. Do you know approximately where? Approximately how much?

A. No, sir.

Q. Let's turn to your other plat (Exhibit B).

page 47 } Q. Mr. Blackburn, I am referring to the plat that has been introduced as Exhibit B. I just want to make sure we correctly understand it. You have testified how you went about making up your Exhibit A. Now, Exhibit B involves nothing other than superimposing an enlargement of the front lots on Exhibit A, and the right-of-way line as taken by the Highway Department, it isn't—isn't that simply what it is, and nothing else?

A. Yes, sir. Of course it was measured to locate that highway.

Q. Yes, sir, I understand it. But this, let us say, is a survey of the present course of the highway as shown by the highway markers?

A. That's right.

Q. Then you have related to that this plat A, as you prepared it and as you introduced, and as you related it?

A. Yes, sir.

Q. This Court Street you have shown here is 60 feet; these lines that you have prepared are intended to show nothing except where the highway markers are, indicating that is presently being taken and used by the Highway Department?

A. That is correct, yes, sir. This dotted line.

J. W. Blackburn.

Q. This line here, showing the north side of this present street as it is laid out, that line also includes all
page 48 } of the construction work, apparently, that was done by the Highway Department, does it not?

A. I don't know.

Q. You do not have any evidence of the Highway Department doing any construction work beyond that line, do you?

A. No, sir.

Q. Then we will, just for the time being and for the sake of convenience will assume that. Now, in checking this, you didn't see any indication that this line here extends into and includes any buildings or other improvements that have been built or used or occupied by the property owners, did you?

A. No, sir.

Q. It is my understanding that your testimony was that this plat A, that by going back and finding these points that you have located at the rear of the property and by moving forward, you did not show any 60 foot street, or roadway, because, I believe, in your testimony there was not sufficient land to dedicate 60 feet without encroaching on the property of the Flippo property across the street.

A. Unless the Flippo property previously infringed upon the highway. Of course I don't know that.

Q. Do I understand that if there is a 60 foot right-of-way here, would that 60 foot right-of-way include the
page 49 } area shown here at Routes 40 and 49?

A. I don't understand your question, exactly.

Q. My understanding is that you say you did not put a 60 foot street here, you did not show it simply because you couldn't find the land to put it on.

A. Approaching from here to here.

Q. What I am getting at is: If you say you didn't find the 60 feet, but if you would take this as a 60 foot street here, if the street were 60 feet, then would it be enough to include the improvements that have been put there by the Highway Department in what is now being claimed as their highway?

A. No, sir.

Q. Then for you to know that, I assume that you have located the boundary on the south, the boundary between Flippo and Bragg?

A. No, sir. I misunderstood your question. I thought you meant that there was room as this was put on there, that there was room without encroaching on these lots or your right-of-way line. I did not take anything on this side of the

J. W. Blackburn.

road except one monument, and a stake was there. I located this line from the stake markers in the center line of the road between the markers.

Q. Did you make any effort to locate the boundary line between Flippo and Bragg?

page 50 } A. That was the road, the boundary line between Flippo and Bragg?

Q. I am just not sure whether you are asking me or testifying.

A. I am asking you. I don't know anything about Flippo.

Q. The Flippo property is the property that is across the street, isn't that right?

A. Yes, sir, I have heard so.

Q. I assume that in doing this work that you did endeavor to locate that line, did you not?

A. No, sir.

Q. Well, now, let me ask you this: If, in your surveying, Mr. Blackburn, what you were basically trying to do was establish the front line of these lots fronting on Court Street, was it not?

A. Yes, sir.

Q. The basic problem in going there was to endeavor to locate the boundary between these lots and Court Street, isn't that right?

A. Yes, sir.

Q. And the two plats that you found in the records, both of which showed a 60 foot Court Street, and all of these lots front on Court Street—

A. Yes, sir.

page 51 } Q. You state that you went and measured from some back points that you found in the middle of the survey and went forward to locate the street. Didn't you make some effort to locate the southern boundary, and then measure back to find out where the lots would come?

A. The road was an old county road for years and years, and I knew that was not the way to get at it. If we could not get it from good points over here, then I might just as well give up.

Q. Here you did find this Court Street, and you found this pavement here. Did you make any effort to measure from the center of this pavement, to go back and see where your 60 feet would carry you?

A. That is self-evident, isn't it?

Q. That would carry you into the sub-division?

A. That's right.

J. W. Blackburn.

Q. You disregarded that you located—You figured from your back and let the storage fall into the street?

A. No, sir. I used land marks, which I was taught should take first place—

Q. You didn't use your land marks for this, did you?

A. That is a shifting land mark.

Q. This is a shifting land mark?

A. Since 1910 that road has moved and slipped
page 52 } around, ditches widened, mud holes—

Q. The back land marks shifted right much, too, when they were put on one plat in one place one year, and another plat showed them in another place in another year, didn't they?

A. I do not know.

Q. So you made no effort then to calculate from the southern boundary backwards to locate the lines of the lots there?

A. You might say I made no effort, but I knew from what I done where that would throw it from the road.

Q. In any event, you didn't do it that way, did you.

A. No, sir.

Q. You have your calculations to offer based on that. You did know that the property across the road from it was property that is shown on the Flippo Development, didn't you?

A. Yes, sir. I had surveyed some of the property across the road.

Q. You surveyed some of the property in the Flippo Development?

A. A number of years ago.

Q. How many years ago?

A. Six or seven.

page 53 } Q. I show you the plat of the E. J. Flippo farm, recorded in Plat Book 1, page 115, and ask you if you gave any consideration to that?

A. I have looked at it.

Q. You knew this Bragg property that we are concerned with here lies generally opposite blocks 1 and 2, or 1 and part of block 2 of the Flippo land, didn't you?

Mr. Gravatt: Which lots are you referring to on the plat, Mr. Bagwell?

Q. I asked you this question that you did know, didn't you, you stated you surveyed—

J. W. Blackburn.

A. I surveyed land across the road there. I don't know whether it was in this addition or not.

Q. You did know that generally this Bragg land lies within the general area that I am designating here, I believe part of the lots 14 and 13, as shown on this plat?

A. Those lots shown on this plat?

Q. I was endeavoring to say lots 13 and 14, I think, are a part of the Bragg land. Maybe not on yours, but on the bigger plat from which you took this. In any event, you knew, understood, the Flippo property was across from our property?

A. Yes.

Q. Did you concern yourself with this plat in making your survey?

page 54 } A. No, sir.

Q. Did you know that this Flippo map showed that as you come northerly along the roadway into a part, the part opposite a portion of block 2, that the roadway, or street, is shown to widen from 30 feet to 60 feet?

A. Does it say so?

Q. Can you scale it?

A. I can as the last resort. I know that it widens.

Q. In other words you say that it widens to approximately 60 feet? I am not trying to trap you on that. It is approximately 30 feet here and approximately 60 feet here?

A. Yes, sir.

Q. According to this platting, did you know that until you reached the point of widening that there appears to be a 50 foot contribution to each side of the property, and then when you come to the point of widening that the plat shows a 15 foot contribution to 60 foot right-of-way by Flippo and 45 foot, approximately, contribution to the right-of-way by Bragg. That is what the map shows, the Flippo map.

A. Yes, sir.

Q. If this map is correct, then the southern boundary of these lots in question at the place where they front on Court Street would be a point 45 feet from the original

page 55 } center line between the Bragg and the Flippo property, wouldn't they?

A. I don't know.

Q. Well, Mr. Blackburn—

A. I will agree that if the map is right and the road was right exactly at that point, then you are correct.

Q. If this map here is correct, then in order to properly find the boundary line that we are considering here, all

you have to do is locate the correct Flippo-Bragg boundary, measure 45 feet in a northerly direction, and you have the boundary line, wouldn't that be correct, sir?

A. Assuming this map is correctly right.

Q. Have you made any effort to test it to see how it works out?

A. I have surveyed by this map, I think. I don't know where I am. Who lives where?

Q. Have you found anything to prove that this map is not correct?

A. That is in dispute up there. You have a dispute up there.

Q. Dispute? Where?

A. I can't think of the man's name.

Mr. Jefferson: Glover and Anderson.

Q. Does he own this property?

Mr. Jefferson: I don't think so. Norman Neb-
page 56 } lett owns this lot, I think, in between that. That does not include the Glover-Anderson property. That is my understanding of it.

Q. My understanding is that in locating these lots as you have located them, that you have made no effort to definitely establish the southern boundary, the original boundary, of the Bragg property, either by an outer survey of the Bragg property itself, or by a survey of the adjoining Flippo property itself.

A. That is correct.

Q. And that the only way that you arrived at it was by these points A, B, C and so forth that you designated on there and projecting therefrom upon the theory that the 1910 lines are the correct lines?

A. Yes, sir.

Q. Your answer was yes, was it not, sir?

A. That's right, yes, sir.

Q. Mr. Blackburn, I ask you if you will take the center line of the pavement as it exists on plat "A", which is the original pavement back before 1956—

A. Uh huh.

Q. —if you would take the center line of that and project another line exactly 45 feet in a northerly direction from it and parallel to it, if that would not include all of the land

J. W. Blackburn.

that you have shown here as new highway right-
page 57 } of-way line ascertained by these monuments?
A. Yes, sir, I think it would.

Mr. Bagwell: Your Honor, I intended to call this to your attention: I am doing everything I can to take the load off Mr. Jefferson in this case. I am sticking my neck into it. Sometimes I don't have complete familiarity. I will go on examining all the witnesses insofar as I can, and if I leave out any of the facts, Mr. Jefferson may have one or two questions he will want to ask. Do you mind if we proceed in that manner?

The Court: That is perfectly all right.

Mr. Jefferson: There are one or two questions I wanted to ask him.

By Mr. Jefferson:

Q. Mr. Blackburn, right across Rod Avenue, right on this corner, is what is known as the Beach property, are you familiar with that?

A. Yes, sir.

Q. Did you check from back here on these points the distances to see where it came to on the Beach property?

A. Not on that side. I checked to here, Mr. Jefferson.

Q. Do you recall a hedge row there on the Beach property?
page 58 } A. Yes, sir.
Q. You didn't check to see whether that was the property line according to your measurement from these back points?

A. I belive I did check there, but I couldn't be certain. I couldn't be certain, no, sir.

Q. I think you recall you made a plat for Rudy Johnson there at the corner across that road there in about 1951, this plat will remind you of it.

A. Yes, sir.

Q. I think this will remind you of it.

A. That's the corner property.

Q. That is it, isn't it?

A. Yes, sir.

Q. On this plat you did locate a point here on the south side of Court Street?

A. Yes, sir. Our property is right up here, isn't it?

Q. What? The Johnson property?

A. The other property, this Bragg site.

J. W. Blackburn.

Q. The Bragg site is this right across here. All across Rod Avenue here to—

A. Mutual Avenue.

Q. Mutual Avenue is below here. This is Roanoke Avenue, Mutual Avenue is a little to the north.

page 59 } A. It was on the south.

Q. I mean toward Victoria.

A. I was looking this way.

Q. No, Roanoke Avenue is right on the line of this property. In here is Glover C. Anderson, and Riggins, and the other property. Right over here, along in here, somewhere, is the reserved three acres of the Bragg Residence Site, a little beyond this Johnson line, or maybe right in there.

Mr. Jefferson: That is all I have.

The Court: Mr. Bagwell, do you have any more?

Mr. Bagwell: Yes, sir.

By Mr. Bagwell: (Continuing)

Q. These points, A, B, C, D, and so forth, are they things we, or someone for us, can readily find if we looked? Do you have them flagged in any way now?

A. No, sir.

Q. *They* are some iron pins in the ground?

A. Yes, sir.

Q. And some of them are posts?

A. Yes, sir. Two posts.

Q. Just from the point of being able to identify them now and being able to go and find them to check from them, would you advise us who is there that could point out these particular points so as to save time?

page 60 } A. Well, I can point them out, Mr. Winn can point them out. I expect Mr. Bragg can point them out.

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page 61 }

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RE-DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Assuming that the Flippo plat—I don't know this, whether this is true or not—

J. W. Blackburn.

Mr. Neblett: Let's see the Flippo plat there just a moment.

Q. (Continuing) This little piece that Mr. Bagwell called your attention to, lots 13 and 14, on the west side of the road from Victoria to Lunenburg Court House, is somewhere beyond the center of blocks 7 and 8, and it may be beyond the property that is shown on this plat?

A. I think that is correct. I am not certain.

Q. Is there anything inconsistent between the Flippo plat, particularly the location of lots 13 and 14, and the location of the road from Victoria to Lunenburg, as shown on your plat, Exhibit A, at that point?

A. I don't understand you exactly, Mr. Gravatt.

Q. I mean, this plat, the Flippo plat—Mr. Bagwell stated it was marked on the plat, but it is not marked on the plat—that 15 feet is contributed on one side of the road and 45 feet on the other, which would give you 60 feet.

page 62 } Would there be 60 feet at that point according to your plat?

A. Yes, sir, from lot 5 south.

Q. From lot 5 south there would be ample?

A. Ample.

Q. The controversy here is in the lots and in the ownership back to the north?

A. Primarily.

Q. Will you take your scale and see whether or not there is ample room in front of those lots for a 60 foot road?

A. Well, it's mighty close on 3 and there is plenty of room on 1.

Q. Mr. Bagwell has suggested, Mr. Blackburn, that it possibly could be that the land-owner in changing the plat of 1909 to the plat of 1910 did not take into consideration the fact that in changing the angle of the lots he would project the lots further out into Court Street. In order for that to be done, he would also have had to change the location of High Street and the location of the alley through Blocks 7 and 5, would he not?

A. Yes, sir. I don't remember—He would have had to change the location of this alley, if he had an error like he said, but he could have left High Street like it was.

Q. He would had had to change the location of

page 63 } the alley?

A. Yes, sir, he certainly would have to do that.

Q. He would have had to change the amount of the footage

that he put into Court Street, would he not? If the 60 foot distance he has in there, if he had it right the first time, he still wouldn't have this 60 foot left when he made the change, would he?

A. No, sir.

Q. It would be 25 feet less than 60 feet when he made the change, would it not?

A. Approximately, yes, sir.

Q. If Mr. Bragg did that, then he simply made an error in showing 60 feet in Court Street, he should have shown some 35 feet in Court Street?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Did you examine this property carefully when you went over it?

A. Yes, sir.

Q. Did you see any land use of the property that would suggest that the property lines of the lots and the use of the lots had been made in conformity with the plat of 1909, which ran these lines at an angle to all of the streets?

A. No, sir.

Mr. Gravatt: I think that is all.

page 64 } RE-CROSS EXAMINATION.

By Mr. Bagwell:

Q. Mr. Blackburn, as a matter of fact, with reference to the location of this alley here that you have just mentioned, if certain of these lots were conveyed, frontal lots were conveyed by the 1909 plat and others were conveyed by the 1910 plat, as a matter of fact that alley is bound to be zig-zag and crooked, is it not?

A. Yes, sir, it would have to be.

Q. But you don't show it zig-zag and crooked, do you.

A. No, sir.

Q. I ask you this: Now this Flippo map that we are looking at gives courses and distances, does it not?

A. That's right.

Q. That is the best way for a map to be, to be meaningful, is it not?

A. Yes, sir.

Q. These other two maps that we haev actually *show,* themselves, the maps show no fixed and established corners and

J. W. Blackburn.

show no courses and few distances, isn't that correct?

A. Well, that may be, but technically where you have right angle you don't need them, of course.

Q. I understand.

page 65 } A. It shows none.

Q. In instances where you have a plat that shows what these plats do, it's possible that the plats could have been prepared on paper before the survey was actually made on the land, isn't that true?

A. Anything is possible.

Q. I mean it could very well have been done, isn't that true?

A. Yes, sir.

Q. Isn't this the type of map that could most easily and would most readily be drawn on paper without actually having been surveyed on the land?

A. I would never make a drawing like that.

Q. Doesn't the very fact that it is made into askew on one plat and then the later plat is followed changing them completely, doesn't it indicate that at least either one or both of these plats were done without a survey on the land at the time?

A. I couldn't answer that.

Q. But it is true that there is nothing in either plat to prove that there was a survey on the land prior to the making of the plat?

A. Nothing in the plat?

Q. That is right.

A. No, sir. Nothing, but—

page 66 } Q. I believe you have testified that from the markers you found, that from your own knowledge it is impossible for you to know exactly when they were put there, whether it was before the survey, at the survey, or after the survey?

A. That is correct.

Q. Now just this: With reference to this question here of lots, and then the two in which you say there is plenty of room for a 60 foot road, you picked those two, but there would not be room for the rest of the frontage, would there?

A. No, sir.

Q. On the plat you show the highway infringing on them anyhow, isn't that right?

A. Yes, sir.

Mr. Bagwell: That is all.

J. W. Blackburn.

RE-REDIRECT EXAMINATION.

By Mr. Gravatt:

Q. Mr. Blackburn, if these plats of 1909 and 1910 were made on a drawing board and never laid out on the land, from your investigation and the location of the actual use and occupancy of this property, does that show that the mistake, if any mistake was made, was a mistake in the width of Court Street rather than a mistake in the depth of the lots?

page 67 } Mr. Bagwell: I object, Your Honor, that is a conclusion which he certainly is not entitled to make on conjecture. He couldn't possibly know.

Mr. Gravatt: I asked him to use as a basis the use and occupancy of the land and the land marks he found.

The Court: I think that is all right, if he can testify as to markings.

The Witness: I remember the marks, but I said there were right many of them. I checked and show them on the map of this year, those markings.

The Court: All right.

By Mr. Gravatt: (Continuing)

Q. Will you answer my question, please?

page 68 } Mr. Bagwell: That is improper. I do not believe that would be proper. You are asking him to state a conclusion. It all comes back to the question of law before Your Honor. What he is being asked to do is to state whether or not if a man shows on a speculative drawing streets and lots, and if there is a usage of the land that would tend to indicate another thing. If the law is that, that closes this case. That is really what the question amounts to. All we have here is a speculative conclusion—which Your Honor has before you, and which we all have before us—as to the general question of use and occupancy of the land. That does not mean as a matter of law that any infringement into Court Street by usage would deprive us of title.

The Court: All right. He has already testified to it, I think, in substance.

Mr. Gravatt: I think he has answered the question in his previous testimony in answer to questions asked him by Mr. Bagwell.

The Witness: I still don't understand your question.

J. W. Blackburn.

By Mr. Gravatt: (Continuing)

Q. Let me ask you this question, I will ask you a piece at a time: Did the land marks and use that this property was being put to indicate that High Street was located—How wide is this alley?

A. Twenty feet.

Q. —420 feet from the western line of Court Street? Did the use and occupancy of the land marks indicate that?

A. Yes, sir.

Q. If this plat was drawn without reference to the land, hasn't the use that the land has been put to all this time, doesn't that show that any mistake that was made was made in the width of Court Street—?

page 69 } Mr. Bagwell: I object, Your Honor, to his making a general statement about the use of land of these people. He can testify specifically as to what use there is, and if it needs a surveyor's explanation he can give the surveyor's explanation. Otherwise, to come here and ask this man here—who has not been on the land since two years ago—to give a broad statement about use and occupancy with nothing more than the base conclusion as to it, is not short of ridiculous. We object.

Mr. Gravatt: I will not pursue it any longer and get Mr. Bagwell's temperature up at all. I will stop right there.

Mr. Bagwell: Without waiving the point, I would like to pursue it a little bit.

Mr. Gravatt: Go right ahead.

RE-RECROSS EXAMINATION.

By Mr. Bagwell:

Q. You said something about High Street being how many feet from Court Street?

A. 420.

Q. According to what plat is that?

A. According to this plat here, 1910.

page 70 } Q. According to the plat of 1909 which is the first plat, will you tell me how far High Street is from Court Street? If you don't mind you can scale it.

A. 220 feet.

Q. But that's not the true distance, is it?

A. That's the true distance measured on this line according to this map.

J. W. Blackburn.

Q. You are measuring, when you say 220 feet, you are speaking of perpendicular distance, are you not?

A. Yes, sir.

Q. The perpendicular distance, the same type of distance, tell me how far Court Street would be from High Street, here, approximately.

A. I told you that: 20 feet and 200, about 50 feet more, wouldn't it?

Q. I don't know, sir.

A. Just by scaling the one, 200, and that's right, this thing is not true to scale. Anyhow, it would be approximately 470 feet, would it not?

Q. Yes, sir. In other words, there is right much difference in the location of High Street on one plat and High Street on the other. Now, I want to ask you this question: Do you know of any way that the same engineer could go on the land and accurately survey it and come up with this plat, and then could also go on the land and accurately survey it and come up with that plat?

page 71 } A. He must have vacated one plat before he started the other. That must have been his intention.

Q. Certainly one of them is bound to have been very grossly in error.

A. Yes, sir.

Q. When you refer to usage and when you refer to monuments, do I assume that you are talking about the same usage and the same markers that you have described specifically in your previous testimony, or are you speaking about additional and new ones?

A. Usage, or markers?

Q. Both.

A. Well, usage, if you ever looked at the property you would know the houses are close together. A lot of them. If there were any effort to use this map, the line of one man's lot would run over on the other man's house. So there is your usage. That is the way they have been living on them these many years. That is as to usage.

As to points that were intended to be used in the 1910 version, and in my plat, the markers, the landmarks are just as they were.

Q. In other words, your general statement is intended to be based upon the exact detailed statement that you made earlier in the case?

Wade Winn.

The Court: He testified, Mr. Bagwell, from the
page 72 } facts that he observed there is a usage that conforms to the latter plat instead of the earlier plat, in that the houses all front parallel and perpendicular with the highway instead of being at more or less an angle as was shown on the earlier plat.

A. Yes, sir. That's right.

Mr. Bagwell: That is all.

Witness stood aside.

Note: At this point a short recess is had, following which the hearing resumes as follows:

WADE WINN,
introduced in behalf of the petitioners, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:
Q. State your name and your age, please, sir?
A. Wade Winn. Seventy-seven.
Q. Mr. Winn, how long have you lived in Lunen-
page 73 } burg?
A. Born and raised here. Never been away.
Q. How long have you lived in the town of Victoria?
A. I moved there before there was any town there. Weren't but two houses there when I moved there. Been there ever since.
Q. When did you first buy—I am going to talk loud enough for you to hear me—
A. I can hear you.
Q. When did you first purchase a lot on Court House Road between Victoria and Lunenburg Court House from Mr. Bragg?
A. Well, I think it was in 1912.
Q. In 1912?
A. I think so. Right about that, I know.
Q. Did you build a house on that lot?
A. Yes, sir.
Q. How many houses were there on the road from Victoria to Lunenburg at the time you built your house?

Wade Winn.

A. It was only but two no where near there.
Q. Where were they? Who owned them?
A. Mr. Tom Blackwell owned the one, and Mr. Chambers owned the other. That was the first and second lot that had been sold off of this Bragg estate, and I bought the third one.

Q. Will you take this plat marked Exhibit A,
page 74 } please, sir, and if you can, tell us which one of those lots you purchased back in 1912?

A. Is this the one next to town, coming this way?
Q. Let me show you, if you don't mind.
A. I want you to.
Q. This is your present lot, where you live.
A. Yes, sir.
Q. This is Rod Avenue, come out to Court House, to the road to Lunenburg Court house.
A. Uh huh.
Q. This is High Street.
A. Uh huh.
Q. Now, as I understood you, you owned a lot up here on this road from Victoria to Lunenburg Court House?
A. Yes, sir. One, two, three—Let's see. I don't know whether I'm coming from the right way.
Q. Let me tell you a little further, if you don't mind. This is the Blackwell property right here, presently owned by Mrs. Blackwell. This is owned by Mr. Bollinber.
A. That is the one I bought.
Q. This is the one you bought?
A. Yes, sir.
Q. That being lot No. 3 in Block No. 5. Will you put a cross mark on that lot, on Exhibit A, please, sir?

A. Lot 3?
page 75 } Q. That's right.
A. Just a cross?

Q. Just a cross mark.

Note: Witness places a pencil cross mark in Lot 3, Block 5, on Exhibit A.

Q. At the time you bought that lot, how were the corners of the lots in that sub-division marked?
A. By cedar stakes set on the very corner of every lot in there.
Q. Was a cedar stake set at the four corners of Lot No. 3?
A. Yes, sir.

Wade Winn.

Q. Were there cedar stakes set at the four corners of all the other lots?

A. Every one that I know of.

Q. Were those stakes in perpendicular line to the road from Victoria, or were they at an angle?

A. Plumb square, one with the other, all the way up.

Q. Did you run any fences?

A. Yes, sir.

Q. At that time on your lot?

A. Yes, sir.

Q. Will you state what you did about it?

A. Well, I started here on the back, run to the
page 76 } road between me and Mrs. Blackwell, and I went across the front of mine and hers, and then went back to the alley on mine, and hers, too. Her house was on this one, and I put the fence over here, fenced in two lots.

Q. You fenced in two lots for her, and one for you, is that correct?

A. That's right.

Q. Did those fences run perpendicular to the road from Victoria to Lunenburg Court House?

A. Yes, sir.

Q. The corner of those fences, were they set where the cedar stakes had been set?

A. Every one of them.

Q. Are those fences still there?

A. Most of them gone.

Q. Most of them are gone at this time?

A. Yes.

Q. Some of them are still there, or are they not?

A. There might be some there. I think it is. I don't know that.

Q. Did you run any fences on these other lots?

A. Let me see: Mine and—

Q. Here is your lot, right here.

A. Yes, I know. Coming that a way—I think I fenced both of them in, the yards and back to the alley. All
page 77 } of them.

Q. Did you run those fences perpendicular to the road from Victoria to Lunenburg Court House?

A. Every one. Just like that.

Q. Were those fences set on the lines, and the corners at the stakes that had been put there by the surveyor?

A. Yes, sir.

Q. Mr. Winn, did you later sell this lot?

A. Yes, sir.
Q. Did you buy another lot in this sub-division?
A. Bought one over here.
Q. Will you show us which one it is, please, sir?
A. I think that it's that one.
Q. Would you make a cross mark on that one?
A. That's the one I live on now. (Placing mark on Exhibit A.)
Q. That is Lot 1, Block 8. Did you, at the time you went there, were there any stakes similar to the stakes that the surveyor had put there marking the corners of that lot.
A. Yes, sir. They were all down when I went there in '28. Practically every stake was out there then. But they have all got a way.
Q. The lot that you have marked on the plat is Lot No. 1 in Block No. 8?
page 78 } A. That's right.
Q. Did you mark the corners of Lot No. 1 at that time?
A. Yes, sir.
Q. How did you mark it?
A. Put an iron pin there.
Q. How did you find the corner to know where to put the iron pin?
A. The cedar stake the surveyor put there.
Q. Did you determine where High Street was in front of your property?
A. Yes, sir.
Q. Did you determine that?
A. Yes, sir.
Q. How did you determine that?
A. By these stakes.
Q. Did you put a pin at any other point marking the corner of High Street?
A. I did. But they're under the ground. I drove them down there so I could cut grass over them.
Q. Did you put a pin in the place marked A on this plat? Look at the plat, please, sir?
A. Yes, sir. That's the one I showed these state folks, and your surveyor, Mr. Blackburn. I showed it to all of them a dozen times, at least.
page 79 } Q. Was that how—How did you ascertain that point?
A. By that stake they put there, the surveyor put there.
Q. Did you run any fence down this street?

Wade Winn.

A. No, sir.

Q. Do you know anything about a fence being on the street—

A. Hasn't been one there.

Q. Do you know anything about these fence posts, the points marked B and C?

A. I don't know as I do.

Q. You do not?

A. No. But I do know that I took up that cedar stake and put this iron pin in there that I showed all of the men. That's all I know about it. I put that iron pin right where the surveyor had that stake sitting then.

Q. Yes, sir.

A. Then I tooked that one up and put the iron pin in there. I thought that iron pin would stay in there as long as I ever had any need for it.

Q. That iron pin is still there?

A. Yes, sir.

Q. Are there any other evidences to mark the line of High Street in this block?

page 80 } A. Yes, sir.

Q. What are they?

A. A fence in a lot for Chambers Hawkins. Now let's see. If I got it right. I reckon I have. That's the corner. I fenced in a lot for Chambers Hawkins. One, two, three—I don't know whether it's three or four. Right in here. Somewhere right along in there.

Q. Could it be this lot No. 8?

A. Let me see. One, two, three—I don't think so.

Q. That would be four.

A. I don't think that's right. Let me see. One, two, three, four—I reckon that is the one, the fence that I put in for Chambers Hawkins. I reckon. That's been nearly forty years ago, and the corner posts at each corner, at every corner is sitting there today, right now. I can show them to you. And I showed Mr. Blackburn that when I started him out from here. I said, "There's the next corner, also. A definite point you can get from this here."

Q. Did you set those corner posts in the place where the surveyor's stakes had been?

A. Yes, sir. Took them out and set them. Every one, right where they were.

Q. You said that was forty years ago?

Wade Winn.

A. About that.

page 81 } Q. That was before you had bought this lot back in here?

A. Well, I don't know. Let's see. No, I bought that in—Yes, it might have been. I wouldn't say definitely about that, but it's been something like forty years ago since I fenced that.

Q. Mr. Winn, did you see Mr. Blackburn when he ran his survey of this property?

A. Yes, sir. I walked with him 300 yards, I reckon, or more.

Q. Did you see Mr. Blackburn set stakes on the lines of the lots fronting on Court Street, or on the road from Victoria to Lunenburg Court House?

A. Yes, sir.

Q. Will you state whether or not those stakes were set so as to conform to the fences that had been built on the lines of those lots?

A. Exactly. And everybody who owns property up there are particular with their lines. And that's right. It was the line of their property, what they bought.

Q. Has there ever been any controversy among any of the people who have owned lots in this sub-division with respect to where the lines were?

A. Never that I know of.

Q. Or with respect as to where High Street is?

page 82 } A. Never heard a word about it.

Q. Or with respect to where the alley is?

A. No, sir. Not as I know of.

Q. Do the lines of all of the lots in there correspond with the stakes that you say the surveyor put there when you first bought a lot up there in 1912?

A. I say there has never been any narrowing lot or widening lot in there. They are all exactly the same kind.

Q. There has never been a narrow end or a wide end lot?

A. All the same width. That's from the alley clear to the front. Every one that a way. I know.

Q. Are they all perpendicular?

A. Yes, sir.

Q. Perpendicular to the streets?

A. Yes, sir.

Q. Are there any lots in there that run cater—bias on an angle to the street?

Wade Winn.

A. Past Mrs. Beach's, that is where you get into that, figuring on that.

Q. Past Mrs. Beach's going toward the Court House you get into what?

A. What? Wide end and some narrow end, to either one, front or back. The most of them on the road is the same width, but then some of them are more narrow on page 83 } the back, making that bend around the road, you know, some of them. Get to another bend they're wider on the back. I know that. I done seen stakes all over the woods up here, mile and a half from my house. They was all there when, years ago. I seen them thousands of times there.

Mr. Gravatt: That is all.

CROSS EXAMINATION.

By Mr. Bagwell:

Q. Mr. Winn, I want to ask you a question, please, sir.

A. Yes, sir.

Q. These different points you have referred to, you referred to these post markers, did you point all of these out to Mr. Blackburn, the surveyor?

A. Not all of them, no, sir. Won't hardly any of them there when he come there to survey.

Q. What I am getting at is: All of them that are now there that you could find, you pointed out to him?

A. No, I didn't look for any but just two. He said he wanted a starting point. He said, "I can't go with one; I got to have two." Which I imagine is so. I don't doubt that at all.

Q. Do you know where some marks are now, other than the ones you showed him?

page 84 } A. Well, I can find some mighty easy.

Q. Can you tell me where some are now?

A. On this plot somewhere. I wouldn't say where.

Q. You know some are there, but you don't know specifically where?

A. Most of them aren't—

Q. I thought you said something about one still being up here on the front somewhere?

A. No. I ain't said nothing about the front. That I know of.

Q. You haven't said anything about the front that you know of?

A. Nothing about no stakes being up there.

Q. So you just know of these stakes, then. You believe you could find some more, but the only ones you know of, that you can locate now, are these that you told their surveyor about, and the ones you pointed out on this plat?

A. I showed the state people fifteen times. All of them.

Q. You heard Mr. Blackburn testify, did you not?

A. I heard some of it. Yes, sir. Lot of it.

Q. You heard him testify. He testified correctly about these posts that you pointed out to him, placing them correctly, didn't he?

A. I think so.

page 85 } Q. While you think you could locate some more, you cannot tell us now where any others exist?

A. No. I wouldn't attempt to do it. If I had known a week ago, they may be gone now, you see. I wouldn't tell without going and seeing first. But I walked over every one of them streets, alleys, and lots. I know where they were.

Q. You bought your first lot, this one on the front, in 1912, I think you said?

A. The deed speaks for itself. I said around that.

Q. When was the first time you went on that lot to look at it?

A. To do what?

Q. To look at it, examine it.

A. Before I bought it?

Q. Yes.

A. I bought it as soon as I found out that was what I found I wanted.

Q. Would you say the month, the same month you bought it, the same time—

A. About that. Not long. I don't know just how long.

Q. Within, in other words, a month or two from the time you bought it?

A. Few months, anyhow.

page 86 } Q. Within a few months you went on it for the first time?

A. Yes, sir.

Q. Is that the time that you observed all of these markers that you are talking about?

A. I observed them then and before that, and knew where every one was sitting, for years, exactly.

Q. The only markers you observed at that time, exactly,

Wade Winn.

were those with reference to the lot you were interested in buying?

A. No, the rest of them, too.

Q. How many posts did you see there then?

A. I saw them all then.

Q. Did you find the four corners on your lots?

A. Why sure. Fenced it in, put the posts right where I took out his pegs.

Q. You know when you went there, within several months of the time you bought your property in 1912, that there were some stakes there that you understood to be surveyor's stakes?

A. That's right.

Q. What sort of stakes were they?

A. Cedar.

Q. What were they, posts or stakes?

A. Split up, about that size, I reckon. All sizes.

page 87 } Q. Split wooden, split cedar stakes?

A. Yes.

Q. Were they just like the kind the surveyors use when they are surveying on the highway today, that you drive down to mark—?

A. Maybe so, I wouldn't say.

Q. In other words, it was a piece of wood—

Mr. Gravatt: The Highway does not use cedar stakes.

Mr. Bagwell: I am talking about the length and appearance of the stakes.

Mr. Gravatt: Don't lead that way.

Q. The stakes at the corner, now, were the size of the little highway stakes, approximately the size of the road stakes?

A. Approximately an inch, inch and a half by two feet. Two feet long. That's the shape of the stakes they were. Splitted up with an ax.

Q. About what were the dimensions, what were the sizes of them?

A. I can't tell you exactly, but from that size up to twice that size. (Indicating wrist).

Q. Your wrist, the size of your wrist, splits?

A. Twice that size of some of them, I would say.

Q. You didn't see them put them there, but you

page 88 } know when you went there they were there?

A. I know Bragg told me: Here's the lots, and

here's the streets, and there's the alleys, and everything about it.

Q. That is the line that you claim by. Do you still own that lot?

A. Yes, sir.

Q. You still own that yourself?

A. Yes, sir.

Q. Are any of these corner markers there now?

Mr. Gravatt: I think you have him mistaken. He still owns this lot.

A. Not this one, no. Just that one.

Q. The Court Street lot, do you still own that?

A. No I sold that years ago.

Q. How long ago?

A. I don't know. Thirty years ago, I reckon.

Q. Approximately thirty years ago. When is the last time you went and checked the stakes on that lot that fronts on Court Street?

A. Haven't been there at all since I sold it.

Q. In thirty years?

A. I don't reckon I have, except for here on the back. I saw one thing there I had. I had an old gate hung there page 89 } to get out of that lot in the alley, you know, and that old hinge is still on it right now.

Q. What you are testifying to about these corners and the posts that were put at the rear of your lot, is your recollection from thirty years back?

A. I know that that is right.

Q. Did you understand that these posts that were put at the rear of your lot were put at the rear corners of the lot that you bought?

A. That's right. That's what I understood when I put them there. Yes.

Q. Then did you understand that you owned 200 feet further down to the south?

A. I don't know what you mean 200. They're all 50 by 200 feet.

Q. Did you claim from there a lot 200 feet deep?

A. Yes, sir.

Q. Did you know that you bought, that your deed was based on the old 1909 plat; that it did not give you a lot that was square, that ran back square with the highway?

A. Well, that survey I built on was square; it was surveyed

square, and made square; and stayed square. All of them.

Q. Did you know that the lot that you bought, according to the plat, gave lines that were completely different from the ones that are marked off now? Did you know

page 90 } that?

A. No, I didn't know that. I had no reason for knowing. The stakes there were set up plumb exactly the same width at the alley that was on the highway. Every one of them the same. Streets and alleys and all. I had no reason to doubt it. The surveyor put the stakes up, and if you ain't going by the surveyor's stakes, what are you going by? Tell me that.

Q. Did you build a house there?

A. Yes, sir.

Q. You state that your house was built, and your side lines were square, as you observed them and followed them, were square with Court Street?

A. Well, as far as square with the line on Court Street I wouldn't say the road because the road is crooked, you know, but this line from here is straight.

Q. All you know is that there were four stakes at the corners, these wooden stakes that you replaced with a better stake?

A. Uh huh.

Q. You haven't gone and looked at them in thirty years?

A. I didn't replace none but mine.

Q. I understand. You know that those stakes were 50 feet apart in the back, and 50 feet apart in the front,

page 91 } and 200 feet to the back and front?

A. 200 feet deep. That's right.

Q. That is all you could tell us about it today?

A. All I know about it.

Mr. Bagwell: That is all I have.

RE-DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Mr. Winn, Mr. Bagwell asked you about other landmarks than those you pointed out to Mr. Blackburn. In your testimony and answers to his questions you mentioned the post at the back of the lot which you formerly owned on the front of the sub-division.

A. That's right.

Q. On which you had a gate hung?

A. Yes.

Wade Winn.

Q. You stated that that post was put in the place of the pin, that the stake was taken out?

A. That's right.

Q. Is that post still there?

A. Yes. It was a month or two ago. I looked at it.

Q. Does it have the hinge to that swinging gate still on it?

A. Yes. Half of it. Half the hinge. I don't know

page 92 } about the bottom piece of it. The top half is there.

Q. All right, sir. I understood you to testify that when you moved onto this lot here you took the surveyor's stakes out—this is Lot No. 1 in Section No. 8—and that you put iron stakes at every corner of that lot?

A. Well, I did. Yes. But you can't see them until I go out and dig them up.

Q. You buried them in the ground so you wouldn't be bothered with mowing?

A. Yes. Cutting grass over them and running over them if I wanted to.

Q. I understood you to state that you had built a fence, also, around two lots of Mrs. Blackwell's?

A. Yes, sir.

Q. And put posts in the corners where the surveyor's stakes had been?

A. Yes, sir. Yes, sir.

Q. You do not know whether those posts are still there or not?

A. Some of them are there, I'm sure. Some of them are there, I'm sure. I don't think all of them. I think some of them is.

Q. All of those marks you yourself put in are in the very spot where the surveyor's stakes were removed from?

A. Yes, sir. Every one of them.

page 93 } Q. I want to ask you again about the perpendicular—I think we have gone into that sufficiently.

A. That I know well.

Mr. Gravatt: I do not think we have anything else.

RE-CROSS EXAMINATION.

By Mr. Bagwell:

Q. Let me ask you this question: Which corner is this post at that you say can still be found today? Is it in the corner toward Victoria, or is it in the corner toward Lunenburg Court House?

Wade Winn.

A. Now, this is the highway, and that's the alley here. Well, it's on that corner.

Q. Toward Victoria?

A. Yes. The one I said had the piece of hinge on the post. It's there unless somebody has moved it in the last month.

By Mr. Jefferson:

Q. Mr. Winn, do you know the Beach property here?

A. Yes.

Q. Across this Rod Avenue?

A. Yes.

Q. Do you know where her line is on Court Street?

page 94 } A. Well, I wouldn't say I know exactly, because I think when they hit this street, I mean this street going down to my house now, they made a little change, a little offset in this line, you know; I don't know how much, but they made it.

Q. You know that hedge in front of her house?

A. Yes.

Q. Do you know that that is the line?

A. I put it there. I reckon I know it. I set it back something like eight inches inside, you know, on account of it growing bigger and bigger.

Q. You planted the hedge on her line?

A. Right close.

Mr. Jefferson: That is all.

RE-REDIRECT EXAMINATION.

By Mr. Gravatt:

Q. You put that hedge there yourself?

A. Dug a ditch and set that hedge myself.

Q. You say—

A. Mr. Blackburn will tell you when I started him out from this stake down there, that peg at home, I said, "You go up there on it 420 feet from here and you will be right in line with that hedge." He is here, ask him. And I went with him and he was right on it. And when you know a thing you know it.

page 95 } There is *know* use trying to get you out of it, you know it. That's all I know about it.

RE-RECROSS EXAMINATION.

By Mr. Bagwell:

Wade Winn.

Q. I want to ask him this: As I understand it, you have stated that as you come on up this highway toward Lunenburg Court House, coming toward this end of the Bragg subdivision, that there is a hedge row there that is in front of the Beach house, and that you set that hedge row out yourself?

A. I certainly did.

Q. When that hedge row was set out, wasn't it intended and planned to be set out on the edge of the right-of-way, between the property owner and the highway?

A. Near the edge. I said I set it back eight or ten inches, maybe twelve, on her land from these stakes the surveyor put out.

Q. From the stakes the surveyor put up?

A. Yes. I didn't check the hedge with them, understand.

Q. When was that done?

A. Well, I don't know. Let's see. It's been thirty-five years, I know, at least.

Q. When you are referring to stakes, you are talking about stakes of the same appearance and apparently of the same age as you were talking about in your other testi-
page 96 } mony?

A. I don't know what you mean "stakes". I was talking about the one sitting here at the corner.

Q. That's right, all around, the surveyor stakes, the cedar stakes that you have been talking about.

A. That's right.

Q. When you are referring to the stakes down there at the Beach property, you are referring to similar stakes, are you not?

A. That's what was there. They are not there now, of course.

Q. You state when you set out the hedge row, maybe thirty or thirty-five years ago, you set it out within a few inches of those stakes?

A. Yes, sir. Something near twelve inches, ten or twelve inches of the line.

Q. That hedge row is set back far enough to allow for the 60 foot right-of-way, is it not?

A. I don't know about that. I can't tell you about that. I don't know nothing about the 60 foot right-of-way. I don't know where to go to start at. I can tell you this: Everytime that road had ever been widened, they widened it over on that side. See? And the center of that road ain't no where near the

center of the road there today of the old road now, you understand.

page 97 } Q. You set out this hedge row to be within ten or twelve inches of the front line of the property, did you not?

A. That's right.

Q. So you understood then that those stakes you saw there within ten or twelve inches of the hedge row were the lines at the front of the lot?

A. That's what I think.

Q. That was the line between the lot and the dedicated road?

A. That's what I think. That's what they told me all the time.

Q. Were the stakes in line with the stakes as you came on further down toward Victoria?

A. I don't know about that. I don't know.

Q. You deny they were?

A. I wouldn't say they were or not. I do say when they got past this, or these two blocks, when they got over on there in front of Mrs. Beach's, they made a little change to the line. They didn't run straight with it.

Q. Who made that change in the line?

A. The surveyor, whoever he was. Mr. — who did they say it was? Over here at Kenbridge?

Mr. Neblett: Crafton.

A. Crafton.

page 98 } Q. In other words, you understand that the original survey made a turn in the boundary line when it got to the Beach property?

A. Up somewhere near Mrs. Beach's. I don't know exactly where it was.

Q. You couldn't say how much of a turn?

A. I don't know.

Q. You couldn't say those stakes, as you come on down toward Victoria from the Beach property, whether they were, or were not, in line with those Beach stakes?

A. I don't say they were, and I don't say they weren't. I don't know. But I do know the stakes from there on these two blocks were straight. I know that. And I do know when they got to that road that goes to my house they made a bend somewhere along there. I wouldn't say just where.

J. M. Jackson.

Q. Will you look at this plat here? Have you ever observed the plat of this property?
A. I reckon I have seen it. I don't know.
Q. Did you know that the plat shows a straight line on down by the Beach property?
A. It may be. I don't deny that.
Q. You don't deny that the road was straight?
A. No. I wouldn't say. I wouldn't know. I said I didn't know.

page 99 } Mr. Gravatt: Let's see the plat. I thought you were looking in the wrong book. From here it looked like a new plat.
Mr. Bagwell: I never did get to it.

By Mr. Bagwell: (Continuing)
Q. The only boundary you have been able to observe on this front lot within the past thirty some years, since you have disposed of it, is the post with the hinge on it at the rear?
A. That's the only one I have known.

Mr. Bagwell: That is all.

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page 101 }

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J. M. JACKSON,
introduced in behalf of the petitioners, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:
Q. State your name—
A. J. M. Jackson.
A. —and age?
A. 67.
Q. J. M. Jackson?
A. That's right.
Q. Mr. Jackson, are you a resident of Lunenburg County?
A. Yes, sir.
Q. How long have you lived in the county?

J. M. Jackson.

A. About forty-five years.

page 102 } Q. Did you at any time own property on West Avenue, fronting on the road leading from Victoria to Lunenburg Court House, a part of the Bragg Residence Site sub-division?

A. Yes. Mentioned as Court Street, in my deed, it was.

Q. Will you take this plat here, sir, marked Exhibit A in this testimony, and tell us, if you can, where the property that you owned there was located?

The Court: Show him about where it is if you can.

Q. This is West Avenue here.

A. This is West Avenue?

Q. This is what is reserved.

A. Here is the lot I have. One and three. One, three, five, seven, nine—I think I had those back there. These here are the lots I had.

Q. You owned lots 1 and 3 in Block No. 1?

A. That's right.

Q. Lot 2 in block No. 1?

A. Yes, sir.

Q. Did you own lot No. 4 in block No. 1?

A. No.

Q. You owned lots Nos. 1, 3, 5, 7 and 9 in Block No. 2?

A. Block No. 2, where is that?

page 103 } Q. These lots, Block No. 2, right here.

A. That must have been just a half block over. I owned a piece across that street, across what was that—

Q. High Street?

A. High Street. Five lots on the other side of High Street. I suppose that would be them.

Q. You owned five lots on the other side of High Street?

A. I think I did. Lot No. 2 was facing High Street; Lot No. 1 was facing Court Street, and Lot No. 3 was facing Court Street.

Q. Will you put a "J" on Lots Nos. 1, No. 3, and Lot No. 2; and on Lot No. 1—

A. You want a J in all of them?

Q. Yes, sir, in all of them that you own.

Note: The witness places a "J" in the specified blocks.

Q. Mr. Jackson, when did you own these lots?

A. I bought those lots in 1918.

J. M. Jackson.

Q. Did you have occasion to undertake to ascertain where the corner of West Avenue and Court Street was?

A. I did.

Q. What was the occasion for your being particularly interested in knowing where the corner of West Avenue and Court Street was?

page 104 } A. I was putting a fence through here, and I couldn't find no line over here. On the blocks over here. I went to Mr. T. D. Bragg and asked him if he could point out the line, a straight line through there so I could get a straight line here. (Speaking of the lots in Block No. 2.)

So he came here on the corner of West Avenue and Court Street, and there was an iron—oh, maybe a 6 inch rod—drove down in the ground, and the hub of an, out of an old wagon wheel. I dug it up and dropped off of it. And we also found a stake over here that I could get a straight line over yonder for a fence to this property over here.

Q. When Mr. J. W. Blackburn came to survey this property, did he talk with you to try to ascertain if you could give him any information about where the corner of West Avenue and Court Street was?

A. They did. They came and got me.

Q. What did you tell them?

A. I showed them as near as I could, as close as I could—remember this was forty years ago and the highway has been widened out on that side—and I showed them as near as I could. I told them they would find an old hub in there.

Q. You told them that if they would dig there they would find an old hub?

page 105 } A. If they dug there they would find an old hub in there. I went back and it wasn't a long while before they come back with the bast iron out of the old hub. The old case iron parts in the old wooden hub.

Q. The inside part of the old wooden hub?

A. Yes. They wanted to know if that is what I meant by the cast iron in the hub. Of course the hub in it, the wood part had done rotted, you know. It had been forty years.

Q. The wooden part had rotted?

A. Yes, sir. It was just the old iron part, the cast iron part. That was the only thing I knew about the lines. The wood had rotted. It had been there a good many years.

Q. Were you present when they dug the hub out?

A. No, I wasn't.

Q. Let me ask you this: Was that information pointed out

J. M. Jackson.

to you, and that point where that hub was, was that pointed out to you by Mr. Bragg?

A. Mr. T. D. Bragg.

Q. Is he the man who sub-divided that property?

A. That's right.

Mr. Gravatt: You may examine him, Mr. Bagwell.

CROSS EXAMINATION.

page 106 } By Mr. Bagwell:

Q. Do I understand that the first knowledge that you had of any observance of a corner, of a front boundary of this property was in or about the year 1918.

A. Yes. I bought it in 1918.

Q. There was an iron pin of some kind there then, which is still there today?

A. No. No, it is not there today.

Q. I am sorry, I guess I didn't exactly follow you as to what it is. I judge that it was something that was there then Mr. Bragg showed it to you, and Mr. Blackburn dug down he found the remnants of it, is that correct?

A. It was an old hub out of an old wagon wheel. The cast iron box in it. And it was dropped over that peg. That was what Mr. T. D. Bragg showed me. And he told me that was the corner, in which I caught that and went back over here and found another corner over here.

Q. What I am getting at is: I think I have it clear—Do I understand that something of what you saw there in 1918 is still there now, is that correct?

A. I don't know whether it is there now. They dug it up.

Q. I mean within the past two years.

A. They dug the thing up.

Mr. Gravatt: We will put a witness on to tes-
page 107 } tify about that later.

Mr. Bagwell: I am trying to get it clear in my mind. He doesn't know—He pointed out to Mr. Blackburn this location and told—

By Mr. Bagwell: (Continuing)

Q. You did not see it when it was found?

A. He brought it to me after he dug it up.

Q. Was it the same thing you saw there in 1918?

A. I couldn't swear to that. I swear it was a box out of an

old wagon wheel. That's what they had around it, the hub out of the old wagon wheel.

Q. Of course, you don't know how many old wagon wheels there might have been?

A. I don't know how many old wagon wheels. I would almost swear that was the one around that stake.

Q. But there was some kind of a hub of a wagon wheel around the stake?

A. That's right.

Q. That you saw there in 1918?

A. That's right.

Q. About two years ago something was brought to you as having been found there, which looked like a part of that hub?

A. It didn't look like it, it was an old box.

Q. A box. The thing that the axle goes in.

page 108 } A. That's exactly right. The case box.

Q. Do you know where that thing is now?

A. I don't know. I don't know. Mr. Bragg may have it. He can tell you something about it.

Q. Do you know what plat these conveyances to you were based on, whether they were on the 1909 plat or the 1910 plat?

A. No, I don't.

Q. Do you know whether this survey here conforms to either one of these plats or not?

A. No, I couldn't tell you about that.

Q. Do you know whether these plats are laid out or conform to your lots as you claim them?

A. No, I couldn't tell you.

Q. Do you own these lots now?

A. No. I didn't keep the lots but a couple of years.

Q. You bought them about 1918 and sold them about 1920?

A. I sold them about 1920. I think I sold them in 1920, I reckon.

Q. Then you haven't—

A. These, I kept them a little longer over there.

Q. You haven't had any connection or interest with these things since then?

page 109 } A. No.

Q. Were you there when he dug in and located this?

A. No, I wasn't there.

Q. Do you know whether there was a similar object at any of the other corners? For instance, the eastern corner?

A. I wouldn't know. I never did know.

Howard Bragg.

Q. You do not know whether any of the other corners are marked by the same type of thing

A. I never did look until I was trying to get this corner there. Then, of course, we let it lay right there then.

Q. Do you know whether there was a road through here?

A. No, I don't know anything about it.

Q. You do not know anything about that at all?

A. No.

Q. That is all you know. You had familiarity with this property from 1918 to 1920, there was something at that point that you understood to be this corner of that lot—

A. That's right.

Q. —Something has been recently found at that point, that you understand to be that corner, which you think looks like a part of what was in there then.

page 110 } A. That's right.

RE-DIRECT EXAMINATION.

By Mr. Gravatt:

Q. You got that information from Mr. T. D. Bragg, the man who owned the property?

A. That's right.

Witness stood aside.

HOWARD BRAGG,

a petitioner, first being duly sworn, testifed as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Mr. Howard Bragg, did you hear the testimony of Mr. Jackson, who has just gone off the witness stand?

A. Yes, sir.

Q. Were you present when Mr. Jackson pointed out the place where this hub would be found?

A. Yes, sir.

Q. Who was present with you?

page 111 } A. Arthur Shoupe.

Q. Was Mr. Blackburn there?

A. I think he was. I am not sure if he was there at the time he pointed out where it would be, but I think it was late that one afternoon; and then the next day Arthur Shoupe, and

Howard Bragg.

Mr. Blackburn, and myself went there at the point and dug the hub up.

Q. Did you dig at the point that Mr. Jackson had pointed out to you?

A. Yes, sir.

Q. Had he told you before you dug what you would find?

A. Yes, sir.

Q. What did he tell you you would find?

A. A wagon hub.

Q. Did you find anything there?

A. Yes, sir.

Q. What did you find?

A. We found a wagon hub.

Q. Did you later take it to Mr. Jackson and show it to him?

A. Just as soon as we dug it up we took it in my car and carried it to Mr. Jackson, and brought him back over to the hole and he said that was exactly where it was.

Q. He identified it as being of the same kind
page 112 } and description of the hub that he had seen there.

A. Yes,sir.

Q. Do you know where that hub is now?

A. I think Mr. Blarkburn has it. We gave it to him.

Q. You gave it to Mr. Blackburn?

A. Yes, sir.

Q. Mr. Bragg, will you tell the Court what you know about any iron pins at the points on the plat marked Exhibit A?

A. The points designated as D, E, and F, right here, well, when I got—I own this farm down here, starting right here. All right. When I got ready to run a fence down this alley, I went to see Mr. Tom Ashworth, *which* owned and lived in these lots, and had owned them since way back when he bought the land from my father to build it on. And I asked him where the line was, and he showed me the stakes and lines from this corner, right here, which he has a tobacco barn sitting on the corner, going both ways, right on the corner.

Q. That is a tobacco barn square with the corner?

A. Right square, and right on the corner.

Q. Is that sitting there today?

A. Sitting there right now.

Q. All right, sir that is the corner of Lot No. 1,
page 113 } of Block No. 6.

A. Yes, sir. He also showed me lines upon this end, and all across the back of his lots. And he showed me the lines around this lot here, which my brother owned at that time. He showed me the points on there.

Howard Bragg.

Q. Are those points marked in any way?
A. Yes, sir.
Q. How are they marked?
A. They were marked with iron stobs at that time. And he showed me a stob right here, which is marked D, which is under a peach tree, which never has been disturbed. He also came on over to the corner and showed me the iron stake at No. E.
Q. That is: Mark "E", Lot 15, Block No. 6.
A. He also came up and showed me the iron stake sitting just in this man's yard, which is marked number F.
Q. On lot No. 15?
A. That's right.
Q. You say Mr. Ashworth had purchased that property from your father?
A. Yes, sir.
Q. And had had those marks there since the time he owned it?
A. Since he bought it. Yes, sir.

page 114 } Mr. Bagwell: Your Honor, I do not like to interrupt counsel in direct examination, but I have been letting this man point this all out for the sake of expediting the hearing, but when he goes into what the man told him about it, that is not proper.
The Court: The man is dead, is he not?

A. This alley was between my land and his land. I was going to put a fence on it, and he was showing me the exact location to run my fence. That is the reason for it.
Mr. Bagwell: I have tried to allow the information to come in for the sake of expediting the hearing.
The Court: This person you were talking to, Mr. Ash*burn,* is he living?
The Witness: No, sir.
Mr. Gravatt: He is not living.
The Court: It is preservation of the property history.
The Witness: He is the only one who ever owned the property.
Mr. Bagwell: I want to get the record straight: Do I understand you are permitting him to testify as to what the man told him, with how long things had been there, or not?

page 115 } The Court: I think it is all part of the history.
Mr. Bagwell: I want to note our objection and exception to the ruling of the Court.

Howard Bragg.

The Court: The man is dead, the record shows that.

By Mr. Gravatt: (Continuing)

Q. How old are you, Mr. Bragg?

A. Thirty-seven.

Q. How long ago has it been since you talked with Mr. Ash*burn* about that matter?

A. About ten or twelve years ago.

Q. He is dead at this time?

A. Yes, sir.

Q. He owned this property from the time he purchased it from your father up until how long?

A. I guess—

Q. Do his heirs still own it?

A. No, sir. It was sold about three years ago to W. O. Berry.

Q. He owned it up until about three years ago?

A. Yes, sir.

Q. The information that you acquired from him as to these stakes and markers, did you use that information for the purpose of establishing the alley and for the construction of the fence on your property?

A. Yes, sir. We went across the alley from this
page 116 } corner here. It was another stake over there. But
I have plowed that stake up and throwed it away. But that's where I ran my fence, right straight down there, where he showed me.

Q. How long have you known this property?

A. Well, I was born on it.

Q. You were born on it?

A. Yes, sir.

Q. Have the lots in Blocks 5, 6, 7 and 8 ever run any way but perpendicular, as shown on plat Exhibit A?

A. Not that I know of.

Q. Have they been that way ever since you have known the property?

A. Yes, sir.

Q. Have the parties who own the property used it and occupied it in accordance with the perpendicular lines to the highway, in accordance as shown on that plat?

A. Yes, sir. Every alley and every street.

Q. Is there anything else about this property that I haven't asked you that you think ought to be stated here that you know? I want to give you full opportunity to say anything that you think is proper about it.

Howard Bragg.

A. I think all the marks have been pointed out on this map by the various people that knew about it.

Mr. Gravatt: All right, sir, then you may stand aside.

page 117 } CROSS EXAMINATION.

By Mr. Jefferson:

Q. When the highway people first came to you, when they were first starting through there and were trying to locate some points in this sub-division, didn't you, at that time, tell them that you did not know any points, Mr. Bragg?

A. I carried them down and showed them. I told them Mr. Winn was the oldest man around there, and I told them he would know some of the markers. And I carried the state surveyors—

Q. Was Norman Neblett with you at the time?

A. No, sir.

Q. Didn't you go down there with the state people and Norman Neblett when Mr. Winn—

A. On this one, yes, sir. I went with them down to here. I am speaking of over here where the road goes down by—

Q. You didn't mention those at the time they first came to you, did you?

A. I carried him over and showed them to him.

Q. When they first came to you?

A. Yes, sir.

Q. You pointed out these various points?

A. Yes, sir. And I also—They came back, I expect—In fact, I saw them around there several times surveying.

page 118 } I also carried them back—Two of them came there together one time and I carried them back and showed it to him the second time.

Q. That was more recently, was it not?

A. No, sir. It was before, about the time they were starting to work on the highway.

Q. I see.

A. And I showed him the same marks, D, E, and F, right on up to G. And I carried them across here to a piece of land that I had owned and showed some, showed them within a foot of where the iron stob was drove in the ground there. And I showed them—I didn't pin point anything closer than a foot, but I showed them within a foot of where the line was all around. But I did specifically show them these iron stakes.

Howard Bragg.

The Court: As he pointed out on the map, we didn't get the location in the record.

Mr. Gravatt: He stated he specifically showed them the iron stakes marked D, E, and F, and point G as shown on Exhibit A, which was marked by a rock.

A. Yes, sir. And you can look down all of these alleys, or measure them, any way you want to, here, and they are straight. They have the right distance in between them from one end to the other. This alley and this alley.

page 119 } Mr. Ash*burn* came up here and showed me on this street here he built a house one foot from the line, and he stood there and showed me a straight line from this point here—

Q. What point now?

A. Point F.—over to Mr. Winn's. And he has a small house built on this lot (indicating Lot 9). He told me twelve inches measured from the line.

Q. Mr. Ash*burn* told you that?

A. Yes, sir.

Q. Is it a straight line through the alley running through Blocks 5 and 7?

A. Yes, sir.

Q. Are the fences and out buildings built so as to keep the alley open through there?

A. Yes, sir.

Q. Is it a straight line from Bragg Avenue to Rod Avenue down High Street?

A. Yes, sir.

Q. Are the fences and houses built so as to keep High Street open for a width of 50 feet through there?

A. Yes, sir.

Q. Is it a straight line from Bragg Avenue ot Rod Street along the alley through Blocks 6 and 8?

A. That is the alley where I built the fence.

Q. That is where you built the fence?

page 120 } A. Yes. That is open.

Q. That alley is open?

A. Yes, sir.

Q. Are the fences and adjacent use of the property, buildings and all, located so as to keep that alley straight and to keep it open for the full distance?

A. Yes, sir.

Mr. Bagwell: All right, sir.

Howard Bragg.

By Mr. Jefferson:

Q. Mr. Bragg, let's get this straight: I will ask you again when Mr. Raabe of the Highway Department, this gentleman over here, first came there and asked you about points on this sub-division, if you did not tell him you did not know but two points in the sub-division?

A. No, sir. I never have told him that.

Q. I am warning you, I expect to contradict you on that. I want to get it straight on that.

A. I showed—I think it was him and he had another man with him. I carried them down and showed them two points right here.

The Court: Points D and E?

A. D and E.

Q. Did you show them anything else?

A. I showed this F, and I showed them G, and—

page 121 } Q. I want to warn you I am going to contradict you on—

Mr. Neblett: He might be contradicting your witness, Mr. Jefferson.

A. I showed them to him on several occasions.

Q. I am talking about when he first went there.

A. Now the first time, I think I just showed them maybe two. He said—

Q. That's right.

A. He said he needed two points.

Q. That time you showed them only two points. You didn't say anything about any others?

A. I showed them the first time they went there, D, E, and F, which is plainly marked with iron stakes.

Q. I thought you just said a minute ago you only showed them two points?

A. That is all they wanted—two points.

Q. Did you show them any more?

A. Yes, sir.

Q. You still contend you showed them all?

A. Yes, sir.

Q. I thought you said you didn't show but two?

A. They said they didn't need but two.

Q. You said you didn't show—

Howard Bragg.

A. Mr. Winn showed them this over here. I
page 122 } showed them these two over here. I walked right
on up the street. I think one walked with me and one drove the car, as well as I recollect. We walked right on up all the way to the highway and there is a fence right on Mr. Davis' land, and we walked all the way up there.

Q. I am not trying to trick you, Mr. Bragg, I am trying to get it straight. I am talking about the first time he contacted you. I am not talking about later, when he went back there. You did show him other points, but I am talking about the first time. Didn't you show them just two points? That is the point I want to get straight.

A. I don't think I ever went to this alley without showing these two points right here together.

Q. All right, sir.

A. And I think Mr. Winn showed them this one over here.

Q. Mr. Bragg, when the American Legion hall was built out there, were you the Commander of the American Legion at that time?

A. No, sir.

Q. You were very much interested in it, were you not?

A. Yes, sir.

Q. Didn't you, after that building was started, have a question that it may be built within that 60 foot
page 123 } right-of-way, and you came out here and checked
it and found—

By Mr. Gravatt:

Q. Where is this American Legion hall?

A. It was torn down there after—

Mr. Gravatt: You wait a minute. I object to the question upon the ground that it is not relevant. It has no relevancy in this case.

Mr. Jefferson: It was located right beyond the Beach property.

Mr. Gravatt: The Beach property is not involved in this case.

Mr. Bagwell: If Your Honor please, I submit counsel has no right, that it is improper for him to interrupt the cross examination of this witness. He is trying to alarm his witness.

Howard Bragg.

Mr. Gravatt: I have a right to except to irrelevant material.

Mr. Jefferson: Let the Judge pass on it as to its relevancy.

By Mr. Gravatt:

Q. How far beyond the Beach property was it located?

The Court: Let's let him tell it.

The Witness: I will tell you.

By Mr. Jefferson: (Continuing)

page 124 } Q. You know that it is well within the Bragg Residence site?

A. Yes, sir.

Q. How far beyond the Beach property is it? How far beyond Rod Avenue?

A. Well, Rod—Let's see. Rod Avenue would be Mrs. Beach's. It would be approximately two blocks, on the corner down there. What was the question you asked?

Q. I asked you: Didn't you have a question about whether or not they started the building within the 60 foot right-of-way, and you were concerned about it, and you came out and checked the record to see it?

A. Yes, sir. We did not want to put it in the 60 foot right-of-way.

Q. You recognized it was a 60 foot right-of-way you say you didn't want to put it in the 60 foot right-of-way?

A. I checked with Mr. Waddell—

Q. That's right.

A. —to see how far we had to get back off the highway.

Q. So that you would be out of the 60 foot right-of-way?

The Court: That was two blocks away?

A. I don't know whether it was to get out of the 60 feet. We wanted to get back off the highway where we

page 125 } could built.

Mr. Jefferson: That is all, sir.

Mr. Gravatt: If Your Honor please, I move that any statement in regard to Mr. Bragg saying anything, or doing anything that indicates what he might have thought about a 60 foot right-of-way when the American Legion Hall was

built be stricken, as it has nothing to do with my clients in this case. Mr. Bragg is not a party to this suit.

Mr. Jefferson: Yes, sir. He is one of the property owners.

Mr. Gravatt: Then I submit that it be let in insofar as he is concerned.

A. When I came to inquire about that, it wasn't anything ever said about building, widening the highway through there. That was before you all ever—

By Mr. Jefferson: (Continuing)

Q. You didn't want to get it in the 60 foot right-of-way.

A. No, sir. I didn't want to get it too close to the road.

Mr. Jefferson: That is all.

By Mr. Bagwell:

Q. Let me ask this one question, I want to get
page 126 } it clear in my mind now. You were talking here
awhile ago about your finding some marks that were pointed out to you by someone, and that was about twelve years ago. I want to get it fixed straight in my mind.

A. Ten or twelve.

Q. Who was this man who pointed these markers out to you?

A. Tom Ash*burn.*

Q. The Judge let you testify that they had been there for so long a period of time, according to his knowledge. How long did he say he had familiarity with that? I wanted to get that straight.

A. Well, he had been there probably—I don't know how long—it was after it was surveyed off; but I think he is the first man that bought the property, and he put the stakes there himself. When the original stakes were moved, he replaced them with iron stakes.

Q. When you say he put the stakes there himself, you mean the iron stakes. He replaced the wooden stakes with the iron stakes himself?

A. That's right.

Q. He indicated to you he knew of those things since he had been there?

A. Yes, sir.

Howard Bragg.

Q. You do not know when he came there, but
page 127 } you think it was some few years, not too long, after it was sub-divided?

A. Yes, sir.

Q. You judge it he came there about the time he bought the lot?

A. That was before I was born.

Q. Apparently what you are trying to say is whatever time he bought the lot, as the records will show, you understood he came there and knew something about it from then on?

A. Absolutely.

Q. At that time, this man—what was his name, again?

A. Tom Ash*burn.*

Q. He owned it for a long time?

A. Yes, sir.

By Mr. Jefferson:

Q. He is dead now, isn't he, Mr. Bragg?

A. That's right.

Mr. Gravatt: You may stand aside.

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page 128 }

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By Mr. Jefferson:

Q. Come here, Mr. Bragg, and see about where the American Legion Hall would be. Here is Rod Avenue, here is Mrs. Beach's; this is the ball park along in here—
page 129 } A. As well as I can remember it was sitting right there. On the corner of the second block. Sitting right on the corner. We were going to use this area for parking, and we wanted to know how much, how far to put the building back off the highway to enable us to park in front of it and on the side of it.

By Mr. Bagwell:

Q. This is lots 1 and 3 in Block 11, down Stonewall Avenue?

A. Yes, sir.

Q. This is where the American Legion Hall was, where you said it was a 60 foot right-of-way?

A. I think it is. Starting from up here at Mrs. Beach's, I think is the first place that it widens out to 60 feet. But it is 60 feet from there on down, I understand.

Q. From Mrs. Beach's on down?

A. Yes, sir, but it gradually tapers from here to join in with this 30 foot road up here on the town road.

Mr. Bagwell: Thank you.

page 130 } MARY G. BLACKWELL,
a petitioner, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:

Q. State your name and your age, please, ma'am?

A. I am Mrs. Mary G. Blackwell. Born in Franklin County, Virginia, 1891. I was born the 25th day of June.

Q. 1895?

A. 1891. Yes, sir. The 25th day of June.

Q. Then you are 67 years old?

A. Yes, sir. Last June.

Q. Mrs. Blackwell, you are a widow, I believe?

A. Yes, sir. Been a widow twelve years.

Q. Do you own property and reside on the road from Victoria to Lunenburg Court House in what is known as the Bragg Residence sub-division?

A. Yes, sir.

Q. How long have you lived there?

A. I have lived there—I was married on the 9th day of April, 1913. Came to Victoria on the 10th day of April, and have been there ever since. Right in that house.

Q. You and your husband lived there for as long as he lived, and you still have continued to live in the same place?

A. Yes, sir. He willed it to me at his death.

page 131 } Q. Do you know whether or not there were any fences ever built—Can you tell us which lots you own on this plat? Can you point out to us the lots you own?

A. I don't know whether I know much about the lots. I

Mary G. Blackwell.

own the lot next to Mr. Winn. Mr. Wade Winn sold his lot.

Q. This is the one Mr. Winn owned.

A. I lived up on these two right here.

Q. Wait a minute now, you are going away from Victoria. You are going toward Lunenburg Court House. You are going away from Victoria. Mr. Winn owned this lot right here.

A. I live—Now, Mr. Winn lived right here. My lots are right next to him. This lot. And this is Mr. Braggs lot. I own two lots: Right up here and right up here I own.

Q. You own two lots there?

A. In the front. Yes, sir.

Q. On the front next to Mr. Winn?

A. Yes, sir.

Q. Your two lots are back toward Victoria from Mr. Winn, are they not?

A. Towards town.

Q. Towards town, yes.

A. Yes.

page 132 } Q. So that your lots are 5 and 7?

A. Yes, sir. I have four on the back.

Q. Four on the back?

A. Yes, sir.

Q. Are they immediately behind—

A. Right behind the others. There's an alley between them, a street.

Q. On which side—Two are immediately in the rear of the two front lots, where are the other two that you own, the other two?

A. I own four right together.

Q. I understand there are four, but you don't own but the two on the front.

A. Own four in the back.

Q. Yes, ma'am, I understand there are four, but the two extra lots on the back, are they toward Lunenburg Court House, or are they toward Victoria?

A. They are right behind these. I own four lots. Toward Victoria.

Q. Toward Victoria?

A. Right behind—

Q. You go in behind Mr. Stevens' lots then?

A. Yes, sir. This road leads down to Mr. Bragg's farm. Wait a minute. I don't know. This is the alley—

Mary G. Blackwell.

Q. This right here is a street. You own these
page 133 } two lots right here behind these other two?
A. Mr. Davis is here on the corner, and these two lots are right down here this way.

Q. I know where your front lots are. We have them located. What we are trying to get at is where your back lots are. The two extra lots, are they toward—

A. Four. That's right.

Q. There are four lots, two of which are right immediately behind you?

A. Yes, sir.

Q. Where are the other two?

A. Right beside of them, up above.

Q. On which side?

A. On the corner, right behind where Mr. Davis is in. And you come on up in that direction. The other two lots—

Q. Let me ask you: Did you and your husband, when you moved to this property after you were married, did you fence your property?

A. He had everything fixed when I came. I didn't have nothing to do but to come in. Yes, sir. After two or three years he had all the property fenced in. Mr. Wade Winn did the work for him. My husband was working for the Virginia railroad, and Mr. Winn was a carpenter, and he gave
him the work to do. He couldn't do both—work
page 134 } for the railroad and fence, too—so that's who
did the work.

Q. Did he set the corner posts on the surveyor's stakes that marked the corner of your lots?

A. Yes, sir.

Q. Are those posts still there?

A. There's one of them. The cement block—they kept arguing about they couldn't find the stob, and I took the grubbing hoe myself. I said I would see for myself. It was right there in the corner between Mr. Winn, right where—Right here is a big cement post where the fence build to, and the cement block is down in the ground, and there was a rod drove in, right down beside the post. That's how come I could find it.

Q. Did you dig and find it?

A. Yes, sir, I did.

Q. Is it there now?

A. It's right there now for anybody to see

Mary G. Blackwell.

Q. The post and rod sit in cement there where the surveyor marked the corner of your lot?

A. Yes, sir.

Q. Are your lots perpendicular to Court Street—so-called—or are they, do they run cater-bias to it?

A. They run straight.

Q. Are they plumb? Do your lots set plumb to the front of your property?

page 135 } A. Yes, sir.

Q. Does your house face exactly toward the front?

A. Yes, sir.

Q. It does not face on any angle?

A. No.

Q. The fences run back in a straight line?

A. Yes, sir.

Q. Directly perpendicular to the highway?

A. Yes, sir.

Q. How close did the highway come to the front of your property before they extended the highway and widened the highway?

A. They taken 30 feet, and they said they could come back and take 15 more feet any day they wanted to. That's what they told me, the State Engineer, it belonged to them.

Q. What did they have to move of yours?

A. They moved the fences, cut down trees—

Q. Did they cut down trees inside of your yard?

A. Cut down. Yes, sir. Cut down trees where I had planted; and cut down shrubberies, what I wasn't able to move and what I give away and people had taken them; and cut down a big mulberry tree what was valuable; and all the fences, tore them down, the yard fence, the fence next to Mr. Sharpe, tore all that down, throwed it back; and that was where the garage used to be, right where my

page 136 } husband drove and he backed out in the road. The people kept telling me, saying, you're going to get killed backing out there. He built it right on the line, with the line with the yard fence.

Then when they came there to put the road down I asked them to put me a driveway there, and they first, the man that was bargaining for the job, taking the job, he said, "I don't know whether they will or not." And I said, "Well, how am I going to get out of here if I should be taken ill, with a pile of dirt in front. I will have no way to get out

if an ambulance had to come to take me out." So he said, "I don't know whether they will give you one or not." And so the Engineer asked the State to—

Q. Let's don't tell all of that. I don't want to go into all that. They came in and moved these fences, and flowers, and physical things that had been a part of your front yard—

A. Yes, sir.

Q. —since 1913?

A. Yes, sir.

Q. Had they all been there ever since then?

A. I used it and cultivated—

Q. Or were they built there two or three years after that?

A. Right about then, about 1913.

page 137 } Q. You had been cultivating your flowers and maintaining your front yard through all these years?

A. Yes, sir. Yes, sir. Through all these years.

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page 139 }

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Q. This particular fence that you have referred to, is all of that fence there now, except the frontage part that was removed?

A. They moved all the front and part of the fence between Mr. Winn and myself, what they took. They took it and lifted it and took the post—

Q. What I am getting at is: That is the fence moved in the area that the Highway Department took?

A. Yes, sir.

Q. Is there a fence right now, in case we drive out there, around the rest of the lot that you can see?

A. Well, they took it and the posts up and threw it back. It's sort of there leaning up. Anybody can see it that wants to.

Q. That is not what I am getting at. Do you have a fence around all the rest of your lots, right now, that you can see, except the area that the Highway Department took?

A. Yes, sir. There's a fence that's gone down, but you can see it.

Mary G. Blackwell.

Q. It's there so that you can—
A. You can see it.
Q. You testified, I am not sure I got it straight, about one corner, either being in concrete, or—
page 140 } A. Yes, sir. That is on the end of the lot back this way, where there's a street that comes down—
Q. Is that out on Court Street, or is it back on the alley?
A. On the alley.
Q. Way back at the alley?
A. Right on the corner.
Q. At the back of the lot?
A. Yes, sir.
Q. It is not out on the front.
A. The corner where the lot starts.
Q. You state that your lot is laid off square with the highway.
A. Yes, sir.
Q. Did you know that the lot that was bought by your husband was a lot that was not square with the highway?

Mr. Gravatt: I object to that.

A. I don't know anything about it.

The Court: He bought it by another plat.
Mr. Gravatt: That is not what he asked here, Judge.

Q. Do you know anything about the records of what he bought, as to what plat it was bought on, or what the deed called for?
page 141 } A. 200 feet deep and 50 feet broad.
Q. That is all you know: 200 feet—
A. That's what the deed calls for.
Q. Do you know what plat it refers to?
A. No. I will have to look.
Q. Have you ever seen the plat?
A. No.

Mr. Bagwell: That is all.

Witness stood aside.

HENRY DAVIS,
a petitioner, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Will you state your name, age, and residence, please, sir?

A. Henry Davis, 52 years old.

Q. Do you own lots Nos. 13 and 15 in Block No. 5, as shown on Exhibit A?

A. Yes, sir.

page 142 } Q. How long have you owned those lots?

A. Twenty-one years. Ever since '37.

Q. There is testimony here that there is a stone at the point marked "G" on this plat. Do you know what that stone marks, and what it designates?

A. Yes, sir. I bought the lots from T. L. Hood. He said it was a corner line. He had two lots, one up at the corner next to the street, and one down adjoining Stevens to the alley, and one out in the front. It had three rocks when I went there. It only has one now.

Q. What has become of the others, do you know?

A. The boy that lives down from the Stevens' house tore that one out with a motor-grader. Looking up the alley he lives down there. The Highway Department tore the other down when they widened the road.

Q. When they widened the road they moved the other one?

A. Yes, sir.

Q. Do you have any fence, or did you have any fence on your property?

A. Yes, sir. I got a fence now all the way between my line and Stevens, and all the way out, along the alley out to the road. What I didn't tear out. It's an old fence and part fell down.

Q. How long has the fence been there?

page 143 } A. It was there when I went there. It was put there a number of years ago, because I think Wade Winn put it there.

Q. Is that fence on the line between your property and the owner of Lot No. 11?

A. Yes, sir.

Q. Is it a straight line perpendicular to the alley behind it?

A. Yes, sir. It looks straight to me.

Q. Has it ever been suggested to you at any time, or have

Henry Davis.

you ever heard it suggested, that any of the lots in Blocks 5, 6, 7 and 8, run cater-bias, or at an angle to the alleys and streets laid off in that sub-division?

A. No, sir. I have never heard anything like that.

Q. Do the fences and the buildings and the use of the property conform to perpendicular lines to the streets and alleys as shown on the plat, and as laid off on the plat?

A. Yes, sir.

Mr. Gravatt: You may examine, Mr. Bagwell.

CROSS EXAMINATION.

By Mr. Bagwell:

Q. You bought your property when?

page 144 } A. '37.

Q. In 1937?

A. Yes, sir.

Q. Did you ever make any effort at all to make an investigation from the records as to what you acquired by your deed?

A. No, sir, I got Mr. Bob Weaver to search my records and papers when I bought it, to see if it was clear. He tended to it, if I remember right.

Q. What lots did you buy, again?

A. 13 and 15.

Q. You bought lots 13 and 15 in block 5?

A. Yes, sir.

Q. Did you ever look at the plat recorded in Deed Book 54, page 496?

A. *Unh unh.*

Q. You never saw a plat of it showing the lots lying cater-bias or on an angle to the highway, other than a right angle?

A. I never have looked at it.

Q. You never investigated that at all?

A. No.

Q. You bought it according as you understood it to be on the ground: A lot square to the highway; and that is all the information that you have?

page 145 } A. Yes, sir.

Q. This corner you state to be identified by a rock, that corner is at the rear of the lot, back on the alley?

A. Yes, sir. It has a rock buried there. I reckon it's as big around as that. Just at the top of it.

Q. It is a big rock?

A. A great big rock.
Q. How much in diameter?
A. Oh, I say twelve inches in diameter.

* * * * *

page 150 }

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JAMES T. WADDILL, JR.,
introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bagwell:
Q. Mr. Waddill, would you give us your full name, sir?
A. James T. Waddill, Jr.
Q. You are the Clerk of the Circuit Court of Lunenburg County, Virginia?
A. Yes, sir.
Q. How long have you held that office, sir?
A. About twenty-two years.
Q. Twenty-two years, that is continuously?
A. Yes, sir.

* * * * *

page 151 }

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J. W. BLACKBURN,
having been previously sworn, testifies further as follows:

DIRECT EXAMINATION.

By Mr. Bagwell:
Q. Mr. Blackburn, I believe that since you testified yesterday that you have taken your plat, that is Exhibit B, and have superimposed on it by dotted lines what purports to be the old hard surfaced highway before the recent improvements?
A. That's correct.
Q. This dotted roadway that you have now shown on Ex-

hibit B is the same roadway that is shown by dotted lines on Exhibit , simply superimposed on this plat?

A. That is correct.

Q. And it is to scale?

page 152 } A. Yes, sir.

Q. I observe that the old road as you show it on here, although at points it may not be precisely, but generally it runs approximately in the center of the new highway?

A. That map will speak for itself. Yes, sir. Generally there is no difference between the old and the new highway right-of-way line.

Mr. Bagwell: Thank you kindly. That is all I wanted to ask him. I just wanted to get that into the record here.

JAMES T. WADDILL, JR.,
testifies further as follows:

DIRECT EXAMINATION.

By Mr. Bagwell: (Continuing)

Q. Mr. Waddill, I direct your attention to a plat that is entitled Bragg Residence Site, Victoria, Virginia, 8/25 09, J. E. Crafton, Engineer and Surveyor, and ask you whether or not that is a plat that is recorded in the records of your office in Deed Book 54 at page 496?

Mr. Gravatt: I object to that question, if Your Honor please. I think that the word "recorded" may

page 153 } call for a legal conclusion on the part of the witness. If he will amend his question to say that the plat is found at page so and so of Deed Book so and so, I would not object to the question.

The Court: All right, sir. I think we can understand that. I will take care of the situation. The question is a matter of proof, whether it is properly recorded or not. I understand.

Mr. Bagwell: I do not want to waste time, but we submit that if it is recorded in the Deed Book that it is properly recorded.

A. I will answer that by saying it appears of record in that Deed Book.

Q. I believe that this bears a certification which reads as follows: "In Lunenburg Circuit Court Clerk's Office, September 18, 1909: The foregoing plat of land of the Bragg

Residence Site, was this day presented and admitted to record. Teste: John L. Yates, Clerk."

A. That is correct.

Q. He was the Clerk back at this time, was he?

A. Yes, sir.

Q. This plat is fastened by gluing it to the Deed Book at the page that I have referred to, is it not?

A. Yes, sir.

Q. Is that the way that the plats, generally, of this period of time were placed with the records?

page 154 } A. Yes, sir.

Q. From the best of your information, has this plat been here in this location ever since you have been Clerk?

A. Yes, sir.

Q. Will you prepare a certified copy of this plat for us to file with the records in this case?

A. I don't know whether I am capable of doing it or not, sir.

Note: An off the record discussion is had concerning the preparing of a certified copy of the above mentioned plat, whereupon an agreement is had that a tracing will be made.

A. I will be glad to do that.

The Court: If you want it more accurate, you can get Mr. Blackburn to make a copy of it.

Q. Mr. Waddill, I direct your attention to a plat entitled "Bragg Residence Site, Victoria, Virginia, All lots 50 by 200, except those specified. J. E. Crafton, Sr. Engineer and Surveyor. November 22, 1910." I ask you whether or not this plat is recorded in your office in Deed Book 55 page 382, or 383?

A. Sir, it is in Deed Book 55 at page 382-383.

Q. I say at one page or the other, because I believe the plat extends across the width of both pages, and is sealed in on the other side?

page 155 } A. That is right.

Q. I believe this Deed Book, immediately under the plat in question, bears the following legend: "In Lunenburg Circuit Court Clerk's Office, March 1, 1911: The foregoing plat of the land of the "Bragg Residence Site" was this day presented and admitted to record. Teste: John L. Yates, Clerk."

A. That is correct.

James T. Waddill, Jr.

Q. I observe here that there appears to be an irregular tear at the bottom of this page. Do you have any way of knowing whether that is something that has happened to this plat since it was placed with the records in the Clerk's Office, or whether it was something that was done to it before?

A. I do not know. It hasn't been done since I have been Clerk here, sir.

Q. But it is an irregular tear at the bottom, and does show a tear along a folded line where it could have worn? I am trying to get in the record, as near as I can, what the situation is.

A. It looks to me like it was cut or torn there, sir, and this was left on.

Q. There is a corner projection on which "Tidewater Improvements Company, Incorporated" is written?

A. That is a prediction of these streets into the

page 156 } Bragg Residence Site.

Q. Has this plat been in this condition, and in this location, under this certificate in your office ever since you have been the Clerk of the Court?

A. Yes, sir.

Q. At this period, around 1909 or 1910, please state whether or not it was common practice for plats to be recorded there, right in the Deed Books—

Mr. Neblett: We object to that, Your Honor. That is a question—

The Court: He is the Clerk. He can certainly testify as to the practice if he knows.

A. All plats of that period were recorded.

The Court: That is perfectly all right. He can state whether they were put in the Deed Book, or whether they had a separate plat book for them.

Mr. Neblett: I don't know. The statute states that it will be prepared in a certain way the deeds recorded.

The Court: He can state what was done, all right. Whether it was properly recorded or not is a question for the Court. He can state what action was done.

A. Plats of that period were put in the Deed

page 157 } Book. I think about 1912—I am not sure of the exact date—they started the Plat Book here. Just

about the year 1912. Either the latter part of 1911 or the first of 1912.

Q. Mr. Waddill, will you also prepare for the record a certified copy of that plat, in a similar manner to which you have prepared the other ones?

A. Yes, sir.

Mr. Gravatt: Do you want the whole plat, Mr. Bagwell?

Mr. Bagwell: Yes, sir.

A. We will do the best we can. Yes, sir.

Q. I will direct your attention to a plat at page 115 in Plat Book 1 of the records of your office, which is entitled "Map of E. J. Flippo's Farm. 3/4 of a mile southwest of Victoria, on Lunenburg Court House Road, Lunenburg County, Virginia. Sub-divided by Atlantic Coast Realty Company. Petersburg, Virginia. Greenville, North Carolina. Scale: 1 inch equals 300 feet. February, 1919. W. B. Fluharty, Engineer," and ask you whether or not this plat is recorded at the plat referred to in the records of your office?

A. It is.

The Court: I understand that your exception is noted as to your definition of "recorded"—

Mr. Gravatt: Yes, sir.

page 158 } The Court: —without making an exception.

Mr. Gravatt: I do not want to raise the question every time the question is asked, Judge, but I would like to reserve the right to question all documents as to whether or not they are properly admitted to record.

The Court: Yes, sir. Let the record show that such an exception is noted.

By Mr. Bagwell: (Continuing)

Q. I believe this plat, apparently through long wear and usage, has become torn, and that the lower corner of it is in part missing?

A. Yes, sir.

Q. I don't think it has any bearing, the missing part. I wanted to get it into the record.

I ask you whether or not this was admitted to record and placed upon this record prior to your coming as Clerk?

A. It was.

Q. Does this bear a legend anywhere here of the Clerk, Mr. Waddill?

James T. Waddill, Jr.

A. No, sir. I don't see it, sir.

Q. I will assume without wasting time that a
page 159} further legend may be later found and inserted in the record by him?

Mr. Gravatt: You mean the certificate of recordation of the Clerk?

Mr. Bagwell: That's right.

Q. Where were the certifications of the Clerk customarily placed on plats of this kind at the time, do you know, Mr. Waddill?

A. No, sir, I do not.

Q. Could it have been on the corner of this map that is destroyed?

A. I don't know, sir.

Q. All you know is that this map has been there in this plat book since you have been Clerk?

A. That's right. Yes, sir.

Q. I believe it is indexed in the regular indices of that plat book?

A. That's right.

Q. Mr. Clerk, will you likewise have a copy of this plat prepared for us? I think we could have this thing photographed.

The Court: We do not have a photographic machine. It is easier for him to trace it.

Mr. Bagwell: Judge, couldn't you take it to Halifax by agreement and let me photograph it there?

page 160} The Court: By having it photographed it might change the scale. It might make it either smaller or larger. It will be taking it out of the office here. I expect we had better let Mr. Waddill make a copy of it, or you can get Mr. Blackburn to make a copy of it if you wanted a more accurate copy.

Mr. Bagwell: All right, sir. Very well.

By Mr. Bagwell: (Continuing)

Q. Mr. Waddill, I ask you whether or not it was the usual procedure through the years, and particularly back during the time of these plats that we have discussed, for plats to be placed upon the records in the Clerk's Office without having any signature of the landowner, or acknowledgment before a Notary by him?

Mr. Gravatt: I object.

The Court: I think it is all right for him to say what the custom is. It is a question for the Court to decide whether it is properly recorded or not.

Mr. Gravatt: I think Mr. Waddill would have to make an examination of all the plats; if he feels he is prepared to say what has been the custom, if he has examined these plats with a view to determining whether or not it was the procedure—

The Court: I will take care of that. He can page 161 } tell what he knows about it.

Mr. Bagwell: He has testified he has been the Clerk for twenty some years, I believe.

Mr. Gravatt: He cannot testify about something he doesn't know.

The Court: Mr. Waddill knows that.

A. I wouldn't like to testify about that period. I can testify about the period since I have been Clerk. I wouldn't like to testify about that period, sir, because I don't feel that I know. Do you want me to testify?

Q. Yes, sir.

A. It's very few plats, if any, admitted to record other than signed by the surveyor since I have been Clerk.

Q. Thank you, sir. In other words, most of them bear the surveyor's signature, and that is all?

A. Yes, sir.

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page 163 }

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Q. On yesterday there was testimony concerning the conveyance of property by T. D. Bragg and wife back in the year 1912 to Thomas Blackwell, who was then later to become the husband of Mrs. Blackwell, who testified here yesterday.

I would like to refer your attention to this deed, Deed Book 56 at page 126, and ask you whether or not, ask you when that deed was admitted to record in your office?

A. It was admitted to record on February 27, 1912.

Q. Mr. Clerk, if you will, I want to get it before the Court here at this time, if you will read to the Court this deed, or I can read it into the record, either way.

James T. Waddill, Jr.

Mr. Gravatt: It will be all right either way with us.

Q. Would you prefer to read it?

A. I will be glad to. "This deed made this the 7th day of February in the year 1912 by and between T. D. Bragg and Lilla L. Bragg, his wife, of the county of Lunenburg in the State of Virginia as parties of the first part, and Thomas Blackwell of the same County as party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of seven hundred and
page 164 } fifty dollars ($750.00) cash in hand, paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell and convey with title of general warranty unto the said party of the second part and to his heirs or assigns, all that certain lot, piece or parcel of land situated in the County of Lunenburg in the State of Virginia and which is known, numbered and designated on a certain plat or subdivision of a portion of the land of the said T. D. Bragg duly of record in the Office of the County Clerk of the County of Lunenburg, Virginia in Deed Book No. 54 and known as "Bragg Residence Site" as follows: Lots No. 5, 6, 7 and 8 in Block No. 5 which said lots have a frontage of 50 feet on Court Street and two have a frontage on High Street with a depth between parallel lines of 200 feet. The said Thomas Blackwell by the acceptance of the deed covenants and agrees with the said T. D. Bragg, his heirs or assigns, will that he, his heirs or assigns, will not for a period of ninety-nine years from the date of the deed, sell, rent, lease, convey or otherwise dispose of the said lots of land or any part thereof to any person or persons of African descent. The said T. D. Bragg and Lilla L. Bragg, his wife, covenants that they have the right to convey the said land to the grantee; that they have done no act to encumber the said land; that the grantee shall have quiet possession of the said land free from encumbrances and that they, the said parties of the first part, will execute such further assurance of the said land as may be requisite.

page 164a } "Witnesseth the following signatures and seals: T. D. Bragg (Seal) L. L. Bragg (Seal)."

Do you want me to read the acknowledgment?

Q. It is duly acknowledged, is it not?

A. Yes, sir.

Q. I believe the description here that you read is to lots

in Deed Book No. 54, Bragg Residence Site, Lots 5, 6, 7 and 8 in Block 5?

A. That's right.

Q. Of the two plats you have testified to that you have identified here, only one of them is in Deed Book 54, the other one is in Deed Book 55?

A. That's right.

Q. So this Bragg Residence Site shown here, in blue, is the plat that is referred to by that deed?

A. Yes, sir.

Q. If you will turn to page 215. On yesterday the witness Winn, in describing part of the property that is the subject matter of this suit, referred to the coveyance and what he was conveyed by deed back in 1912 from Thomas Bragg. I point to you what appears to be a deed from T. D. Bragg and wife to W. W. Winn, dated May 6, 1912 in Deed Book 56 page 215, and ask whether or not that is a deed duly recorded in the Deed Book of your office?

A. I believe it is. Yes, sir.

page 165 } Q. What is the date of recordation?

A. May 6, 1912.

Q. Again I would like to read the body of this, which is shorter than the other, into the record and save Mr. Waddill. If you don't mind I will go ahead and read it myself.

"This deed made this the 6th day of May in the year 1912 by and between T. D. Bragg and L. L. Bragg, his wife, of the County of Lunenburg in the State of Virginia as parties of the first part and Wade W. Winn, of the same County and as party of the second part, witnesseth: That the said parties of the first part for and in consideration of the sum of one hundred dollars ($100.00) ten dollars, cash in hand paid, the receipt whereof is hereby acknowledged; do grant, bargain, sell and convey with title of general warranty unto the said party of the second part and to his heirs or assigns, all that certain lot, piece or parcel of land situated in the County of Lunenburg *on* the State of Virginia and which is known, numbered and designated on a certain plat or sub-division of a portion of the land of the said T. D. Bragg duly of record in the Office of the County Clerk of the County of Lunenburg, Virginia, in Deed Book No. 54, and known as Bragg Residence Site" as follows: Lot No. 3 Block No. 5, which said lot *have* a frontage of 50 feet on Court Street,

page 166 } with depth between parallel lines of 200 feet. The said Wade W. Winn by the acceptance of this deed—" and so forth.

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page 169 }

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Q. I direct your attention to Deed Book 54 page 509 of the records of your office what purports to be a deed dated September 18, 1909 from T. D. Bragg and wife to C. Orgain, and ask you whether or not this instrument has been duly recorded in your office and on what date?

A. It was duly recorded on October 4, 1909.

Q. Now I am going to again, if I may be permitted, to just read the part of this that I want to get specifically into the record at this point for Your Honor's consideration:

"This deed made this the 18th day of September in this year 1909 between T. D. Bragg and Lilla Bragg, his wife, of the County of Lunenburg in the State of Virginia, parties of the first part and C. Orgain of the same County and State party of the second part, witnesseth: That the

page 170 } said parties of the first part in consideration of the sum of one hundred dollars cash in hand paid, the receipt whereof is hereby acknowledged; the said *I.* D. Bragg and Lilla Bragg, his wife, do hereby grant, bargain, sell and convey with title of general warranty unto the said C. Orgain, and to his heirs or assigns all that certain lot, piece, or parcel of land situated in the County of Lunenburg in the State of Virginia, and which is known, numbered, and designated on a certain plat or sub-division of a portion of the land of the said *I.* D. Bragg duly of record in the Office of this County Clerk of Lunenburg County, Virginia in Deed Book No. 54 known as Bragg Residence Site, as follows: Lots Nos. 13 and 15 in Block No. 5, which said lots have a frontage of 50 feet each on Court Street with a depth between parallel lines of 200 feet. The said C. Orgain by the acceptance of this deed covenants and agrees with the said *I.* D. Bragg that he, his heirs or assigns will not—"I do not believe it is necessary to get the covenants relating thereto.

There is just one other deed that I wish to refer to.

James T. Waddill, Jr.

Mr. Clerk, will you prepare certified copies of each one of these deeds to be filed with the record in this case so that we will—

The Court: I thought that was the reason you were reading them into the record.

page 171 } Mr. Bagwell: I just quit reading. I want the whole thing. I do not want any arguments as to what is in it. It is not too difficult a thing.

A. I will have to get the references to the deeds if you have them.

Q. Yes, sir. I will do that.

The Court: Mr. Jefferson can do that.

Mr. Bagwell: As I understand it, in the Bollinber case and the Davis case, certification from Mr. Jefferson identifying these as being the sole link in the chain of title connected with the plat will be considered adequate.

Your Honor, I assume that they are in all right, but in any event I would like it understood that at this time these deeds that have been read from, and these plats, were presented as evidence in this case on behalf of the defendant.

The Court: The deeds will be marked as exhibits for the defendant whenever we get them.

By Mr. Bagwell: (Continuing)

Q. Mr. Clerk, I direct your attention to Deed Book 95 page 139 of the records of your office, what purports to be a deed from W. G. Smith and wife to John A. Worsham, and ask you whether or not this is a deed that was recorded in your office on the 24th day of November, 1953?

page 172 } A. It is.

Q. I ask you to read the descriptive paragraph of this deed, if you will, to show what it conveys?

A. "That certain lot or parcel of land situate in Plymouth District Lunenburg County, Virginia, near the corporate limits of the town of Victoria, which is known, numbered and designated on a plat or sub-division of the property of T. D. Bragg, known as "Bragg Residence Site" of record in the Clerk's Office of Lunenburg County in Deed Book 55 page 373 as Lot number nine (9) in Block No. one (1), having a frontage on Court Street of 60 feet and extending back between parallel lines a distance of 200 feet, being a part of the same conveyed to the said parties of the first part by

deed A. S. Bridgforth and wife, dated May 29, 1951, recorded in said Clerk's Office in Deed Book 91 page 405-406."

Q. In other words that is Lot 9, Block 1, of the Bragg property, according to the '55 plat?

A. That's right.

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page 180 } E. F. MASSIE, JR.,

introduced in behalf of the defendant, first being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bagwell:

Q. Mr. Massie, you have been duly sworn, I believe?

A. Yes, sir.

Q. Are you a certified land surveyor, certified by the Commonwealth of Virginia?

A. Yes, sir. I am a certified land surveyor, and licensed civil engineer.

Q. You are a licensed civil engineer?

A. Yes, sir.

Q. What is your training for that capacity?

A. I have a B. S. degree in civil engineering from VPI, an M. S. degree in construction engineering from VPI, and I have been—

Mr. Neblett: We will be glad to admit his qualifications.

Mr. Bagwell: We would like for the record show—

Mr. Neblett: We never objected yesterday, we agreed to it, Mr. Bagwell, we will be glad to let the record show he is fully qualified.

Mr. Bagwell: I would like for the record to

page 181 } show the extent of his qualificaitons.

A. I have been licensed as a certified land surveyor since 1947; licensed as a civil engineer since 1948, in the State of Virginia.

Q. You have been doing land surveying ever since then?

A. I have been doing land surveying ever since 1947.8. Private practice of my own since approximately '54. '54, somewhere.

Q. Where is your home?

A. Crewe, Virginia.

E. F. Massie, Jr.

Q. Have you been, during this time, surveying land generally about the area that we are concerned with here?
A. Yes, sir.
Q. Victoria and the surrounding areas?
A. I have surveyed Lunenburg County, Nottoway, Amelia, Prince Edward, Charlotte, Mecklenburg, Chesterfield, just a general—Powhatan—Within approximately a hundred mile radius of Crewe.
Q. You received both a bachelor's and a master's degree in engineering from VPI?
A. Yes, sir.
Q. How long is the course of study to get the master's degree?
A. Anywhere from two—I mean from one to
page 182 } three years, depending on how diligently you go after it.
Q. Four years for a B. S. and one to three years for a Master's?
A. I took one year on my M. S.
Q. Mr. Massie, have you been called upon to make a survey in an effort to establish the boundary of the road that is shown as Court Street on the Bragg plats, that we have been referring to as being in Deed Book 54 and Deed Book 55?
A. Yes, sir.
Q. When did you make this survey?
A. Well, I was there once in the early spring, in this particular instance; and I was there again in July, in this particular instance. I have surveyed in connection with, along this highway at different places, and these plats have been introduced at other locations prior to that.
Q. Have you prepared a plat showing the Court Street in question?
A. Yes, sir, I have.
Q. Is this the plat?
A. Yes, sir.

Note: Counsel is examining plat.

By Mr. Gravatt:
Q. Do you have an extra copy of that?
A. No, sir, I haven't.
Q. Sir?
page 183 } A. No, sir. You may have prints made of it.

E. F. Massie, Jr.

Mr. Bagwell: I will get you a copy of it if you want me to get you an extra copy of it.

Mr. Gravatt: I have given you one copy of the plat taken from the basic plat. Not that one, I have given you a copy of the other plat filed as Exhibit A, which is—

Mr. Bagwell: I don't seem to have it, but in any event I will be glad to go to the trouble of having one made if you all will get one of those for me.

Mr. Gravatt: Don't bother.

Mr. Bagwell: Your Honor, I would like to file this as Defendant's Exhibit No. 1.

The Court: We used letters for the petitioners' exhibits. This will be filed as Defendant's Exhibit No. 1. Mark that Exhibit No. 1 there, please, sir.

Note: The above referred to plat is now marked Exhibit 1 by the witness.

Mr. Bagwell: Are you going to be able to see this clearly as he testifies from it, Judge?

The Court: I will come down there.

By Mr. Bagwell: (Continuing)

Q. Mr. Massie, if you will, I would like for you page 184 } to take your time now and explain to the Court—

Mr. Gravatt: If Your Honor please, having seen that thing I am going to object to it upon the ground that the Highway Department has executed conveyance and filed plats in this office establishing the line of the old highway and the old right-of-way. This plat is in complete conflict with what is shown on those plats. I do not think that the Highway Department can take one position in relation to where the road is and where the right-of-way is in connection with one set of land owners, and then take another position as to where the highway is and where the road is in relation to another set of land owners.

The Court: That may be right. I think we had better let him go ahead and put it in evidence. You may argue that point.

Mr. Gravatt: We save the point, sir.

By Mr. Bagwell: (Continuing)

Q. Mr. Massie, if you will now, I would like for you to point out to the Court exactly what this plat shows.

E. F. Massie, Jr.

A. This plat shows the location of the existing center line of the present or new developed highway.

Q. Point these things out as you go along.

A. This solid line in the center, marked "center line of new highway" shows the existing center line of the present highway as constructed.

page 185

The outside edge, solid, heavy solid line shows the edge of the right-of-way as the construction or building right-of-way that the Highway has proposed when they built their plans.

Q. Right at this point let me ask you: When you refer to the edge of the right-of-way for new highway, is that the same, is that the area that is marked by the monuments as was testified to by Mr. Blackburn?

A. Yes, sir.

Q. Same thing?

A. Yes, sir. With exception of some turnout monuments that are marked "turnout," back into these streets, at one or two places, which are not in contention.

Q. That is 60 feet now that is used and marked—

A. Utilized.

Q. —as the presently operated highway?

A. Yes, sir.

Q. This substantially shows what Mr. Blackburn showed there with reference to his plat?

A. Yes, sir. They are the solid heavy ink lines. It also shows the center line of the old highway borne out by the Flippo plat; and it also shows the edge of the old highway as borne out, or the old highway, the area used by the old highway as shown on the Flippo plat; and it also shows the edge of the right-of-way in relation to the old highway as shown on the Bragg sub-division plat.

page 186

Q. Does this show the boundary—

By Mr. Gravatt:

Q. Let me ask him: What was that last statement you made? I want to get what you said.

A. It shows the edge of the right-of-way, or the edge of the dedicated line in relation to the center line of the old road, as shown on the Bragg sub-division plat.

Q. I am not sure I understand.

The Court: Go ahead, Mr. Massie, and clear it up.

A. I said it shows the dedicated—

E. F. Massie, Jr.

Q. I understand what you are talking about, but what line shows that?

A. This dash line. The line with the two dashes. Along here. Here is the line as the Bragg—

Q. Follow the line with a pencil.

A. Well, right here. This line. The line with the two dashes.

Q. Yes, sir.

A. That's the line, shows the line of the edge of the dedication set forth in the Bragg sub-division plat in relation to the center of the old road.

page 187 } By Mr. Bagwell: (Continuing)

Q. Will you make a red mark with this pencil at that line so we will know for sure what line we are talking about?

Note: The witness draws a red line on Defendant's Exhibit 1.

Q. You have traced beside it, and close to it, a little bit with red to clearly identify it there, Mr. Massie, isn't that right?

A. Yes, sir.

Q. I think that is enough. Where would it be down here?

Note: The witness places a red line further down on Defendant's Exhibit 1.

By the Court:

Q. Let's see now, that is your interpretation of the place where the Bragg line would come?

A. No, sir. This is a construction of the edge of the dedication as set forth in the Bragg sub-division plat in relation to the center of the old road.

By Mr. Bagwell: (Continuing)

Q. This line that you have touched in red there then marks your location of the northern boundary of the dedicated Court Street and the southern boundary of the lots that were sold fronting thereon?

page 188 } A. As shown on the plans of the sub-division, the Bragg sub-division.

Q. When you refer to the Flippo plat, are you referring to

the Flippo plat that we have been dealing with here, and that was identified by the Clerk a little while ago?

A. Yes, sir. The Flippo sub-division plat.

Q. I would like for you to describe to the Court here how you established and located this dedicated street, or this street, whatever it is, Court Street, the 60 foot street as shown on the plats. In order that there may be no misunderstanding, will you refer, when you refer to Court Street, or to a dedicated street, are you referring to this street marked Court Street on this plat at page 373?

A. Yes, sir.

Q. The similar street as shown on the plat recorded in plat book 54?

A. Yes, sir.

Q. I would like for you to describe to the Court how you went about locating and establishing these points, if you will, please, sir?

A. Well, I will go about it in chronological order, I imagine that would be the best way, as we proceeded to survey it and the reasons behind each step as we took them.

page 189 } The first thing was, the question was raised on this property involved the overlap incroachment. So the first procedure was to go to the Bragg sub-division lots and survey them according to the landmarks, or the marks that the residents there considered as their property marks. We started on some iron pins and fences to the back, and worked out to the highway.

Now we are assuming, to begin with, that these pins were right; and we assumed that the plat and the pins agree. So, therefore, we developed the sub-division toward the highway, based on this assumption that it was correct. However, when we reached the highway we found that the property line fronting on Court Street did not agree with the location of the old road, or the location of the—Yes, the old road and the present road. That they were not in agreement.

There were two possibilities: Either we made an erroneous assumption to begin with, or else the road was not where it was supposed to be.

Then we proceeded, and our next survey was to determine whether the road was wrong, or whether our original assumption was wrong. So we went over to the Flippo property, surveyed some of the property over there; found some definite undisturbed landmarks; and worked out to the highway. We went further down toward Victoria, to the Robinson property,

E. F. Massie, Jr.

I believe it is, and started on the back of that and surveyed out to the highway and in both cases—

page 190 } Mr. Jefferson: Excuse me, I believe you mean the Johnson property.

A. The Johnson property it is. C. K. Johnson. In both cases these agreed very closely with the center line of the new road as to the location of the old road.

The Flippo plat shows, and the Bragg plat is in agreement, that the boundary line between the Bragg and the Flippo property was originally the center of the old road, or approximately the center on a straight line.

So our second survey was an attempt to reestablish the original property line between two individual sets, pieces of property. We found these plats in agreement with the landmarks, the physical evidence at the site to be in agreement. Therefore, we had proved our second assumption; which was not in agreement with our first assumption. So by all positive means the first assumption was bound to have been the erroneous assumption, that was: The pins at the back were set right to begin with. They are not in agreement with where the road is at all, nor in agreement with the Flippo property.

Q. In other words, the pins that are back in and scattered throughout the sub-division, that were referred to yesterday, they do not agree with either the location of the old road as the physical boundary, or with the boundary between the properties as located from the Flippo sub-divi-
page 191 } sion?

A. That's right.

Q. You did find well established monuments there from which you could operate on the Flippo property?

A. Yes, sir.

Q. Under the best rules of surveying practice, under a circumstance of that kind, which should prevail: The theory that is based upon these outer boundaries in the roadway and so forth as you have located them, or the premises that you originally started on from the start?

Mr. Gravatt: I object.

The Court: It is all right from a surveyor's standpoint. It may be a question of law for the Court to determine; but this man is just like a doctor, and a doctor is allowed to state what is the best practice.

Mr. Gravatt: If he is asking about the practice that is all right; but he is asking which should prevail.

Mr. Bagwell: I did not ask him which should prevail; I asked him which is the better, the preferable surveying practice.

Mr. Gravatt: I thought you used the word prevail.

A. The surveying practice to develop the inside of the sub-division—To to be definitely right about it you
page 192 } would start at the outside boundaries and work in to the development.

Q. I ask you this: From your knowledge and understanding of surveying principles, will you please state whether or not you concluded that the method you used was the proper method to be employed in this case?

A. I felt, and I am sure, that it was; not only because it was good practice, but because the physical evidence bore it up as we proceeded to develop our survey down there.

Q. I ask you this: Whether you have done any surveying at any time of a part of this Bragg sub-division that showed whether or not inside stakes were accurately and properly located, or not?

A. Yes, sir, I did.

Q. Did that show whether those inside stakes and markings were properly located?

A. The inside markings were not properly located. There were fences there that were as much as twenty feet off of where the actual property lines was. And in that case, we had to go to the outside boundary and come in again to establish this—

Q. Were the inside markings slightly in error or grossly in error?

A. It depends on how much length you got as to whether it was slightly or grossly. As much as twenty
page 193 } feet in a thousand miles, twenty feet is not much; in five miles, twenty feet is a whole lot.

Q. Were a few of the things in error, or did most of them appear to be in error?

A. It was the majority of them in error, deviation from what you would expect.

Q. Did you, in discovering those errors, did you base it upon an outer boundary, survey of the outer boundary, tying it in with another adjacent property?

A. Yes, sir. I had to go by the outside boundary.

Q. What adjoining owner was that?

E. F. Massie, Jr.

A. It was the Tisdale property. It was W. C. Tisdale at that time. Who owns it now I don't know.

Q. The highway, or street, Court Street extended on out to that general area?

A. Yes, sir.

Q. Let me ask you this: Are you familiar, have you made a careful examination of the Bragg plat in Deed Book 55 and the one in Deed Book 54?

A. Yes, sir.

Q. Is there any way that these two plats can be reconciled with each other?

A. Not without a whole lot of argument, and probably court suit.

Q. In other words—

page 194 } A. There is considerable amount of overlap of property.

Q. Insofar as the location of the rear lines are concerned, and the side lines of the lots, if one of them is correct, is it not true that one would be substantially in error?

A. No, sir. It's in error. It couldn't be in agreement.

Q. With reference to this Flippo plat, I would like for you to point out to the Court here what can be easily observed from it. You made reference to the fact that apparently the center line of the old road was the original boundary line—

A. Yes, sir.

Q. Point out what this plat shows with reference to that?

A. This plat shows the Flippo property coming to the center of the road, the Court House Road—Lunenburg—Victoria Road. You follow the center of your traverse coming right down the center of the road. This traverse coming right down the center of the road. Up along in this section, towards lots 11 and 10, and so forth of the Flippo plat, you find it 30 feet wide—15 feet on each side of traverse, or center line. As you get down to lots 2 and 1, and Lots 13 and 14 of the Flippo plat, you find that the highway, or

page 195 } roadway, opens up to approximately 60 feet—15 feet on one side of the traverse line toward the Flippo property being dedicated, shown as dedicated, and 45 feet toward what is now Braggs, or what we refer to as Braggs, being dedicated, set forth as the highway.

Q. In other words, according to this plat, part of the roadway as it is laid out is a 30-foot roadway and part of it is a 60-foot roadway?

A. Yes, sir.

Q. Where does this property here tie in with the Bragg property?

A. Lots 13 and 14 on the Flippo property are Lots 1 and 3 in Block 7 of the Bragg sub-division.

Q. In other words—

A. That's according to the Bragg sub-division, his second and newer one in 1910.

Q. The Bragg property begins with Lot 13 and extends towards Victoria?

A. That's on the Flippo plat. No. 13 would be Lot No. 1 on the Bragg plat.

Q. And extends towards Victoria?

A. Yes, sir.

Q. This plat shows that as you go from Lunenburg Court House to the Bragg property there is a 30 foot right-of-way and a 60 foot right-of-way?

page 196 } A. Yes, sir.

Q. 45 feet of which lies on the Bragg side of the center line of the roadway, and 15 feet of which lies on the other side?

A. Yes, sir. That's right.

Q. Does this indicate that 15 feet of the 60-foot roadway was contributed by the Flippo property, and the 45 feet was contributed by the Bragg property?

A. Yes, sir.

Q. Has all of that been carried out on your drawing here?

A. Yes, sir. There was an attempt on my part on the drawing to show that.

Q. Please state whether or not your examination has indicated that the center lines of the old highway, before it was redone, and the center line of the new highway are substantially and approximately in the same location?

A. They are, yes, sir. They are reasonably close. Within three or four feet. In some places, I mean, in some places the center line of the old road would be to one side of the center line of the existing road, and in some places it would be to the other side: but generally, you know, when I say—

Q. Would you say the relationship appears to be approximately along the line indicated in the Blackburn

page 197 } plat?

A. Yes, sir. It seems to be in agreement with what I have found and set forth on mine.

Q. Mr. Massie, I ask you whether or not this Flippo map is marked with indication of corners, and with courses and

E. F. Massie, Jr.

distances throughout, particularly around the outer boundaries?

A. Yes, sir. It is marked with distances.

Q. What about the Bragg plats, are the outer boundaries shown by courses and distances and so forth?

A. The Bragg plats are shown by distances, however, the courses of the directions are not set forth.

Q. Which type of map is considered the most reliable for surveying purposes? The Flippo map, the Flippo type of map with these distances and so forth on it, or the type of map that is like the Bragg map?

A. The Flippo map, because it has more information, it has the intention of directions shown, whereas on the Bragg map there is only an intention of distances. The intentions of direction are not shown. They are generally indicated, but not shown exactly what they intended.

Q. Mr. Massie, in the testimony here yesterday there was testimony of three witnesses as to the purchase of lots that are located, frontage lots on Court Street in Block 5 of the Bragg Residence Site as shown in Deed Book 54 page 496.

I direct your attention to this plat here showing page 198 } Lot 5, showing Block 5 of this plat recorded in Deed Book 54 page 496 or 497. Now the deeds were read here in Court this morning describing those various lots, the exact numbers of them I don't recall, which fronted there on Court Street.

Yesterday Mr. Blackburn and other witnesses testified as to the rear boundaries of those lots, and the testimony of those witnesses was that the rear boundary of those lots is as shown on Exhibit A filed by Mr. Blackburn, and it was testified that there was a certain marker or markers on this alleyway showing the rear line of the lots. I wish to ask you if these parties owning lots from 1—1, 3, 5, 7, 9, 11, 13 and 15 in Block 5—if these lots as shown there have their rear lines on this alley as shown on Exhibit A, I would like for you to take a pencil and show us where the front line of those lots will be. Just take your time.

By the Court:

Q. What is that supposed to do?

A. This, if you get the true depth on this plat here, where the lots are askew, the askew line is 200 feet, and if this alley line is right, working then from this alley line—if that is this alley line here—to get an askew distance of 200 feet the true distance would only be 189 feet perpendicular distance.

The Court: I see.

Mr. Gravatt: Mr. Blackburn said it would be
page 199 } about twenty-five feet less, did he not?

A. Mr. Blackburn was measuring from back here.

Mr. Blackburn: That was according to scaling it. As I stipulated—

A. That's right. Of course mine is from scaling it, too. I said approximately 189 feet. That is scaling. You can only be so dependent on accuracy.

By Mr. Bagwell: (Continuing)

Q. In other words, as you take these lines here that are shown on the 54 plat and you make them perpendicular to the road—

A. The true depth of the lot reduces.

Q. —reduces by approximately how many feet?

A. A depth of approximately 200 feet reduces it approximately ten feet, or a little over, between ten, eleven, maybe twelve feet. So you would have a reduction of five to six feet per hundred foot of depth.

Q. Consequently then, if you, with reference to the 1909 plat, if you went back to High Street, or to an alley behind that, the further you go back and establish your point and bring it forward the more reduction there would be?

A. Yes, sir. That is correct.

Q. You say there is an eleven or twelve foot reduction down how far?

A. Per two hundred feet.

page 200 } Q. Per two hundred feet?

A. Yes, sir.

Q. According to the Blackburn plat, can you show how far, according to his own figures, it indicates an encroachment by the highway on the property in question? Does that show that? Do these figures show that?

A. Yes, sir. They are written right there.

Q. I believe this shows a maximum encroachment of fifteen feet two inches?

A. That is based on the pins that are way back there on the alley behind High Street and the landmarks or marks along High Street. You see, you have—in arriving at this line, I imagine he did, that's the only way we could do it—to

go back to these and develop them out to the roadway according to the plat, assuming that these were right. When we developed them out we found that they came over into the street too much. So it was either one of two things: Either the street was wrong, or the pins were wrong. So then we went over to Flippo's and verified the street. So the only conclusion left was that these pins were erroneously located to begin with, or at some time—

Q. Then if you related them to the 1909 plat and went from these points back here, D and E for instance, you would come forward with a front line much further to the north than this pencil line that you have drawn?

page 201 } A. Yes, sir. If you took the askewed plat, started back at the alley and superimposed the 54 Deed Book plat, the 1909 plat on the 1910 plat, the 1909 plat would show the front boundary along Court Street as being approximately thirty-five feet further back toward this back alley.

Q. In other words, these points—

A. There would be a discrepancy of approximately thirty-five feet. I wouldn't want to be held specifically to thirty-five feet, but approximately.

Q. In other words, apparently from the testimony here, this plat has been constructed by Mr. Blackburn upon the theory that these were the 1955 points that he measured from?

Mr. Gravatt: 1955?

Q. I mean 55 Deed Book.

A. The 1910 plat. Yes, sir.

Q. Whereas the testimony is in here of these witnesses who testified that they bought under the 1909 plat, Plat Book 54, the 1909 plat—

Mr. Gravatt: I do not want to interrupt, Mr. Bagwell, but I do not think any of the witnesses testified as to that. I think you have introduced deeds that show reference to that plat, but I do not think any of the witnesses so stated. I may be in error.

page 202 } The Court: I do not recall any of them stating definitely they knew they bought under the 1909 plat.

Mr. Bagwell: I do not think they knew what deed they bought under.

E. F. Massie, Jr.

Q. Simply covering a part of the conveyances, certainly all the conveyances dealt with under the 54 plat, if these points had been used and the same theory of projecting them to the front had been adopted, but that he had followed the plan of the first plat on which the lots were sold, you would have come out in the front boundary much to the north of where it is shown on this plat?

A. Yes, sir.

Q. Let me ask you this: As I understood the testimony that has been produced here with reference to this Exhibit A, the property shown in Blocks 5, 6, 7 and 8, that he has shown, are precisely from the recorded plat, but that the land down in Block 1 doesn't conform, as he has it platted here, does not conform to either the 1909 plat or the 1910 plat, but that it does conform to two markers that have been located here shown as "I" and "H". Now, I wish to ask you whether or not the turn as you go along in a northerly direction along Court Street or Route 49 there, the street bears to the left, there is a turn to the left at or soon after you pass Block 5?

page 203 } A. To the right as you are going toward Victoria.

Q. Thank you, sir. I wish to ask you whether this angulation to the right, as shown on this Exhibit A filed by Mr. Blackburn, is the same angulation as the angle as shown on the plats in Deed Books 54 and 55?

A. No, sir, it isn't the exact angle.

Q. What is the difference? Is it greater or less turn?

A. Mr. Blackburn's plat shows more turn to the right, more deflection to the right than the two recorded in the deed books.

Q. Do I understand then that after copying verbatim Blocks 5, 6, 7 and 8, that if that same plat that he copied from, the plat in Deed Book 55, had been projected exactly as it was on that plat further toward Victoria in a northerly direction, that the southern boundary of the Bragg property would have been further to the north?

A. Yes, sir. We scaled that plat, the 1910 plat, which is our last result, because Block 1 is not tied to Block 5—I believe it is, yes—on the 1910 plat, except by one dimension—270 feet along the eastern boundary of Block No. 3; the western boundary of Block No. 3, marked "reserved," had no dimensions. Therefore the only thing we could do was scale the deflection that this plat showed to the road. We scaled it and

page 204 } proceeded to run it in, and by that method the house located on Lot 1, Block 1, would be sitting in the dedicated right-of-way. So that plat, again, doesn't conform. And to verify that, we went and brought in C. R. Johnson's property that agreed. C. R. Johnson's property over to the corner of Roanoke Avenue. His property agreed from the center line of the new road and old road. So we disproved the scaling that we had done, or disproved the 1910 plat in relation to that. So that it's just a general discrepancy there.

Q. Then if this Exhibit A had showed the entire plat that it copied in part, do I understand then that the roadway would be further to the left as indicated, as I am laying the ruler?

A. Toward Victoria, Court House Road, the boundary line between the dedicated street and Block No. 1 would be further to your left, if you followed the 1910 plat.

Q. Could you give us any general estimate as to how much further to the left?

A. Now this was based—We had started back on those iron pins on Block No.—

By Mr. Gravatt:

Q. Excuse me, but who do you mean by "we"? Who are you talking about?

A. The men working with me.

Q. Who are they?

page 205 } A. The surveying crew of the Highway Department.

Mr. Gravatt: Go ahead.

A. (Continuing) We started on those pins, and then as we projected this on, you see, from the corner of Block No. 5, we projected on, based on that mark, we were behind that house, between the house and the out building there, I believe it was a garage, a building of some nature. We were thirty-five or forty feet from where Mr. Bragg had showed us this old hub had been. Unfortunately the hub wasn't there, but we were forty or forty-five feet to the left facing toward Victoria. To the left of where that hub had been.

Q. Nothing was there when you were there?

A. No, sir. He informed us that it had been destroyed.

Q. He showed you where it had been.

A. Yes, sir. We were approximately forty or forty-five feet to the left of it.

Q. In other words, if this Block 1 were carried across from the points from Block 5 on this Deed Book 55 plat, it would carry the street, you think, forty-five or fifty feet further to the north?

A. Yes, sir. And it would get worse as you went on out through there. Mr. Worsham would be in bad shape up there.

page 206 } Q. If the corners were put down in Block 1 with reference to this Deed Book 55, this 1910 plat, they would have had to have been forty or fifty feet further to the north, or to the left?

A. Left, as you face Victoria.

Q. Left as you face Victoria?

A. Yes, sir.

Q. These points here that are located as "H" and "I" could not be related to any corners that are shown on this plat?

A. Sir?

Q. These points as identified here at the location in the Exhibit A plat, as "I" and "H," could not identify corners to lots as shown on the recorded plat?

A. No, sir. They couldn't be the same places as shown on that plat, exactly the way that plat shows.

Q. As you have located the 60-foot street, I believe you have testified that that is consistent with the location of the old highway according to your findings and Mr. Blackburn's findings, and according to the location of the Flippo-Bragg boundary as you established it?

A. Yes, sir.

Q. Apparently the Flippo-Bragg boundary is the center of the old highway?

A. Yes, sir. Or close. Yes, sir. I misunder-

page 207 } stood your question. The center of the old highway was the boundary line between—That was the physical demarcation mark of the boundary line between the Bragg and the Flippo property.

Q. As you have laid off this 60-foot dedicated right-of-way, does that take in all of the land that is now being used by the Highway Department and is within its highway markers?

A. Yes, sir.

Q. Does it go some distance beyond that?

A. Yes, sir.

E. F. Massie, Jr.

Q. About how far?

A. Approximately five feet, and in some places, in some places more.

Q. You can scale it right from this map?

A. Yes, sir, and get a very close approximation of it. Very close to it.

Q. Aside from the fact that what you had laid out here could not be tied in with these inside stakes that have been referred to, have you found anything else there on the premises, or that you could find from the records, that were inconsistent with what you have established here?

A. You say aside from what have I found inconsistent—

Q. My understanding from your testimony is that you have explained what your findings are consistent page 208 } with and what you have based them on; you stated you could not reconcile these findings with these points as Mr. Blackburn has found back there. Now I ask you this: Other than these points which we cannot reconcile, have you found anything else in way of boundary or markers on the premises or from the records inconsistent with what you got?

A. No, sir. We very carefully searched the records. I did. I very carefully searched them, examined them. I feel like we had all available information that is of record. The only inconsistent thing from all that we had to work with, the only thing inconsistent with all of it are these iron pins, and the inconsistency of the plats of 1909 and 1910.

Q. I ask you this: From your knowledge of surveying and from your examination of the plats of 1909 and 1910, please state whether or not those plats, taken separately, or taken together, whether or not they indicate careful or lax surveying in the plat?

A. The plats by themselves wouldn't indicate surveying, the accuracy of surveying. However, the plats, either one or both taken separately or together, compared in the field today, and the field notes, indicate that it was either some poor surveying practices or poor drafting practices; one or the two.

Q. Just one other thing: There has been testi- page 209 } mony here about a Mrs. Beach by Mr. Winn, I believe. It was about a hedge that he laid out in front of Mrs. Beach's property, that he says is there today, and that he laid out within a foot of the dedicated right-of-way. Do you know anything about how that ties in with the 60-foot right-of-way as you have laid it out?

E. F. Massie, Jr.

A. Mr. Winn had a pretty good eye there. This hedge checks in pretty close to within a foot or so of where Mrs. Beach's, this corner would be. We checked that corner in as we came up—

Mr. Gravatt: He said he had stakes there when he laid it out. He didn't have to have a good eye.

Q. I understand the hedge is there today and can be seen very clearly, isn't that right?
A. Yes, sir.
Q. That appears as a marker boundary of her yard?
A. Yes, sir.
Q. It is very, very close to this right-of-way line of the 60-foot dedicated street as you have laid it out on your plat?
A. Yes, sir.
Q. Do you know where it is on here? Do you know where the Beach property is?
A. The Beach property is right in here.
page 210 } Q. Can you show it?
A. Do you want me to draw the Beach property on the plat? There is Mrs. Beach's hedge, it comes right here. It was my understanding—I don't know whether this should be testimony, or not, Mr. Gravatt—it was my understanding from Mr. Winn that he sighted along stakes along here somewhere, when he set the hedge. The stakes were along in here and he sighted along the stakes in the next block when he set the hedged. That was my understanding.

Mr. Gravatt: I am not arguing with you.

A. But it was close.

Mr. Bagwell: He said stakes were everywhere in there. I don't know whether he actually referred to the stakes being here when he set the hedge there.

A. It was very close.
Q. Do you know where it is on this plat?
A. This is the Beach property, right here.
Q. Put "Beach" on it.

Note: The witness writes "Beach" on the plat.

E. F. Massie, Jr.

Q. There was some reference from witnesses yesterday about a tapering or a change in the course of the line from a 60-foot right-of-way back here at Mrs. Beach's
page 211 } and the American Legion as you go on toward Victoria. I believe that the plats show, or do the plats show, that there is a slight turn in the curve of the road at this area?

A. There is a slight turn at Mrs. Beach's corner. The plat shows from the dimension, that there would be a slight turn at Mrs. Beach's corner, because the back of Mrs. Beach's lot is wider than the front. It shows the deed line parallel with this line, assuming this line to be the right-of-way.

Q. In other words, around Block 9, Lot 3, there is a slight turn in the course of the road?

A. Yes, sir. Very slight.

Q. Aside from that slight turn, is there anything on the records, or anything that you could find on the premises that indicated any change in the width of Court Street from a 60-foot right-of-way narrowing as you go toward Victoria?

A. The plat shows, according to Poplar Avenue, which is way back toward Lunenburg, a 60-foot street for Court Street, and no other notation until you get to Mutual Avenue, as being 60 feet. The lines are drawn parallel for both sides of the dedicated street. The general surveying practice, unless the street changes in width, is to note the width at each end of it, and that's it.

Mr. Bagwell: Mr. Jefferson would like to ask you one question.

page 212 } By Mr. Jefferson:
Q. Where is that C. R. Johnson property?

A. Right down here.

Q. You located the edge of Johnson's land on the other side of the road, at this point, the edge of the road?

A. Yes, sir.

Q. Did you take that from the plat of Mr. Blackburn that we had in evidence here yesterday?

A. I took it from a plat of Mr. Blackburn. I didn't see the plat you had yesterday. But it was a plat prepared by Mr. Blackburn.

Q. Did you find a point back here?

A. There was an iron that we started from. That iron was not—I am not sure whether Mr. Blackburn used it or not.

But we took that from the plat prepared by Mr. Blackburn of the C. R. Johnson property.

Mr. Bagwell: He is your witness.

CROSS EXAMINATION.

By Mr. Gravatt:

Q. Mr. Massie, as I understand what you have told us here is that you went on this property and took certain landmarks that the owners had accepted for many years as marking their lines, is that right?

A. We went there and took certain landmarks
page 213 } that Mr. Bragg showed me that had been reported to him by different people to be their corners.

Q. Did you take the point, mark the point "A" on this plat?

A. Yes, sir. There is an iron at that point.

Q. Did you take the posts at B and C?

A. We assumed—Let me see. No, sir. We took a tie from the iron at F. Offset between the two. We established our first line based on F and A. I might add A, B and C were close enough to have been on the straight line.

Q. Were they in line?

A. Yes, sir.

Q. Then you tied A in with F. Did you tie E in with F?

A. E with F; G in with F; and E in with F.

Q. On this corner?

A. I don't know which corner it was.

Q. Did that tie in?

A. Yes, sir. This corner back here is a fence.

Q. You are referring now to the corner of Lot 1 Block 8?

A. There was a fence back there. I believe the Beach property, somebody's property runs on back here. The fence is in agreement back here with the general thinking. The accuracy, I might add, the accuracy of this block
page 214 } as being square, as being multiples of 50 foot and multiples of 200 foot lots, and 50 foot streets, and 20 foot alleys, is very accurate.

Q. When you laid it down on these points and projected it out toward the county road, you didn't have enough, it went out into what you thought was the road? In other words, what the Highway Department had then acquired?

A. Yes, sir.

E. F. Massie, Jr.

Q. Where they had their highway?
A. Yes, sir. It went out into part of the 30 feet. Yes, sir.
Q. Into part of the 30 feet or 60 feet?
A. Well, the 30 feet from the center line of the 60 foot road. 60 feet from side to side, whichever you want to consider.
Q. You assume it to be 30 feet to the center line of the highway at that point?
A. The Highway built plans on a two 30 foot lane road, center to center.
Q. What do you mean "built plans on"?
A. The plans the Highway built on, 30 feet on each side of the center line.

The Court: Gives you a 60 foot total.

A. 60 foot total.
Q. You mean 30 feet on either side of the center
page 215 } line?
A. 30 feet on each side of the center line.
Q. Where you projected up there, that projection went into the area occupied by the right-of-way as you have it drawn on your plat?
A. Yes, sir.
Q. As a consequence of that, you decided that you were in error?
A. No, sir. As a consequence of that, I decided that our original assumption needed further investigation.
Q. You decided that you would look further to see whether you could find out whether you were right, or not?
A. That's right. Whether our assumption was right.
Q. You left this, then—
A. That's right.
Q. —where did you go?
A. We went over on the Flippo property.
Q. Which is shown on this plat?
A. Yes, sir.
Q. What did you do on the Flippo property?
A. We surveyed lots 1, 2, and 12, shown on the Flippo property.
Q. What do you mean you surveyed them?
A. We started at a corner at this point, ran this—
Q. You mentioned you started at a corner, do
page 216 } you mean the corner on the rear of the line separating lot 3 on Block 2 and—
A. The line separating Lot 2 from Lot 3.

E. F. Massie, Jr.

Q. All right, from Lot 2, going on back here 84 feet southwest of the corner of Lot 12, that is where you started from?
A. Yes, sir.
Q. Who gave you that starting point?
A. Mr. Neblett.
Q. What Neblett?
A. Mr. Norman H. Neblett.
Q. That is all you know about it?
A. There were fences there. There was a fence in here; there was a fence in here. Now we assumed that point to be correct and started on it.
Q. All right.
A. We proceeded to build up a traverse around this property and checked-in on the other points: A stone pillar here, a corner here, a corner here, hedge rows along these lines, fences along these lines. Therefore, our first assumption was right.
Q. What do you mean your first assumption was right?
A. All the other points and locations in there,
page 217 } in the physical boundaries checked.
Q. What was your first assumption?
A. That our starting point was this post.
Q. So you took a starting point over here at this post and was simply checking it against this plat itself?
A. Yes, sir.
Q. Was Mr. Neblett one of the property owners?
A. We proceeded to start at this point and survey out.
Q. How far is it from here, at this point that you started, over to Rod Street, as shown on this plat?
A. 1625 feet to the center of the old road; 3 feet to the center of the new road—that would be 1628—and 30 feet, of course, changed direction, 45 feet plus 1628—1673 feet to the outside, I would say to the northwestern boundary of the dedicated Court Street, according to the plat. This line does not come up into what is Rod Street. It is to the south of Rod Street.
Q. After you had checked all that, what did you then do?
A. We checked out for the location, to see how it coincided with the center of the old road.
Q. How did you know where the center of the old road was?
A. The old road? The center of the new road
page 218 } was shown on the Highway map to be approximately the center of the old road; so therefore, we checked the Flippo map—

E. F. Massie, Jr.

Q. You didn't survey the old road, you never did survey the old road, did you?

A. No, sir. I didn't survey the old road.

Q. You were relying upon something somebody else did to tell you where the old road was?

A. Yes, sir. I am relying on the Flippo plat to tell me where the old road is; I am relying on the Highway Department survey to tell me where the old road is; I am relying on Mr. C. R. Johnson's plat, made by Mr. Blackburn, to tell me where the old road is.

Q. Let me ask you: Did you ever see the old road?

A. Yes, sir. I saw it.

Q. Did you survey it?

A. No, sir.

Q. Did you ever identify where it was?

A. No, sir, I did not.

Q. All you have to go by when you say where the old road is: You have taken the center of the new road for your own survey as being the center of the old road?

A. No, sir. I show it on here as being three feet two inches in one place and six feet, six and a half feet in the other.

Q. Where did you get that?

page 219 } A. By surveying the Flippo plot and finding it.

Q. The Flippo—?

A. The Johnson plot.

Q. Where is the three foot, the difference you got?

A. Here's the center of the old road—this dash line here. Here's the center of the new road.

Q. Where is the Flippo property?

A. The Flippo property is right here.

Q. How far does it go down there?

A. How far does it go down where?

Q. Down this street.

A. It continues on in this direction a good long ways. It only goes up this far in this direction.

Q. Well now, let me ask you this question: In other words, you took this plat—

A. Yes, sir.

Q. —of the Flippo property—

A. That's right.

Q. This plat here goes how far on this property here?

A. Let's turn it around here and make sure we are talking about the same place at the same time.

Q. I am talking about the Flippo plat you have out here,

the one you have been testifying from, dated
page 220 } February, 1919.

A. Yes, sir.

Q. How far—

A. The north—

Q. —Corner Lot No. 1, where—

A. Just one second now and I'll tell you, Mr. Gravatt.

Q. Let me finish my question so your answer will make sense in the record. Corner Lot No. 1, where is that shown on your plat?

A. The north corner of Lot No. 1 on the Flippo plot coincides to the property line shown just to the right of the PT 967 plus 13 point 58 as shown on my plot.

Q. All right, sir.

A. That locates that point.

Q. All right, sir.

A. Now, the southwest corner of Lot No. 2 on the Flippo plot coincides with the intersection of the property line with the center line of the old road shown on my plot with the notation of 2.9 feet.

Q. All right, sir. So that what you did was to take this plat, and from the starting point that you have mentioned, and the road as is shown in front of Block No. 2, Lots 14 and 13 on the Flippo plat, and simply projected on through and in front of the Bragg sub-division?

page 221 } A. Projected?

Q. Did you have any courses, distances, and landmarks to go by when you were going, when you left this plat here, this Flippo plat?

A. When I surveyed the Flippo plat I used the courses and distances shown on the Flippo plat.

Q. I understood that.

A. Yes, sir.

Q. What I am trying to find out is: When you left the Flippo plat, did you have anything to carry you beyond it as you went on down in front of the Bragg sub-division?

A. No, sir.

Q. You just took what line you had and carried it straight on?

A. What I did—Let's get you straight on this: What I did was to use the center line of the existing road, the new road, as a basis of reference for comparing old road data.

I located the boundary line between Bragg and Flippo relative to the center line of the present road. Not meaning that it is directly the same line; I have shown in one place

E. F. Massie, Jr.

three feet difference, and one place six and a half feet difference; but for a control, what we call in surveying, a control line, a base line to refer to, everything to,
page 222 } I used the center line of the existing highway.

Q. Yes, sir. And you assumed it was how wide?

A. What was how wide?

Q. The center line of the highway.

A. The center line of the existing highway? A line is no wide.

Q. How wide did you assume the right-of-way was?

A. The right-of-way was assumed to be 30 feet from the center line to each side.

Q. You based your survey on the fact that the right-of-way is 60 feet wide?

A. No. I never based my survey on anything except the center line of the highway. I showed on my map where the Highway considered, the 30 feet to each side of the center line. I didn't survey it. I showed it on my map. I show where it is.

Q. How did you establish that it was 60 feet wide? How did you establish that fact?

A. I established the fact, established the 60-foot dedication off of the Flippo map and the Bragg maps. Both of them set forth a 60-foot dedication.

Q. Right. And you took that as an accurate assumption to start with?

A. I didn't assume it, it's written on it.

Q. I understand it is written on it, and that is
page 223 } the basis that you projected the highway, moved—

A. No, sir. The highway, the 60-foot that they have shown on construction is not at the same place as this 60-foot dedication. They bought additional land, an additional fifteen feet, or more, from Mr. Norman Neblett and those adjoining land owners.

Q. Where is the 60-foot dedication?

A. They don't occupy the 60-foot dedication.

Q. You say they have not occupied—

A. No, sir. Only on the Bragg side.

Q. How much haven't they occupied?

A. Approximately five feet, I believe. In some places, in some places it's more than that that they haven't occupied.

Q. In other words, you took the highway, you went back to the Flippo plat, and you took the highway on the Flippo plat as being 60 feet wide, and you took the center line and you carried that right on through in front of the Bragg

property, and then you laid the Bragg property off on the west side of that highway?

A. I laid the Bragg property off 45 feet from the western side of the boundary line between Bragg and Flippo.

Q. Right then, you did that on the basis—

A. That is exactly the way the Bragg plat shows it as being. The Bragg plat shows it as being 45. The

page 224 } Flippo plat and the Bragg plat shows it as being 60-foot dedicated. The Flippo plat shows that 45 feet was dedicated by Bragg and 15 feet were dedicated by Flippo.

Q. All I want to know is that your map was made on the basis of the dedication of the 60-feet as shown on the Flippo plat, and as shown on the Bragg plat?

A. Yes, sir.

Q. And that is all that you did was to go in there and take 60 feet and try to locate it with relation to the center line of the highway?

A. No, sir. I also went on down to the Johnson property and located the center line of the old road, which was the boundary between Bragg and whoever was on this side, at that time Johnson's property.

I went down and located the center of the old road, projected it out in relation to the center of the new road to set up, find out where the 60-foot dedicated right-of-way was down there.

Q. What you did was to locate the 60 feet?

A. What I did was to locate all of the available information that I could get correlated in respect to one base line.

Q. Namely, the center line of the present right-of-way?

A. Yes, sir. It's correlated. It doesn't mean

page 225 } that everything that I have done is laid in relation to it. It's correlated to the base line. The center line of the existing right-of-way, existing highway is only a base line. I could just as well have shot a line twenty feet, fifty feet, a hundred feet off to one side or the other and used it as a base line, and made reference to everything else to it.

Q. You rejected all of the landmarks as shown on the Bragg sub-division in Blocks 5, 6, 7 and 8 because they projected the front lots into the right-of-way as occupied by the highway?

A. I didn't reject it, it's up to the Court to accept or reject it. All I am doing is telling what I found.

Q. You found you went over into the highway?

E. F. Massie, Jr.

A. Yes, sir.

Q. If that—

A. They were in complete disagreement with all other recorded information.

Q. They were in complete disagreement with the location of the highway as it was then, as was then located?

A. All of the recorded information.

Q. You found that there was, on the Flippo plat you found that there was a 60-foot right-of-way shown?

A. That's right.

Q. You then took that, simply carried that center line right along with the highway and accepted that as being

page 226 } the true and correct location of the highway?

A. No, sir. I didn't carry the two together. As I said, the information of my survey, the Flippo plat, is correlated to the center of the highway, but it is not the same as the center of the highway. You have completely missed the point of a base line. The base line is not necessarily in itself a specific line, other than a line for correlation of all other data.

Q. If it is not a property line, let me ask you this:—

A. A base line is not a property line. The center line of the existing highway was merely used as a base line to correlate all the information. Now the property line, in some places, is six feet to one side of this present highway.

Q. You took—

A. The old property line.

Q. After you found the lots went out in the highway, then you went and located the highway?

A. Located the old highway.

Q. The old highway?

A. That's right.

Q. From that you took the dedication shown on the plat and located the new highway?

A. No, sir.

Q. You said it was 30 feet on either side.

page 227 } A. When I found out that that came over into the new highway, I went back and surveyed the Flippo property, correlated that to the center of the new highway; then correlated with that the center of the old highway, correlated with that the property line of the dedicated 45 feet that comes off Bragg, a total of 60 feet.

Q. And you then just simply disregarded the physical landmarks and moved the Bragg property on back?

A. No, sir.

Q. You moved the Bragg property on back to conform to the present line of the highway?

A. No, sir. I haven't moved anything. I just give it to you, and it's up to somebody else besides me to move it.

Q. Let me ask you if you did this: Did you take these landmarks that you investigated in Blocks 5, 6, 7 and 8, and undertake to see how they tied in with the lots numbered 13 and 14 as shown on the Flippo plat?

A. Yes, sir.

Q. How did they tie in?

A. They tie in very well with the 1909 and 1910 plat of the Bragg Residence.

Q. Right. The 1910 plot of the Bragg Residence Site as laid out on Exhibit A—

A. That's right.

page 228 } Q. —will tie in almost perfectly with Lots 14 and 13 as shown on the Flippo plat, will it not?

A. It's possible. The only lack of tie that you have is in the northeasterly direction, being that Lots 13 and 14 are not tied at all to the eastern side of the Flippo property, other than—See what I mean? There is no direction as to how far the relationship between this point and this; in this direction there is a relationship in this direction, yes. But—

Q. Did you show on your plat, on your drawing, any change of direction in this highway between Gold Avenue and Shade Avenue?

A. Do you mean change of direction at Rod Avenue, is that what you are after?

Q. Anywhere between here and here?

A. No, sir. Because mine doesn't extend any further than the Victoria side of Rod Avenue.

Q. What do you mean yours doesn't extend any further than that? That is as far as your plat goes?

A. That's right. That is as far as my plat goes, correlated with this plat.

Q. You didn't show anything beyond Rod Avenue?

A. No, sir, because I understand that everybody past Rod Avenue accepted and recognized the 60-foot dedication.

Q. There wasn't any—There was 60 feet there

page 229 } in front of these other places. Now, Mr. Massie, let me show you something: Just let me ask you a question about this, if you don't mind. This is a plat recorded in State Highway Plat Book 237, and it shows Mrs. Thomas Blackwell's property, and it shows her sidewalk projecting out into the right-of-way, as laid out on that plat.

It shows what the Highway Department claims to have been the width of the right-of-way in front of that place?

A. The distance—I cannot explain it at all. It takes a Highway Engineer to interpret it actually.

Q. Doesn't the broken line indicate the existing improvement?

A. I think it does.

Q. Doesn't the solid line indicate the right-of-way?

A. Solid line represents the right-of-way, then the broken line represents the ditch line. In this case, right there, the solid line represents the proposed new pavement, I believe that is right. Mr. Raabe can testify better to this. I am not an expert on highway plans at all.

Q. I am glad you are not. In any event, is this the same center line that you took?

A. Yes, sir.

Q. Now, will you tell me: How far is it from this point to here?

page 230 } A. From what point to where?

Q. Where my finger is, whatever you call it—

A. Is it the solid or broken line?

Q. —I don't want to argue with you. The dedication of the old right-of-way, then. I just don't want to fuss about that. It's this line right here.

A. I would have to scale it. That's as far as I can tell you, Mr. Gravatt.

Q. Do you have a scale?

A. Yes, sir. That's mine that you had.

Q. I didn't have it.

A. As far as I could tell, Mr. Gravatt, my interpretation of that is that that is the proposed new pavement. Now, the plans and specifications which clearly set forth as to—

Q. I told you I didn't want to argue with you about that. I want you to tell me how far it is from that line to the red line on either side of it.

A. 22 feet.

Q. 22 feet. Now—

A. You are speaking of the solid line, now.

Q. I am speaking of the solid line. The first line, solid line down from the center line.

A. It looks to me, they are so close to each other that it is hard for me to tell them apart.

page 231 } That's the reason I asked whether you were speaking of the pavement line or the ditch line.

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page 232 }

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Q. Can you tell me how wide that pavement is, Mr. Massie?
A. I scaled it to be 22 feet.
Q. 22 feet, on one side now, that would give you a total pavement—
A. That scales up here to be 45 feet.
Q. The Highway Department has purchased from Mr. Neblett all of the land indicated in the red area, do you understand me, the area outlined in red.
A. Yes, sir.
Q. Now, if they had a 60-foot dedicated right-of-way, why would they purchase that property from him?

Mr. Bagwell: Objection.
The Court: I will sustain the objection.

Q. Let me ask you: Will you measure from—Will you measure how much new right-of-way they got from Mr. Neblett down there on your scale?
A. Before I would want to get into that, to answer that, I would like to qualify one thing: What experience I have had with reading the highway deeds, when they buy right-of-way, where they have already had an existing right-of-
page 233 } way or roadway, they outline the total they are going to occupy, and accept in there the part that they have already occupied. Now that has been my experience in the past. Whether this exact thing happened here, or not, I don't know.
Q. I agree with you.
A. So this area outlined in red, all of this may not have been purchased. The deed might set forth the amount. They didn't buy all of it, only a part of it. They already had part of it.
Q. I can't argue that.
A. Get the deed, it will tell you what they bought and what they didn't, then you don't need a measurement.
Q. Yes, we'll need it, too.

Mr. Bagwell: That is correct. If you are interested in knowing that, the Highway plats do include in the colored

boundary not only what they are purchasing, but to the center as well. The reason for it is that so they will clear up any possible title questions as they go along, if they have a right of usage, and so forth.

A. Containing eight acres more or less of which twenty hundreth of an acre includes exising right-of-way.

Q. I understand about that. That's what they bought including existing right-of-way. How much isn't? Can you tell us that?

page 234 } Mr. Bagwell: The deed speaks for itself there.

A. I don't know.

Q. I want to get a line. We are talking about what is dedicated, and you are going out buying land from people. It doesn't look like to me you would have to buy land—

Mr. Bagwell: The question is argumentative with the witness.

Mr. Gravatt: It is not argumentative at all. Here is the plat he has filed.

Q. *Mrs.* Massie, if this 60 feet, as you have outlined here, was dedicated to a public highway, will you tell me why the Highway would buy land from anyone?

A. I don't know how much they bought, Mr. Gravatt. I told you of the only kind of experiences I have had with them, and that is they outlined everything they were going to occupy, then in the deed set forth what they were going to buy. The highway man can tell you what they bought and didn't buy.

Mr. Bagwell: Let me get my objection in the record, please. We object to this line of questioning because the questions wherein he interrogates this man as to why the Highway Department did or did not act in a given way are not matter that lie within the knowledge of this page 235 } witness. It is argumentative. Anyone, if they should be properly directed to, would be the representative of the Highway Department. I don't think he should be allowed to brow-beat the witness.

Mr. Gravatt: I am not trying to do that.

The Court: He would not know if they had to buy land or didn't.

E. F. Massie, Jr.

By Mr. Gravatt: (Continuing)

Q. Let me ask him this: I understood you and the Highway crew did this work together?

A. Yes, sir.

Q. They worked with you?

A. Yes, sir.

Q. Did it occur to you to make any investigation to ascertain what the Highway Department was claiming to have been dedicated, and what they were claiming not to have been dedicated?

A. Not from them. My thought and my idea, and my purpose was to get sufficient information to locate where the original property line was, to locate where the original highway was, to locate where the proposed new highway, or now existing highway is, and the outside boundaries of the right-of-way that they were using, and to correlate

page 236 } that with the information at the Court House in the Clerk's Office as to how much right-of-way was dedicated, and to how much they had extended past the dedicated streets, either on one side or the other.

Q. Well, just let me ask you this:—

A. As you can see—

Q. How much of this is dedicated as shown on your plat?

A. The dedicated is between the line, long line with two dashes. This is the deed line; this is the dedicated line. My interpretation is, that all along this side here, you were asking about Neblett here, that they had actually occupied beyond the dedication. They bought some from him.

Q. You got the edge of the old road as shown on Flippo plat, that is what that line is marked?

A. That's 15 feet. You see the 15 feet? Edge of old road, or it should be edge of dedicated as marked on Flippo plat, or old road. I assumed old road was 30 feet.

Q. You took 15 feet off of the Flippo side?

A. As shown on the Flippo plat.

Q. And 45 feet on the Bragg side?

A. As shown on the Flippo plat.

Q. And ran right on down the highway, and that is what you concluded was dedicated.

A. Based on the center line of the old road,

page 237 } which is shown not necessarily as the center line of the old road, but as far as the boundary between Flippo and Bragg, the original boundary as shown on Flippo plot.

Q. Right.

E. F. Massie, Jr.

A. And also, the Flippo plot shows 15 feet of that dedication came off of Flippo and 45 feet came off of Bragg.

Q. And you conclude then—

A. That's where I put it at.

Q. You conclude Mr. Bragg actually didn't dedicate 60 feet; Mr. Bragg only dedicated 45 feet?

A. That's right.

Q. Yet the plat shows he dedicated 60?

A. That's right. His plat shows he dedicated 60 feet.

Q. He undertook 15 feet of Mr. Flippo's land over on the other side?

A. Mr. Flippo's plat shows it was dedicated, and Mr. Bragg shows it was dedicated, so the Flippo plat is in agreement with the Bragg plat, so therefore there must not have been any dispute about it.

Q. You concluded your testimony here a moment ago by telling Mr. Bagwell that you considered that both of these Bragg plats were very inaccurate and unreliable?

A. Let's qualify that again. I told you that the
page 238 } determination of accuracy of a plat could not be done by examining the plat itself. That either in comparing the plat with the work in the field, that either there was an error in the plat or there was an error in the field; that the two didn't agree.

Q. What do you mean "error in the field", Mr. Massie?

A. An error in the physical lay of the property. The property that the plat describes. The real estate that it describes. The plat and the real estate should agree if accurate surveying was done. If they don't agree, then there is either an error in the surveying or an error in the plat. Now whichever it is, I don't know.

Q. The only difference you found in Blocks 5, 6, 7 and 8 was that to run that plat according to the way Mr. Blackburn ran it, and by the landmarks, projected some of the lots into the right-of-way that the Highway Department has occupied, that was the only discrepancy you found?

A. It did not agree with Flippo as to the original boundary line between Mr. Bragg and Mr. Flippo.

Q. Did it undertake to show where the original boundary line was between Mr. Bragg and Flippo on that plat?

A. Yes, sir, it shows indirectly.

Q. How indirectly?

A. Shows 45 foot dedication.

page 239 } Q. I thought it was a 60-foot dedication?

A. That's right. And Mr. Flippo's plot shows

15 feet of that dedication was his. Therefore, 45 feet was Mr. Bragg's.

Q. So then the knowledge—

A. Then if you want, if you would consider it that way, maybe Mr. Bragg did dedicate 60 feet and Mr. Flippo dedicated 15; so actually, instead of a 60-foot dedication they might have a 75 foot dedication.

Q. Right, and would that make anybody happy?

A. That would make the Bragg property and the Bragg plats even more grossly in error.

Q. But for the fact that by running this plat according to these ancient landmarks which projected these marks into the right-of-way occupied by the highway, there would be no real or material discrepancy in the plat, would there be?

A. What ancient landmarks now do you mean?

Q. I think the testimony is the landmarks have been here, either stakes or the stakes which were replaced by iron pins at A, at B, at C, at F, at E, at D, and at G, ever since this property was surveyed and laid off.

A. By answering that I am not agreeing or disagreeing as to the age of the landmarks.

Q. I don't expect you to. That is the question page 240 } for the Court to determine.

A. The landmarks in relation to themselves agree, but in relation to other physical data, it does not agree.

Q. The only other physical data is the highway.

A. Or the Flippo property, the—

Q. That is as it relates to the highway, is it not?

Mr. Bagwell: Please let him finish his answer.

Mr. Gravatt: I did not mean to cut him off.

Mr. Bagwell: Your Honor, I object to counsel cutting the witness off.

The Court: I understand. All right.

Mr. Bagwell: The witness wasn't permitted to complete his answer.

The Court: Go ahead and complete your answer.

A. (Continuing) The other physical data besides the highway is the Flippo property, its boundaries on it, and the boundaries of the Johnson property. They are also in agreement with it.

Q. The fact the Johnson-Flippo property may agree with it, anyway, doesn't reflect upon the Bragg property not

E. F. Massie, Jr.

agreeing with it, does it?

page 214 } A. The only thing is, that everything is in agreement, except the Bragg plats, with what's out there. I mean that's the thing.

Q. So that the Bragg plats, you think, are not reliable?

A. The plats are evidently reliable; it's a question of the irons in the back, whether they—The only thing I can tell you is what I found out there; and it's anybody's guess as to how come they are wrong, and how come they don't agree. I can only tell you they don't agree.

Q. Mr. Massie, if you had gone there before the Highway was constructed and seen the fences and seen the sidewalks that these people had built out from their homes out to the property line, and seen all of the use that had been made of the property on its front prior to the reconstruction and relocation of the highway, don't you think that that would have influenced you with some respect as to whether or not these physical landmarks that you refer to are in such gross error or not?

A. I would have checked into it thoroughly, and would have gone around that square block, just as I did this time. I might add that one or two of the residents told me there before they ever built the new highway they knew that they had devloped so that the way they were developed there, the way their land laid, that it was less than 60 feet between them

page 242 } and the other side of the dedicated highway. That they knew it was.

Q. I think anybody who knew that there was a figure of 60 feet on this plat would have known that there wasn't 60 feet in the front, wouldn't he, as he drove along there in an automobile?

A. I don't know about that.

Q. Had you driven over it?

A. They were all claiming up to as far as they developed, you see, and the surveyor *new* exactly where they were claiming.

Q. Let me get you another question: I never did understand exactly how you managed to cut these lots short when you changed from being at an angle into being at a right angle?

A. It is a simple little thing there of a right triangle.

Q. I understand, but it seems—

A. You have two short legs and the hypotenuse, and the askewed line of 200 feet. When you move it around to the long leg, or the short leg of the right triangle, either side is going to be shorter than its 200 feet. That's the basis of it.

Q. What I am thinking about is that if you have a crooked line, it comes back from the highway 200 feet, when you move it over, it will not be as long as the other

page 243 } line?

A. You mean the askewed line?

Q. Yes.

A. That's right.

Q. Now, you stated that—How much of this would be taken up in the highway?

A. It depends on how far back you go. You see, the longer you go back—The further you go back the greater the proposition..

Q. Did you notice this plat here? If you will notice, have you noticed the difference in the width of High Street and Talbott Street as shown on this plat, and as shown on the 1909 plat?

A. The width of High Street on the 1909 plat is 60 feet, if I'm not mistaken.

Q. I take it that—

A. What the width of Talbott Street is I don't remember.

Q. It is drawn on the same scale as this, does it not have the same width as High Street?

A. I don't know. On the 1909 plat—

Q. I believe it is 60 feet on the 1909 plat. Let's look at it. Does it show it as being 60 feet?

A. 60 feet.

Q. What is the proper way of determining the

page 244 } difference between the depth of these lots on a crooked line, and the depth of them when you make a line perpendicular, what is the proper way of doing it? Don't you have to know the angle in order to get it accurately?

A. To get it accurately—I told you, when I put that thing on there, that was approximately, that what I said wasn't going to be exact.

Q. How much would you say it would be, Mr. Massie?

A. I said approximately five to six feet in 100 feet; 200 feet about eleven feet. When you came back to the alley you had 2, 4, 6, 6 times about 30 feet on three, and you got a 50 foot street, and a 20 foot alley—approximately 35 feet, see, the further you go back to start that thing the further you come up here, the more you are going to move out of line.

Q. That's right. So that is 200—

A. 600.

Q. 200 and 200 are 400.

A. 200, 600, 800. But we were working at that time on the alley. We were working on the alley. We were not all the way

E. F. Massie, Jr.

to Talbott Street, or whatever it is. We were working from the first alley.

Q. I understand you were, but what I am now trying to ascertain from you is: Let's take this, look at this plat here:

page 245 } Does it appear to you, from looking at that plat, would you say that all of these lots are run, or that they have attempted to run these lots parallel to the dividing line of this property and the W. J. Bragg, Jr., property?

A. That is the way it appears there. Yes, sir.

Q. If you knew the angle of the W. J. Bragg, Jr. property you would ascertain accurately whether or not, to exactly what extent that change would be, the exact measurement of it, couldn't you, within 200 feet, couldn't you?

A. Yes, sir, I think you're right.

Q. You would not have to depend upon the scaling on the plat, or would you?

A. Yes, sir. You are depending on the scales on the plat when you assume that they have the mark parallel to the W. J. Bragg property.

Q. I agree. I agree. If that is not correct—

A. If the assumption is right.

Q. If that is not correct, then, of course, it will be wrong. He does mark the first line W. J. Bragg line—

A. That is the same point I was working on, in discussing projecting these pins out into the street—making an assumption. In the event an error would show up, you see, you would have to prove or disprove your assumption with direct proof.

Q. Would it suggest to you the fact that when the man re-

page 246 } platted the property after he had recorded the plat in 1909 and reduced the width of these two streets ten feet a piece, would that suggest to you that he was trying to compensate for the lots of that distance when he made the lines perpendicular?

A. Yes, sir, it's possible that he would attempt to do that; however, that reduction of ten feet—

Mr. Gravatt: I think that is all.

RE-DIRECT EXAMINATION.

By Mr. Bagwell:

Q. To what extent would the change in the alleys compensate?

A. He didn't change the alleys, he only changed the streets

by ten feet, each would be fifty then, which will leave a loss—going all the way back to this other street—leave a loss of about twenty feet.

Q. On the basis of scaling it?

A. Yes, sir, on the basis of scaling it.

Q. I believe that according to this plat here, filed by Mr. Blackburn, that it does not show any infringement of as much as twenty feet?

A. That is correct. Yes, sir.

Q. I also believe that any adjustment with reference to the streets would not affect, if all of your calculations based upon your instrument are correct, from the corner of

page 247 } the alley, which is represented by this line here.

A. No, sir. We are assuming all the adjustments there. We only straightened up these lines, or worked on these lines between the alley and the street. This line is not anything at all relative to back here.

Q. What are the two streets that you mentioned?

A. High Street and Talbott Street.

Q. Where is Talbott?

A. Further back, way on back. It is not included on Exhibit A.

Q. Would you make a mark on that line so that we will know —Just put your initials by the pencil line.

A. Compensation for askew?

Q. That's right. Compensation for askew. Mention was made of the fact that the Flippo plat and the Bragg plat were substantially inconsistent as it related to where the Flippo plat located on the north side of the road the lots shown as 13 and 14 on the Flippo plat? I believe these lots, 13 and 14, are the same as 1 and 3, Block 7, shown on Exhibit B?

A. I think you're right. Yes, sir.

Q. I believe Mr. Blackburn's own plat of these lots, as shown on Exhibit B, show that the highway right-of-way that is being taken there does not encroach on these lots?

A. That's right. Due to lack of flection here,

page 248 } made not to measurement, this thing came about.

That starting at the corner of Lot 1 on Block 7, that a rotation in counter-clockwise direction going toward Victoria is where your error came about—that's, I should say clockwise rotation—from what was originally planned. I don't know that. That is an assumption on my part.

Q. Let me ask you this: In your questions you were questioned about what you have proved these different matters by, or not disproved them by; did you go there and exert every

reasonable effort to find everything you could, both from the records, from the physical ground, and from your knowledge of surveying techniques, to establish these points that you were surveying?

A. Yes, sir.

Q. Now, I want to ask you to explain, because there was much talk about it, this matter of a base line. May I ask you this: Is a base line a line that is used for references from points that can easily be established at any time?

A. Yes, sir.

Q. In other words, you picked the center of the new highway because the center of the new highway could be located by you, or any other surveyor today, or presumably some later time from now?

A. Yes, sir.

page 249 } Q. So in order to go there, you made the kind of survey such as you laid out, so that anyone could go there, take your survey next year, for instance, or next month, and locate the center line of the highway and by identifying that with your center line there can locate from it on the ground these other things that you have pointed out?

A. Yes, sir.

Q. The base line itself is ordinarily not of any consequence other than simply a thing that you can find, and that you can portray other things with reference to?

A. That's right. Yes, sir.

Q. I want to make sure that this is clear to the Court: You refer here to a 60-foot right-of-way of the Highway Department that you have shown, and also to a 60-foot dedicated highway; are those two things exactly the same as shown on your plat?

A. No, sir. They are two different things: The 60-foot dedication is the dedication of right-of-way set up by the plat for a street, road, or for traveling, whereas the 60-foot right-of-way for the new highway that I show is what the Highway is using as its right-of-way, for its improvements and building.

Q. It is my understanding that the 60-foot dedication that you are referring to lies 45 feet on the Bragg side of what you have established as the original boundary,

page 250 } and 15 feet on the Flippo side of it?

A. Yes, sir.

Q. You established that boundary by survey and in every way that you could there on the premises?

A. Every possible means that I could find.

Q. Do I understand that this boundary as you establish it,

and as you related it to these plats, the original boundary between Flippo and Bragg from what you measure is at the center of the original roadway as it is supposed to have originally existed there?

A. Yes, sir. That was the original boundary line between the two big tracts of land before they went into the development of sub-divisions and so forth.

Q. Do I understand from your plat that the center, that that Flippo-Bragg boundary as you have located it, and as it indicates, must have been the original center of the original highway, is close to the center of the pavement as it was before construction, but is not identical to it?

A. Yes, sir. That's right.

Q. And it is also close, reasonably close to the center of the present pavement?

A. Yes, sir.

Q. Which is identical to it?

A. Yes, sir, that's right.

Q. The center of the pavement as it existed
page 251 } three, four and five years ago, and the center of
the present pavement are fairly substantially consistent, but are not identical?

A. Yes, sir. That's right.

RE-CROSS EXAMINATION.

By Mr. Gravatt:

Q. Mr. Massie, I don't want to prolong this discussion, but I believe you said that the line you took for the division line between the Bragg property and the Flippo property was the original line before any of this property had been subdivided?

A. I said the line that I took was, between the two, was the line shown on this plat as it appears to have been before any of the land was sub-divided. Now for all I know, Mr. Bragg might have already had 45 feet up here before he started. He might have set aside 45 feet for this county road before he ever decided to sub-divide. Maybe he decided to do it when he decided to sub-divide. But as far as Flippo was concerned, 15 feet of it he had given for a 15 foot right-of-way.

Q. Do I understand that you are going on the basis that the Flippo plat was made before the Bragg sub-division?

A. No, sir. The Flippo plat was made after the Bragg subdivision.

E. F. Massie, Jr.

Q. The Flippo plat was made in 1919.

page 252 } A. Yes, sir.

Q. The Bragg plat was made and in existence a long time before the Flippo plat was made?

A. That's right. So therefore Mr. Flippo's plat certainly should show the condition of Mr. Bragg's side of the property up here when you get into the—

Q. Do you know what—

A. —layout of the roadway, what went on there.

Q. Did you check anything to see whether any property so far as the actual line of it is concerned, as shown on the Flippo plat, was ever put into the public highway? This map shows 15 feet. Can you establish, did you establish whether that 15 feet ever was a part of the public highway or not? The public highway, I believe, wasn't but 22 feet wide.

A. Why do you say that—

Mr. Bagwell: I believe Mr. Gravatt is testifying here.

A. Why do you say it was 22 feet wide?

Q. I should have said there has been testimony here to that effect, the pavement was 22 feet wide.

A. I think you are misrepresenting testimony.

Q. Well now, wait a minute, I—

A. I don't know.

Q. Wait a minute. Mr. Blackburn testified that it was 22 feet of highway there, 18 to 20 feet wide, and a

page 253 } very small ditch, a foot and a half, something of that nature.

A. I beg your pardon. I thought you were talking about when I mentioned 22 feet to scale.

Q. I didn't quote you at all.

A. Excuse me.

Q. No, sir. I am not trying to quote you in the least.

A. Excuse me.

Q. Have you any evidence that the 15 feet that is shown in this part of the Flippo property was ever actually used as a public highway? Has it ever been a part of the public highway?

A. The only evidence that I can tell you that it was a public highway: I surveyed other parts of the Flippo property and found it to come to and agree with where the public highway was at that time. That was before all new construction went on.

Q. Correct. So you weren't there when the old highway was,

and you don't know whether it was ever a part of it or not, do you?

A. The only thing I know is what the Flippo plat shows. I'm not telling you the highway was there. I'm telling you it checked. I'm not telling you it was there.

Q. The Flippo plat doesn't show Mr. Bragg dedicated 60 feet, does it?

page 254 } A. No, sir. It shows, the Flippo plat shows that Mr. Bragg dedicated 45 feet.

Q. So that if you are going to try to rely on the Bragg plat, so far as his dedication is concerned, you get into trouble right away, don't you?

A. If you rely on Mr. Bragg's plat and the physical evidence out there, you get in trouble any way you're going.

Q. You get into trouble relying on the dedication because his plat shows 60 feet has been dedicated; you make up the 60 feet by adding 15 feet over on the Flippo property, but you don't know whether it has ever been in the public road or not.

A. The only thing I can tell you is: Flippo's portion is 15 feet. And I surveyed into it and I found that to be the case.

Q. But the road was gone.

A. No, I'm talking about where the road was, and where the road is now. I am talking about existing things and things I surveyed prior to the construction of the new road.

Q. I see.

A. That's from experience, that was, what I was—

Q. Is that part of what goes into your testimony and plat, all that?

page 255 } A. Not a part of this plat. It is a part of the experience I have had in surveying Flippo property and other sections of other properties.

Q. I see.

A. As to what existed, where the lines chained out to the present highway—not the new highway, but the old highway.

Q. Mr. Bragg's plats are dated 1909 and 1910, and you are trying to correct the Bragg plats by a plat made in 1919.

A. No, sir. I told you, I am trying to allow the extra 15 feet rather than saying Mr. Bragg deeded all of the 60 feet; but, of course, if you wanted to do that, Mr. Flippo has 15 feet deeded, you would have 75 feet.

Q. That would make everything wrong, wouldn't it.

A. It is pretty wrong down there now.

Q. Flippo's, Bragg's and everybody else's would be wrong. If you make that assumption, you could go through and take everybody's dwelling house and all, couldn't you?

E. F. Massie, Jr.

A. I think as far as the Flippo property is concerned, the Highway got across that 15 foot dedication and bought whatever additional property it was. I can't tell you how much. You will have to ask the Highway Department.

Q. It is just as reasonable to assume you had 75 feet of dedication as to assume you had 45 or 60, isn't it?

page 256 } A. No, sir. not hardly, because the records wouldn't agree on that.

Q. Do they agree now?

A. Yes, sir. I think they agree as far as the assumption that Bragg intended to dedicate 45 feet and Flippo dedicated 15.

Q. I see. Mr. Bragg didn't know how to write 45 so he wrote 60.

A. No, sir.

Mr. Gravatt: That's all.

A. (Continuing) I'm not talking about what Mr. Bragg wrote, I'm talking about what the reasonable deductions are from the combination of the plats, Mr. Gravatt. I think Mr. Bragg could write.

RE-REDIRECT EXAMINATION.

By Mr. Bagwell:

Q. What I would like for you to do, I would like for you to mark clearly the line that is shown on this plat as the line which was located and established by you as the property line between Flippo and Bragg.

A. Let's mark that with a pencil and "X" it, put "X's" along the line. Identified on here as "Center line of old road as shown on Flippo plat" as being—

Q. Just mark it in a couple of places so as to

page 257 } make sure we have it.

A. That being the division line between the two pieces of property.

Q. In other words, the line that is shown as "Center line of old road as shown on Flippo Plat" is the line that you locate as the boundary line between the properties?

A. Yes, sir.

Q. You located that as the boundary line between these properties, and do I understand from that, that according to the plat that establishes the line, that is the center line of the old original highway?

A. Yes, sir.

Q. You have been questioned here about this surfaced road, that, as I understood Mr. Blackburn to testify to, is shown on his plat as a dotted line, as being the surfacing of the road as it existed approximately three years ago?

A. Uh huh. Yes, sir.

Q. I believe that you have testified that the center line of this road appears to be roughly consistent with this boundary, which is the center line of the original road, but not exactly the same?

A. Yes, sir. That is correct.

Q. Could you state whether or not this paved road here, as is laid out here by Mr. Blackburn, and this center
page 258 } line as you have described it, the original road here, are close enough together so that if his road were superimposed—In other words, if his 22 foot road were superimposed on your plat, would part of it be on the Flippo side of the center line and part of it on the Bragg side?

A. Yes, sir, approximately half would be on each side.

Q. In other words then, according to that, if it was a twenty-two, twenty or twenty-two foot road, hard surfaced road three or four years ago, approximately half of it was on the Flippo side of this boundary as you have designated and approximately half of it on the other?

A. Yes, sir.

Mr. Bagwell: That's all.

RE-RECROSS EXAMINATION.

By Mr. Gravatt:

Q. Mr. Massie, take the Flippo plat and tell me if Rod Avenue is shown on there?

A. No, sir, it's not.

Q. Isn't that Rod Avenue?

A. That may be Rod Avenue, but it's not so designated as Rod Avenue.

Q. How wide is that street going—Do you know the lot numbers you said these were?

page 259 } A. I told you I thought that was the—Lots 13 and 14 were lots 1 and 3 of Block 7. I told you I thought they were. Now, to tell you more behind it, Mr. Jefferson has searched the record on that. I haven't read it. I only know by hearsay. I suppose it to be; for a fact I do not know.

Q. You testified they were—

E. F. Massie, Jr.

A. I told you I thought they were Lots 1 and 3. Check the testimony. I said I thought they were.

Q. I don't question your testimony. I would like to know if that thing right there is in the same place that you think Rod Avenue is on that plat?

A. I think it is Mr. Gravatt.

Q. What is the width of it? Would you scale it?

A. I would have to scale it.

Q. Would you scale it?

A. From scaling it appears to be about 25 feet.

Q. How wide is Rod Avenue on this plat?

A. 50 feet.

Q. You have measured Rod Avenue?

A. We checked across from this corner to Mrs. Beach's property.

Q. How wide is it?

A. About 50 feet.

Q. Flippo's plat is in error about that, is it not?

A. Yes, sir. That is my scaling, and as you
page 260 } know, scaling is a questionable thing.

Q. I understand it is. Now, what does the Flippo plat show as the width of the public road from Rod Avenue south?

A. The Flippo plat shows 15 feet on each side of the center line, approximately 15 feet.

Q. What does the 1910 plat of the Bragg Residence Site show?

A. Shows it being 60 feet.

Q. Did you testify a minute ago that you understood that all of the lines, all of the property owners beyond Rod Street had been approached and they had conceded that the Highway Department was entitled to a 60-foot right-of-way?

A. I understood that, yes, sir.

Q. So that the Flippo plat is in error then, is it not?

A. What? Wait a minute. Let's qualify that: That all of the property lines lot owners having gotten their's from the Bragg Residence plot had conceded that it was a 60-foot right-of-way? I mean the property owners on the other side, just like Mr. Neblett. They have been compensated for the difference that they came over on there, they allowed 15 feet. What I was speaking of was the Beach property, the American
Legion property, and continuing on out to where
page 261 } the McLaughlin property is.

Q. All that I wanted to know was whether or not they had conceded it to be 60 feet?

A. Yes, sir.

Q. And you have taken your whole thesis and whole theory on the basis that at a point beyond Rod Avenue on the Flippo plat the public way is shown to be 15 feet of land off the Flippo property and 45 feet off of Bragg, isn't that correct?

A. Going toward Victoria.

Q. That's right.

A. It definitely shows that it widens out.

Q. That's right.

A. And to scale it, approximately 15 on one side and 45 on the other.

Q. That's right. Then you undertake to use that to change what is shown on the Bragg plat?

A. No, sir. I undertake to reconcile the two without making it worse on the Bragg than what it is. Like I say, the only other way you can reconcile it is that the whole 60 feet, as Bragg shows it, was on Bragg's side of the center line. Then you would have a 75 foot right-of-way.

Q. Explain to me why a surveyor would have taken 45 feet of Bragg's land and shown it beyond Rod Avenue when the plat of the Bragg property and the lines of the
page 262 } Bragg property south of Rod Avenue shows exactly the same thing, 60 feet, and yet when he went south of Rod Avenue he shows it 30?

A. I don't know why he did it, Mr. Gravatt.

Q. You don't know why he did it. He indicates that he was not undertaking to relate this plat to the Bragg plat at all, does it not?

A. He must have undertaken something to show this 60 feet up here. If he hadn't undertaken to show something, you wouldn't get the same width all the way through.

Q. He didn't indicate—

A. It relates after you get down this way, it shows what he intended toward Victoria.

Q. That is the only place it is related, and you have to dig that out—45 and 15 feet—

By Mr. Bagwell:

Q. Let me ask you this: I ask you whether or not the Flippo property does show throughout that the Flippo-Bragg boundary line is a line that lies 15 feet to the south of the old road?

A. Yes, sir. That is right.

The Court: He has testified to that.

A. (Continuing) Not only does the plat show it, but in surveying all up in through here, these sections here verify it.

page 263 } Q. Well, then, if it is true that if this boundary line that you find here on this Flippo map, and that you establish as the boundary between Bragg and Flippo is correct, then couldn't that mean of necessity that 45 feet of this dedicated street would have to lie on the north side?

A. At best 45, and like I say, if you don't allow the 15, in that event, you could come over 60 feet. The way I was reconciling the thing is the only logical thing: Allow 15 of the 60 feet on the Bragg plat to be taken up by Flippo.

Q. But the basic thing you established to begin with was that the Flippo-Bragg boundary was the center of, the center line of the old highway?

A. Uh huh.

Mr. Bagwell: That is all.

Witness stood aside.

Mr. Gravatt: I would like to recall Mr. Blackburn for one question.

page 264 } J. W. BLACKBURN,

upon being recalled by Mr. Gravatt, having been previously sworn, resumes the stand and testifies further as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Mr. Blackburn, did you undertake to ascertain the angle at which the lots platted on the Bragg Residence Site plat of 1909 abutted the street known as Court Street?

A. Yes, sir.

Q. How did you do it, please, sir?

A. I did it by using a point here on West Street and Court, and measuring up from Willie Bragg at the top of the Bragg line the specified distance, setting the rod up there and sighting back at this point here and turning the angle.

Q. Does that give you the accurate determination of what that angle is?

A. Yes, sir. Reasonably so, over the long period of time.

Q. Can you tell us what the difference is in the length of

that line if it were to be made perpendicular to Court Street as shown on the revised plat that you have made?

A. Referring to Block 5?

Q. Yes, sir.

A. It would—You mean how much this angle

page 265 } would reduce that slant—

A. That's right.

A. —if it were put on perpendicular? It would reduce it by approximately ten and one-tenth feet. That is in 420 feet, between High Street and Court Street.

Q. 420 feet?

A. It would reduce it ten and one-tenth feet.

Q. In 420 feet it would reduce the length of the line ten and one-tenth feet?

A. Yes, sir.

Q. What would that require to be done with High Street?

A. You would have to move High Street ten feet west.

Q. That is, move the eastern line of High Street west—

A. Yes, sir.

Q. —to compensate for making the line come to Court Street perpendicular?

A. And have your proper distances.

Q. You would have the proper distances?

A. Very close.

Q. Is the same thing true in this next block?

A. Yes, sir.

Mr. Gravatt: You may examine him.

page 266 } CROSS EXAMINATION.

By Mr. Bagwell:

Q. Do I understand from what you are saying, Mr. Blackburn, that the distance from High Street to Court Street, and referring to Block 5 along the lot lines and along a perpendicular line, there is only approximately ten feet difference in it?

A. That is correct, according to actual—

Q. Would you scale it there?

A. I did that yesterday.

Q. You said it was around 25 feet, did you not?

A. That's right. Somewhere around 25.

Q. According to scale it's around 25 feet?

A. Let me scale it again. I didn't have a very good scale yesterday. It scales a little less than that, about 23 feet.

J. W. Blackburn

Q. About 23 feet?

A. Yes, sir.

Q. How do you account for the fact that it scales 23 feet, but calculates ten feet?

A. It could be an error in drawing the map, the map is stretched, see, this thing is forty some years old.

Q. Wait a minute now, you don't mean that this paper would stretch the difference—If it stretched one way it stretches the other, doesn't it? Let's scale along page 267 } the line.

A. Not necessarily. It may stretch one way and not stretch the other.

Q. All right. Let's see.

A. It is supposed to be 250. It scales pretty close there. But this couldn't be much. Comes out—This is just an approximation, I think what Mr. Massie testified to, I think, was supposed to be in 420 feet, wasn't it?

Q. Yes, sir.

A. Just this little bit right there. Just a little bit.

Q. Approximately.

A. Couldn't logically stretch that much.

Q. Let me ask you this, I want to make sure I understand you right—

A. Yes,sir.

Q. As you put your scale along the lines as I have it there, as shown on the plat, these lines that we call askew lines, the lines as shown on the plat, they scale approximately correctly, do they not?

A. It's off just a little, about five feet, according to that. As near as I can read it.

Q. All right, sir. Say it is 5 feet off. Then when you would turn it to make it perpendicular you wouldn't think the paper stretched that much so as to make it more than page 268 } five feet off that way, would you?

A. It could have been drafted—

Q. What I am trying to get at is: A twenty-three foot difference in the platting of it and a ten and a fraction foot difference according to the angulation and the measurement, indicates that the platting of it is grossly erroneous, does it not?

A. No, sir, I wouldn't say that. This was traced from another map. You know they don't make it on this; the paper could slip a little bit; your pencil could slip a little bit; and you could make a mistake in using your scale.

Q. These lots then, as they appear physically here on this

paper, are at much more of an angle to the street than you figured there from calculating the angle, isn't that right?

A. Yes, sir.

Q. So there really is a discrepancy between your arriving at what the angle is by calculation and what is shown here on the ground as such?

A. By referring to ground landmarks—

Q. Now your angle is turned from this from an outer boundary?

A. Yes, sir.

Q. What is that outer boundary?

A. Right here.

page 269 } Q. Is it shown as an outer boundary on this map?

A. No, sir.

Q. Does it show courses or distances of angulation on here?

A. No, sir.

Q. You just found that physically?

A. Yes, sir.

Q. It doesn't present what is down here physically?

A. What do you mean?

Q. It just doesn't agree with what is shown here on this map.

A. No, sir. Not as far as the angle is concerned.

Q. This is the 1909 plat, and this shows a different angulation, completely, from the 1910 plat, does it not?

A. That is correct.

Q. There is a change in Block 3 here to compensate for the differences?

A. Yes, sir, and an omission of one lot, 15.

Q. You don't know whether or not the same man who drew these lines here drew these lines here—that you say are physically out of place—and put the stakes there, do you?

A. No, sir.

page 270 } Q. Is it as easy to get stakes physically out of place as it is to get lines physically out of place on a map?

A. You mean stakes on the ground or on the map.

Q. Stakes on the ground and lines on the map.

A. I don't know.

The Court: Are you all through?

Mr. Bagwell: Yes, sir.

Witness stood aside.

LOUIS W. RAABE,
introduced in behalf of the defendant, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Bagwell:

Q. Mr. Raabe, I believe you are with the Right-of-way Department with the Virginia Highway Department?

A. Yes, sir.

Q. There is a difference from the Engineering Department?

A. Yes, sir.

page 271 } Q. I believe you have been working down here on the right-of-way involved particularly in this subject matter of litigation and surrounding right-ofways, is that correct, sir?

A. Yes, sir.

Q. Mr. Raabe, a question has been raised here in the testimony as to your actions with referencce to this, as to why such and such was done with reference towards this right-of way, and the dedication. I would like to ask you just when and how it came about that you first came to know about any 60-foot dedication?

A. Well, actually, when we start on a project we have to assume that all the data is furnished on the plans according to the existing right-of-way, and we proceed accordingly.

We had—When I say we, I am putting it in terms of another fellow and myself. Actually I was in charge of what was going on.

I started in on one side, for no particular reason, and dealt for the right-of-way which is on the Norman Neblett side. During the contact of these poeple they questioned me if I was familiar with the fact that this was a dedicated 60-foot right-of-way. I said, "No—".

Mr. Gravatt: I object to all that, if Your Honor please.

page 272 } Mr. Bagwell: Let it go in if you don't mind. It is easier to get it in now and then strike it out. We don't want to disregard anything. We want an explanation for all these things. We are merely putting in answers to questions you have been raising throughout the testimony.

Mr. Gravatt: All you are doing is putting on hearsay testimony.

Mr. Bagwell: You are requesting this affair, why the Highway Department did or did not do thus and so if it had the dedication. In order to get to it in short order—

Mr. Gravatt: I will let you put it in if you want to get it in, Mr. Bagwell.

The Court: Let's move along.

By Mr. Bagwell:

Q. Go ahead, Mr. Raabe.

A. Actually, after all our negotiations and talking with these people, I came to the Court House and I did find there was a plat on record; and in contacting some of the people that were more familiar with the sub-division, reconciled that there was a right-of-way and proceeded to negotiate accordingly. I talked to Mr. Howard Bragg, as well as the other people.

Q. When you came you didn't know about the dedication until after talking to some of the people, and after

page 273 } receiving suggestions from them you investigated and found what you concluded to be a 60-foot right-of-way?

A. Yes, sir.

Q. May I ask you whether or not, there has been reference to the Worsham property that was discussed in the testimony, are you familiar with where that property is, Mr. Worsham's property?

A. I can look at the plat recorded with the deed and tell you who actually made the purchase.

Q. I want you to show us what lot it was, if you had that information. Did it include any part of this Bragg sub-division?

A. Now I have to go on this: Assuming I am furnished the title examination and the correct information is furnished me, then I understand this is Lot 9. I can't prove that.

Q. Lot 9 in Block 1?

A. Block 1. Yes, sir.

Q. Did you deal with him yourself?

A. Yes, sir.

Q. It is introduced here in testimony that he pointed out a marker with reference to his property in question, that has been testified to by petitioner's witnesses, as the corner of this Lot No. 9—

Mr. Gravatt: Let me see.

page 274 } Q. I ask you whether or not—

Mr. Gravatt: Wait a minute. I have to object to that, Mr.

Louis W. Raabe.

Bagwell. I don't know who testified to that.

The Court: I do not remember anyone testifying that Mr. Worsham pointed out the corner of his property.

Mr. Gravatt: Nobody testified Mr. Worsham pointed out any marker.

The Witness: I think I can probably tell you who it was—

Mr. Gravatt: Just you wait a minute, please, sir. If you can name the witness who testified to it—

Mr. Bagwell: My impression is that it was Mr. Howard Bragg. Mr. Bragg referred to the marker; or, too, it may have been Mr. Winn.

Mr. Gravatt: Mr. Winn didn't testify about anything down on this end of the property. Mr. Bragg only testified about the hub in the ground and they dug it up.

Mr. Bagwell: I am reminded—I cannot carry all of the details in my head—that Mr. Blackburn himself, in testifying,

page 275 } testified that he ran this survey for Worsham. and that in the survey of the Worsham property he located this corner as Worsham's corner, which is shown on one of these plats here as a marker of some kind at this corner, at the corner of Lot 9 with Court Street and Mutual Avenue.

Mr. Gravatt: I think that is substantially correct, but that is entirely different than saying Mr. Worsham pointed it out to him.

Mr. Bagwell: I apologize. I cannot carry all the details in my mind.

Mr. Gravatt: I don't criticize you; I don't want to get myself in a trap; I don't know whether this is proof.

By Mr. Bagwell: (Continuing)

Q. You testified you negotiated with Mr. Worsham I ask you whether or not, in your dealings with Mr. Worsham, whether he recognized—

Mr. Gravatt: I object. If Mr. Worsham is going to be testifying, let him testify.

Mr. Bagwell: Let me get it into the record. I am permitted to make the record on it and get it into the record, then make your objection.

Mr. Gravatt: I object to the thing coming in, and what is the purpose of putting it in the record at all?

Mr. Bagwell: Because I contend that it is

page 276 } proper for it to come in the record. If you want to take a little time to argue I will be glad to argue,

but I see no reason to argue about it. The judge decides whether it is admissible for him to consider anyway; and your objection can be considered on appeal, if there is an appeal that goes forward. If I am not allowed to put it in the record, at least I am entitled to being heard on it.

Mr. Gravatt: Tell me, what grounds do you think Mr. Worsham's statement to Mr. Raabe can be introduced in this evidence by Mr. Raabe's tstimony?

Mr. Bagwell: Upon the same basis which the Judge permitted you in several instances to present witnesses to testify as to what someone there in the chain of title said about their corners. That occurred in several instances, and we objected to that, but the Court said that could be done.

Mr. Gravatt: Mr. Worsham is alive.

Mr. Jefferson: No, he's not. He's dead.

Mr. Gravatt: He's dead? I will not object to it.

Mr. Bagwell: Thank you, sir.

Mr. Jefferson: He died since this suit, since page 277 } the highway construction.

Mr. Gravatt: I will not object to it.

By Mr. Bagwell: (Continued)

Q. My question to you is as to whether Mr. Worsham, the owner of Lot 9 that had this marker there that has been discussed, whether he negotiated and disposed of the right-of-way problem that he had with this Highway Department by recognizing the 60-foot dedication that we are contending for in this case?

A. Yes, sir, and this is the plat that was recorded with the deed.

Q. That is in Highway Plat Book 1, page 220.

A. We purchased only this portion. He owned up to this point here. He recognized the 60-feet here. Only on one lot. That is all that is involved. We did not purchase, he recognized it.

Q. He actually owned land further on down from the development?

A. Yes, sir.

Q. Was the 60 foot right-of-way recognized down there also?

A. Yes, sir.

Q. I ask you whether or not you can identify the Beach property, and here is the plat. I refer to the plat in Deed

Louis W. Raabe.

Book 55.
page 278 } A. On the corner here of Rod Avenue.
Q. In Block 9?
A. Yes, sir.
Q. Being on the corner of Rod Avenue on which side?
A. Coming toward the Court House.
Q. That is the property that Mr. Winn testified to with reference to the hedge that is there?
A. That's right.

By the Court: That is obvious today.
A. Yes, sir.

By Mr. Bagwell: (Continuing)
Q. I ask you whether or not she has accepted the 60-foot right-of-way that we are contending is the right-of-way in this instance?
A. Yes, sir, and this is the map that was recorded in the deed which dealt with her recognizing the dedication.
Q. Mr. Bragg testified with reference to his connection with the American Legion, where is that?
A. Right there, adjoining the Beach property.
Q. That is how many lots?
A. I am not familiar with the exact number of lots.
Q. But it adjoins the Beach property?
A. It adjoins the Beach property and comes to-
page 279 } wards the Court House.
Q. Toward the Court House?
A. Yes, sir.
Q. I ask you whether or not the right-of-way as acquired there was acquired on the basis of the 60-foot dedication as is claimed by the Highway Department in this case?
A. Yes, sir. And this is the plat that was recorded with that deed, which indicates the recognition of the dedication also. (Highway Book No. 1, page 261)
Q. I believe there was some point here raised at the time Mr. Jefferson questioned the witness Bragg about pointing out to you certain markers, and just in order to clear that point, I ask you what markers did the witness Bragg point out to you?
A. It is only probably a little confused issue, what he said. Maybe at a later date he told us more points, but at the first meeting he said that he only knew of two. He didn't know of any points at Rod Avenue, but he would take us to Mr. Winn, and he pointed out that point; and Mr. Bragg showed

me an iron down there, and to my knowledge, that's all I know.

I had another man contact Mr. Bragg a couple of times and they could have talked over other points. I don't know.

page 280 } He didn't indicate that he was trying to keep anything from me, he just showed me those two points at that time. That was all, to my knowledge, those two points.

Q. I will ask you just one further question: Is there any reason why the Highway Department did not utilize the 60-foot dedication that it claims precisely and altogether in the construction of its highway?

A. Well, like I—

Mr. Gravatt: Do you feel you can answer all that about why the Highway Department built the road like it did build it, and didn't acquire more highway than it did acquire?

A. I don't think I can answer that particular question.

Mr. Gravatt: The reason why the Highway didn't utilize all the highway is not in your department.

A. I think I can answer the question in general as to the policy of the Highway Department, and I have already verified the fact that they did not know this right-of-way existed, so that is the reason the plans were laid out like they were.

Q. Go ahead.

A. Like I say, initially, when we came up here that right-of-way was not shown on the plans; that was

page 281 } evidently not recognized, or known by the parties at the time they were out here picking up field data. It is not shown by the design here. Therefore, even after they found the dedication and assumed that they had it, that we had it, it would cause quite an expensive engineer revision to shift the road, from an engineering standpoint as far as the design; and also, you would be moving off the present travelway, which has been a stabilized subgrade. We like to stick as close as we can to the present travelway due to the stabilization of the soil. Otherwise, if the roadway were shifted from the present road bed, or if it utilized the right-of-way, then we would have to build up the soil and work the soil up to stabilize the material.

Louis W. Raabe.

Q. In other words, you have a construction problem either way, and you have to weigh the one against the other.

A. You would have a design problem, too, revising all the plans.

Q. I believe there is a policy and there is a law to the effect that where there is no evidence of dedication, or no specific dedication or knowledge thereof, and no particular boundary identified, there is an assumption of a 30 foot right-of-way?

A. Yes, sir.

* * * * *

page 282 }

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CROSS EXAMINATION.

By Mr. Gravatt:

Q. Mr. Raabe, do you know whether the American Legion, Mrs. Beach, and all the rest of the people south of Rod Avenue had the area called for by their respective deeds without encroachment upon the 60-foot right-of-way that you claim?

A. Do you ask before we proceeded or what?

Q. I am just asking you if you know whether they did or didn't.

A. Here was the approach I made, Mr. Gravatt, as to laymen—

Q. You can't tell me something if you don't know the answer to the question.

A. I don't quite understand the question. Please *elabroate.*

page 283 } Q. The question is simply this: If these people had, for instance, if the American Legion Hall had a deed that called for a lot 200 feet deep and 50 feet wide, and if they had that area without encroaching upon what you claim is your right-of-way, there would be no occasion for any controversy, would there?

A. I am not going to try to explain whether the plat is good or not.

Q. I am not asking you that. I am asking you: There would be no need for any controversy with any of these people if they were actually occupying the area that was con-

veyed to them under their deed from the Bragg Residence Site, would there?

A. No, sir. Because from all the evidence they were outside the 60-foot right-of-way.

Q. Right. Therefore there was no cause for any controversy out there, was there?

A. That's right . They recognized it.

Q. You had a 60-foot right-of-way out there that is not shown on the Flippo plat, didn't you? You have seen the Flippo plat?

A. Yes, sir.

Q. You know it shows a 30-foot right-of-way out in there?

A. Do you want me to elaborate why I think it is a 30-foot right-of-way?

page 284 } Q. I don't want you to elaborate at all, all I want are the facts.

A. The facts are evident.

Q. You got a 60-foot right-of-way from everybody who recognized it, and yet on the Flippo plat it is shown as 30 feet, why?

A. I can't answer that question. I don't know why.

Q. You say you did get the 60-foot right-of-way?

A. Yes, sir, we got the 60-foot right-of-way, as far as I know.

* * * * *

page 287 }

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E. F. MASSIE, JR.,

upon being recalled by Mr. Bagwell, having been previously sworn, resumes the stand and testified further as follows:

DIRECT EXAMINATION.

By Mr. Bagwell:

Q. Mr. Massie, Mr. Blackburn testified here with reference to this matter of the differences in perpendicular depth and lot line depth relating to Block 5 in the Bragg plat of 1909, and he took the stand to explain that by certain methods of calculations from an outside boundary he would compute the difference in the line distance, and the side line lot

distance, and the perpendicular distance, to be different from that which it scaled. Will you please explain whether or not there are any assumptions that have to be made by a surveyor to come to that conclusion with reference to the differences? Just explain it, if you can. You can do it quickly and better than if I tried to question you.

A. An assumption to begin with was the angle at which the lot lines in this case are inclined to the perpendicular lines to Court Street. That was, that's an assumption, since we have no measurement of the angle that this plat
page 288 } shows—that is the 1909 plat—this plat doesn't show how much inclination those lot lines are to Court Street. Therefore, you have to assume an angle. I think, from listening to Mr. Blackburn's testimony, the assumption was that these were inclined so that they were parallel to the boundary line between one Bragg and the W. J. Bragg property. Now that's an assumption. His calculations, I am sure, were correct. His assumption may be correct, and it may not be. It's just a question of how valid the assumption is of the angle of such a quantity, of such an amount. It's just an assumption. The validity of the assumption governs how accurate it is.

Q. Do I understand you have to assume one of these lines shown on the map is the correct outside boundary of the Bragg property, or is parallel to the correct outside boundary of the Bragg property?

A. Yes, sir. That was the assumption he made, I believe, on his calculation. Is that right? (Directed to Mr. Blackburn)

Q. From the record, is there any proof that that assumption is correct?

A. I don't think of any that is definite proof of it.

Q. I ask you this also: Whether there isn't a turn in Court Street right at the corner of Block 5 with Bragg Avenue?

A. Yes, sir.

page 289 } Q. Well, does that indicate then that the lots in Block 5 are not parallel with the lots in Block 1?

A. No, sir, it doesn't. The way this is drawn up the blocks in Block 1 are parallel with the blocks in Block 5 because you have a 250 distance, this distance is equal to this distance, meaning that they are parallel. So this turn here actually—

Q. If these lots here are parallel and the street turns, doesn't that prove that the angulation of the lots in Block 5 with Court Street are different from the angulation of the lots in Block 1 with Court Street?

A. That is true. Yes, sir.

Q. Then doesn't that completely destroy the effectiveness of the theory as to perpendicular distances, as to the measurement of perpendicular and side line distances in Block 5?

A. What it does do, let me say this: What it does do it changes, yes, it changes the angle between Court Street and the side lines of the lots from what it was down here in Block 1. Yes, sir. It changes that.

Q. In other words, if you make the assumption that Mr. Blackburn made, and if the assumption is correct, and if his figuring is correct, his conclusions would be correct as to differences in side line distance and perpendicular distance in Block 1, but it would not apply in Block 5?

page 290 } A. It depends on which line here he took along Court Street to figure his figures on. Now I assume that it may have been the wrong assumption that he was working on when he got up here. Whether he has taken that into effect, I don't know whether he did or not. I guess that assumption may be wrong, it may be right.

Q. But in order to calculate, in order to make any correct calculation based upon the angle here, you would have to—

A. Take to that turn.

Q. What is the actual angle here?

A. You would have to effect that turn at this point, which you have no quantitative measure there. You would have to estimate or assume, one or the two, estimate or assume. Scale it just as you scale down here, the block itself. That is another sort of error.

Mr. Bagwell: That is all.

Witness stood aside.

page 291 } J. W. BLACKBURN,

upon being recalled by Mr. Gravatt, having been previously sworn, resumes the stand and testifies further as follows:

DIRECT EXAMINATION.

By Mr. Gravatt:

Q. Mr. Blackburn, Mr. Bagwell has reconstructed your answers to the questions I asked you in such a way I don't know whether I understand what you testified or what is the

J. W. Blackburn.

situation. Will you tell us how you asserted the angle and what lot you were dealing with when you did it, please, sir?

A. I established this line.

Q. You are now looking at Exhibit A.

A. Yes, sir.

Q. All right, sir.

A. At the corner of Bragg Avenue and Court Street, this angle was turned at 106° 12′. This angle here, which would be the same as this here 61° 14′. From these angles you can transpose this line up there like that and calculate this distance, I mean this angle here, which would give you the angle between this slant line and the perpendicular line. This point here was right on the line with that. It wouldn't make any difference where I figured it from. You bring it on up here like this, and then draw this line here perpendicular. This is not to scale. You know, this angle. This is supposed to be parallel, of course, 106° 12′ in here, page 292 } the deflect angle 16° 12′. You know this angle here is equal to this angle here—61° 14′ plus 16° 12′. All right, then you know the angle from here around to here: 77° 26′. Subtract that from 90° that would be 78° 16′. Wait a minute. 77° 26′ subtracted from the total angle of 90°, which would give you this angle, it's 12° 34′ difference between the slant line and the perpendicular line.

Mr. Gravatt: All right, sir.

CROSS EXAMINATION.

By Mr. Bagwell:

Q. This is based upon your conclusion here and your usage of the corner at the intersection of Bragg and Court Streets as being an angle of a certain size, isn't it?

A. Uh huh.

Q. And being the angle that is shown on this plat prepared by you?

A. Yes, sir.

Q. But as a matter of fact, that angle as shown on this plat, prepared by you, is very definitely not the same as the angle that is shown at the same location on the Bragg plat shown in Deed Book 54?

A. If you bring that down parallel, perpendicular, I don't think it would be too much difference. I don't know.

J. W. Blackburn.

Q. You don't know?
page 293 } A. Just from inspecting it.
Q. It's not the same, is it?
A. I don't know.
Q. It doesn't appear to be the same, does it?
A. It looks similar.
Q. Will you say that it is the same?
A. No, sir.

Mr. Bagwell: That is all.

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A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Appeal and *Supersedeas* Awarded	1
Record	2
Order—July 15, 1958	2
Suggested Stipulation of Facts	4
Stipulation of Facts	6
Letter—Opinion	7
Decree—December 16, 1958	9
Notice of Appeal and Assignments of Error	11
Proceedings	13
Witnesses:	
J. W. Blackburn	13, 87, 144, 157
Wade Winn	48
J. M. Jackson	63
Howard Bragg	68
Mary G. Blackwell	79
Henry Davis	85
James T. Waddill, Jr.	87, 88
E. F. Massie, Jr.	98, 155
Louis W. Raabe	148

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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