

NA RG 79, E 2127, B2

HFD 746b

T R A N S C R I P T I O N

The Chesapeake & Ohio
Canal Company

vs.

James B. Wager
Gerard B. Wager &
Sarah Ann Wager

In the Matter of the
Inquisition taken on
the 29 June 1832
by William [?]
Fitzhugh, Eqr. Shff
& a Jury of Washington
County Maryland

note: throughout document word "there" is almost invariably spelled
"their"

Hezekiah Boteler, Witness produced and Sworn on the part of the said Canal Company, deposeth and saith that he this deponent was one of the Jury, who tried this case on the 29th June last, and it was proved before the Jury at the trial on the part of the Messrs. Wagers that the tavern house on the land condemned for the use of said Company, had been rented out by the said Wager & that they were in the habit of receiving two hundred or two hundred & fifty dollars per annum as the rent of the same, but he does not recollect the time they were in the habit of receiving that rent. Does not recollect that there was any testimony before the Jury making the amt less than \$200 at any time. It was proved on the part of the Messrs Wagers on the trial that Capt Byrne had offered 1\$ per front foot for a part of that land which was refused by the Messrs Wagers.

Quest. Whether or not the jury in agreeing upon the verdict took into consideration any benefits conferred by the construction of the Canal upon the Messrs. W.?

Ans. We did consider to the best of my recollection that it would enhance the value of the property of Mr. Wager on the Virginia side in some measure, and at the same time considered that it would diminish the value of the property on the Maryland side, and of the Bridge very much. It was observed upon that day by the Counsel for the Canal Company, that there would be or was likely to be a dam constructed just below the Bridge, which would make slack water around Mr. Wager's shore on the Harpers Ferry side, we considered in the event of that, that it would make this dock more valuable to them {begin p.2} than it had been before, that it would become a place of deposit. To the best of my recollection I do not think it was considered that any benefit would be derived from increased rents in Harpers Ferry, there might have been a good deal of talk about it, but I do not think we came to any conclusion about it--To the best of my recollection we did not set off any benefit against damages, it was a mystery whether there would be benefits or not, and we could not act upon supposition, that was my view, and I think ~~it was the view of the jury at the time, we were required by our oath to consider the advantages and disadvantages, and we did consider these things, but came to the conclusion that there would be no advantages.~~

Quest. by the Attorney for the Company. Was anything allowed for future injuries to the Bridge or the revenue derived from the Bridge? Answer: I think there was not to the best of my recollection.

Quest. by the Attorney for the Company. Was the Jury during their deliberations secluded from all other persons or was any other person in the room with them? Ans. There was no person in the room with the Jury but the Sheriff.

William Stover, a witness produced on the part of the Messrs. Wagers, being first duly sworn on the Holy Evangel of Almighty God, deposeth & saith that he is a blacksmith by trade, has a family and is employed and has been for upwards of five years as a workman in the Government works at Harpers ferry, that in the years 1828 &

and making out the inquisition, he was lying down on the bed the greater part of the time.

Samuel Clagett, a witness produced & sworn on the part of said Canal Company, deposeth and saith, that he this deponent was one of the Jury who tried the Inquisition in this case on the 29th day of {begin p.5} June last, that it was proved before the Jury at the said trial on the part of the Messrs. Wagers, that the tavern house of the Messrs. Wagers on their land condemned for the use of the said Canal Company, had been rented for a number of years preceeding for two hundred dollars and the taxes on the property paid by the tenant; how many years back he does not recollect, but his impression is that Mr. David Coons' lease was the farthest back and according to his recollection their was no contradictory evidence on this point before the jury, though it was argued by the counsel on the part of the Canal Company, that since the erection of the Bridge, the tavern house was not valuable (for that reason) Quest. by the Attorney for the Company- Whether or not the jury in agreeing upon the verdict took into consideration any benefits conferred by the construction of the Canal upon the Messrs Wager. Ans. The jury took into consideration the advantages and disadvantages and brought in their verdict accordingly, they considered that the disadvantages would more than counterbalance the advantages.

Quest. by the Attorney for the Company. Was their any pecuniary estimate put upon the benefits or any attempt to ascertain their probable value, or any actual set off for benefits against damages, allowed by the jury in agreeing upon their verdict? Ans. I made my own calculations from the testimony and acted accordingly, and I believe most of the jury did the same; I know that several did who sat around me. I did make an estimate of advantages, but do not recollect the precise amount, it was an estimate in money. I do not recollect the particulars of my calculation, but I settled upon the amount specified in the verdict, we did talk over the subject of advantages some contended that their would be advantages, and some that there would not be--I do not recollect that their {begin p.6} was any general discussion amongst the jury about the benefits as a separate consideration from the damages, their was a great deal said in the jury room which I do not recollect their was no person in the room except the jury and the Sheriff, he the Sheriff was lying down on the bed the most of the time and did not to my recollection interfere at all in the discussion.

Quest. by the Counsel for the Company--Was their evidence produced before the jury by Mr. Wager, that damage was likely to accrue to the bridge from the construction of the Canal?

Ans. There was I think.

David Coons, a witness produced and sworn on the part of the said Canal Company, deposeth and saith--That he this deponent says he built the tavern house in question in the year 1809, and put it under roof under an agreement with old Mr. Wager in his life time, to pay him 40\$ a year rent for as long a time as this deponent

were able to pay or not, and it frequently happened that persons unable to pay were thus detained by high water, he could not turn them out of doors and so lost by them--On further reflection Mr. Coons thinks that he was mistaken about the length of time he paid \$200 rent, he thinks he did not pay that rent except for the last two years that he was there, and he thinks that was more than it was worth, when he did not pay \$200 he paid \$130 per annum.

Quest. by Mr. Wagers counsel. Do you think that house in the hands of a judicious person, would have been as valuable after the Bridge was built as before?

Ans. I should suppose that the Bridge would be an advantage to it. I was never there more than once after the Bridge was built and while Everson and Jackson lived there.

Philip Coons, a witness produced and sworn on the part of the said Canal Company deposeseth and saith--says he lived at the tavern house in question from 1809 to 1827 as stated in the testimony of David Coons the father of this deponent, that S[T?]impkins to whom the unexpired term of his said fathers lease from June to April, was rented after remaining there for about four months died, that he then rented the residue of said time to Geo. Everson, who remained there until April at which time the term expired, and paid the rent there of after Emerson [Everson?] a tenant by the name of Jno. Jackson rented it from Mr. Wager for the purpose of keep-
{begin p.9} ing tavern and did keep tavern, does not know how long, but supposes a year, considered Jackson a man in good circumstances when he went there, supposes he Jackson was injured in his circumstances by coming to that property, but what was the cause I do not know he, as well as his wife was sick a good while whilst he was there and his wife died there.

George Everson a witness produced and sworn on the part of the said Canal Company deposeseth & saith that he has known the tavern house and property of the Messrs. Wager and property condemned for the use of the Canal Company for the last 8 or 10 years, that he lived at that tavern house about 18 mths. in the years 1828 & 29. He paid \$200 per annum & the taxes, that rent was too much by one half or more, when he went there he had plenty of every thing and when he came away he had not a cent, and he attended to business as regularly and faithfully as he could do. After the Bridge was built he would not give \$50 for it as a tavern Stand, in constructing the abutment the stables were taken away which prevented the stages and other custom from stopping there. The house did not possess sufficient size and other accommodation for the keeping of a respectable tavern at the time he had it. After he left it, it was inhabited by a parcel of black people - Old Minta & others whether they paid rent or not he does not know. Jackson went there afterwards and kept tavern, Jackson had some custom - Harpers ferry custom and country custom- as for travellers they would not stop there after the Bridge was built, does not know whether Jackson had anything when he went there, supposes, he had-when he (Jackson) left there he had nothing he had to back out for

consequently that the workmen were sufferers. The mass of mercantile business is still done upon Mr. Wagers property. In 1831 Mr. Wager removed an old frame house which stood in the street- a house not superior to some which government have condemned as being untenantable which house Mr. {begin p.12} Wager had rented for some years - 10 or 12 at \$300 per annum. It was occupied as a store house and derived its value from its particular situation. Mr. Wagers rents in town are generally considered to be very high. Deponent supposes that no inducement could have existed for workmen in the armory to cross the river to live, as the government rents are so low, that, to live on government property would be preferable to building or renting from a private individual. Deponent thinks that there was nothing to increase the population of the place except the construction of the Canal. Mr. Wagers Maryland land was narrow and steep, and could not have been built upon without great expense as the necessity of preserving a pathway would have caused the foundations to be excavated from the hillside which was steep and rocky, that is, the land just above and below the bridge, it must have been very narrow immediately where the bridge crosses.

Quest by Mr. Wagers counsel. Were you produced, sworn and examined before the jury who found the Inquisition in this case?

Answer - No.

Alfred Cruzen a witness produced and sworn on the part of the Canal Company deposeth and saith--That he first became acquainted with the property in question about 4 years ago in the winter 1828 & 29. The tavern house was then in a very dilapidated open state, he staid there with a locating party who suffered a great deal from the cold and exposure, the bridge being then unfinished it was impossible to cross the river at all times conveniently, on the return of the party in February the bridge was in a passable condition for foot passengers and that he then took lodgings in Harpers ferry. At that time and in its then condition he conceived the building {begin p.13} The land owned by Mr. Wager on the Maryland side, he then understood and believed to have been purchased for the purpose of securing a ferry landing, the tract was about ½ mile in length, at the widest place about 160 feet, and at the narrowest about 112 feet wide, it consists of perpendicular cliffs of rocks on the upper side, 50 or 60 feet above water surface from the base of which to the margin of the river, which constitutes the lower boundary, the surface is of masses of rocks, which seem to have fallen from the cliffs above, there is not upon the tract any level ground except the bed of the road, which was made through and over the rocks. The inclination about ¼ of a mile above the bridge is less steep and less rocky than the remainder of the tract. Deponent does not consider the whole property, including the tavern house, to have been worth more than \$1500, as nothing could be produced there- not a vegetable, not firewood of any important amount, hardly a spear of grass. This tract lies immediately at the base of the blue ridge, where the mountain has been broken through by the Potomac river, and cliffs rise

connexion with said dam to pass the boats into the main canal--That this deponent stated it had been in contemplation to erect a dam and guard lock as stated above, and that they had accordingly been placed under contract, that the building of the dam would occasion a basin of still water under the bridge and around the river shore on the Harpers Ferry side of sufficient depth for any of the boats that would navigate the Canal- At the same time the Deponent stated, that it was in contemplation to build the dam &c as above stated, and also gave it as his opinion that there was very little doubt but what they would be so so built, yet he mentioned the possibility that the dam might not be built- The Jury I have no doubt were under the impression that the dam would be built as the counsel for the Canal Company used the fact in argument before the Jury, to reduce the damage on the ground that it would benefit and render much {begin p.16} more valuable the property owned by the said Wagers in Harpers ferry, on the other hand the Counsel for the Messrs. Wagers insisted that the erection of the dam would do them great injury by diminishing the tolls of their bridge. The Deponent also states that the plan of the Canal so far as regards the erection of the dam has been changed since the taking of the Inquisition, that is, it has been changed for the present, probably for several years. The Canal Company having it in contemplation at some future time to erect said dam. The Deponent also states that the Messrs. Wagers have since the Canal Company determined to defer the building of the dam, said that they would much prefer that the dam should be built.

Dennis O'Byrne, a witness produced and sworn on the part of the Messrs. Wager, being sworn deposed & saith, that he is well acquainted with the property condemned by the jury in this case, that he has known it for near 20 years, that he owns a farm within 2 or 3 miles of it, and has lived upon the farm for 12 or 13 years and in Harpers ferry for 7 or 8 years preceding that time. Is also well acquainted with all the property owned by the Messrs. Wager in Harpers ferry. He offered (as he stated to the Jury) 100\$ for 100 front feet extending back to the upper boundary of Mr. Wagers land, he considered it valuable for the purpose of building tenements to rent out to the workmen or other tenants. He thinks that there are now living in Bolivar, about one mile from Harpers ferry and other places equally remote from Harpers ferry mechanics whose business is in Harpers ferry, and who would live there if they could procure houses, he made the offer above mentioned for 100 feet of the most tenable ground above the Bridge, upon which it was his in- {begin p.17} tention to put up two tenements at a cost for both of \$400 which he could have rented for at least \$60 each. He thinks that the residue of the land would be valuable in the same proportion as that which he wished to purchase if improved as it was his intention to improve that lot for similar purposes. He (this deponent) rents to one of the workmen working at the government works in Harpers ferry who has a family - a small tenement distant about 2½ miles from Harpers ferry at the rate of \$35 per annum, there are on the land condemned large quantities of

the blacksmith as an assistant to him in the factory, he is paid by the Government I suppose, at least I know that he draws his pay monthly with the rest of the hands at the pay office, I have his words for it.

Q. When was it you offered \$100 for 100 front feet of that land on the Maryland side?

Ans. It is within a year past, though for several years I had it in view before I made the offer.

Q. Was not the Canal then located through that land and the works of the Company in operation upon it?

Ans. I believe there was a location on top of it, but I never thought the canal would take place.

Q. What reason did Mr. Wager assign for rejecting your offer

Ans. He gave me no definitive answer, but put me off I supposed he meant to consult with his friends about it

Q. Did you not state before the Jury, that Christie rented a part of his house for \$3 a month, and if yes what part of the house was it?

Ans. I cannot say certainly, but I always found the tenant living in the kitchen, sometimes they had one or two rooms sometimes not, according to the ability of his tenant to pay. He is not certain of the sum for which he rented to any of its tenants, but is certain that for 2 rooms he get between 4 & 6\$

Q. If you could build comfortable tenements that would rent for \$60 on the land in question for \$200 a piece, perhaps you can tell about the cost of building such a house as the tavern house now standing there?

Ans. I do not know what such a house as that would cost, but I can tell what small tenements on my own premises would cost, cannot form any idea what such a house could cost

Q. What do you suppose to be the dimensions of that house?

Ans. I really cannot tell what the dimensions are.

Q. What do you suppose the rent of that house worth? {begin p. 20}

Ans. I suppose if properly kept by men who had funds & would keep a good house, it would be worth what was given for it, provided there was not interruption by the Canal as has been since

Q. Would you judge from its size and appearance that it was a suitable house for a respectable tavern?

Ans. If it was well kept and well furnished, I think it might be a very passable tavern.

Q. Did you calculate building houses as large as that or nearly as large?

Ans. O'no! by no means.

Q. Was the 100 feet which you offered to purchase, the best of that tract?

Ans. I certainly would choose the most suitable.

Q. Was there any other place of equal extent for which you would have given as much money?

Ans. There might be as good sites as the one that I would select.

Q. How much would you have given for the second choice of 100 feet not taking the first choice?

Ans. The nearer I could get to the bridge the more I would prefer

the last five years.

To 2nd Inter. He answers and says, I consider it valuable if it was improved by putting buildings on it for dwellings, by building houses that would cost from 200 to 250 dollars each, tenants could be got for them that would pay as a rent from 50 to 60\$ a year, their are many persons who live over the Shenandoah river and rent houses their, that work in the armoury of the United States at the Ferry that would find it more convenient to rent on the Maryland side and cross over the bridge to the Ferry, their being no bridge over the Shenandoah, I think that they would get the privilege of passing the bridge free of toll, they now have to keep their own skiffs to cross in. He thinks however that they have the privilege of crossing the ferry on the Shenandoah owned by the Government free of cost.

To the 3rd Inter. He answers & says I am acquainted with the property owned by the Wagers at Harpers ferry. It does afford building stone, but not as good as that on the Maryland side of the river in my opinion. A house was built in the ferry by Mr. Anderson, the stone he got out in preparing for the building were used only in part, and he got stone from Mr. Wernwag on the Maryland side & for which he paid 50 cts a perch delivered the stone at the ferry are a kind of shelving slate stone and not so hard as those on the Maryland side - {begin p.23}

To the 4th Inter. He answers & says he thinks it does afford good building stone, that he has seen the quarry opened their and the stone are fine building stone, it would be more easy and convenient for the Messrs. Wagers to procure their stone from their, they could haul them across the Bridge conveniently.

To the 5th Inter. He answers and says that since the condemnation & possession of the land by the Canal Company Mr. Wager commenced building a Warehouse in Harpers Ferry, that for the purpose of this building he got his stone from Thomson one of the contractors of the Canal & paid him twenty cents a perch for them at the quarry, he Wager having to haul them, Wager had also to take the refuse stone which Thomson could not use in the canal and at last got so bad that Wager had to stop the building for the want of better stone, I do not know where else he could get good stone as conveniently.

To the 6th Inter. He answers and says I know George Everson and knew him at the time he occupied the tavern of the Wagers on the Maryland shore. I did not think him a very industrious man or a very sober or attentive man. His habits were not such as to make it likely that he would do well as a tavern keeper, he was a single man, and he might therefore have been idle, and that is the reason for the opinion I have expressed, that is, in reference to his industry, but not in reference to his sobriety.

To the 7th Int. He answers & says. I think that the tolls would be reduced the one half. I do not know that I would be quite, it would be pretty near.

X Interrogatories by the Canal Company
First X Int. Are you in Mr. Wagers employment in what capacity &

6th Int. He answers & says that it is rather a delicate question to answer, but that he cannot say any good of him, I never considered him a well {begin p.26} doing man; my reason for thinking so hard of him is that he has got into my debt and will not pay me although he always promises. I never see him that he does not tell me some lies about it, he dealt with me a good deal on credit and a good deal for cash and fell 35\$ in my debt which he has never paid me, his dealings were small and in a small way he dealt principally for liquors when he was keeping tavern.

Inter. by Canal Company. Has business been brisker in Harpers Ferry since the Canal is making?

He answers & says that he is a merchant in Harpers Ferry, and that business has been a great deal improved, it is owing to the workmen on the Canal but how long it will last he does not know.

Lewis Wernwag a witness on the part of the Messrs. Wagers after having duly & solemnly affirmed to tell the truth, the whole truth & nothing but the truth--says, When I was building the locks at the dam intended to be built by the Canal, I quarried stone for that purpose, and agreed to sell a part of them to Mr. Wager at 50 cts. per perch--the refuse stone not fit for building I threw away. I know the property that is condemned by the Canal Company on the Maryland side as Mr. Wagers land. I consider it valuable to the Messrs. Wagers for building. By taking the stone that came down from the Mountain side and building a wall near the river tenements could be built that would rent well and if they would give to the tenants the liberty of crossing the bridge free of toll, I believe that they would rent as well as if they were on the Virginia side of the river. Above the bridge in said land {begin p. 27} their are good building stone, and below the bridge their are also good building stone if quarried. On a small island on the Virginia shore I have rented a small tenement with one room and a small kitchen for \$45 per year. There is a great demand for small houses in and about Harpers ferry. I believe if I had 50 of them that I could rent them on account of the men who are at the ferry, some working in the Government factory & some on the Canal, lately the demand has been greater on account of the Canal men. This demand for houses to rent was great before the Canal was commenced. There are large quantities of stone on parts of the land that could be got without quarrying, that would be good for building by rolling them down.

On his X Examination by the Canal Company He says that such a house as the tavern on the Maryland side, could on account of the material being handy, be built for about \$450. Mr. Wager has a good deal of property in Harpers ferry that might be improved by building on it, such houses as would rent for 50 or 60\$, one story high, could be built on the land on the Maryland side for about 250 or \$300.

John Fitzsimmons a witness produced & sworn on the part of the Messrs. Wagers deposeth & saith that he has known the property condemned by the Jury on the Maryland side owned by the Messrs.

Wagers for about 3 or 4 years, that he considers it valuable to the Messrs Wagers, as it could be improved by building on it small tenements which would be rented by Mechanics in and about Harpers ferry and to whom it would be nearly as valuable as if they were in the ferry. That this deponent {begin p.28} rents out a small tenement on the Virginia side, on Mr. Wagers land 16 feet by 20, that a Mr. Shultz, a Taylor rents only the one half of the one room of it for 70 dollars a year.

Interrogatories to be put to Witnesses to be sworn and examined on the part of the Messrs. Wagers.

1st. Do you know the land owned by the Messrs. Wagers in Maryland & which has been condemned for the use of the Chesapeake & Ohio Canal Company, if yea, how long have you known it, state your knowledge herein fully & at large.

2nd. Do you consider this land valuable to the Messrs. Wagers or not? If valuable, for what purpose, state your knowledge herein fully and at large?

3rd. Are you acquainted with the property of the Messrs. Wagers in Harpers ferry? If yea, does it afford any good building stone or not, state your knowledge herein fully and at large?

4th. Does the property which was condemned by the jury on the Maryland side afford good building stone, and would such stone be more easily & cheaply procured by the Messrs. Wagers. State your knowledge herein fully and at large.

5. Have you any knowledge of the Messrs. Wagers having since the condemnation & possession of the said land by the Canal Company, having had to buy & haul stone for their use from said land? If yea, state your knowledge herein fully and at large?

6. Do you know George Everson the tenant who occupied the tavern in question; and who has already testified in this case? If yea, state whether you knew him at the time he occupied said tavern stand, and if yea what were his habits for industry, sobriety and attention to his business as a tavern keeper? State your knowledge herein fully and at large?

7th. If the tolls arising from the Wagons coming from the West to Harpers ferry were to be withdrawn by the Wagons stopping and unloading at the Ferry on the south side of the Bridge, what do you believe would be the annual loss in the amount of tolls on said Bridge? State your knowledge herein fully and at large.