W. L. Marbury,
Atty. for Plaintiff.
John K. Cowen
Atty. for Defendant.

The plaintiff, by his counsel, then presented the following prayer to the Court:

Plaintiff's Prayer.

The plaintiff prays the Court to declare as the law of this case, that upon the facts contained in the agreed statement of facts filed in this case, the plaintiff is entitled to recover the land described in the amended declaration, and damages for the use and occupation thereof by the defendant; the said land being the western half of the bed of Henry street between Winder street on the south, and Wells street or Ohio ave. on the north. - (Granted.)

And the Court having taken the case under advisement, did, on the 6th day of September, 1886, grant said prayer, filing with his decision the following written opinion:

The trustees appointed by the late Alexander Gould, in his last will, with power to sell his real and personal estate, sold to S. Alexander Preston on 22d November, 1872, a lot of ground containing between two and three acres, said lot being bounded by Winder street on the south, Johnson street on the west, Wells street on the north, and Henry street on the east, and by consent of all parties interested in the property, the sale was ratified by the Circuit Court of Baltimore city, which had taken jurisdiction of the trust, and a deed was executed therefor on 2nd December 1872. The title to said property, as set forth in said deed, with all the rights and appurtenances

thereto belonging, was acquired by the Baltimore and Ohio Railroad Company, on 5th April, 1874, and said corporation has ever since continuously held and enjoyed possession of said land, including the ground, now the subject of controversy. The plaintiff in the present suit was appointed by the Circuit Court to succeed the original trustees named in the will of Alexander Gould, on 1st March, 1883. The controversy between the parties now before the Court, relates to the western half of the bed of Henry street, between Winder and Wells streets, which was designated on Poppleton's plat of Baltimore city as a street, but which was never opened or used as such, and was, by ordinance No. 142, of the Mayor and City Council of Baltimore, approved 9th November, 1874, condemned and closed. The street closed purported to be sixty-six feet wide, although it is only fifty feet wide as laid down on Poppleton's plat; and the railroad company, owning the eastern half of the bed of the street in fee, and having an easement in the western half, when used as a street, was allowed $250 damages for each half, making $500, and charged with $725, as benefits accruing from the acquisition of the bed of the street free from public easement, the difference, $225, being paid into the City Treasury. Had the street, as located on Poppleton's plat, been opened or used as a highway, the question now before the Court could not have arisen. The fact that the deed called for Henry street, gave the grantee an easement in the land in question, the legal title, however remaining in the grantors. The fact that a street is located on the plat, does not confer a title thereto upon the public. The owner may dedicate