

## FOREWORD

**Title**

Case Study: Webster v. Susquehanna Pole Line Company of Harford County (1910)

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**Abstract**

At the turn of the 20th century, the State of Maryland witnessed an increase in the demand for hydroelectricity. Several public utility companies raced to construct a hydroelectric facility on the Susquehanna River, by which they could distribute electricity to Baltimore, Harrisburg, Philadelphia, and Wilmington. This case study examines the use of eminent domain by one such company, the Susquehanna Pole Line Company of Harford County, for the purpose of erecting a continuous transmission line, originating at McCall's Ferry Dam, the first hydroelectric facility built on the Susquehanna River. This project was subsequently challenged by Harford County residents, whose property the company sought to condemn.

**Disciplines**

Constitutional Law; Environmental Law; Legal History

## Case Study: Webster v. Susquehanna Pole Line Company of Harford County (1910)

### I. Introduction

Eminent domain is the authority of the government, through condemnation proceedings, to take private property for public use.<sup>1</sup> The State of Maryland is granted this authority in the Maryland Constitution, which provides that “[t]he General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation.”<sup>2</sup> This condemnation power is legislatively delegated to public utilities.<sup>3</sup> These companies, which are generally privately owned, provide services, such as electricity, consumed by the public.<sup>4</sup>

In the early 20th century, the Susquehanna Pole Line Company of Harford County sought to exercise its condemnation authority to erect a continuous transmission line of electric energy. This transmission line would originate at McCall’s Ferry Dam, the first hydroelectric facility on the Susquehanna River, and distribute electric energy through Maryland. This impressive project was opposed by Harford County residents, whose property the company wanted to condemn. James Edwin Webster and Dora Rouse Webster litigated against the proposed condemnation, appealing their case to the Maryland Court of Appeals.<sup>5</sup>

This case study will provide a comprehensive history of the condemnation proceedings challenged in Webster v. Susquehanna Pole Line Company of Harford County, including a

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<sup>1</sup> Black’s Law Dictionary (4th ed. 2011).

<sup>2</sup> Md. Const. art. 3, § 40.

<sup>3</sup> See, e.g., Md. Ann. Code art. 23, § 366 (1904).

<sup>4</sup> Public Utility, Wikipedia (Oct. 22, 2015), [https://en.wikipedia.org/wiki/Public\\_utility](https://en.wikipedia.org/wiki/Public_utility).

<sup>5</sup> Webster v. Susquehanna Pole Line Co. of Harford Cnty., 76 A. 254, 21 Am. Ann. Cas. 357 (Md. 1910).

detailed analysis of the parties involved and the motivation behind the taking. Using this case as a foundation, this paper will examine the need of public utility companies to exercise their condemnation authority to provide services to the public.

## II. The Webster Family

Edwin Hanson Webster was born in Harford County, Maryland in 1829. He attended the local Churchville Academy, and later the renown New London Academy in Chester County, Pennsylvania. In 1847, Webster graduated from Dickinson College. He subsequently worked as a school teacher, and was admitted to the Maryland bar in 1851. At the age of 26, Webster, supporting the American Party, was elected to the Maryland State Senate, where he served as a presidential elector for Millard Fillmore and acted as President of the Senate in his final year.<sup>6</sup>

Portrait of Edwin Hanson Webster.



Webster was elected to the 36th Congress in the mid-term elections of 1858. During the Civil War, Webster pledged allegiance to the Union, calling himself an Unconditional Unionist. He led the 7th Maryland Infantry Volunteers as first colonel in the defense of Washington, D.C. in August and September 1862. Webster commanded this regiment until November 1863, when

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<sup>6</sup> Edwin Hanson Webster (1829-1893), Dickinson College Archives (2005), <http://archives.dickinson.edu/people/edwin-hanson-webster-1829-1893>; see also Edwin Hanson Webster, Wikipedia (Sept. 16, 2015), [https://en.wikipedia.org/wiki/Edwin\\_Hanson\\_Webster](https://en.wikipedia.org/wiki/Edwin_Hanson_Webster).

<sup>7</sup> Edwin Hanson Webster (1829-1893), *supra*.

he returned full-time to his seat in Congress. After the war, during the Johnson administration, Webster was appointed Collector of Customs at the port of Baltimore. He returned to his practice in Bel Air during the Grant administration, but was reappointed Collector of Customs by President Arthur in 1882. Webster held this position until 1886.

Webster married Caroline H. McCormick on June 6, 1855. The couple had four children, three daughters and one son. Webster died on April 24, 1893, at the age of 64, at his residence.<sup>8</sup> His Last Will and Testament conveyed real property, including the property at issue, to his son.<sup>9</sup> James Edwin Webster, born in 1857, served as State's Attorney from 1887 to 1891, and acted as Maryland's Republican Delegate to the Republican National Convention in 1900.<sup>10</sup> With his wife, Dora Rouse Webster, he had two children, Harriet Webster and Edwin H. Webster.<sup>11</sup>



The grave of James Edwin Webster and his wife, Dora Rouse Webster, located in Harford County, Maryland.

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### III. The Susquehanna Pole Line Company of Harford County

<sup>8</sup> Id.; Edwin Hanson Webster, supra.

<sup>9</sup> Compl., Webster, 76 A.

<sup>10</sup> History, Harford County Government, [http://www.harfordcountymd.gov/875/History; Webster](http://www.harfordcountymd.gov/875/History;Webster), The Political Graveyard (Dec. 15, 2014), <http://politicalgraveyard.com/bio/webster.html#398.49.55>.

<sup>11</sup> James Edwin Webster, <http://arlisherring.com/tng/getperson.php?personID=I298271&tree=Herring&PHPSESSID=410d71970220c78afd6e880248d110a1>.

<sup>12</sup> Nancy Sheads, James Edwin Webster (July 12, 2009), <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=39387653>.

The Susquehanna Pole Line Company of Harford County (Susquehanna Pole Line Co.) was established in 1907 by Alexander S. Bell, Joseph T. Deckman, James Alexis Shriver, Octavian M. Whitaker, and H. Clay Whiteford. Unsurprisingly, these five men were born into wealthy and well-known Maryland families. When Susquehanna Pole Line Co. was founded, they all resided in Harford County.<sup>13</sup>

James Alexis Shriver installing a historical roadside marker, honoring John Brown, in 1938.



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James Alexis Shriver, the most notable of these men, moved to Harford County after graduating from Cornell University in the early 1890's. Shortly thereafter, Shriver began investing in local public utility companies. In the late 1890's, he was appointed President of the Baltimore and Bel Air Telephone Company. When this firm sold to the Chesapeake and Potomac Telephone Company, Shriver became involved in the Bel Air Electric Company. He additionally contributed to the Baltimore and Bel Air Railroad Company, which sought to build a streetcar

<sup>13</sup> Act of Incorporation, Susquehanna Pole Line Co. (Aug. 13, 1907).

<sup>14</sup> Celery Soup, Mrs. J. Alexis Shriver, Old Line Plate: Cooking/Maryland History, <http://oldlineplate.com/post/112404456458/celery-soup-mrs-j-alexis-shriver>.

connecting Cockeysville, Timonium, and Towson. The public's preference for bus service caused this latter venture to fold in 1923.<sup>15</sup>

Shriver was also known for his participation with the Harford County Historical Society. In addition to fundraising for the organization, he authored a history of George Washington's 127 trips through Maryland and recorded Lafayette's activities in Harford County. Moreover, Shriver campaigned to have cast iron historical roadside markers raised along Maryland's roads. He died on February 6, 1951, at the age of 79, at his residence. Shriver was survived by his wife, Harriet Van Bibber Shriver.<sup>16</sup> Interestingly, his wife was the daughter of the Harford County Judge that signed Susquehanna Pole Line Co.'s corporate charter and issued the order refusing to grant the Websters' requested preliminary injunction.<sup>17</sup>

The founding members of Susquehanna Pole Line Co. signed its Act of Incorporation on August 13, 1907. The charter established Susquehanna Pole Line Co. as a class thirteen corporation under Article 23, Section 28 of the Code of 1904. Specifically, the company was formed:

for constructing, owning, or operating telegraph or telephone lines in this State, and for the transaction of any business in which electricity, either over or through wires may be applied to any useful purpose, and especially to buy, sell, operate, or lease pole lines, erect poles, string wires thereon, or on poles of other individuals or corporations on any and all streets, avenues, highways, and roads, public or private, and over and under all canals and other waterways, and across any and all bridges, and to use the same either for the transmission of electric current for delivery to customers on such lines, or for

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<sup>15</sup> William G. Le Furgy, *J. Alexis Shriver Papers, 1790-1945*, Maryland Historical Society (Mar. 1999), <http://www.mdhs.org/findingaid/j-alexis-shriver-papers-1790-1945-ms-963>.

<sup>16</sup> *Id.*

<sup>17</sup> See *Act of Incorporation*, *supra*; *Webster*, 76 A.

transmission of current to independent vendors thereof, and for the transmission of current for any individuals or corporations producing or delivering the same to said corporations, and to sell or lease to either individuals or corporations the right to string electric wires on, or attach electric wires to, any or all poles so erected, owned, or leased, and to use such lines both as through lines and for local delivery, and to sell or lease wires, cables, or fixtures for the transmission and use of electric current in any manner or form whatsoever, and to manufacture and deal in any and all apparatus and things required for, or capable of being used in connection with, the transmission, delivery, and accumulation, and other employment of electric energy and current, or of electricity, to build and construct and use for any of the purposes stated above, underground subways, or conduits, either under or across any streets, avenues, highways, roads, canals, and waterways, and to string electric wires, cables, or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation, the right to string and to use as aforesaid electric wires, cables, or conductors in such subways; to erect, operate, maintain, and either lease or let the substations for raising or lowering the voltage of any electricity received for it for distribution over its lines, and for the accumulation, storage, transmission, and distribution of electric current, and to purchase, lease, hire, buy, sell, or deal in any and all machinery used therein or in connection therewith, or convenient to its economical and practical operation...and to have the powers provided by...Section 366 of the Code of Public General Laws of 1904, together with such other rights, powers, and privileges, as are by the General Laws granted to all corporations formed under the

General Incorporation Acts of the State of Maryland, and granted by any laws that may be particularly applicable to corporations formed under the class aforesaid...<sup>18</sup>

The Act of Incorporation further specified that Susquehanna Pole Line Co. intended to operate in both Baltimore County and Harford County. The capital stock of this new company was \$50,000, divided into 500 shares of \$100 each. The charter, recorded on August 14, 1907 in the Circuit Court for Harford County, was certified by James A. Lyle, the local Justice of the Peace, Judge George L. Van Bibber, and Clerk William S. Forwood, Jr.<sup>19</sup>



The Harford County Courthouse.

On November 2, 1909, in a manner allowed by law, Susquehanna Pole Line Co. filed an amended Act of Incorporation. The amended charter declared that Susquehanna Pole Line Co. planned:

[t]o act as a common carrier of electrical power or energy by means of all appropriate or necessary structures, appliances, machinery, fixtures, devices, inventions, or processes

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<sup>18</sup> Act of Incorporation, supra.

<sup>19</sup> Id.

<sup>20</sup> Dinah Faber, Tour of Booth Family Historic Sites, The Historical Society of Harford County (March 2002), <http://www.harfordhistory.net/boothTourI.php>.



now or hereafter capable of being used in the transaction of any business wherein electricity or electric power or energy may at any time or place or in any manner be applied to any useful purpose...And the public in like situation with said [Susquehanna Pole Line Co.], its successors and assigns, whether individuals, partnerships, or corporations, are hereby vested with and entitled to a right to apply for and demand of the said [Susquehanna Pole Line Co.], its successors and assigns, all connections and facilities without discrimination or partiality, to the extent of the just and reasonable distribution, transforming, carrying, and connecting capacity and facilities of the said [Susquehanna Pole Line Co.], its successors and assigns, provided such applicant comply or offer to comply with all reasonable rules, regulations, terms, and rates of said [Susquehanna Pole Line Co.], its successors and assigns, and the said [Susquehanna Pole Line Co.], its successors and assigns, shall and must supply all applicants as aforesaid in like situation as aforesaid, who may exercise their said right, with such connections and facilities as aforesaid and to the extent and upon the condition aforesaid; and the said [Susquehanna Pole Line Co.], its successors and assigns, shall not impose any conditions or restrictions upon any such applicant that are not imposed impartially upon all persons, corporations, or partnerships in like situation with it; and further the said [Susquehanna Pole Line Co.] shall not discriminate against any such applicant engaged in any lawful business, or between any such applicants engaged in the same business, by requiring as a condition, for furnishing such facilities aforesaid, that said facilities shall not be used in the business of said applicant or otherwise for any lawful purpose.<sup>21</sup>

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<sup>21</sup> Amended Act of Incorporation, Susquehanna Pole Line Co. (Nov. 2, 1909).

Susquehanna Pole Line Co. accordingly received condemnation authority from Article 23, Section 366 of the Code of 1904, which provided that:

[a]ny of the corporations formed under class thirteen, Section 28 of this Article, as codified by the Code of 1904, shall have the powers which are conferred upon telegraph companies incorporated under this Article by Section 324, and may construct and lay any part of its line or lines underground on any route for which it is authorized to construct such lines in whole or in part, above ground and such corporation may acquire by condemnation any property or right whatsoever necessary for its purposes in its discretion, either in fee simple or the use thereof in fee simple or for a less estate, either in the manner set forth in Sections 251 and 252 or Sections 360 to 365 of this Article; provided, however, that all corporations incorporated, or to be incorporated by virtue of said Section 28, class thirteen, and all corporations hereafter incorporated under the provisions of this Act, except such corporations of said class as are now in practical operation and have laid or constructed their lines, or any part thereof, in the city of Baltimore, and their successors by consolidation or otherwise, shall obtain a special grant from the General Assembly of Maryland, and the assent and approval of the Mayor and City Council of Baltimore City, before using the streets or highways of Baltimore City, either the surface or the ground beneath the same.<sup>22</sup>

Susquehanna Pole Line Co. utilized this authority to condemn land in Baltimore County and Harford County for the purpose of constructing a continuous distribution line of electric energy. Susquehanna Pole Line Co. had contracted with the McCall Ferry Power Company, which was constructing a hydroelectric facility at McCall's Ferry in Pennsylvania. With the assistance of

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<sup>22</sup> Md. Ann. Code art. 23, § 366 (1904).

Susquehanna Pole Line Co., electric energy produced at this facility would be delivered to consumers in Maryland.<sup>23</sup>

#### **IV. The McCall's Ferry Dam**

The early 20th century witnessed an increase in the demand for hydroelectricity. Hydroelectricity refers to the production of electrical power using the gravitational force of falling or flowing water.<sup>24</sup> Investors supported this technology because hydroelectric facilities were relatively inexpensive, relied on a renewable resource, and produced minimal pollution.<sup>25</sup> Accordingly, during this time period, there was a race to build a hydroelectric facility on the Susquehanna River. Such facility was expected to be extremely profitable, with the cities of Baltimore, Harrisburg, Philadelphia, and Wilmington within a 75-mile radius.<sup>26</sup>

The Susquehanna Canal and Power Company, incorporated in Pennsylvania in 1902, was established, in part, for that purpose. The company was met with opposition from the Susquehanna Water and Power Company, which proposed to construct a hydroelectric facility at McCall's Ferry, ten miles north of the Mason-Dixon Line. Under the "Harrisburg Agreement," the Susquehanna Water and Power Company obtained the exclusive right to build on the Susquehanna River.<sup>27</sup>

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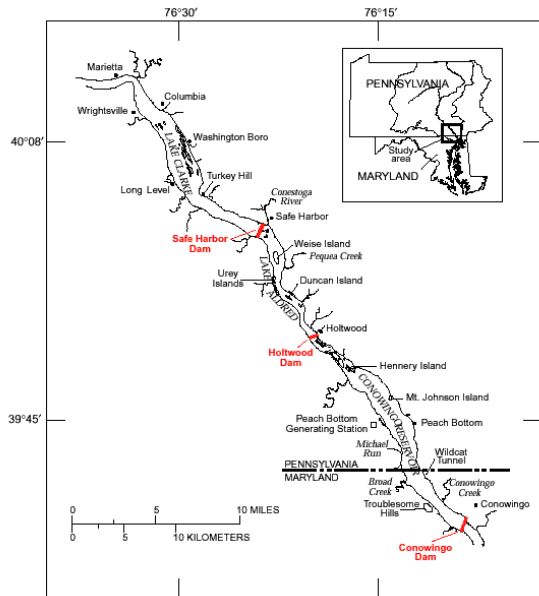
<sup>23</sup> Webster, 76 A. at 256.

<sup>24</sup> Hydroelectricity, Wikipedia (Oct. 18, 2015), <https://en.wikipedia.org/wiki/Hydroelectricity>.

<sup>25</sup> Willis S. Shirk, Jr., Holtwood Hydroelectric Power Plant, The Pennsylvania Historical and Museum Commission (2009), [https://www.portal.state.pa.us/portal/server.pt/community/history/4569/holtwood\\_hydroelectric\\_power\\_plant/539903](https://www.portal.state.pa.us/portal/server.pt/community/history/4569/holtwood_hydroelectric_power_plant/539903).

<sup>26</sup> Pennsylvania Water and Power Company, Social Networks and Archival Context, <http://socialarchive.iath.virginia.edu/ark:/99166/w6d26zwr>.

<sup>27</sup> Id.



The locations of the oldest hydroelectric facilities on the Susquehanna River.

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The McCall’s Ferry Dam was designed by Hugh Lincoln Cooper, a self-educated civil engineer. Cooper began his career in 1885 as a bridge engineer, but shortly thereafter became involved in the construction of hydroelectric facilities. He worked on various projects in Brazil, Canada, Mexico, and the United States. After opening his own office in New York City, Cooper contracted to supervise the McCall’s Ferry Dam, his best-known work.<sup>29</sup>

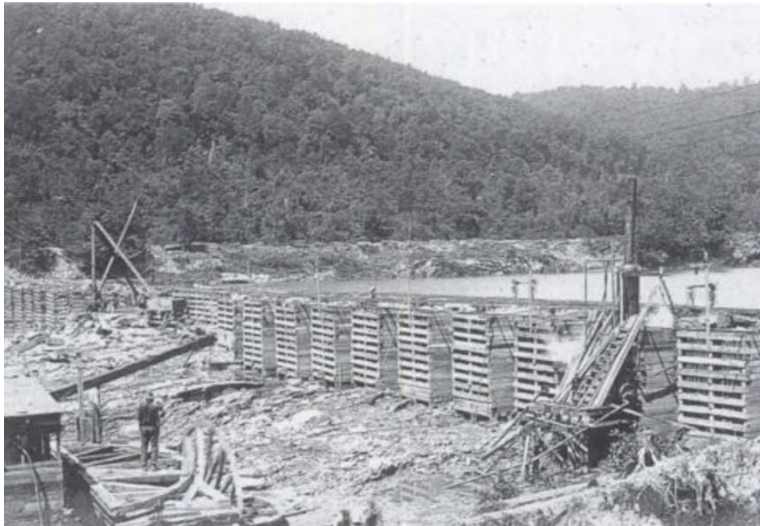
The design, “a gravity dam featuring a triangular section of plain concrete,” became characteristic of concrete dams over the next 75 years.<sup>30</sup> Prior to constructing the facility, Cooper was challenged with developing a method to build the dam’s foundation across the wide Susquehanna River. “Cooper devised a system whereby half the river was blocked by a temporary coffer dam to allow construction there while the river ran through the open half. The

<sup>28</sup> Michael J. Langland, Changes in Sediment and Nutrient Storage in Three Reservoirs in the Lower Susquehanna River Basin and Implications for the Chesapeake Bay (1998), <http://pa.water.usgs.gov/reports/fs003-98.html>.

<sup>29</sup> David P. Billington & Donald Conrad Jackson, Big Dams of the New Deal Era: A Confluence of Engineering and Politics 76 (1st ed. 2006); see also Hugh Lincoln Cooper, Wikipedia (June 26, 2015), [https://en.wikipedia.org/wiki/Hugh\\_Lincoln\\_Cooper](https://en.wikipedia.org/wiki/Hugh_Lincoln_Cooper).

<sup>30</sup> Billington, supra at 77.

river was then directed through the partly completed dam while the second half was cast within a new coffer dam.”<sup>31</sup>



The temporary coffer dam, used during construction.

The Dam’s structure, designed to facilitate the flow of water.



On April 14, 1905, the Susquehanna Water and Power Company reorganized as the McCall Ferry Power Company. The company began construction on its dam and power plant, stretching nearly half a mile across the Susquehanna River, in October 1905.<sup>34</sup> When the project was approximately 80% complete, the McCall Ferry Power Company defaulted on their bonds.

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<sup>31</sup> Id. at 78.

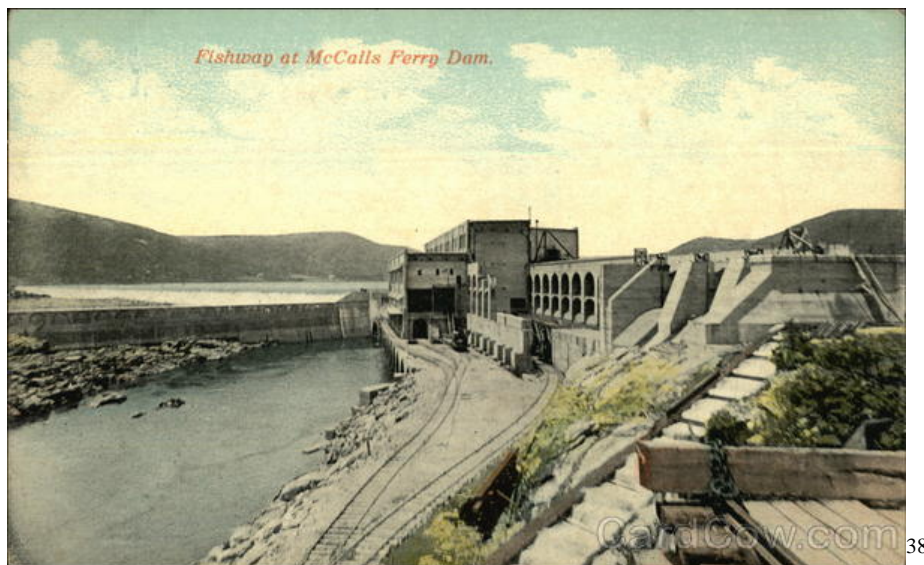
<sup>32</sup> Id. at 76.

<sup>33</sup> Id. at 77.

<sup>34</sup> Pennsylvania Water and Power Company, supra.

Due to the Panic of 1907, Knickerbocker Trust Company initiated foreclosure. In response, the McCall Ferry Power Company's board of directors contacted John E. Aldred, a prominent financier in the hydroelectric industry.<sup>35</sup> Aldred purchased the property on December 7, 1909.

On January 13, 1910, the McCall Ferry Power Company again reorganized as the Pennsylvania Water and Power Company.<sup>36</sup> The company began generating electricity at the hydroelectric facility in October 1910. The facility, the oldest of three hydroelectric facilities built on the Susquehanna River, generated 104,000 kilowatts of electricity. Aldred received additional funding for the project from Sir Herbert S. Holt and Edward R. Wood. He renamed the facility Holtwood Dam in their honor.<sup>37</sup>



The completed McCall's Ferry Dam.

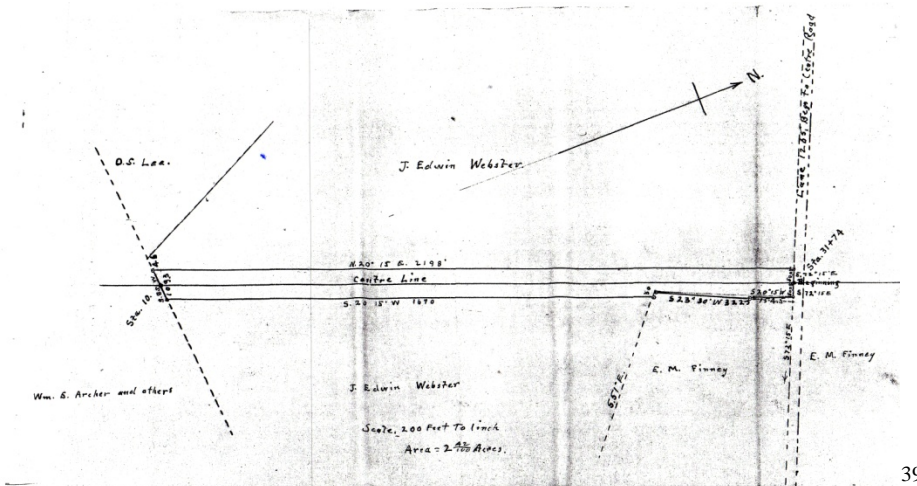
## V. Case Timeline

<sup>35</sup> Chris Porse, Hydro Hall of Fame; Taking Holtwood Next into the Century, Hydro Review (June 1, 2010), <http://www.hydroworld.com/articles/hr/print/volume-29/issue-4/cover-story/hydro-hall-of-fame.html>.

<sup>36</sup> Pennsylvania Water and Power Company, *supra*.

<sup>37</sup> Porse, *supra*.

<sup>38</sup> Fishway at McCall's Ferry Dam, <https://www.cardcow.com/388297/fishway-at-mccalls-ferry-dam-lancaster-pennsylvania/>.



Sketch of the property sought to be condemned in the instant case.

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On November 23, 1909, Susquehanna Pole Line Co. initiated a condemnation proceeding against James Edwin Webster and Dora Rouse Webster.<sup>40</sup> The company sought to exercise its condemnation authority to obtain certain property in fee simple, as well as an easement to cut, trim, and remove trees and other obstructions which may fall upon the property.<sup>41</sup> On that same date, James A. Lyle, the local Justice of the Peace, issued a warrant to Joseph E. Spencer, the Harford County Sheriff.

The warrant directed Spencer to summon 20 Harford County residents, qualified to act as jurors under the laws of Maryland, to value the contested property. The potential jurors were instructed to meet on the property on December 6, 1909, where both parties would be permitted to exercise 4 peremptory challenges. The remaining 12 jurors were tasked with calculating any damages that would result from the proposed condemnation, which they would submit in writing to the Clerk of the Circuit Court for Harford County.<sup>42</sup>

<sup>39</sup> Compl., Webster, 76 A.

<sup>40</sup> The Webster case file, which contains all relevant pleadings, is not electronically available, with the exception of the Maryland Court of Appeals decision. The case file can be found at the Maryland State Archives. This case file is not, however, complete. The author of this case study made assumptions, where necessary, regarding the case timeline. The author used the documents that are available to better understand the missing pleadings, including the Websters' Complaint.

<sup>41</sup> Compl., Webster, 76 A.

<sup>42</sup> Warrant, Webster, 76 A.

In response to this warrant, the Websters requested a preliminary injunction against Susquehanna Pole Line Co., Lyle, and Spencer, to restrain them from taking any further action. On November 25, 1909, Judge George L. Van Bibber of the Circuit Court for Harford County refused to grant the injunction and dismissed the Websters' Complaint. The Websters appealed their case to the Maryland Court of Appeals, which affirmed the decision of the lower court.<sup>43</sup>

The Websters, in their Complaint, alleged numerous violations of state and federal law. In particular, the Websters argued that the aforementioned condemnation proceeding violated Article 3, Section 40 of the Maryland Constitution, which forbids the taking of private property for private use, the Fifth Amendment to the United States Constitution, which establishes that no person shall be deprived of life, liberty, or property without due process of law, Article 23 of the Declaration of Rights of Maryland, which provides that no man ought to be disseised of his freehold, liberties, or privileges but by the law of the land, and the Fourteenth Amendment to the United States Constitution, which declares that no state shall deprive any person of life, liberty, or property without due process of law.<sup>44</sup>

## **VI. The Judges**

George L. Van Bibber, author of the Circuit Court for Harford County decision, was born in Harford County, Maryland in 1845. He attended school in Churchville, Maryland before graduating from Princeton University in 1865. Van Bibber became a well-respected lawyer in

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<sup>43</sup> Webster, 76 A. at 255-256.

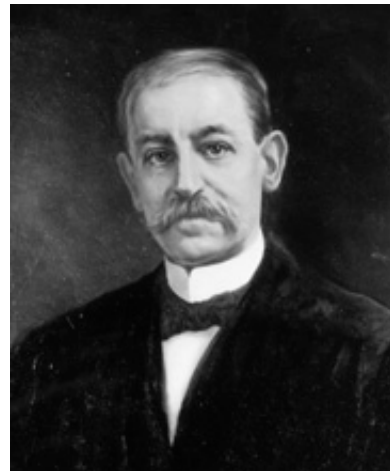
<sup>44</sup> Id. at 256.



Harford County, and, in 1903, was elected Judge of the Third Judicial Circuit. He died in 1911, while still in office. Van Bibber was survived by his wife, Adele Franklin Van Bibber.<sup>45</sup>

James Alfred Pearce, author of the Maryland Court of Appeals decision, was born on April 2, 1840 in Chestertown, Maryland. Pearce is the only son of the United States Senator with the same name. He attended public school, and later Washington College. Pearce graduated from Princeton University in 1860. He practiced law in Kent County, Maryland for over 30 years before his appointment to the Court of Appeals, the State of Maryland's highest court at the time, in 1897. Pearce, who retired from the bench in 1912, died of pneumonia on December 9, 1920.<sup>46</sup>

Portrait of Andrew Hunter Boyd.



<sup>47</sup>

Andrew Hunter Boyd was born on July 15, 1849 in Winchester, Virginia. He practiced in Allegany County, Maryland after graduating from both Washington and Lee University and the University of Virginia. Boyd was elected to the Maryland Court of Appeals in 1893, where he

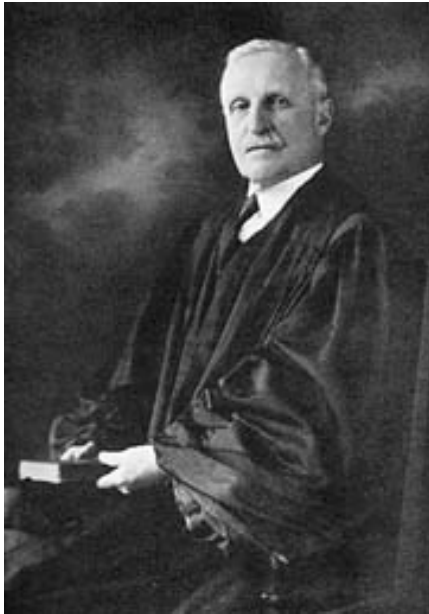
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<sup>45</sup> John Dowdy, George L. Van Bibber (Oct. 11, 2012), <http://www.findagrave.com/cgi-bin/fg.cgi?page=gr&GRid=98680935>.

<sup>46</sup> James Alfred Pearce (1840-1920), Archives of Maryland, <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/013600/013621/html/13621bio.html>; see also James Alfred Pearce, Wikipedia (Nov. 8, 2015), [https://en.wikipedia.org/wiki/James\\_Alfred\\_Pearce\\_\(judge\)](https://en.wikipedia.org/wiki/James_Alfred_Pearce_(judge)).

<sup>47</sup> Andrew Hunter Boyd (1849-1935), Archives of Maryland, <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/001600/001629/html/1629bio.html>.

served as Chief Judge from 1907 until 1924. Boyd died on August 2, 1935, and was survived by his wife, Berien M. Thurston.<sup>48</sup>



Portrait of John Parran Briscoe.

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John Parran Briscoe was born in Calvert County, Maryland in 1853. After graduating from St. John's College in Annapolis, Briscoe opened the practice Briscoe & Jones in Baltimore. He served on the Maryland Court of Appeals from 1891 through 1924. Briscoe, with his wife, Kate MacPherson Bowen, had 7 children. He died on April 14, 1925.<sup>50</sup>

Nicholas Charles Burke was born in 1854 in Baltimore County, Maryland. He attended St. Mary's College in Emmitsburg, Maryland, and was admitted to the Maryland bar in 1875. After serving as State's Attorney, Burke was elected to the Third Judicial Circuit. He became Chief Judge in October 1905, which allowed him to sit on the Maryland Court of Appeals. Burke served until his term expired in 1920. He died on December 8, 1923, and was survived by his wife, Colie Ady Burke, and son, Edward H. Burke.<sup>51</sup>

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<sup>48</sup> Id.

<sup>49</sup> John Parran Briscoe (1853-1925), Archives of Maryland, <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/013500/013517/html/13517bio.html>.

<sup>50</sup> Id.

<sup>51</sup> Nicholas Charles Burke (1854-1924), Archives of Maryland, <http://msa.maryland.gov/>

John R. Pattison was born in Dorchester County, Maryland in 1860. He studied law with Sewell T. Milburn, and was subsequently admitted to the Maryland bar in 1882. Pattison taught at the Cambridge Academy and opened a legal practice in Dorchester County, representing large businesses such as the Pennsylvania Railroad, the Dorchester National Bank, and the Cambridge Manufacturing Company. After serving in the Maryland House of Delegates, Pattison was elected Chief Judge of the First Judicial Circuit in 1909, and thereby received a seat on the Maryland Court of Appeals. He retired in December 1934, and died on August 25, 1940.<sup>52</sup>

Webster v. Susquehanna Pole Line Company of Harford County was additionally argued before Maryland Court of Appeals Judges Samuel D. Schmucker, William H. Thomas, and Hammond Uner.<sup>53</sup>

## **VII. The Maryland Court of Appeals Decision**

The Maryland Court of Appeals considered the instant case on February 2, 1910. The Court's aforementioned Judges found in favor of Susquehanna Pole Line Co., thereby affirming the decision of the Circuit Court for Harford County.<sup>54</sup> In his opinion, Judge Pearce recognized, and then rejected, each of the Websters' main arguments.

The Websters first alleged that Susquehanna Pole Line Co. did not plan to use the condemned property for a public use.<sup>55</sup> Article 23, Section 366 of the Code of 1904 granted Susquehanna Pole Line Co. authority to condemn "any property or right whatsoever necessary

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megafile/msa/speccol/sc3500/sc3520/014400/014465/html/14465bio.html.

<sup>52</sup> John R. Pattison (1860-1940), Archives of Maryland, <http://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/014400/014464/html/14464bio.html>.

<sup>53</sup> Webster, 76 A. at 255.

<sup>54</sup> Id. at 254.

<sup>55</sup> Id. at 257.

for its purposes in its discretion.”<sup>56</sup> However, this power could only be exercised for a public use. “[T]he Constitution forbids the taking of private property for a private use, and the Legislature cannot make a private use public, by declaring it to be such, or by authorizing the exercise of the power of eminent domain for any use which the courts may determine not to be a public use.”<sup>57</sup>

The Court addressed the issue of public use in Arnsperger v. Crawford, when it held that property could not be condemned to build a private road for use by individuals with the authority to limit public access.<sup>58</sup> In determining whether the proposed private road was a public use, the Arnsperger Court considered whether a public trust had been imposed on the property and whether the public had a legal right to the use, which could not be gained or denied at the pleasure of the property owner. These factors became known as the Arnsperger test.<sup>59</sup>

In the instant case, the Court held that Susquehanna Pole Line Co.’s amended charter, filed with the Circuit Court for Harford County in November 1909, satisfied the Arnsperger test. Specifically, the amended charter “amply safeguard[ed] the right of the public to the use of the electric current to be conveyed over the pole line.” It declared that Susquehanna Pole Line Co. was founded “[t]o act as a common carrier of electrical power or energy” and vested in the public the right to “all connections and facilities without discrimination.”<sup>60</sup>

Using the aforesaid language, Susquehanna Pole Line Co. wrote into its amended charter “the obligation to the public to perform all those duties in which the public is interested, and, this charter being granted under the general law of incorporation, that obligation is as much a part of

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<sup>56</sup> Md. Ann. Code art. 23, § 366 (1904).

<sup>57</sup> Webster, 76 A. at 257.

<sup>58</sup> 70 L.R.A. 497, 61 A. 413, 414 (Md. 1905).

<sup>59</sup> Webster, 76 A. at 257.

<sup>60</sup> Id. at 260.

its organic life as if contained in a legislative charter directly to [Susquehanna Pole Line Co.].” Because the distribution of electric energy was commonly held to be a public use, the Court found that Susquehanna Pole Line Co. could exercise its condemnation authority to construct the proposed transmission line.<sup>61</sup>

The Websters further claimed that Susquehanna Pole Line Co. could not exercise its condemnation authority because some of the company’s purposes, found in its amended charter, could not be held to be public uses. The Court quickly dismissed this argument, suggesting that “[i]f a private use is combined with a public use in such a way that the two cannot be separated, then, unquestionably, the right of eminent domain could not be invoked to aid the enterprise; but it has been said, and it seems to [the Court] that it is the better reason, that where the two are not so combined as to be inseparable, the good may be separated from the bad, and the right exercised for the uses that are public.”<sup>62</sup>

The Court, moreover, explained that “[w]hile the exercise of the right of eminent domain must be guarded jealously so that the private property of one person may not be taken for the private use of another, after all is said and done, the power to prevent property taken for a public use from being subsequently devoted to a private use must rest rather in the supervisory control of the state, than in caution in permitting the exercise of the power. Property taken for a public use by a corporation organized solely to promote a public business may be as easily diverted by it to a private use as it may by one having both private and public objects.” The company was therefore permitted to condemn property for those purposes, including the distribution of electricity, which could be identified as public uses.<sup>63</sup>

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<sup>61</sup> Id. at 258-259.

<sup>62</sup> Id. at 260.

<sup>63</sup> Id.

Third, the Websters contended that even if Susquehanna Pole Line Co. had legitimate condemnation authority under Article 23, Section 366 of the Code of 1904, the company could not take both a fee simple and an easement. In making this argument, the Websters referenced the disjunctive language of Section 366, specifically the phrase, “the use thereof in fee simple or for a less estate.” The Court found this narrow construction of Section 366 to be unreasonable.<sup>64</sup> “It cannot be doubted that if [Susquehanna Pole Line Co.] had only asked for the use in fee of the parcel described, and after occupying it had discovered that it was necessary to have the right to cut and trim trees and bushes interfering with the use and occupation of the parcel first taken, that it could have a second inquisition for that purpose; and there can be no reason why it should not be allowed to take in one proceeding, upon proof of necessity, what it could take in two proceedings.” Susquehanna Pole Line Co. was consequently allowed to exercise its condemnation authority to obtain certain property in fee simple, as well as an easement to cut, trim, and remove trees and other obstructions which may fall upon the condemned land.<sup>65</sup>

Finally, the Websters argued that Susquehanna Pole Line Co. could, after acquiring the contested property, amend their corporate charter, divesting the company of its public uses. Susquehanna Pole Line Co. could then hold for private use the property condemned for public use. The Court held that this result could not be accomplished under Maryland law. Although corporations are permitted to apply for voluntary dissolution, this power is withheld “from public service corporations, and it can require no argument to show that such a corporation could not by amendment accomplish what it could not do by attempted dissolution.” The Court

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<sup>64</sup> Id.

<sup>65</sup> Id. at 260-261.

does not deny that such result is impossible, but chose not to address the issue since it did not arise in the instant case.<sup>66</sup>

### **VIII. Conclusion**

Although the Maryland Court of Appeals found in favor of Susquehanna Pole Line Co., there is no evidence that the proposed condemnation actually occurred. There is no deed conveying property from James Edwin Webster or Dora Rouse Webster to the company.<sup>67</sup> While it is likely that such deed was not properly recorded, and Susquehanna Pole Line Co. exercised its condemnation authority to take the contested property, it is also entirely possible that the company modified the route of the proposed transmission line to avoid the property.<sup>68</sup>

Regardless, Webster v. Susquehanna Pole Line Company of Harford County emphasizes the motivations behind public utility companies' exercise of eminent domain. These companies require the use of certain property for the public good. Here, Susquehanna Pole Line Co. needed the Websters' property to erect a continuous distribution line of electric energy. If the company was not permitted to use its condemnation authority, the transmission line would not have been constructed and the public would not reap the benefits of hydroelectricity.

The use of eminent domain by public utility companies is limited by the United States Constitution, the Maryland Constitution, and the statute granting condemnation authority to the specific public utility company. Susquehanna Pole Line Co., in the instant case, did not violate any of these laws. Instead, this case is likely an example of the holdout problem. The Websters,

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<sup>66</sup> Id. at 261.

<sup>67</sup> Harford County Land Record Indices, 1773-1959, MSA CE 251, 289-291.

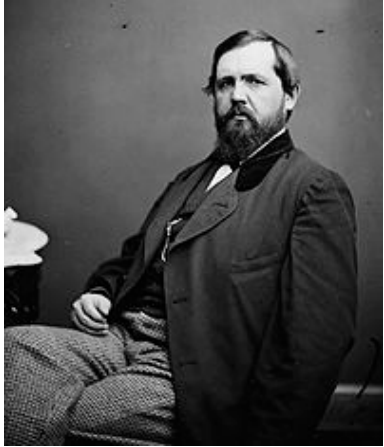
<sup>68</sup> The exact location of the contested property could not be located. James Edwin Webster owned numerous properties in Harford County. Furthermore, the Last Will and Testament conveying the contested property from Edwin Hanson Webster to James Edwin Webster defined the property with physical points of reference, which no longer exist.

who indubitably had the money and resources to contest the proposed condemnation, were aware that their property was essential to the completion of the transmission line. James Edwin Webster and Dora Rouse Webster probably believed that Susquehanna Pole Line Co., which purchased numerous properties for the transmission line prior to this case, would eventually pay in excess of the property's fair market value.



## Biographical Appendix I – Edwin Hanson Webster

Edwin Hanson Webster (March 31, 1829 – April 24, 1893) was an esteemed politician in the State of Maryland during the late 19th century.



Portrait of Edwin Hanson Webster.

### Early Life

Webster was born on March 31, 1829 near Churchville, in Harford County, Maryland. He was raised by his parents, Henry and Martha Webster, in a Presbyterian household. Webster studied at the local Churchville Academy, and later the renown New London Academy in Chester County, Pennsylvania. He entered Dickinson College in Carlisle, Pennsylvania in 1844, where he graduated in 1847.

### Professional Career

Webster worked as a school teacher prior to his admittance to the Maryland bar in 1851. At the age of 26, Webster, a member of the American Party, was elected to the Maryland State Senate. Webster served as a presidential elector for Millard Fillmore, and also acted as President of the Senate in 1858.

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<sup>69</sup> Edwin Hanson Webster, supra.

Webster was elected to the 36th Congress in the mid-term elections of 1858. During the Civil War, Webster pledged allegiance to the Union. He was elected to the 37th Congress as a Unionist supporter, and to the 38th and 39th Congresses as an Unconditional Unionist.

Webster led the 7th Maryland Infantry Volunteers as first colonel in the defense of Washington, D.C. in August and September 1862. The 7th Maryland Infantry Volunteers eventually became part of the Maryland Brigade, 3rd Division of I Corps of the Army of the Potomac. Webster commanded this regiment until November 1863, when he returned full-time to his seat in Congress.

After the war, Webster was appointed Collector of Customs at the port of Baltimore by President Johnson. He returned to his practice in Bel Air during the Grant administration, but was reappointed Collector of Customs by President Arthur in 1882. Webster held this position until 1886. Webster's banking experience greatly influenced his subsequent legal practice.

#### Personal Life

Webster married Caroline H. McCormick on June 6, 1855. The couple had four children, three daughters and one son. Webster died on April 24, 1893, at the age of 64, at his residence. He is buried in the Calvary Cemetery in Churchville, Maryland.<sup>70</sup>

#### Relevance

Webster's Last Will and Testament conveyed property, including the property at issue in Webster v. Susquehanna Pole Line Company of Harford County, to his son.<sup>71</sup>

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<sup>70</sup> Id.; Edwin Hanson Webster (1829-1893), supra.

<sup>71</sup> Compl., Webster, 76 A.

## **Biographical Appendix II – James Alexis Shriver**

James Alexis Shriver (1872 – February 6, 1951) was a wealthy and well-known businessman and historian in the State of Maryland during the early 20th century.

### Early Life

Shriver, born in 1872, resided for much of his early years in Baltimore, Maryland.

### Professional Career

Shriver moved to Harford County, Maryland during the early 1890's, after graduating from Cornell University. Shortly thereafter, Shriver began investing in public utility companies. In the late 1890's, he was appointed President of the Baltimore and Bel Air Telephone Company. When this firm sold to the Chesapeake and Potomac Telephone Company, Shriver became involved in the Bel Air Electric Company. He additionally contributed to the Baltimore and Bel Air Railroad Company, which, from 1910 until 1923, sought to build a streetcar connecting Cockeysville, Timonium, and Towson. The public's preference for bus service caused this latter venture to fold in 1923.

Shriver was also known for his participation with the Harford County Historical Society. He engaged in an extensive membership drive, seeking to raise enough funds to construct a separate building for the organization, which was originally situated in the Bel Air Court House. Additionally, Shriver authored a history of George Washington's 127 trips through Maryland, detailing the many taverns Washington visited and the roads he traveled, and recorded Lafayette's activities in Harford County.

Furthermore, Shriver campaigned to have the State of Maryland's history highly visible, predominately through public celebration of historical events. He fought to have cast iron roadside markers raised along Maryland's roads, and organized numerous festivities.

### Personal Life

Shriver died on February 6, 1951, at the age of 79, at his residence in Harford County. He was survived by his wife, Harriet Van Bibber Shriver.<sup>72</sup>

### Relevance

Shriver was one of the five founding members of Susquehanna Pole Line Co., the public utility company whose condemnation authority is being vehemently challenged in Webster v. Susquehanna Pole Line Company of Harford County.<sup>73</sup>

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<sup>72</sup> Le Furgy, supra.

<sup>73</sup> Webster, 76 A.