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Bill of Complaint.

BILL OF COMPLAINT.

Filed June 15, 1923.

In Chancery of New Jersey

To the Honorable Edwin Robert Walker, Chan- 10
cellor of the State of New Jersey:

Humbly complaining sheweth unto your Honor,
your Orator the Borough of West Long Branch
a municipal corporation of the State of New
Jersey organized and operating therein.

1. That your orator as such governing body
has been in control and charge of the streets,
avenues and public places of said borough since
1908, the year of its incorporation.

2. That prior thereto, the territory embraced 20
within the present Borough of West Long
Branch was a part of the Township of Eaton-
town, out of which the Borough of West Long
Branch was incorporated.

3. That for more than twenty-five years there
has existed a public road now in said borough
which is the continuation of Monroe street, ex-
tending northwardly from Wall street to the 30
farm known as the Isiah S. Lane farm.

4. That said roadway north of Wall street
is laid out at a uniform width of fifty-nine feet
and runs northwardly from Wall street for a
distance of approximately two hundred fifty-two
(252) feet to the said Lane farm.

5. That said road has been recognized as a
public road by the Township of Eatontown
prior to the incorporation of the Borough of
West Long Branch for more than twenty years 40

Bill of Complaint.

last passed and has been so treated as a public road since the incorporation of said Borough of West Long Branch.

10 6. That said road has been graded, gravelled and scraped at public expense from year to year and has never been closed during any part of said time until just prior to the filing of this bill; that for more than twenty (20) years last passed said road has been bounded on the east by a privet hedge fence and on the west by a rail fence, some of the posts of which are still standing. The road is shaped and crowned and the gutters on each side are clearly defined and on the east side of road north of Wall street there is a sidewalk well established and a road-
20 way leading from the premises on the east side opens into said road over which the several owners and residents of said property have in the past traveled on foot and with vehicles.

Your Orator further shows that for many years this road has been used publicly by the owners and tenants of the Lane farm property in the rear and by the many persons in the habit of using said road passing through to the said farm for the purpose of purchasing produce
30 and the like.

On or about January 1, 1922, one John Hoch one of the defendants in this suit purchased the premises fronting Wall street which immediately bounds the road in question on the east side and in the deed of conveyance to said John Hoch, from William L. Hayes and wife bearing date of December 31, 1921, it is expressly declared that said premises so purchased begins in the center line of Wall street at the intersec-
40 tion of said centre line with the centre line of

Bill of Complaint.

a street crossing same through Norwood Park to lands of the said Lane, the westerly boundary line in said deed following the centre of said street.

On or about June 24, 1922, Frank M. Tilton and Grace Tilton, his wife, purchased of James H. McIntyre and wife, premises located on the north side of Wall street which adjoins said street in question on the west and in said deed it is expressly declared in the descriptive clauses that the premises so purchased begin at a point in the centre line of Wall street which is also the centre line of a proposed street running north from Wall street to property of formerly Isiah S. Lane. 10

On or about June 2, 1923, the said defendants, John Hoch and Frank Merrit Tilton and Grace Tilton, his wife, or one or more of them with force and against the consent of the complainants deliberately closed said street and have caused to be erected across the front thereof on the property line paralleling Wall street a fence and have likewise at other points crossing said street in question caused fences to be constructed completely shutting off to those who have been in the habit of using said street the right of ingress and egress and complainant having directed and caused said fences to be taken down and said obstructions removed, said defendants did with force and arms again replace said obstructions and barriers and have closed said road to the use of the public and those who have been accustomed to enjoying the same for many years. 20 30

Answer.

Complainant is without adequate remedy in the court of the law and therefore prays:

1. That the said John Hoch and Frank M. Tilton and Grace Tilton, his wife, who are the defendants in this suit may answer this bill of complaint without oath and each statement
10 therein made.

2. That an injunction, order and restraint may be issued by this Court enjoining and commanding the said defendants to remove said obstructions from said roadway and to desist and refrain from further obstructing the same or any part thereof as has been used as a public street of said borough.

3. That a writ of subpoena may issue commanding said defendants to answer this bill of
20 complaint and abide by such decree as this Court may make in the premises.

WILLIAM A. STEVENS,
Solicitor and Counsel
with Complainant.

30

ANSWER.

Filed September 10, 1923.

The joint and several answer of John Hoch and Frank M. Tilton and Grace Tilton, his wife, to the bill of complaint filed in the above stated cause.

These defendants answering said bill, say:

1. That they admit paragraphs 1 and 2 of
40 said bill.

Answer.

2. The said John Hoch admits that he is the owner of the premises adjoining on the east, the strip of land in question and also says that he is the owner of the easterly half of the said strip in question.

3. That on June 24, 1922, the said Frank M. Tilton and Grace Tilton admit that they became the owners of the tract of land adjoining the land in dispute on its westerly side and also say that they became the owners at said time of the entire westerly side of the land now in dispute. 10

4. These defendants, and each of them, deny paragraphs 3, 4, 5 and 6 and every allegation therein contained.

5. These defendants further answering say that the land in dispute and described in the said bill of complaint never was, nor is it now, a street, avenue or public place, nor has it ever been subjected to the use of the public, nor has the public, or said complainant as its representative, any right or interest therein, or any privilege, or power of using the same as an avenue, street or public place. 20

6. These defendants in further answering say, that about the year , James H. McIntyre and the owner of property lying on the south side of said Wall street, contemplated the possibility of extending Monroe street, referred to in said bill, northerly through the lands of said McIntyre and other lands lying to the north of the land in dispute, including the property of the Isaiah H. Lane farm, so called, and others, a distance of perhaps a mile to the public road leading from Long Branch to Eatontown, and that said McIntyre, then being the owner of a 30 40

Answer.

considerable tract of land, including the premises in dispute, and lying on the north side of Wall street, was agreeable to the said proposed extension of Monroe street and that in subsequent conveyances made by him of lands adjoining the disputed premises on its easterly and westerly sides he referred to the disputed tract as a "proposed street," but never in any way did he cause the same to become a street, or public way, nor did he ever dedicate either in writing or by his act the said disputed tract, or any part of it to public use and his reason for so doing being that the owners of the other lands lying to the north of the disputed tract and to the said road leading from Long Branch to Eatontown declined to accede to the proposition of the extension of the said Monroe street and that, therefore, said extension was never consummated.

7. That about the date aforesaid the said Isiah S. Lane, then being alive, asked the permission of the said McIntyre to use a portion of the said disputed tract as a private driveway leading from Wall street to the said farm of the said Lane, to be used by the said Lane and his family and employee and by such persons as who might desire to use the same as a means of access to the said Lane farm and upon the distinct and express condition that said permission and use should be continued only for so long and under such conditions which should be agreeable and according to the pleasure of the said McIntyre.

8. That from the date aforesaid and down to the present time said disputed premises have always and continuously been in the possession and under the dominion and control of the said

Answer.

McIntyre and his successors in the ownership of the title thereto, and that during said time the said Lane, in his lifetime, and the successors in title to the said Lane farm, have been permitted by the said McIntyre and his successors in title, upon the request of such persons, to use a small portion of the disputed premises for the purpose of access from Wall street to the said Lane farm. 10

9. That said Lane and his successors in title, expressly asked and received from the said McIntyre permission to use the premises as aforesaid upon the terms and conditions hereinbefore set forth, and they never at any time, until very recently, have asserted any right to use the premises in dispute.

10. These defendants further answering say 20 that said McIntyre and his successors in title to the disputed premises have frequently, since the making of the said arrangement between the said McIntyre and the said Isiah S. Lane, effectually shut off the said disputed tract from Wall street by erecting across the same fences and barriers and other obstruction so that no one, even the occupants of the Lane farm, could use the same and that the acts aforesaid were not contested or disputed by any one. For many 30 years the said McIntyre, and his successors in title, have maintained a large stone quite near the centre of the disputed tract and which stone still remains and was intended and accepted by the said occupants of the said Lane farm as the boundary line of the small strip of land which they should be permitted to use as a means of access from Wall street to the Lane farm.

11. These defendants further answering say 40 that the said complainant, as a representative

Answer.

10 of the public, never had, or now has, any interest, or right in the disputed tract, and if they did any act, as stated by them, they were trespassers. That the only right that any owner or occupant of the Lane farm had to use the said disputed tract was with the permission and as the licensee of the said McIntyre and his successors in title, and that such right, permission and license has long since been revoked and that the defendants are the absolute, unconditional owners of the disputed tract and in possession of the same and entitled to be so decreed by this Honorable Court.

12. The defendants, and each of them, pray to be hence dismissed with all their costs and charges.

20

BENJAMIN P. MORRIS,
Solicitor of John Hoch, Frank
M. Tilton and Grace Tilton.

I consent to the filing of the within Answer as of due time.

WILLIAM A. STEVENS,
Solicitor of Complainant.

30

Replication in common form

(Filed Feb. 8, 1924.)

40

IN CHANCERY OF NEW JERSEY.

*Between*THE BOROUGH OF WEST LONG
BRANCH,*Complainant,**and*JOHN HOCH, FRANK M. TILTON
and GRACE TILTON,*Defendants.*

10

Transcript of testimony taken before Hon.
John E. Foster, Vice-Chancellor, at Long Branch,
N. J., on Friday, the 8th day of February, A. D.
1924, at 10:30 o'clock A. M.

20

Appearances:

William A. Stevens, Esq., for complainant.

Wilbur A. Heisley, Esq. and Benjamin P.
Morris, Esq., for defendants.

Senator Stevens: Mr. Morris and I entered
into a stipulation to take certain testimony
which has already been taken in the cause.

By consent of counsel, certain testimony
which was taken before Miss Throckmorton at
Long Branch, is admitted to be used on the
hearing with the same effect as if taken in open
court.

30

The Court: Counsel having brought to the
Court's attention the fact that there was a
possibility under the pleadings and issues pre-
sented thereby, as well as possibly under the
proofs to be offered, a question of law, and
counsel have made the further suggestion to

40

Dr. Edward M. Beach, direct.

10 the Court that inasmuch as the case has been formally set down for hearing today, after some months' delay, that the Court should proceed to hear the witnesses, notwithstanding the question of law, and then if the Court concludes that the issues requires a determination at law, the cause can be removed to the court of law, and the testimony here to be taken can be used in the trial of the issues at law, and the parties can reserve the right to take further testimony in the issue at law.

DR. EDWARD M. BEACH, duly sworn for complainant, for

Direct examination by Senator Stevens.

20 Q Dr. Beach, where do you live? A West Long Branch.

Q And what is your profession? A Physician.

Q How long have you lived in West Long Branch? A Thirty-eight years.

Q Have you held public office in the Borough of West Long Branch? A Yes, sir.

Q What office? A Councilman.

30 Q For how long? A I think two terms, four years.

Q Do you recall what years they were? A I don't just remember when it was. When the borough was first formed. The first and second term.

Q Can you remember the date when the borough was incorporated, 1908? A 1908, yes, sir.

40 Q From 1908 to 1912 you were councilman?
A Yes, sir.

Dr. Edward M. Beach, direct.

Q Are you familiar with the property of Dr. Hoch, the defendant in this suit, the Julian property? A Yes, sir.

Q Do you know the Tilton property, on the same road? A Yes, sir.

Q On what road do these properties face?
A It was formerly called High street. It is now called Wall street. 10

The Court: Is that the road in question?

Senator Stevens: No.

Q What divides, if you know, doctor, the Julian property from the Tilton property? A A road running in, an extension of that avenue that crosses.

Q Monroe street? A Monroe street, that is right. 20

Q Will you describe that road to the Court?

The Court: Is Monroe street the street in question? A That runs from Cedar avenue to Wall street and on up to Mr. Antonides' property, Mr. Lane's property.

Senator Stevens: This is a map of the Borough of West Long Branch. We are going to offer this map in evidence. It is called the tax map of the Borough of West Long Branch, made by J. W. Seaman, city engineer, dated March 25, 1915. 30

The Court: It will take the Exhibit number C. 1. The piece in controversy the Court is going to mark in pencil, not binding upon anyone, as a mere matter of information, with the word, "Monroe street," and the part so designated runs from the line of Wall street to Lane's property, which is 40

Dr. Edward M. Beach, direct.

marked 36.35 acres, and the length of it is 252 feet, 6 inches.

10 And on this exhibit, which is on page 11, there appears to be an extension of this alleged roadway, on the southerly side of Wall street, which will appear on page 14, which will be marked Exhibit C. 2, and is designated on that map as Monroe street, and Judge Heisley, on the part of the defendants admits that that portion of the street so designated on Map 14, running from Wall street southerly to Cedar avenue, is a public highway.

Senator Stevens: This map was adopted March 25, 1915.

20 Q Doctor, has that street been opened to the use of the public? A Yes, sir.

Q For how long? A Long as I can remember, thirty-eight years I think; never had any difficulty going in.

Q Did you use it in going in? A Yes, sir, always use it.

Q For what purpose? A Used it to go up to Mr. Lane's house.

30 Q Drive in and out? A Drove in and out, yes, sir.

Q Can you describe the street and its boundaries? A The street starts at Wall street and goes in just the width of the other avenue; it is an extension thereof, the same width.

The Court: What is that?

The Witness: Between fifty and sixty feet.

40 The Court: Are there sidewalks on the portion between Lane's property and Wall street?

Dr. Edward M. Beach, direct.

The Witness: There was a sidewalk.

The Court: Is it open and cleared?

The Witness: Yes, sir.

The Court: And it can be traveled?

The Witness: Yes, sir.

Q Have you seen it traveled? A Yes, sir. 10

Q To any great extent? A Yes, sir.

Q Who have been accustomed to using it? A
The public.

Q When you reach the line of Lane's farm,
Lane's property, is there any fence there to stop
you? A No, sir.

Q Do you know whether the borough has
worked the street?

The Court: Of your own knowledge?

The Witness: They have the last four or 20
five years; put dirt in there and scraped it.

Q Have you ever seen—during all the time
that you have known this street have you ever
seen any obstructions placed there to prevent
people going in or out? A Only just last
summer.

Q When that fence was put there? A Yes,
sir.

Q Prior to that time had anyone ever ob- 30
structed the right of the public to the use of that
street? A Not to my knowledge.

Q Since you have known it to be a public
street? A Since I have known it to be a public
street.

The Court: How frequently did you use
it?

The Witness: Whenever there was sick-
ness in the family. 40

Dr. Edward M. Beach, direct.

Q Do you know who went there for any purpose? A Well, different parties. He rented it out by the season. They had a great many people going in and out to buy things.

10 The Court: Is there any other outlet to Lane's property?

The Witness: Yes, sir, there is another outlet.

Q You have not described the boundaries of the street. Will you tell what defines the width of the street, hedge, or fences, or what fixes the line? A There used to be a fence. Just a short way in there is a road on one side, that is Mr. Tilton's road, on the west side.

20 Q Did they have a fence on it? A Not recently.

Q Do you remember a fence ever being there? A I don't remember a fence ever being there, on that part of it.

The Court: Any hedge, or anything growing there?

The Witness: No, sir, not on that side.

30 Q On the east side? A Mr. McIntyre's place, the Hoch property now.

Q What bounded the road on that side? A They had a hedge.

The Court: On the east side of the property?

The Witness: Yes, sir.

The Court: That seems to be marked Plat 36.

Senator Stevens: Yes, sir.

Dr. Edward M. Beach, direct.

Q That has a hedge all the way? A Hedge all the way.

Q How long has that hedge been there, Dr. Beach? A Fifteen or sixteen years.

Q Prior to that what was there? A That might have been there twenty years ago.

Q How did Dr. Hoch, or the people that owned the premises he now owns, get out to Wall street? A Well, they came out on the street, or by his driveway. 10

Q With a vehicle, how would they get to the Hoch property? A They had a road that runs right into his barn from Wall street.

Q Is there any roadway out of his property to Wall street over this road in question? A Yes, there is now.

Q They have a roadway out now? A Yes, sir. 20

The Court: How old is that roadway?

The Witness: Well, it has been there all the time but the bank was steep and they didn't use it, but went there all the time as soon as the house was built.

Q And they went out through this roadway? A Yes, sir, all the time. 30

Q How did the Tilton people get out? A Well, they run out that lot. There is no building on it at all.

The Court: Which is the Tilton property?

Senator Stevens: 37, on the westerly side.

The Court: Let it appear that it is agreed that on the map, Exhibit C. 1, page 11, that the plot marked 36 is the property of the defendant, Dr. Hoch, and the prop- 40

Dr. Edward M. Beach, cross.

erty marked 37 is the property of the defendant, Mr. Tilton.

10 Q Is there anything else you have in mind that would throw any light on this roadway at all? A No, only I have been going in and out of there for thirty-eight years. There was an obstruction, only just lately.

Cross examination by Judge Heisley.

Q You recall that the property that is now owned by Dr. Hoch lay between the Lane farm and Wall street, that that property was owned by Howard McIntyre, and a little bit in back was owned by Isaiah Lane? A Yes, sir.

20 Q Are you familiar with the fact that Lane sold that triangular piece in the back of the McIntyre property to Mr. McIntyre? A Yes, sir.

Q So that McIntyre owned all the way from Wall Street in to Lane's farm, as now located, is that right? A Well, I think that is so. I didn't understand it runs back to Lane's property.

30 Q Well it does, as a matter of fact. A Yes, runs clear back to his property.

Q Now the record will show, and I am just calling this to your attention for the purpose of refreshing your memory, that Mr. McIntyre bought that triangular piece on November 20th, 1891. That would be thirty-three years ago, and in the deed from Isaiah Lane to Mr. McIntyre, he described the property he is conveying to him as being bounded by the middle of a proposed street. You say there has been a street there for
40 thirty-eight years? A Yes, sir.

Dr. Edward M. Beach, cross.

Q Here is a deed that was made thirty-three years ago and it simply refers to it, that is five years less than thirty-eight years—that refers to it simply as a proposed street. Do you still say there has been a street there for thirty-eight years? A Yes, sir.

Q Notwithstanding this deed? A Notwith- 10
standing that deed.

Q This deed calls it a proposed street. A
I rode in there, yes, sir.

Q What I mean is thirty-eight years— A
Yes, I surely can remember I went in that way.

Q Do you still say, in view of this reference
in this deed, that that was a street thirty-eight
years ago, although in 1891, Mr. Lane, in selling
the property to Mr. McIntyre referred to it as a
proposed street. Does that cause you to change
your recollection about it? A No, sir, it does
not change my mind. I always went in that
way. 20

The Court: I don't suppose the Judge
has anything to show whether that descrip-
tion was copied from an earlier deed.

Mr. Morris: Mr. Lane sold at that time. 30

The Court: I mean whether it is copied
from an old deed.

Mr. Morris: Mr. Lane made that descrip-
tion.

Q Doctor, this was a strip of land fifty or
sixty feet wide?

The Court: This so called street?

The Witness: Yes, sir. 40

Dr. Edward M. Beach, cross.

Q It was never graded, was it? A No, I don't think it was.

Q Never was paved, or graveled, that you know of? A Well, the last five or seven years.

10 Q But before five or seven years ago, you know of nothing that the Borough of West Long Branch did towards repairing that road? A I don't know it. I don't remember it.

Q And when you did drive in from High street to Lane's property, you would go in over one place, generally? There was a well-defined road track there? A Yes, sir.

Q Now how wide was that well-defined road track, would you say? A Well, no time back of ten years back, it wasn't never wider than the ordinary vehicle would go, maybe twenty feet.

20 The Court: That is the traveled track?
The Witness: Yes, sir.

Q Now, Doctor, what time are you referring to, when you say it wasn't over twenty feet wide, before ten years ago? A Yes, sir.

Q Now during the past ten years, how wide has it been, the traveled, beaten path? A Well, it must be twenty-five or thirty feet.

30 Q Then your judgment is that never has over one-half of this strip of land been used as a beaten path, is that right? A That is about right, sir.

Q And the land in this so-called street, where it intersects Wall street, is higher than at Wall street? A Little higher, but that was cut down some ten or fifteen years ago.

40 The Court: To bring it down to the grade of Wall street.

Dr. Edward M. Beach, cross.

The Witness: To bring it down to the grade of Wall street, yes, sir.

Q Who cut it down? A It was done by the authorities.

Q Isn't it a fact that was done at the time when the freeholders changed High street, High street was changed. 10

The Court: Wall street was formerly High street?

The Witness: Well, the freeholders didn't change it.

Q The surveyors of the highway changed it? A They raised High street up a little.

Q No, doctor, I am referring to a fact, which is a fact. The surveyors of the highway appointed a number of years ago, took a bend out of High street, now known as Wall street? A That is when Monroe was up there. He changed that. 20

Q Isn't it a fact that at that time, that the entrance to Wall street, or High street was lowered, but before that it had always been up? A The entrance going into Mr. Lane's.

Q No, going into High street? A Going into High street where? 30

Q From this so-called street. A Yes, it was a little higher.

The Court: What year was that action of the surveyors?

Judge Heisley: March 5th, 1891, that is when the map was filed.

Q Is it not the fact that this so-called extension of Monroe street, being this strip of land 40

Dr. Edward M. Beach, cross.

which you now say is a street, runs from High street into Lane's farm, and there ends, doesn't it? A Yes, sir.

Q And during all this time the Lane farm has had, and now has a mode of ingress and egress from the farm to Wall street, and also one to Locust avenue? A Yes, sir, that is right.

Q And if they have this road, it makes three? A No, it makes two.

Q Haven't they got a private right of way in by the asparagus bed, from Wall street? A No, not that I know of.

Q They have one out to Locust avenue? A Yes, sir, they have one out to Locust avenue.

Q How long have you been a councilman? A I was a councilman for four years.

Q And the only time that you know that the Borough has done anything on this strip of land has been within the past four or five years? A Yes, sir.

The Court: He said six or seven years?

The Witness: Yes, sir.

Q Doctor, what do you know, of your own knowledge, not what you have been told, or what has been reported to you, but what do you know of your own knowledge, that the Borough of West Long Branch has done with this alleged road, during the past six or seven years? A Well, they put gravel in there and scraped it.

Q Where did they get the gravel from? A It came off Cedar avenue.

Q Then you knew it was the gravel taken from the old Monmouth Road, when the freeholders determined to improve the Monmouth

Dr. Edward M. Beach, cross.

Road? A Well, Monmouth Road and Cedar avenue was fixed at the same time.

Q Are you referring to the gravel that Mr. Hayes, a former owner of the Hoch property let the contractor from Monmouth County take from Monmouth Road and put on this alleged street?

A Yes, I know that was put on at that time. 10

The Court: Did the Borough put any other gravel on?

The Witness: Not that I know of.

Q Well, the Borough didn't do that, Mr. Hayes did it. A I don't know of that.

Q You don't swear that the Borough did it, but as a matter of fact, you don't know of your own knowledge, whether the Borough has done any work on it? A Well, I think that they scraped it. 20

Q Well, I want to know what you know from your own observation; have you seen the Borough officials working on the road? A Yes, they have worked on it; they have scraped it.

The Court: Who have you seen scraping it?

The Witness: I think it was Mr. Farry. 30

Q When did you see him scrape it? A Four or five years ago.

Q What was his position, assistant superintendent for the Borough? A Yes, sir.

The Court: In charge of the streets?

The Witness: Yes, in charge of the streets. 40

Dr. Edward M. Beach, cross.

Q Well, with that exception, that is all you have ever seen them? A Yes, sir.

Q Don't you know that for many years there has been a large stone, still there, almost in the center of this alleged right of way, and almost where it joins Wall street? A Stone in the center of the road?

10 Q Yes. A I never came into contact with it.

The Court: About what size stone do you mean, Judge?

Judge Heisley: About a foot square, or a little over.

Q Don't you know that for many years there has been maintained in that entrance, in the entrance of this proposed road, a red stone, at a place where the proposed road almost intersects Wall street? A No, sir, I never saw it. It must have been covered up if it was there. Vehicles never struck it.

20

The Court: When did you last drive over this road before today?

30 The Witness: When did I last drive over the road? I think about three months ago.

The Court: With an automobile?

The Witness: With an automobile.

The Court: Did you see any such stone?

The Witness: I didn't see it there—didn't come in contact with it.

Q Doctor, does this picture which I show you look to you like that road of which you have been testifying? Do you recognize it? A Yes, I think I would.

40

William M. Slocum, direct.

Q Well, do you? A Yes, sir.

Q Let me call your attention to this thing here at the edge. Doesn't that look to you like a stone, with a cross mark under it? A Yes, it looks like it.

Q Would you say that isn't a stone that hasn't been there for years and years? A I never knew it was there—I never came in contact with it. 10

Judge Heisley: I offer the photograph for identification.

(Photograph marked Exhibit D. 1 for identification.)

WILLIAM M. SLOCUM, duly sworn for complainant, for 20

Direct examination by Senator Stevens.

Q Mr. Slocum, where do you live? A West Long Branch.

Q And how long have you lived in West Long Branch? A Ever since it has been West Long Branch. 30

The Court: That has been how long?

The Witness: Since 1908.

Q And you have lived in that same territory how long? A Sixty years.

Q You were living in your present home for practically that time, or within what is now the Borough limits? A Yes, sir.

Q Are you a member of the Council of West Long Branch? A I am. 40

William M. Slocum, direct.

Q And how long have you been such? A Eighteen years.

Q And what department did you have charge of, supervision over? A Street Department.

Q Now how long have you been in that department? A Two years.

10 Q Do you know the Julian property? A I do.

Q Do you know the Tilton property also? A I do.

Q And they face on Wall street? A Wall street, yes, sir.

Q Are you familiar with this so-called road, Monroe street, that extends north from Wall street? A Yes, sir.

20 Q How long have you known that to be a public road? A Well, I don't know as I could tell you about the date. It was all done at the same time they straightened Wall street.

Q How many years more than twenty years?

The Court: Judge Heisley has informed the Court that that was in 1891.

The Witness: I would say thirty years, but it is at least twenty-five.

30 Q What use has that property been put to? A Always been used by the public to drive in and out.

Q Have you seen them driving in and out? A Yes, sir.

Q Have you, yourself, used it? A I have went in there and I got things, and I went in for different purposes. I went in to Mr. Lane's. I haven't gone in there former years much, but of late years I went in more.

40 Q You worked in that neighborhood? A I worked on the golf grounds.

William M. Slocum, direct.

Q Describe this road? A It is between fifty and sixty feet wide and runs in from Lane's property. It is used by the summer golf people coming in to Lane's farm after strawberries.

Q Are its boundaries fixed on the west and east side by anything that determines the lines?

A There was a fence on the west side and that has been down for the last four or five or six years. 10

Q Describe that fence? A Well, it was a slab fence.

Q Posts in the ground? A Posts in the ground.

Q And on a direct line with the line of the property? A Yes, sir.

Q On the east side what is there? A There is a hedge there, been there for years. 20

Q And that hedge runs the length of the Hoch property? A Yes, sir.

Q And is there any sidewalk? A There is a place where the sidewalk was.

The Court: Do people walk there?

The Witness: They used to walk there.

Q You mean there was a well-beaten path?

A I couldn't tell you that. 30

Q What is it today? A It is mostly grass now.

The Court: You mean the path is overgrown, or the road?

The Witness: No, on the sidewalk. It hasn't been kept cut out.

Q Has the Borough, since its existence, worked this road, taken care of it? A They 40

William M. Slocum, direct.

have scraped it, carted gravel in there and usually ploughed it out, in case of snow.

Q Do you recall of any gravel having been placed on this road during the past three or four years? A All I know is that the men that did the work told me, Mr. Elwood usually did the work.

10 Q He told you that—did you see him cart it there? A No, sir.

The Court: Did the Borough pay for the carting of gravel there?

The Witness: Yes, sir.

Q Did you see the gravel there, after it was put there? A Yes, sir.

20 The Court: You say Elwood is the name of the man that put it there?

The Witness: Elwood Farry.

The Court: Was he employed to do work on the Borough roads?

The Witness: Yes, sir.

The Court: What year was that?

The Witness: I imagine it is possibly four years, something like that.

30 Q Prior to four years ago did the Borough exercise care over this road? A Well, he has done work in there ever since he has been with us.

Q How long is that? A Seven, going on eight years he has been with us.

Q Do you know of your own knowledge how extensively that road was traveled? A Well, I know of lots of automobiles that would go in there in the summer time.

40

William M. Slocum, cross.

Q They would go through, or come back the same way? A Both.

The Court: You said something about going into Mr. Lane's place to get produce?

The Witness: Yes, sir.

The Court: Did he have a market there? 10

The Witness: Well, he sold whatever stuff he had.

The Court: How long has that been going on?

The Witness: That has been going on for years. It is safe to say for the last twelve years.

Q And they had no obstruction in the way of them? A Nothing. 20

Q Did you ever see anything placed there to obstruct the free passage of the public? A Only last summer.

Q That is when the fence was put across the street? A Yes, sir.

Q Prior to that time there was nothing there to denote that there was any claim against the Borough's use of it as a public road? A Not to my knowledge. 30

Q Did you ever hear it questioned by anybody? A No, sir.

Cross examination by Judge Heisley.

Q Mr. Slocum before seven years ago, nobody, no municipality, ever did any work on that alleged street that you know of? A I couldn't tell you, I don't know.

William M. Slocum, cross.

The Court: What Township was it in before?

The Witness: Eatontown.

10 Q Do you know of work having been done by anybody other than perhaps the owners of this land, prior to seven years ago? A Well, I don't know, because we didn't have a man at that time, but I think Mr. Hughes—

Q Not what you think. A Mr. Hughes had charge of it before that. He was Street Commissioner.

Q You have seen people go into the Lane farm for only about twelve years? A That is all I know of.

20 Q This road only goes in to the Lane farm? A That is all.

Q It is certainly for his accommodation? A That is, I don't know of its going anywheres.

Q What position does Lane hold here in the Council? A None.

Q His son-in-law, Antonides does? A Yes, he is the Mayor.

Q And he is the man who lives at and occupies the Lane farm? A Yes, sir.

30 Q Let me show you a photograph—marked Exhibit D. 2 for identification. Isn't that a pretty good picture of Wall street and this alleged street as it appears now? A Yes, that is a pretty good picture.

Q Who put these road signs up? A Well, now, I don't know.

Q The Borough did, I suppose? A The Borough did, yes, sir.

Q There is no road sign on the other side of Wall street, the side of the road in question?

40 A No.

William M. Slocum, cross.

Q This road sign is on the Norwood Park side of Wall street? A Yes, sir.

Q But the Borough, when it put that up, didn't put any on the other side? A No, we didn't usually do that.

Q You haven't done it in this case? A No.

Q Isn't it true that this white strip shows the place where the carriages and the other vehicles have come in and gone out? A Yes, sir. 10

Q And on the sides there is grass? A Yes, sir.

Q You notice a sidewalk on the side. Don't you know that that sidewalk only goes back to Dr. Hoch's kitchen? A I don't know whether it goes back there or goes on through.

Q As this picture shows the used portion, would you say that was about the extent of the used portion, the extreme width of that road, during the twelve years you have seen people going in there? A Well, I don't know if it was any wider, much. 20

The Court: He has said he has known the road to be used for twenty-five years. I understand the limit is twenty-five years, limiting people going in to the Lane farm. 30

The Witness: The road has been open, but all I remember about people going in to buy from Lane is twelve years.

Q Do you remember people using it for more than twelve years? A Yes, sir.

Q But simply you remember people going in to buy produce for twelve years? A Yes, sir.

Q You remember this stone, don't you? A It is a red sand stone. 40

William M. Slocum, re-direct.

Q It has been there for years? A For some years.

Q What is it there for? A Well, it is above ground.

The Court: Is it a monument?

10 The Witness: No, it is not. It is a big stone, gotten from the woods or some place.

Q You have never undertaken to take that stone out? A No, sir.

Q It would be an obstruction to any automobile that hit it wouldn't it? A It surely would.

The Court: Did it ever obstruct your use of the road?

20 The Witness: It is on the east side.

The Court: Then it never obstructed you?

The Witness: No.

Q The effect of it, generally, would be to keep people to the west of that stone? A No, sir, going to the east of it.

Q Did it require them to go to the east or west? A To the west.

30 Q You said it would obstruct them from going to the east. A That is right.

Q The object of that stone is to make the traveler go to the west of that stone? A Yes, sir.

Re-direct examination by Senator Stevens.

40 Senator Stevens: I offer in evidence a photograph showing the road, and the Julian property, now the Hoch property, and the

Frank Antonides, direct.

fences on each side, endorsed, "George, from Uncle Harry, May 31, 1898."

The Court: Judge Heisley admits that photograph was taken.

Senator Stevens: It was given to "George, from Uncle Harry, on May 31, 1898."

10

The Court: And you don't dispute the accuracy of the portrayal as of that date?

Judge Heisley: No, we do not.

(Photograph marked Exhibit C. 3.)

FRANK ANTONIDES, duly sworn for complainant for

20

Direct examination by Senator Stevens.

Q You are the Mayor of the Borough of West Long Branch, Mr. Antonides? A I am.

Q And have lived in West Long Branch how long? A Twenty years the 7th day of May.

Q Twenty years the 7th day of May, this year? A Yes, sir.

Q And during that time how near to the road that is in question have you lived? A I have lived in the now Hoch property from May 7th, 1904, to April 1, 1908.

30

The Court: In the Hoch property from when?

The Witness: May 7th, 1904.

The Court: Until when?

The Witness: Until April 1st, 1908.

The Court: And after that?

40

Frank Antonides, direct.

Q After that where did you live? A I lived in the immediate neighborhood.

Q And have lived in the immediate neighborhood ever since? A Yes, from March 19th, 1912, to the present date, in the Lane Homestead.

10 Q Will you describe to the Court—

The Court: When you speak of the Lane Homestead, it is on the farm we call the Lane farm?

The Witness: That is it, yes, sir.

Q Will you describe to the Court as accurately as you can just what this road is, and what use it has been put to, to your knowledge, since you have known it to be a road? A Well, it is approximately about sixty feet wide. It had a sidewalk on the Hoch property, together with a hedge running almost the whole length of that lot.

20

The Court: From Wall street in?

The Witness: Yes, sir; on the west side it had a post and board fence up to a few, five or six years ago, when it rotted away, and I think Mr. McIntyre took it down. The road has been graded at some time and it is lower than the lots on each side.

30

The Court: Has the entire top soil been removed from the surface?

The Witness: At one time, but on each side of the pathway there is grass growing now.

The Court: Is there more than one traveled track?

40 The Witness: Just one.

Frank Antonides, direct.

Q Do you use the road for the purpose of ingress and egress? A I do.

Q Who goes in and out of there, to your knowledge? A The public in general.

Q And how long have you been using the road? A Continually?

Q Yes, off and on? A Off and on for close 10 to twenty years. I have used the road twenty-three years, off and on.

Q Prior to coming there, what occasioned your using it? A Going to visit the Lane's.

Q You married a Miss Lane? A Yes, sir.

Q So that you know that that road has been there how long? A Twenty-three years.

Q Have you ever seen it obstructed, or the use of it denied to the public? A Not until last 20 June.

Q Have there ever been any obstructions placed there? A Not to my knowledge.

Q What care has the municipality given to this road? A They took waste gravel, or worn out gravel from the different streets and they put the gravel there when they built the new State Highway on Cedar avenue.

Q You have heard it stated that somebody by the name of Hayes carted gravel in there. A 30 Never seen Mr. Hayes cart gravel.

Q Who carted gravel in there? A Mr. Farry, and the contractor carted gravel in there.

Q Under whose direction? A I don't know about that.

Q Do you know where the contractor carted the gravel in there to? A Yes, sir.

Q Did he do it? A Yes, sir.

Q And Mr. Farry carted gravel in there? A 40 Yes, sir.

Frank Antonides, direct.

Q And Mr. Farry was Borough Engineer?

A Yes, sir.

The Court: How long have you been Mayor?

The Witness: Since June 1st, 1923.

10 The Court: And you were a Councilman for how long, Mr. Antonides?

The Witness: I was Councilman for nine years prior to that. I resigned in 1921.

The Court: But for nine years prior to 1921 you were Councilman, and in close touch with the affairs of the Borough?

The Witness: Yes, sir.

20 The Court: You say the Borough put gravel on this disputed road. Do you know if the Borough paid to have that done?

The Witness: No, the gravel the Borough put on, they took and cleaned out of the gutters from other streets.

Q To better the condition of that road? A Yes, sir.

30 The Court: And that was done by the ordinary street force of the Borough?

The Witness: Yes, sir.

Q Are there any telegraph poles or wires over Wall street, or any sewer outlets under the street? A There is a private water main running from the hind end of the property into opposite the kitchen on the Hoch property.

40 The Court: In the roadbed of this disputed street?

Frank Antonides, direct.

The Witness: Yes, sir, just out of the line.

Q Are there any wires that run into your premises, in the rear? A No.

The Court: How long has that water main been in the street? 10

The Witness: I couldn't say.

The Court: Was it there when you owned the property, used the property?

The Witness: 1904, but I couldn't get any water connections, because there was a big water bill due and I had to have water connected with the windmill in the rear.

Q You were a tenant in the Hoch property. While you were there did you have a horse and wagon? A I did. 20

Q How did you get to Wall street? A By the use of this lane, this street.

Q You had a driveway out to the side street? A Yes, sir.

Q And that leads to Wall street? A Yes, sir.

Q Was there any other driveway? A One on the east side of the house, and this on the west. The barn had two entrance platforms. You could come in from Monroe street, or in the regular driveway. 30

Q Has Mr. McIntyre, or any of the owners of the Tilton property, or Hoch property ever forbidden the use of that roadway to you? A No, sir, not to me.

Q Prior to last summer? A No, sir. 40

Frank Antonides, cross.

Q In all the time you used it, what did you take that street to be? A An extension of Monroe street.

The Court: Were there any signs to indicate that it was a private right of way?

10 The Witness: No, sir.

Q Was there anything to draw your attention to the fact that there was any claim that it was not a public street? A No, sir.

The Court: Did you ever get permission from anyone to use it?

The Witness: No, sir.

The Court: Did you ever ask permission?

20 The Witness: No.

Q And your family used it with you, of course? A Yes, sir.

Q And you drove in and out that way, going to and from your stable, in 1904 to 1908? A Yes, sir.

Cross examination by Judge Heisley.

30 Q How many ways has the Lane farm, at the present time, of getting out to Locust avenue and Wall street? A One to Locust avenue and one to Wall street.

Q Isn't there one besides this one to Wall street? A No, sir.

The Court: This plot marked 35, here is Monroe street, and here is Locust avenue. Judge Heisley has asked you if there are not three outlets.

40

Frank Antonides, re-cross.

The Witness: There is sort of a driveway running on the east line of the property to the golf grounds.

The Court: Is that what Mr. Morris called a driveway by the asparagus bed?

The Witness: Yes, sir.

10

Re-direct examination by Senator Stevens.

Q Is that on the Lane premises, or golf grounds property? A On the Lane premises, and going back to the dividing line.

The Court: But it does not lead in to the Lane house or buildings?

The Witness: No, sir.

Re-cross examination by Judge Heisley.

20

Q Then your property has a frontage on Locust avenue and on Wall street? A Yes, sir.

Q The water main you speak of was put in there solely for the private use of the Hoch property, wasn't it? A I don't know.

Q It only leads to Hoch's kitchen, doesn't it? A Yes.

Q Why was it put in there? A I don't know. 30

Q When do you recall seeing the first work ever done by the authorities upon this alleged street?

The Court: By Borough or Township authorities or any public authorities.

Q Of your own knowledge? A About seven years ago.

40

Frank Antonides, re-cross.

Q And how much dirt did you see carted in there, waste dirt from other roads? A I couldn't say the exact number of loads—several loads at different times.

Q What do you mean by several loads? A Thirty-five or forty loads in all.

10

The Court: During the past four or five years there have been about that number of loads dumped there?

The Witness: Yes, sir.

Q And where was the dirt dumped? A I would say in the center.

The Court: On the traveled track?

20

The Witness: Yes, sir, on the traveled track.

Q And during all the time you have known that property, there has been a large red stone imbedded in the soil but sticking above the surface, along the easterly edge of the beaten track? A About a year and a half.

The Court: For the last year and a half?

30

The Witness: Yes, sir.

Q Will you say it hasn't been there eight years? A I will say it hasn't been there eight years.

Q Who put it there? A Mr. Hayes.

40

Q You say he put it there within the past two years? A About a year and a half ago. That is a stone that is a piece of the brick foundation of his house, cemented together. I struck it and moved it out of the road and he put it back.

Frank Antonides, re-cross.

Q When did you strike it? A The first two or three days it was there.

Q And it is still there, isn't it? A I haven't seen it there lately, no, sir.

Q Do you recall the time when Mrs. Julian owned the property? A Mrs. Chacey owned it. I rented off Mrs. Julian formerly.

Q Don't you recall a time during Mrs. Julian's ownership that there was a fence put across that road and kept there for a week? A No, sir. 10

Q You would say it wasn't done? A I say it wasn't done in the last two or three years.

Q What would you say about Mr. Hayes putting boards on the grass to confine the traffic to this beaten track? A He done that one winter, when the frost was coming out of the ground.

Q How long ago was that? A Two or three years ago this winter. 20

Q Never did it before that? A Never did it before that, no, sir.

Q How far does that path go? A On a line of the barn.

The Court: The road appears to be 250 feet deep.

The Witness: I would say 220 feet. 30

Q And goes back to your barn? A They have a driveway going into the barn, from the road.

Q And at that driveway? A The hedge stops.

Q And the path stops? A Yes, sir, the path stops.

Q You know that the authorities have put road signs up over West Long Branch pretty generally? A Yes, sir. 40

Frank Antonides, re-cross.

Q And you know there is one put up by the authorities on Monroe street, almost directly opposite this property? A Yes, sir.

Q Indicating Monroe street the other side of High street and also indicating High street?

10 The Court: High street is Wall street.
Judge Heisley: Yes, sir.
The Witness: Yes, sir.

Q On any of your Borough maps, that you know of, is this extension, or this piece of property shown as a street? A On the tax map.

Q Is that the only thing you know of? A That is the only map I know of.

Q And even on that it isn't named, is it? A No.
20 Q Never did have a name, did it? A Not officially I don't think, no.

Q Well, have you ever heard it called any name? A I heard it called Monroe street for the last twenty-three years.

Q And yet on your tax map you name all streets with their own names, don't you?

30 The Court: I don't suppose he is responsible for the map.

Q On the tax map, is it true, generally, that the Borough has put the names of the alleged streets? A There is some streets they haven't put names on.

Q And this is one? A Yes, we have got one on Locust avenue leading west, that hasn't got any name on it.

Q Who drew this map? A Mr. Seaman.

40 Q Do you remember Mr. Seaman borrowing this map sometime ago? A No, sir.

A. Randolph Chimney, direct.

A. RANDOLPH CHIMNEY, duly sworn for complainant, for

Direct examination by Senator Stevens.

Q You live in West Long Branch? A I do.

Q And you have lived there how long? A About forty years. 10

Q And in the immediate neighborhood of this road? How far from this road do you live? A Within five hundred feet of it.

Q And you have lived there all this time, about forty years? A Yes, sir.

Q So that you know how long this road has been opened? A Well, that road was opened about the time that—either shortly before or after—Mr. McIntyre built the house. Wall street was straightened by Mr. Newman, or Monmouth County. 20

The Court: About 1891?

Judge Heisley: That is right.

Q Was that used by the public, to your knowledge, since that time? A It has been.

Q Have any obstructions been placed in the way of its being used as a public street? A Not as I know of, until last year, when the wire fence was put up. 30

Q Have you ever heard of this road being described as being bounded on the east side by a hedge fence? Do you know how long that hedge fence has stood there? A It has been a good many years, but I couldn't say how many. It has been there for a number of years. I wouldn't like to give the exact date.

Q Was there anything there that the hedge displaced? A I think there was a fence there. 40

A. Randolph Chimney, direct.

There was a fence on the other side, a post and board fence.

The Court: You mean on the west side?

The Witness: Yes, sir.

10 Q Is there a sidewalk on the east side of this road? A There was until recently, part of the way in.

The Court: Up to what time?

The Witness: This last summer.

The Court: Within the last year or so?

The Witness: Within the last year.

20 Q What has become of that sidewalk? A Well it has been filled in and sodded, just the entrance. The rest of it is in grass, in sod.

Q Have you seen the municipal authorities caring for the road, in the way of scraping, or graveling, or anything of that kind? A I have seen the road men in there with the scraper several times.

30 Q Did the grass grow up high, so it would have to be cut? A Mr. Hayes used to keep it cut while he was there, occasionally. The other side wasn't cut.

Q What travel passed through? A Quite a lot of travel through there, people going in to procure produce from the Lane property.

Q How long has that practice been going on? A A good while.

Q You must tell the Court just how long? A Ten or fifteen years.

40 The Court: Have you made use of the road yourself?

A. Randolph Chimney, direct.

The Witness: I have.

Q How long? A Ever since it has been opened. When Mr. Tilton lived there, and when Mr. John Dengler lived there.

The Court: Was the road about the same as it is now? 10

The Witness: Ever since it has been opened.

Q You were in there prior to Mr. Lane's coming there? A Yes, sir.

Q Mr. Lane's father lived there when the road was opened? A Yes, sir.

Q And Mr. Lane's father is the man who sold the front triangle to Mr. McIntyre? A No, it was a little piece in the rear of the barn that Mr. Lane sold to McIntyre. The other property was the Solomon Brown property. 20

Q And was that road opened prior to the time when that triangular piece was sold to Mr. McIntyre? A I am pretty positive it was.

Q It led into Mr. Lane's home, didn't it? A Yes, sir.

Q And there was a right of way over Mr. Solomon Brown's property to Mr. Lane? A Yes, sir. 30

The Court: Was Locust avenue laid out?

The Witness: That was the old Lippincott Road.

Q Did you ever work for the Borough? A Yes, sir.

Q You are Recorder of the Borough? A I am Recorder of the Borough. 40

A. Randolph Chimney, direct.

Q Did you ever work on the roads of the Borough? A Only once, during all my time.

The Court: This road?

The Witness: No, Wall street.

10 Q Have you seen Mr. Farry working upon it?
A Yes, sir.

Q What have you seen him doing there? A I saw him leveling off dirt. I wouldn't say I saw him cart dirt in there, but I saw him leveling off dirt in there.

Q Was the grade of the street lower than the side properties? Was any dirt taken off in order to lower it? A Yes, sir, there had been.

20 Q Who did that, do you know? A I couldn't say. The street of course, was re-graded some years ago, that is Wall street, and a permanent grade made, and the Borough graveled it, and after that was done this road was cut down so as to get in and out of there.

The Court: Who did the cutting, do you know?

The Witness: I couldn't say.

30 The Court: Well, was the slope cut the entire width of the road, or only the graveled track?

The Witness: Only the graveled track.

The Court: And how wide is that graveled track?

The Witness: Well, I imagine about, as near as I could say, fifteen or twenty feet.

40 The Court: Is that westerly of this red stone that Judge Heisley is speaking of?

A. Randolph Chimney, cross.

The Witness: I haven't seen a red stone. I have seen a bunch of brick cemented together.

The Court: Is that traveled track westerly of that?

The Witness: Yes, sir.

10

Cross examination by Judge Heisley.

Q Did I understand you to say that piece of land was used as a driveway before Isaiah Lane sold that triangular piece of land to Mr. McIntyre in 1891, over thirty years ago? A I think that is the time; maybe it was open before that.

Q Do you mean to say it was used before that as a roadway? A Yes, sir. I drove in there then. I bought a horse and went into Mr. Lane's property. I went in there to get a wagon to go to Asbury Park.

20

The Court: When was that?

The Witness: Thirty-four years ago, when I was sixteen.

The Court: You say there was a lane there then?

The Witness: There was an opening there then.

30

The Court: From Wall street?

The Witness: Yes, sir.

The Court: And how much wider is the road today than it was then?

The Witness: When they laid that out, Mr. McIntyre and Mr. Lane's father laid that road out, and it was the intention to go over to Goff street.

40

A. Randolph Chimney, cross.

Q The intention was to run it all the way to Broadway? A It was intended to go all the way through.

The Court: Is Broadway to the north or south?

10 Judge Heisley: North, about a mile.

Q Now, Mr. Chimney, when did you first see any man working there for any municipality, scraping this road? When was that? A I said leveling dirt.

Q Leveling dirt; when was that? A I saw Mr. Farry leveling dirt in there.

Q When they were fixing Monmouth Road? A Prior to that.

20 The Court: About how many years ago was that?

The Witness: Over ten years ago.

Q Over ten years ago, from now? A Yes, sir, not Mr. Farry. I saw men employed by the Borough of Eatontown at times.

30 The Court: Well, was it before it was a Borough that you ever saw anybody working there?

The Witness: I saw them working there when the road was first opened, but I don't know who did it.

Q And where was he putting this dirt that he was leveling, on the beaten path? A On the path, the beaten path, yes.

40 Q And you did see Hayes cutting down the grass? A Yes, sir, I saw Hayes cutting down the grass.

A. Randolph Chimney, cross.

Q And don't you recall seeing Hayes putting logs or rubbish on the road to keep the people off the portion that he had grass on? A I saw a stake put up out on the curb line on Wall street, to keep them from running up against that high bank there. That disappeared, I don't know how.

10

The Court: How large a stake was that?

The Witness: Piece of a log.

Q Which side of the stone was that put on?
A That is where the stone was.

Q And when was that? A Just previous to Mr. Hayes selling the property.

The Court: How long have you known those pieces of brick to have been there?

20

The Witness: Not very long, not over a year or a year and a half. There was different pieces put there; when one thing was knocked away it was replaced by something else.

The Court: Was that before the year and a half?

The Witness: No, it was all done within the year and a half.

30

Q You said you had seen things placed there—was that all within the year and a half? A Yes, sir.

Q When was the stone put there? A About a year ago.

The Court: And they have all been there within a year and a half?

40

Charles A. Poole, direct.

The Witness: Yes, sir.

Q Wasn't it while Mr. Hayes was there? A Yes, sir.

10 The Court: How long has Mr. Hayes been away from there, to your knowledge?

The Witness: About a year—not over a year and a half, I don't think.

CHARLES A. POOLE, duly sworn for complainant, for

Direct examination by Senator Stevens.

20 Q Mr. Poole, you reside in West Long Branch? A I do.

Q And have lived there a good many years, have you not? A Thirty-three.

Q Thirty-three years? A Yes, sir.

Q And have you been a member of the Borough Council? A I have.

Q How long have you been a member of the Borough Council?

30 The Court: Four years from the time of its inauguration?

The Witness: Yes, sir.

Q During the same period of time that Dr. Beach served? A Yes, sir.

Q Do you know this property in the neighborhood of the Julian or Hoch property? A Yes, sir.

Q And this controverted road? A I do.

40 Q Have you ever driven on this road, Mr. Poole? A Only a few times, a year or so ago.

Charles A. Poole, direct.

Q How long has it been opened as a roadway?

A Between twenty-five and thirty years, I should think.

Q And it leads to where? A To Mr. Lane's house.

Q How long has it been under Borough control, to your knowledge, or municipal control? A 10
I don't know. I don't know it ever has been.

Q Have you ever seen the Borough authorities working on the road? A Not the Borough authorities, no.

The Court: Have you ever seen the Township authorities working on it?

The Witness: When it was in Eatontown Township I remember seeing the Overseer of the Roads, grading it down to the road- 20
way.

Q Can you describe this road? A It is the same width as Monroe avenue, about fifty feet, I think, bounded on the east by the hedge on the adjoining property, and on the west there used to be a fence, a turn post and rod fence, I couldn't tell you how long that has been there.

The Court: How far do you live from 30
there?

The Witness: About a quarter of a mile, along the State road.

The Court: Has it been treated as a private right of way or a public street?

The Witness: Yes.

The Court: What?

The Witness: Public road, the public used it.

Charles A. Poole, direct.

Q Have you ever seen people going in and out of there? A I have seen them, but not frequently. I am too far from it.

The Court: Have you been accustomed to using it?

10 The Witness: No.

Q Has the question ever been raised that this was a private road, to your knowledge? A Not to my knowledge.

Q You have never heard any question of the use of the road brought before the municipal authorities? A No.

Q Have you seen Mr. Farry working on the road? A No, I have not.

20 Q You did see the municipal authorities working on the road? A Yes, sir.

The Court: He said they were the ones who made this road conform to the grade of Wall street.

Q To what extent did they work on that? A They sloped it back ten or fifteen feet. It was higher than Wall street.

30 Q And then they made the approach easy of access? A Yes, sir.

Q How far from the property line on each side did it go? A It was the full width, excepting about five or six feet left on each side.

Q For sidewalks? A Yes, sir.

Q You were then a member of the Township Committee? A Not at that time.

Q How long ago would you say that was? A It was prior to 1908—I couldn't tell you. I just
40 merely noticed it.

William E. Palmer, direct.

Cross examination by Judge Heisley.

Q That is the only time you ever saw the Township work on it? A That is all.

WILLIAM E. PALMER, duly sworn for com- 10
plainant, for

Direct examination by Senator Stevens.

Q You live in West Long Branch? A Yes, sir.

Q In the near neighborhood of this road, do you not? A Well, I suppose yes, I go through it quite often.

Q How far do you live from it? A A little 20
less than half a mile.

Q And you pass down Wall street? A Quite frequently. Every day, mostly.

Q Do you know this road in question? A I have seen it, passing by, yes.

Q Did you see it obstructed last summer? A Yes, I did.

Q Did you see the fence across it? A I did.

Q Had you ever seen a fence across it before? 30
A No.

Q How long has it been opened for people to go in and out? A Since 1897, to my knowledge.

Q And people were in the habit of going in there, to the Lane farm? A Yes, my brother-in-law owned the property at that time.

The Court: What was your brother-in-law's name?

The Witness: Julian.

William E. Palmer, direct.

Q And there was a fence along on the east side, was there not? A I believe there was. I am not sure but I think so.

Q What is there today? A There is a hedge there.

Q How long ago did Mr. Julian live there?

10 A He lived there in 1897.

Q And how long did he live there? A A few years.

Q And then the road was opened? A Oh, yes.

Q And was there a sidewalk on it? A There was a fence on that side. There was a place on the side of the Tilton lot, higher than the road.

Q Used as a footpath? A Yes, sir, and there was a path from the house out to that.

20 Q That path went right back? A All the way back to the stable.

Q Have you ever seen any obstructions placed in the road? A Not until last summer, when I seen the wire fence.

The Court: Have you used this road yourself?

The Witness: Yes, I went over and bought asparagus from Mr. Lane.

30 Q Did you use it by permission? A No, I could go in any time.

The Court: Did you consider you were trespassing on anyone's property?

The Witness: No, because I thought it belonged to Monroe street. That was my understanding.

The Court: That it was part of Monroe street?

40 The Witness: Yes, sir.

William E. Palmer, cross.

Cross examination by Judge Heisley.

Q The understanding was that Monroe street was to go all the way through to Broadway? A I didn't understand that part of it.

Q This path you spoke of, went back as far as Dr. Hoch's barn and then stopped? A Yes, 10
sir.

Q It didn't go to Lane's property; it simply went to Dr. Hoch's property? A I couldn't say.

The Court: Mr. Antonides admits it didn't go to Lane's property.

Q Mr. Palmer, while there are sixty feet of land in this strip, it is the fact, is it not, that there hasn't ever been more than one beaten path right through it? A Yes, sir. 20

Q There has been a driveway all the way through? A Yes, sir.

Q But only on a strip ten or twelve feet wide? A Maybe more, maybe less, I couldn't say.

Q Only a small portion of that land has been used by people going in and out, to and from the Lane farm? A I suppose that is so. 30

Q Isn't that so? A I don't know. It might be twenty feet; it might be more or less, I couldn't say.

The Court: You have given the truthful answer, you don't know.

The Witness: That is right.

James W. Hyer, direct.

Re-direct examination by Senator Stevens.

10 Q And the remaining part was never used for any purpose? The owners of the property on either side didn't occupy it? A I don't think they did. I know they didn't, because there is a bank on each side of the road. I should judge the road is fifty feet wide, and the path where the cars go up not half of that, and there would be grass on each side.

The Court: Is the land of the properties on each side higher than the level of the road?

The Witness: Yes, sir.

20 JAMES W. HYER, duly sworn for complainant.

Direct examination by Senator Stevens.

Q Mr. Hyer, you live at West Long Branch?

A Yes, sir.

Q And you have lived there how long? A All my life.

30 The Court: That would be how many years?

The Witness: Fifty-three.

Q And how near this roadway, called Monroe street? A Ever since it has been a street I have lived about a half mile from there.

Q You pass by Monroe street frequently?

A Yes, sir.

Q And down Wall street, to Long Branch?

A Yes, sir.

40 Q Mr. Hyer, do you know the Hoch property? A Yes, sir.

James W. Hyer, direct.

Q And are you acquainted with the Tilton property, and the way it is laid out? A Yes, sir.

Q And what separates the Tilton property from the Hoch property? A Over what was known as a proposed road.

Q Will you describe that road? A Well, 10
it seems to be a continuation of Monroe street.

Q To where? A In to Mr. Lane's property.

Q About how long is it from Wall street to the Lane property? A I imagine about two hundred, two hundred and fifty feet.

Q How wide is it? A It must be fifty or sixty feet wide.

Judge Heisley: We are not going to dispute this at all, that the public has used this road. We are not going to dispute it. 20
We are going to say it was done by permission that Mr. McIntyre gave Mr. Isaiah Lane, and simply by a permission, and that the permission was revoked. We are not going to deny that people went in there.

The Court: How is your conduct going to affect the public, if the public used it without authority? The cases are clear that if you acquiesce in the use of a road for 30
twenty years or more, that the users gain an adverse right to it.

Judge Heisley: That is the law, adverse user for twenty years. The authorities hold that if you grant a right today, the public gets no right by using it at the same time.

Senator Stevens: Our case is entirely on the question of adverse user.

Q Mr. Hyer, have you had occasion to use 40
this road yourself for the purpose of going

James W. Hyer, direct.

in and out? A Yes, used it for visiting Mr. Lane's father and Mr. Antonides.

Q How long have you been using it? A I suppose ever since it has been a road.

Q Do you know whether it has been used by the public? A Yes, sir.

10 Q Have you seen people traveling back and forth in there? A Yes, sir.

Q And how long have you seen these people going back and forth? A As I say, ever since it has been a road.

Q How long, to your knowledge, has it been a road? A My father owned the property between Edward avenue and Wall street and sold that to Mr. Monroe in 1888. We moved off there that spring. Mr. McIntyre built that Julian
20 house and opened up that street right after.

The Court: What year was that?

The Witness: It was fully open not later than three years after.

The Court: About 1891?

The Witness: About 1891, I imagine.

Q And since 1891, to your knowledge, this road has been an open road, where the public
30 have been going in and out freely to Mr. Lane's farm? A Yes, sir.

Q And have you seen the road worked by the municipal authorities? A No, sir.

Q Have you seen dirt or gravel placed upon that road? A I wouldn't say, positively. I had better not say anything.

Q Do you know whether the road has been taken care of? A I am pretty sure.

40 Judge Heisley: Not unless you know it.

James W. Hyer, direct.

The Court: If you don't know, that is the proper answer.

The Witness: I don't know.

Q Do you know whether snow has been scraped from the street by the municipal authorities? A I couldn't swear to it, no.

10

Q Is there a sidewalk on the east side of this road? A Yes, sir.

Q And did you ever use that sidewalk? A I don't know as I have ever been in there except with a car or a horse.

Q Have you seen anyone using the sidewalk? A No, not that I have taken particular notice of.

Q The hedge runs the entire length of the property? A It runs back to the stable.

20

Q Beyond the stable was there any fence or structure that separated the main Hoch property from the rest of the street? A No, sir, not to my knowledge.

Q On the west side was there a fence? A Yes, sir.

Q Do you remember that fence? A Yes, sir, I remember that fence.

Q And that was the dividing line between the Tilton property and the so-called road? A Yes, sir.

30

The Court: Was the Tilton property occupied?

The Witness: No, sir, vacant lot.

Q How long has the Tilton lot been built upon? A There has never been any house upon that.

40

James W. Hyer, cross.

The Court: When was the fence on it?

The Witness: Mr. McIntyre put it there.

The Court: About how long after the road was opened to use?

10 The Witness: I couldn't swear when it was put there, but I know I have seen the fence there.

Q Twenty years? A I couldn't swear to it. I would imagine it was that long.

Q Do you know why the fence was there? A Mr. McIntyre told me he had fenced it off to pasture his cattle in.

Q In his own lot? A Yes, sir.

20 *Cross examination by Judge Heisley.*

Q Where did you say the fence was?

Senator Stevens: On the west side.

Q Have you ever seen anyone erect any obstruction to prevent the public from passing over this road? A No, sir.

30 The Court: Did Mr. McIntyre tell you why he erected the fence where it was put instead of putting it in the roadway?

The Witness: He told me he put the fence there to keep his cattle from going out, and the road was scraped off.

The Court: Do you know who carted the dirt off?

The Witness: No, sir. Mr. McIntyre had it done, I am quite positive.

40

James W. Hyer, cross.

Q Do you remember the occasion when the dirt was graded? A I don't remember seeing it done. I say that is what McIntyre told me.

Q It lowered the street below the properties on both sides? A Yes, sir, made sort of a sidewalk.

Q And these lots on the properties of Dr. Hoch, and the Tilton property were of a higher grade than the road itself? A Yes, sir. 10

The Court: Noticeably higher?

The Witness: Well, it was originally a level field.

The Court: How much is the level of the road below the level of the lots?

The Witness: Eight or ten inches now, that is all. 20

Q Did you see the placing of the fence across the road, in June, last year, when they closed that road up? A I saw that fence there.

Q Did you see it put there? A No, sir.

Q You didn't see it put there? A No, sir.

Q You did see the fence when it was up, however? A I did. I saw the fence there.

Q How long was it up, to your knowledge? A I don't know. 30

Q Was it afterwards taken down? A Yes, sir.

Q Did you see it taken down? A No, sir.

Q But it was closed for a period of time? A Yes, sir.

Q And were there any other obstructions placed in that street, besides that fence on the front? A Not to my knowledge.

The Court: Did you ever see this pile of brick, or stone? 40

William L. Poole, direct.

The Witness: No, sir, I never saw that.

Q You never saw that stone that they speak of? A No, it might have been there. There has always been a heap of rubbish or something of that sort along there.

10

FRED SLOCUM, duly sworn for complainant.

Direct examination by Senator Stevens.

Senator Stevens: I am going to offer Mr. Slocum for the purpose of proving the placing of the obstruction across the road.

20 Judge Heisley: We admit that we put the obstruction complained of in the bill there.

The Court: The obstruction claimed in the bill?

Judge Heisley: Yes, sir.

30 WILLIAM L. POOLE, duly sworn for complainant.

Direct examination by Senator Stevens.

Q Mr. Poole, where do you live ? A On Wall street.

Q In West Long Branch? A Yes, sir.

Q How near to Monroe street, so-called? A About 325 feet.

40 Q How long have you lived there? A Twenty-four years.

William L. Poole, direct.

Q During all the time you have lived there, twenty-four years, has this street, this so-called Monroe street, between the Hoch property and the Tilton property, been open to public travel?

A Yes, sir.

Q Can you go back beyond that period of time, in your own knowledge? A No, sir.

10

The Court: Twenty-four years ago you came there?

The Witness: I did.

Q Have you seen people going to and fro on this roadway? A Yes, sir.

Q And it leads where? A It leads into the Lane farm.

Q And it is about how wide? A The same width as Monroe street.

20

Q Now, have you used it yourself? A Yes, sir.

Q Isn't it a fact that people used to cut through there and go through the Lane property, over to Locust avenue? A Yes, sir.

Q Quite some travel passed through that way? A Yes, sir, as far as I can remember back.

The Court: How old are you?

30

The Witness: Sixty-three years old.

Q Did you ever see any sign upon the premises to the effect that it was a private road, or forbidding trespassing on that road? A No.

Q Have you ever seen any obstructions placed across it? A I seen a fence there last summer.

Q Prior to last summer? A I seen a fence across the sidewalk, keeping the cows off the lawn on the east side.

40

William L. Poole, direct.

Q When was that? A It was way back in Mr. Julian's time. The cows was loose and hurting Mrs. Julian's lawn, and how I know it so well, I was working for Mrs. Julian at the time and she called my attention to it.

10 The Court: Was the road open then?

The Witness: Yes, sir.

The Court: Was it used?

The Witness: Yes, sir.

Q That is prior to the time Mr. Frank Antonides lived there? A Yes, sir, Mr. Antonides lived there.

Q Mrs. Julian lived there? A Yes, sir.

Q Was that before Mr. Antonides went there?
20 A I think Mrs. Julian lived there after Mr. Antonides.

Q Have you seen any stone or brick structure of any kind that was placed there as an obstruction in the mouth of the road, as the gentleman said before? A This here red thing to me looks like a piece of dirt. I seen it there, not a very long time, but it didn't strike anything because it looked to me as if the cars going in keep on the right side of it. The cars going in
30 would keep on the right-hand side of it, keep to the right of it.

Q Did anyone ever forbid your passing over that road? A No.

Q Did Mr. Hayes, or any of the former owners of the Hoch property tell you it was a private street? A No, sir.

The Court: Did anyone ever give you permission to use it.

40 The Witness: I supposed it was an open street.

William L. Poole, direct.

The Court: Aside from what you supposed, did anyone ever tell you you could use it?

The Witness: I supposed it was an open street.

Q No one told you not to use it? A No. 10

Q Do you know of anyone who was told not to use it? A No.

Q Have you seen any work done on that street? A Yes, sir.

Q By whom? A By the overseer of the township.

Q And after that, by the borough? A Yes, sir.

Q Have you seen Mr. Farry working on the road? A Yes, sir. 20

The Court: What did the township overseer do?

The Witness: He ploughed it up, twenty-two years ago last spring.

Q The township overseer? A Lige Williams.

Q Is he living today? A No, sir, he is dead. 30

Q He ploughed it up? A When Mr. William L. Goldsmith was township committeeman.

The Court: He ploughed it up?

The Witness: He went, say sixteen or eighteen or twenty feet, whatever the road is; he ploughed it up.

Q And spread it? A Yes, sir, I drove the team for him. 40

William L. Poole, direct.

Q Were you in the employ of the township at the time? A I was employed by Mr. Williams in the afternoon, to drive his team.

Q And this road was patched up by the township at that time? A Yes, sir.

10 Q Twenty-two years ago? A Twenty-two years ago last year, last summer.

Q And since that time you say the borough authorities have done work upon that road? A Well, I have seen Mr. Farry on the road.

Q What did you see him do? A I have seen him scrape on the road. I wouldn't say positive I ever seen anything else.

Q Do you know whether any gravel was put there? A I seen some gravel put there, yes, sir.

20 Q What was done with the gravel? A The gravel was took off the road when they put down the State road, and they put a lot on Wall street and also on that Monroe street there. Wherever it wanted anything they put it on there. It was near by for them to cart it.

The Court: You say the men working for the borough did that?

30 The Witness: The men?

The Court: The contractor?

The Witness: The contractor who was carting the dirt on those roads, and Farry took care of it afterward.

Q But you saw Mr. Farry there at that time? A Yes, sir.

Q And he was employed by whom? A By the borough.

William L. Poole, cross.

Cross examination by Judge Heisley.

Q How long has it been since you have driven over this driveway to Lane's farm? A As far back as I can remember.

Q When was the last time you went in there? A I can't say to that.

Q It may have been a month or two ago? A 10
Less than that.

Q You are a neighbor of Lane? A I go in there to buy corn or something like that.

Q And that is all people would use that for, it would be to go into Lane's farm? A They go into there to buy stuff.

Q The only reason you know of that people would use that road would be to have business or social relations with people living on the Lane farm? A I couldn't say. 20

Q Is there any other reason for going in there? A I don't know.

Q Well, it led no place except to the Lane farm? A It led into there and came out on another street.

The Court: It came out on Locust avenue?

The Witness: Yes, sir.

The Court: How recently? 30

The Witness: That has come out there for many years.

The Court: Did you ever drive that way?

The Witness: Yes, sir.

Q You don't mean to say they are one and the same road? A Yes, sir, they go right around.

Q Isn't it true that the Lane house has been on Locust avenue for more than forty years; 40

William L. Poole, cross.

that old Isaiah Lane farmhouse has been there for over forty years? A Yes, sir.

Q And wasn't it there before this extension of Monroe street was there? A Yes, sir, it was there before Monroe street was there.

10 Q And that road from Locust avenue goes in to the north side of the old Isaiah Lane house? A Goes on the west side of the house, I mean the east side of the house.

Q Does it go around from Locust avenue to this road? A On the north side down to Locust avenue and on the east side on this street.

Q I am talking about the road leading in from Locust avenue which has been there long before this alleged street came into existence, the driveway from Locust avenue goes in by the north side of the house? A Yes, sir.

20 Q And this road comes in from Wall street on the south side of Lane's house, and goes into his yard, doesn't it? A It goes in on the east side, from what you would call Monroe street, comes in on the east side of the house and goes on around on the north side.

Q There is a yard between the Isaiah Lane house and his barn and outbuildings? A Yes, sir, right between the house and buildings.

30 Q There is a yard space? A Yes, sir.

Q And each of these roads end at that yard space? A This road continues right on around. This road is the same width.

Q Did it continue before it was there? A For the last twenty-four years, the same as now.

Q The fact is that the road in from Locust avenue goes as far as his barnyard? A Yes, sir.

40 Q And the road in from Wall street goes as far as the barnyard on its south side, doesn't

William L. Poole, cross.

it? A Continues right on. I am here for the truth.

Q Now, how much—have you told his Honor that you thought perhaps sixteen or twenty feet was ploughed up? A Somewheres about, I am not positive.

Q And how wide has the strip of land been that has been driven over? A You can drive over the width of three cars if you want it to drive over. 10

Q Where would you get through? Three cars would be about how wide? A I should judge eight feet a piece.

Q About twenty-four feet then? A Yes, sir.

Q Then you think that the used portion has been twenty-four feet? A The road was laid out for that. 20

Q You think the used portion was about twenty-four feet wide? A Yes, sir.

Q Now, you spoke about Mrs. Julian putting up a fence. Where was that fence put? A On the west side of her property. It would be the east side of the street.

The Court: How far did it extend?

The Witness: She put it over her sidewalk. 30

The Court: Post and rail?

The Witness: Just a common fence. She put it in the whole length of her property.

The Court: How many feet wide, extending into the road?

The Witness: She came out just beyond the sidewalk. I would say eight feet, eight or nine feet. 40

Lewis Lane, direct.

The Court: How long was that kept there?

The Witness: Just a short time.

Q And how far back did that run? A Way back, the length of her lot.

10 Q Then she fenced seven or eight feet of this supposed driveway the whole length of her lot?
A I won't say positive, but she went back, as I remember, quite a distance back.

LEWIS LANE, duly sworn for complainant.

Direct examination by Senator Stevens.

20 Q Mr. Lane, you are a resident of West Long Branch? A Yes, sir.

Q And how long have you been a resident there? A I was born there but was away some time. I have been back there twenty-four years.

Q You are a son of Isaiah Lane? A Yes, sir.

Q And you live on the Lane farm now? A No, sir, I live up at the village. Mr. Antonides lives on the farm.

30 Q You have lived on the farm? A Yes, sir.

Q How long? A When I first moved on it I lived there two or three years.

Q How long ago did you come back to the farm? A Twenty-three or twenty-four years ago.

Q And how long did you continuously live there until you moved to your present abode? A I think it is one or two years.

40 Q Do you farm what is known as the Lane farm now? A Yes, sir, I farm it a little.

Lewis Lane, direct.

Q Do you know this road leading in from Wall street? A Yes, sir.

Q Have you been accustomed to using it as a public street? A Yes, sir, always use it.

Q Had you any agreement with Mr. McIntyre, or Mrs. Julian? A No agreement with anyone. No one said I could use it. I always used it same as any other public street. 10

Q Have you used it continuously? A Yes, sir.

Q Do you know whether the municipal authorities of the Township of Eatontown exercised any control over this road? A They graded that up the first year I was there.

The Court: Twenty-four years ago?

The Witness: Twenty-three or four years ago. 20

The Court: When you say they graded it up, be a little more specific, what did they do?

The Witness: They used the grader, a large four-horse grader, scraper some would call it. They took the dirt from the sidewalk and put it in the middle. They left a pathway on the west side of this road. A fence was there at that time. They left the sidewalk there and on Mrs. Julian's side, and graded it up, rounded it up. 30

The Court: How wide was the road when they got through with it?

The Witness: Forty, fifty or sixty foot road.

The Court: And they left five or ten feet for each sidewalk?

The Witness: Yes, sir, each side. 40

Lewis Lane, direct.

Q Were you employed by the Township of Eatontown at that time? A Yes, sir, I supervised the grading.

The Court: Were you the road supervisor at that time?

10 The Witness: No, sir, I was not. I had nothing to do with the road. I was only employed by the township.

The Court: Were you paid for doing this work?

The Witness: I was paid by the township for doing this work and that other work.

The Court: What other work?

The Witness: Other roads.

20 Q You worked on the township roads in that territory? A Yes, sir, in that territory.

Q And this was one of them? A This was one of them.

Q Now, Mr. Lane, what people were in the habit, if any, to use that road? A Why the public.

The Court: What for?

30 The Witness: To come into my place to use the other road.

The Court: To go out Locust avenue?

The Witness: At that time I was living on the farm and they used to come in there. There was a driveway there and a man could drive in there. If he wished he could go on through and come out the other road. When coming up Third avenue we drive in there, turn there and go back.

40

Lewis Lane, direct.

The Court: You mean a man could go out Locust avenue?

The Witness: Yes, sir.

Q And people who came in Locust avenue could go on through there, out Monroe street?

A Yes, sir, they did it this last summer.

10

Q They did it last summer? A Yes, sir, until it was closed up.

Q After it was opened they continued to make use of this road? A Yes, sir.

Q How many people a day went through, on an average? A There has been six or seven cars in at a time, at the barn, buying asparagus, or produce. They came in that way most of the time. They come in that way and from Locust avenue, and go on out Locust avenue to the golf clubs. Then they come in from the golf clubs and go out the other way, this last summer.

20

The Court: Through Monroe street?

The Witness: Yes, sir.

Q You had no private agreement with Mr. McIntyre or anyone else as to the use of that road? A Mr. McIntyre never said a word to me about it, and I have never to him.

30

The Court: What was your relation to Isaiah Lane?

The Witness: I am his son.

The Court: Do you know if he had anything, any agreement with Mr. McIntyre?

The Witness: Never; I heard him say he was going to continue the road to the main street out here.

40

Lewis Lane, direct.

Q Did he say that was the agreement between himself and Mr. McIntyre? A That is what he told me.

10 Q Why didn't that ever go through? A We had a neighbor and it had to go through some of his ground, and he made a kick about it, against it.

Q So far as your father was concerned? A Mr. Chamberlain, to the north, towards Broadway, always stood in the way of a road going through. He was always against any seemingly public improvement. He owned property there and he couldn't go out until he had to go over someone else's ground.

20 Q Mr. Lane, during all these years you have known this street to be open, have there ever been any obstructions to stop people going freely across it? A There hasn't been anything there for twenty-three or twenty-four years.

The Court: Some mention has been made of a stone; do you know anything about a stone?

30 The Witness: I don't know of any stone being placed there, except a large brick there. It lays there today. I can tell you what it is. We had some snow, and sometimes snow will obstruct a road, and someone drove on Mr. Hayes' lawn and it hurt him a little bit. He laid an old stake down in the street. It was an old stake—I don't know where he got it from—he laid it there so as to keep us off the lawn. That is as far as I know about it.

40 The Court: How long did that remain there?

Lewis Lane, cross.

The Witness: That didn't remain there long. You could drive right over it.

The Court: Can you drive over this brick that is there?

The Witness: You can drive over this brick now. You can go anywheres on there.

The Court: How wide is it? 10

The Witness: You can drive three cars at once over it if you want to.

Q There is enough of the traveled track for that? A All roads are traveled more in the middle. We put the best part of the gravel in the middle. The road in the middle is harder and keeps there.

Cross examination by Judge Heisley.

20

Q You say you drove on Hayes' lawn and cut up his grass? A When the snow was on the ground you couldn't see where you were going. We cut on Mr. Hayes' corner in going out.

Q Where was his corner, as regards the beaten path in this road? A His corner as regards the beaten path?

Q Yes, right alongside of it? Right alongside of it? A Right alongside of the beaten path. 30

Q And that is where he put the stake? A The old piece of stick about four feet long.

Q He laid it cross-wise? A Laid it on the corner of the ground, tried to drive it in.

Q So as to keep people on the beaten path? A So as to keep people further off, yes, sir.

Q When was that? A That was three years ago this winter. We had a lot of snow.

Q Do you regard the driveway in from the Lane house out to Locust avenue as a public 40

Lewis Lane, cross.

road, or is that the lane into the house? A It is a public road, which was there for the last thirty or forty years.

Q You don't think that the people owning the Lane lot have the right to close that Locust avenue lane? A No, it is public. Lots of
10 people come through there. Most people come in from Monroe street.

Q How wide is this driveway in from Locust avenue, a single track road? A There is room for three cars.

Q The one from Locust avenue? A That is just a drive road, about twelve feet wide. There was a gate there. The posts are there yet.

20 The Court: How long has the gate been away from there?

The Witness: Twenty-five years.

The Court: Have you ever stopped anyone from using it?

The Witness: Never thought of it.

Q Because they were doing business with you? A I would like to see anyone come in.

30 Q You would no more think of stopping them from coming in to do business with you than Steinbach would stop anyone from coming in his front door? A No.

The Court: Would you stop them if they didn't do business with you?

The Witness: No.

The Court: Do I understand you to say you haven't any right to stop them?

40 The Witness: I don't think I have, no.

Lewis Lane, cross.

Q Do you know Dr. Hoch? A Yes, sir.

Q And do you know Mr. Tilton? A Yes, sir.

Q And do you know Mr. Van Sickle? A Yes, sir.

Q And Mr. Tausig? A I don't know him by that name. I know who you mean but I don't know his name. 10

Q Do you recall last summer when these four men whose names I have called your attention to, and you, met at this alleged road, or right in that neighborhood, and when Dr. Hoch spoke to you about this road, of your saying to him, "Why, doctor, I have had permission to use that road for thirty-three years, and my father before me." Did you say that or not?

A I did not.

Q Did you say anything like it? A I did not, or anything like it. 20

Q And didn't Dr. Hoch say to you, "And now the permission ends"? A He didn't. I don't recall it. I didn't hear it.

Q Or anything like it? A I didn't hear it.

Q Did you meet there with those four men?

A Yes, sir, I did meet there.

The Court: What was said there about permission, at that time? 30

The Witness: I don't remember anything about permission being said.

The Court: Was anything said at that time?

The Witness: He and Mr. Tilton were talking of leaving a twelve-foot driveway. I said a twelve-foot driveway isn't enough, I said, for two or three cars, and Dr. Hoch said, "One can stop on Wall street and let 40

William E. Morris, direct.

the other one come out." That is all that was said about it.

10 WILLIAM E. MORRIS, called out of order by the defendants, duly sworn for defendants.

Direct examination by Judge Heisley.

Q Mr. Morris, you hold what position in Eatontown Township? A Township collector.

Q How long have you been the collector? A This is my fifth year.

Q Have you access to the books and vouchers and paid bills and payrolls and minutes of the township committee? A Yes, sir.

20 Q And you have been subpoenaed and have been instructed to make examination of all those papers for the purpose of ascertaining whether the Township of Eatontown ever did any work of any kind, or expended anything on the development of the alleged roadway in question, isn't that so? A Yes, sir.

Q Have you made such examination? A I have.

30 Q A thorough examination? A Yes, sir.

The Court: When did you make it?

The Witness: Just this week.

Q Has your examination been complete? A Of course, I have not examined every paper in the township. They run back to 1873, and there are a number of papers I can't get access to. They run back to 1873, in April.

40 Q To what year have you gone back? A 1900 in the vouchers, and 1873 in all minutes and ordinances.

William E. Morris, cross.

Q Now, in your research have you found any reference of any kind, or anything relating to doing of work or furnishing material, or exercising of authority by the township committee over this disputed territory? A I have not. I want to say I have examined the minutes from 1873 very carefully up to 1908, when West Long Branch Borough was separated from Eatontown Township, and I can find nothing there relating to this road or street in question. 10

Q And as to the bills during the other dates you mentioned; you find no bills? A The bills are made out, not specifying the road they are made out for. It is assessment tax work.

The Court: Without indicating where the men worked? 20

The Witness: Yes, sir.

The Court: So, if a man had worked a day, or part of a day on this Monroe street, there would be nothing on the vouchers to indicate that?

The Witness: No, sir.

Cross examination by Mr. Stevens.

Q Did you see among those vouchers, vouchers in the name of Elija Williams, for work on the roads, back in 1901 and 1902? A No, I can't recall the names. I remember James B. Jamieson. 30

Q Did you see Louis Lane, among the vouchers? A Yes, sir.

Q But nothing specific as to where he worked? A I brought vouchers with me and all the minutes and the ordinance books. 40

Solomon Sherman, direct.

The Court: If a man did work for one of the overseers?

The Witness: This was designated as District No. 3.

The Court: With an overseer?

The Witness: Yes, sir.

10 The Court: If he employed men by the day would he make out bills, or would the men make out the bills?

The Witness: He would make out the bill and the number of days.

Q And would specify the street or road they had worked on? A No.

20 SOLOMON SHERMAN, duly sworn for complainant.

Direct examination by Senator Stevens.

Q Mr. Sherman, where do you live? A West Long Branch.

Q How long have you lived there? A I have lived where I live now, twenty years last
30 past.

Q And prior to that where did you live? A On the upper end of Wall street.

Q So that you have lived in the borough about how long? A Forty-six years tomorrow.

Q All your life? A Yes, sir.

Q You have lived where you are now how long? A Twenty years last past.

Q How near is that to this so-called Monroe street? A 175 feet.

Q On the same road, on Wall street? A
40 Yes, sir.

Solomon Sherman, direct.

Q During all the time you have lived there, Mr. Sherman, has Monroe street, from Wall street north, to the Lane farm, been open to travel? A Yes, sir.

Q Free, uninterrupted travel by anybody who wanted to go across? A Yes, sir.

Q Did anyone ever stop you from going in, or inquire upon what right you traveled that road? A No, sir. 10

Q Did you use it? A I used it a good deal going across to the golf club.

Q Have you seen others driving over it? A No, sir.

Q Was there anything to impede traffic? A Not until last summer.

Q How long, of your own knowledge has that condition prevailed? How long has that been an open street, leading into Lane's farm? A I don't know. It has been there ever since I have been there. It has been there ever since I have been on Wall street. 20

Q That is how long? A Twenty years last past.

Q Can you remember it before you moved where you are now? A Yes, there has always been a road there.

Q Do you remember its being graded and patched up? A No, sir. 30

Q Did you ever ask anybody for permission to pass over this road? A No, sir, never.

Q Did you ever hear of anyone questioning the right of the public to the use of that road? A No, sir.

The Court: Did anyone ever notify you not to use it?

The Witness: No. 40

Solomon Sherman, direct.

Q Did you ever see any obstructions placed there? A No more than a couple of years ago Mr. Hayes laid out some sticks along the sidewalk to keep them from going on the grass, that is all. That is all I ever saw.

10 Q Does this road adjoin another road at the Lane farm, that leads out to Locust avenue?

A There is a road comes from Locust avenue.

Q Do you know whether travel comes in one road and out the other? A I have seen horses and buggies go through.

The Court: Can you actually go through that way?

The Witness: Yes, sir.

20 The Court: There is a regular road around there?

The Witness: Yes, sir.

The Court: That is frequently traveled?

The Witness: Yes, sir.

Q Have you seen automobiles go through that way? A Yes, sir.

Q Have you seen people go from Wall street through this road and out to Locust avenue? A Yes, sir.

30 Q How long has that been opened? A Ever since I can remember.

Q Your family uses this road? A No.

Q Your own family? A If we should happen to be going to Mr. Lane's.

Q The public generally, in the neighborhood, uses the road? A Yes, sir.

Q Have you seen the municipal authorities do any work on this road? A I have seen Elwood scrape it several times.

40 Q Elwood who? A Elwood Farry.

Solomon Sherman, cross.

Q Have you seen anyone else than Mr. Farry? A I have seen them cart gravel in there.

The Court: How much space was covered by the gravel?

The Witness: Twenty-two feet.

10

Q How long? A I couldn't say.

Q How far back does it go? A I think to the rise of the hill.

Q How far is that from Wall street? A Two hundred and fifty feet.

Q So it is the full length of the Julian lot? A Yes, sir, the full length of that lot.

Cross examination by Judge Heisley.

20

Q Now, you say you can drive around from Wall street, through the Lane property and go out on Locust avenue? A Yes, sir.

Q And you do that by driving between Lane's house and his barn, isn't that so? A Yes, sir.

Q Both of these roads, if they are roads, run into Lane's backyard? A Yes, sir, they run between his house and wagon house, right around his house.

Q And before this alleged road was in existence, the other road stopped at Lane's yard? A I suppose it did.

30

Q So now the situation is simply this, that there is an opening there cutting between the Lane farmhouse and the outbuildings, and there is an entrance from Locust avenue and an entrance from Wall street to Lane's house? A Yes, sir.

Q How wide would you say that the traveled portion of this road was? A Twenty feet.

40

Elwood Farry, direct.

Q It has always been about that, has it? A It has been that way ever since the gravel has been on it.

Q That would be the portion that was used by the public? A Yes, sir.

10 Q You have used this to go into the golf club? A I go in there and across Mr. Lane's field.

Q Did anybody ever tell you not to go across Lane's private field? A No, sir.

Re-direct examination by Senator Stevens.

Q They could use the whole width of this road if they wanted to? A Yes, sir.

20 Q It wasn't ever used for anything else, was it? A No, sir.

Re-cross examination by Judge Heisley.

Q This gravel would end where; it would begin out at Wall street and how far would it go? A It goes in back past the end of Mr. Hayes' barn.

Q But they didn't gravel Lane's back-yard between his house and his barn? A No.

30

ELWOOD FARRY, duly sworn for complainant.

Direct examination by Senator Stevens.

Q Mr. Farry, where do you live now? A West Long Branch.

40 Q And how long have you lived there? A I have lived there going on eight years. It will be eight years the first day of April coming.

Elwood Farry, direct.

Q Do you occupy any position in the borough?

A I am working for the borough now.

Q In what capacity? A Scraping and taking care of the roads.

Q That is your work, taking care of roads?

A Yes, sir.

Q Do you know this Monroe street? A 10
Yes, sir.

Q Do you know of your own knowledge how long it has been opened? A Well, I think it has been opened about, as near as I can remember, about thirty-five years, and probably, maybe thirty-seven or eight so far as I know.

Q And during all that time the public used it? A I couldn't say about that, only within the last eight years. I was not in West Long Branch.

20

The Court: Prior to the eight years where did you live?

The Witness: I lived in Long Branch.

Q But you have known of this road? A Yes, I have known of this road being there long before I came to Long Branch.

Q Did you ever use it before you went to Long Branch? A No, sir.

Q Did you ever drive over it yourself? A 30
No, sir.

Q How did you happen to know it? A Well, I have carted stuff in there.

Q Well, you have used it then. A Yes, with a team working on the roads.

Q You say you know of this road for the last thirty-five years? A Last twenty-five years.

Q How do you know it? A I know it was open.

40

Elwood Farry, direct.

The Court: Before you moved to West Long Branch, how did you know that road was there?

The Witness: I have seen rigs go in there.

The Court: You have seen the road?

10 The Witness: I have seen wagons going in there. Of course, I didn't go in.

Q During the last six or seven years you have been working on the streets? A Yes, sir.

Q What work have you done there? A Well, I scraped it.

The Court: On this particular road?

20 The Witness: Yes, sir, and I carted gravel in there, and spread it.

The Court: When did you first begin to do work on that road? You have been working for the borough for the past eight years?

The Witness: Seven years, going on eight.

The Court: How many years ago was it you began to do work on this street?

30 The Witness: Seven years ago.

Q Tell the Vice-Chancellor what else you have done.

The Court: During the past seven years what have you done on it?

40 The Witness: I have scraped it, and opened the snow on it in the winter, and Mr. Hayes and Mr. Lane asked me if I wouldn't cart some gravel in there and fill up the mud holes.

Elwood Farry, direct.

Q Did you do it? A Yes, and filled up the mud holes and spread it.

Q At the expense of the borough? A Lane and Hayes didn't pay for it.

Q What else have you done? A That is about all I have done.

The Court: Did you put any more gravel on except this to fill up these holes? 10

The Witness: Filled up the holes and I had men there to spread it.

Q From time to time you have dumped a load in there and spread it? A Yes, sir.

Q And you generally gave it some supervision? A Yes, sir.

Q Were you told to do this by any borough official or did you do it on your own responsibility? A I done it to accommodate Mr. Hayes and Mr. Lane. 20

Q Are you employed by the month? A Yes, sir.

The Court: Did you put in vouchers for work on this road?

The Witness: No, sir.

The Court: How did the Mayor and council know you were doing work on this road? 30

The Witness: It didn't take me long.

The Court: Did you tell them?

The Witness: No, I didn't tell them.

The Court: Was there any street committee?

The Witness: No.

The Court: Did they see you working there? 40

Elwood Farry, direct.

The Witness: I don't know.

The Court: Did they know you were working there?

The Witness: I don't know whether they did or not.

10 The Court: Was Mr. Slocum there at any time to see you working on that road?

The Witness: I don't know.

The Court: Why did you work on that without an order of the township authorities?

The Witness: I just done it as a favor.

The Court: Why didn't you charge Mr. Hayes?

The Witness: We was good friends.

20 The Court: Why didn't you charge Mr. Hayes instead of the borough?

The Witness: I didn't ever charge anybody.

Q Now, when the State Highway Commission carted the gravel in there from the State road, did you spread it? A No, sir.

Q Who spread that? A I don't know.

30 Q Was there such dirt carted in there? A I saw the trucks in there dumping it.

Q You didn't supervise the spreading of it? A No, sir, I had nothing to do with it.

The Court: When you cleared the snow and dumped that gravel and scraped the road, did you do it as an accommodation for Mr. Hayes and Mr. Lane, or as work of the borough?

40 The Witness: No, I did it because Mr. Hayes and Mr. Lane asked me.

Elwood Farry, cross.

The Court: You didn't do it as part of your borough work?

The Witness: No, sir.

Cross examination by Judge Heisley.

Q Now this dirt that they are talking so much about, wasn't it dirt that you had taken off other streets and you would take the load of it somewheres to the most convenient place to put it, and you put it there because Mr. Lane and Mr. Hayes requested you to fill up the holes? A Yes, sir, that is very true. 10

The Court: Which Mr. Lane are you referring to?

The Witness: Louis Lane. 20

Q It was surplus dirt, off of other roads that you had to get rid of somewhere, and this was the most convenient place to put it? A Yes, sir.

Q Now, Mr. Farry, how many times do you suppose you carted dirt in this road, just your best recollection? A I have carted it in, a little almost every year, except the last year or two. 30

Q Just the same dirt, surplus dirt? A Yes, sir.

Q How many times have you ever run your snow scraper in there? A I couldn't begin to tell how many times.

Q Many times, isn't it? A Yes, a good many times.

The Court: Did you do that at the request of Mr. Hayes and Mr. Lane? 40

Elwood Farry, re-direct.

The Witness: Yes, sir.

The Court: Wouldn't you do it when you weren't requested to?

The Witness: I did do it sometimes.

Senator Stevens: You were doing that all over the borough?

10 The Witness: Yes, sir.

Q When you scraped the road, would you do that at the request of Mr. Lane and Mr. Hayes? A Sometimes I would, and sometimes I wouldn't. I would go in there anyway.

Q What prompted you on other occasions to go in there and scrape the road?

The Court: When Hayes and Lane didn't ask you to?

20 The Witness: Because it was packed up with snow.

Q I mean when there wasn't snow, in the spring and summer? A I didn't go in there very often, only when the roads were bad and cut up.

Re-direct examination by Senator Stevens.

30 Q You thought it was a public street, didn't you? A I thought it was an open street, of course, I did.

Q You didn't think it was a private road? A No, I thought it was an open street, that is true.

Q You scraped it just as you did on other streets? A Yes, sir.

40 Q Didn't other people ask you to scrape other streets and put down a little gravel? A Yes, sir.

Elwood Farry, re-cross—re-direct.

Q And you would drop a load here and there? A Yes, sir.

Q You were being paid by the borough? A Yes, sir.

The Court: Did Mr. Lane or Mr. Hayes ever pay you for doing any work on that road? 10

The Witness: Not a nickel.

Re-cross examination by Judge Heisley.

Q How many times, how often, did you scrape this road? A I couldn't say.

Q Won't you give us an idea?

The Court: A number of times, or a few? 20

The Witness: A good many times.

Re-direct examination by Senator Stevens.

Q Did you ever trim the sides? A No, sir.

Q Did you ever see it obstructed by anyone, from free travel over it? A No, sir.

Q You have seen it frequently used? A By cars going in and out, both ways.

Q And have you seen them go through the Lane farm from Locust avenue and through Monroe street into Wall street? A Yes, sir. 30

Q Have you done that, too? A Yes, I have been in and out there, in one way and out the other.

Q And were the public in the habit of doing that? A Yes, sir.

Q And would they go in one street and out the other? A Yes, come in Monroe street and out Locust street. 40

Lewis Lane, further cross.

Q And that has been a well-defined road over a period of years? A Yes, sir.

LEWIS LANE, duly recalled for

10 *Further examination by Judge Heisley.*

Q Mr. Lane, do you know Mr. William M. Hayes? A Yes, sir.

Q Do you recall when the Julian house, now owned by Dr. Hoch, was partly burned? A Yes, sir.

Q And do you recall at that time of Mr. Hayes, who owned the house, asking you to take a stone or some debris that had been burned, out on this alleged street? A Yes, sir.

20 Q He paid you for it, didn't he? A Yes, sir.

Q And you carted it out there? A I carted it away, yes, sir.

Q And you carted it out into this street? A Some I did, and some I threw on the ground there.

30 The Court: What was the character of this debris?

The Witness: Ashes and slate.

The Court: And what did you do, dump it in the road?

The Witness: I dumped it nearer the house than I did in the road.

The Court: Whatever you dumped there, did it interfere with the use and travel over the road?

40 The Witness: No, sir. It made it a lot better. I did it for that purpose.

James Atchison, direct.

The Court: Did it interfere with the use of the road?

The Witness: No, sir.

Q Let me show you a picture. You can identify this picture of the roadway. I show you what appears to be a pile of dirt or debris of some kind. Isn't that a pile which was a part of the debris which you carted from that burned house? A No, sir, it wasn't. 10

Photograph marked Exhibit D. 3 for identification.

JAMES ATCHISON, duly sworn for complainant, for 20

Direct examination by Senator Stevens.

Q You live in West Long Branch? A I do.

Q How long have you lived there? A Twenty-nine years.

Q What is your official position? A Collector of the Borough of West Long Branch.

Q Collector of taxes? A Yes, sir. 30

Q Are you familiar with this property in dispute? A Yes, sir, I am.

Q Do you know what use this strip has been put to during the last twenty-nine years? A It has been a means of ingress and egress for public travel.

The Court: Have you lived there for all twenty-nine years in the neighborhood?

The Witness: Yes, sir. 40

James Atchison, direct.

The Court: Have you traveled over it yourself?

The Witness: Yes, sir.

Q Do you know the width of the road? A Approximately the same width as Monroe street.

10 Q Is there much travel on that road? A Well, I couldn't answer that question directly because I come around at the time of day that the main travel would be there. There is a fair amount of travel.

Q Have you seen the vehicles, or people passing over Monroe street, go through and out Locust avenue? A I have, and I have done that myself. I did it on one occasion when the snow was impassable on Wall street and I couldn't get past.

20

The Court: Did you consider you had the right to do that without consulting Mr. Lane?

The Witness: Yes, sir.

The Court: You regarded that as a thoroughfare?

The Witness: Yes, sir.

30 Q It is well-beaten, isn't it? A Well-beaten, yes, sir.

Q Have you examined the records of the borough to ascertain whether this roadway has ever been assessed for taxes to either Mr. Hoch, or Mr. Tilton? A I have only worked on the present taxing map.

Q Since 1915? A Yes, sir.

40 The Court: You are in possession of the duplicates now, are you?

James Atchison, cross.

The Witness: Yes, sir.

The Court: Since 1915?

The Witness: Yes, sir.

The Court: Independent of this duplicate do you know anything about the assessment on the property?

The Witness: I don't; I couldn't just tell about the lines. 10

Q I thought you had worked directly. A Only as I say, by this taxing map. It is Block 21 and lot 36, in Block 37.

Cross examination by Judge Heisley.

Q You say this road was the same width, approximately, as Monroe street? You don't mean to say that the used portion was that wide? A No, the crown of the road. 20

The Court: Admittedly the part of Monroe street is not used from curb to curb.

Judge Heisley: Where they claim under adverse user, our point is that all they can claim is what they have used. My point is if they were entitled to a decree it would not be for the whole width. 30

The Court: Not unless they prove the use of it.

Nicholas White, direct.

NICHOLAS WHITE, duly sworn for complainant, for

Direct examination by Senator Stevens.

Q Mr. White, where do you live? A Long Branch City, now.

10 Q And have you lived in West Long Branch?
A Yes, sir.

Q For how long? A Fifty-three or fifty-four years.

Q In the neighborhood of Monroe street? A Well, not far from it, perhaps three-eighths of a mile from Monroe street, maybe not so far.

Q You are well acquainted with Wall street and the territory in the neighborhood of Monroe street? A Yes, sir.

20 Q Do you know the Hoch property, the Julian property? A Yes, sir.

Q And are you acquainted with the Tilton property, on the other side of Monroe street, the Frank Tilton property? A I know the Tilton property.

Q Do you know the road that leads from Wall street to the Lane farm? A I do.

Q What has been the use that that road has been put to during the last several years back?

30 A They used it for driving out and in there.

The Court: For how long?

The Witness: Since about 1897, I think, if my memory serves me right, and I guess it does.

Q Have you used that road yourself, Mr. White? A Yes, sir.

Q Have you worked for the borough? A I have been marshal there. That is all the work
40 I did.

Nicholas White, direct.

Q Did you ever do any work on the road itself? A I did work on the roads but not on that road.

Q Have you seen the borough work that road, scrape it? A Yes, I think I have.

Q Are you sure? A Yes, I am sure, I have seen the borough scrape it.

Q How long ago? A Perhaps three or four or five years, I couldn't tell about that. 10

Q Have you seen any gravel being placed on the road? A I don't remember about that.

Q Is it graveled? A I don't think it is, if my memory serves me right.

The Court: When were you last on the road?

The Witness: I think I worked on the road last, about five years ago. 20

Q Who were you working for then? A Working for the borough.

The Court: What did you do on the road?

The Witness: Cut the grass and pulled it.

Q Mr. White, do you ever remember seeing this road at any time cut off to the use of the public, during the last twenty years? A Not to my knowledge until the doctor and Tilton cut it off; not before that to my knowledge. 30

Q Were you ever forbidden to trespass over that road? A No.

Q Did you ever ask permission to use it? A No.

Q Do you know whether that road leads around the Lane house and over to Locust avenue? A It travels up to the Lane house and 40

Nicholas White, direct.

then straight up the other side of Lane's house to Locust avenue.

Q Were the public in the habit of using it? A So far as I know it was.

Q Have you seen it used? A Yes, sir.

Q By the public? A Yes, sir.

10 Q Have you seen any obstruction placed in the road where it joins Wall street, a stone or anything of that sort, spoken of here today? A Never saw any stone.

Judge Heisley: That is all.

Senator Stevens: There is a lady witness who is very important. She is at present in Miami, Florida. I would like the right to reserve her testimony.

20 The Court: With that reservation the complainant rests.

Judge Heisley: May I make this suggestion; all the witnesses we will have will be along the same line except that we are going to show an obstruction, and that there was permission for Mr. Lane to use the road.

30 The Court: Senator Stevens also reserves the right to call the assessor and produce the assessor's books and other information in his possession.

William L. Hayes, direct.

Transcript of testimony taken before Nicholas W. Bindseil, Master in Chancery of New Jersey, by consent, at the City Hall, Long Branch, New Jersey, on Thursday, the 10th day of April, 1924, at 10:30 o'clock, A. M.

Appearances:

Wm. A. Stevens, Esq., for complainant.

10

Benjamin P. Morris, Esq., and Wilbur A. Heisley, Esq., for defendants.

It is hereby stipulated and agreed by and between counsel for the respective parties, that the testimony of the witnesses may be taken stenographically, afterwards reproduced in typewriting, and that the signatures of the witnesses to their said testimony may be waived.

Mr. Stevens: I would like to have it appear upon the record that with the exception of one witness, the assessor, to show that the property was never taxed in the confines of the alleged street. We are ready to rest and do rest with that exception.

20

WILLIAM L. HAYES, sworn for defendants.

Direct examination by Mr. Heisley.

Q You have lived in Long Branch how long?

30

A I have lived in Long Branch for forty-five years.

Q Do you know this property in question, up there at West Long Branch? A I think I ought to.

Q And you owned it at one time? A I did.

Q And you finally sold part of it to Dr. Hoch, by deed dated December 31, 1921? A I thought I was selling it all.

40

William L. Hayes, direct.

Q How near to this alleged driveway or street did you live, and for how many years? A I lived there for fifteen years.

Q On the property? A On the property, myself.

Q Do you recall what time it was that you began living there and when you moved away?
10 A Sixteen years back about. I owned it for sixteen years and then I moved there in the middle of the year, I suppose.

Q You mean the house where Dr. Hoch lives now, the house that he owns? A Yes, sir.

Q And which you subsequently sold? A Yes, sir.

Q Did you live there, when you did live there, all the year round, or only in the summer time?

A The year round excepting one year I rented
20 it.

Q You owned the strip of land over which it is said by some people that there is a road. You know that strip of land? A I know that strip of land, yes, sir.

Q During the time that you owned this property and lived there did the Township of Eatontown, or the Borough of West Long Branch ever work it, or improve it? A Nothing under my orders, if I went there and asked them for a
30 load—when they were scraping the street, out in Wall street—of sand to fill up holes or anything, they generally brought it in to me.

Q But did the Township of Eatontown or Borough of West Long Branch, ever make any claim to you that they had a road there which they were going to work? A Never, sir.

Q It has been testified in this case that sometime they carted dirt in there off of Monmouth Road, when that was being scraped. A That
40 was my doings. I went there and asked for it,

William L. Hayes, direct.

and asked the man carting it, and he brought it over there and I tipped him for bringing it in there.

Q It was not done at the instigation of the borough? A No. They had nothing to do with it whatever. Whoever said they had told a lie.

Q Do you know a man named Farry? A 10
I do.

Q He was the road man for the township or borough? A For the borough. I didn't live there when it was Eatontown Township. It was a borough when I lived there.

Q Did Mr. Farry ever work it except at your request? A Never.

Q Do you recall there being a hollow there at one time and there was something put in it? A Yes, sir. 20

Q Tell the Master how that came to be done. A The water used to stand there up towards my apple tree, which stands out in the road— whoever heard of an apple tree standing out in the road—in this strip.

Q In this strip? A Yes. There is where I broke my leg. That apple tree cost me \$800.

Q Where does this apple tree stand? A At the upper end of the lane, about twenty-five feet from the back lane. 30

Q Where do you mean by the upper lane? A The back lane—the lower end of the lot.

Q Up towards the Lane farm? A Yes, sir.

Q How far would you say it stood from Lane's property? A I should judge twenty-five or maybe thirty feet. I can't say positively.

Q How far would you say it stood to the east or west line of this strip? A I should judge about fifteen feet—fourteen or fifteen, as near as I can judge. I never measured it. 40

William L. Hayes, direct.

Q What is the diameter about, of that tree, at the base—at the present time what would you say? A I should judge it was two feet around it.

Q It is an old tree? A Yes, sir, and a fine one, too.

10 Q Do you know anything about a stone which is in the— A (Interrupting) I do know about that stone for I put that stone in myself.

Q I show you a photograph marked Exhibit D. 3 for identification. Do you recognize that. Here is the Dr. Hoch property, where you lived? A Yes, sir.

Q This photograph shows a stone or something up out of the ground right here (indicating), at the easterly end of the worn portion of that tract, there in the edge of the grass. Is that the stone you refer to? A Yes, that is the stone.

Q When did you put that stone there? A About five or six years ago. Six years ago, about.

Q Give us your best opinion, because that is important. A We will say six years ago. That is near enough.

Q How big a stone was that? A About that long (indicating, about three feet long).

30 Q How wide would it be at the top? A It was kind of a round oval stone. I put it in there. First I put in a log and the Antonides boys come down there and took it out.

Q When did you put the log in? A The same year.

Q Before you put in the stone? A Yes, sir.

Q How big a log was that? A About five or six inches.

40 Q How long was it? A I don't know. I dug it down as far as I could dig with a spade.

William L. Hayes, direct.

They come over one night and pulled it up, the Antonides boys. I told them I would skin them if I caught them again, because Antonides when he turned around the corner was cutting my grass down, and I wouldn't allow him to come on that side of the road, and never would allow him to. I laid stakes out and if I didn't have a right to I wouldn't have done that.

10

Q When did you lay stakes out—for how many years? A Four or five years. First they never bothered me. They ran right up one track, and as soon as they got running over on the side I wouldn't allow them.

Q When do you say it was you first—what year was it you first laid stakes or boards or logs out? A I done it the first year I moved there. I had possession of my property. I thought I owned where my deed called for, and I believe I did, too. And I believe so yet.

20

Q You bought this property of Sheriff Francis by a deed dated October 25th, 1906; that is 18 years ago? A Very likely, sir.

Q How soon after that did you begin putting stakes or anything else on any portion of the property in dispute. When did you begin doing that? A I didn't do it the first year because I allowed Antonides to live in there. I let him live that year out.

30

Q In the Hoch house? A Yes, I allowed him to live there.

Q When was it, as near as you can tell, that you began putting those stakes, or logs on top of the ground? A The second year after I bought it.

Q That would be seventeen years ago? A Yes, sir.

Q Now what were the things—tell the Master what were the things you put on top of the

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William L. Hayes, direct.

ground? A I had John Whiting give me a lot of old planking and I carted them up there—they was just kindling wood, and I used to lay them out even to the ruts so that the people could go through. I used to keep this grass cut with a lawnmower.

10 Q The grass in this disputed strip? A Yes, sir, sure I did.

Q Is this true, that you put these sticks and pieces of lumber on this grass so as to confine the people going into the Lane farm to the beaten path? A I certainly did. That was my intention.

Q Did they ever dispute your right to do that? A Never, no; never run over them either. To the best of my knowledge they kept out of there.

20 Q Did I understand you to say you did that every winter? A No, not every winter, because sometimes they didn't bother me at all. Probably some of these people when they did go up there to get a few bunches of asparagus, they would turn out on the grass and I ordered them away and told them they would have to stop going up there if they did not follow that path.

30 Q How often would you say, do you think, during how many years, do you think you put out on top of this ground these pieces of lumber or other things? A Judge, I couldn't possibly say.

Q Did you do it more than once? A Half dozen times or a dozen. I can't answer that question.

40 Q Did the Borough of West Long Branch, or any of its representatives ever complain to you about your having those sticks on top of the ground? A Never. They never bothered me while I was up there.

William L. Hayes, direct.

Q Did they ever protest against it? A Never; never did.

Q Now I think some time the county contractors carted some dirt from Edward avenue and put it in this so-called street? A I got them to do it.

Q The borough didn't do it? A The borough had nothing to do with it whatsoever. 10

Q Or Antonides? A Antonides never had anything to do with it any way.

Q Do you know a man by the name of Louis Lane? A I certainly do; a nice old man.

Q Did you ever employ him to do anything with that road? A I didn't employ him, but I told him one time, I said, "Let me have a cart, I will fill up that hole." He says, "Will, I'll come down and help you." So we dug down the dirt and filled in the hole in the lane. 20

Q You had a road to the east of your house? A Yes, sir, but I didn't want the gravel cut up in the spring of the year. I never run in that way at all. Once in a great while I might drive out that way.

Q Did you ever tell Isaiah Lane, of Mr. Antonides that you would close the place up if they didn't stop running around all over it? A I certainly have. 30

Q Which Lane was that? A Lou Lane.

Q The son of Isaiah? A Isaiah was dead before I moved up there.

Q When was it, would you say, you told Lou Lane that? A When I first moved up there.

Q Did he ever make any claims, that it was a public road? A Never.

Q Or that it belonged to the borough? A No, that is a new line. Billy got that up for them. 40

William L. Hayes, cross.

10 Q Let me ask you this, Mr. Hayes, do you want us to understand, that during the whole time that you owned this property, that you cut the grass every summer in the disputed territory, or only some of the summers? A Every summer I cut my grass clear out to my road. Not summertimes, because the grass didn't grow so good. It didn't grow so good right near to the road.

Q Did you cut the grass on the other side? A Over on McIntyre's side?

Q Yes. A No, sir. I cut it down with a scythe because I didn't like the looks of it, but I didn't cut it with no lawnmower, only on my own side.

20 Q Mr. Hayes, how wide a strip of land would you say that the Lane people, or people going into the Lane farm used? How wide was the worn portion of this land? A Not over eight feet.

Q Little wider than a wagon? A A little wider than a wagon. Five feet is the tread of a wagon. About eight feet.

Cross examination by Mr. Stevens.

30 Q Prior to the time you acquired the property through this sheriff's deed, were you acquainted with this alleged roadway? Were you acquainted with its existence prior to the time you purchased the property? A I certainly knew the property.

Q Were you acquainted with this road that is in dispute, its existence? A Road? Nothing but a driftway, a wagon path.

Q Well, a driftway? A Yes, sir.

40 Q When you got the property, what divided your premises, that you lived on, from the road,

William L. Hayes, cross.

from this driftway? A Why there was nothing, only a hedge in front of the place.

Q What kind of a hedge? A A privet hedge.

Q Along the line of your property? A Miss Julian put in a little walk on the side of the entrance, to walk to the back door. It wasn't there when Miss Julian bought it. 10

Q You say it wasn't there when Mr. McIntyre bought it? A No, certainly it wasn't there when Mr. McIntyre bought it because there was nothing on the land before he built to it.

Q How wide is this strip of land, of which this driftway that you speak of as separating your property from the property of Mr. Tilton is part? A To the lane?

Q From your property to the Tilton house? 20
A To the line?

Q Yes. A About twenty-four feet.

Q Do you understand my question? I am asking you, from your hedge line to the Tilton fence line? A I told you, about twenty-four feet.

Q That is the best of your knowledge? A Yes, sir, that is the best of my knowledge, without measuring it. 30

Q Would you be surprised if you were told it was sixty feet wide? A It ain't, no matter what you say.

Q I asked you to the Tilton fence? A I had nothing to do with that over there.

Q When you first came there, Mr. Hayes, was this road used by traffic? A No. Once in a while a man would go up to see the Lanes.

Q Is it a fact or not that automobiles passed through there? A They got to come there to 40

William L. Hayes, cross.

get this asparagus. I drove lots of them out of there, but they never come up there again.

Q You mean you would go out— A Yes, and tell them this was private property.

Q Did you ever pay taxes upon this property?

A You can ask the assessor.

10 Q I ask you, did you? A I certainly did. I paid taxes on to it all. And they all got the money, too. There was no taxes on to it when I sold it.

Q I am speaking about the road. A Yes, sir. He assessed me \$50 more for a corner lot. Made a corner lot out of it then. It would make a lot out of it.

Q When was that, Mr. Hayes? A About two or three years ago.

Q Wasn't it assessed as a corner before that?

20 A Never; you can ask them, they know.

Q I am asking you? A I told you, no.

Q Do you say the borough officials did not take charge of this roadway and scrape it?

A Never. They scraped it once or twice at my request. It got muddy and I asked those fellows to scrape it down. I says, "You might as well do it for me." I says, "I pay about as big a tax as anybody here." So he run up there.

30 Q Who was that? A Farry, I believe his name was.

Q How many times did they do that? A About four or five times, not any more.

Q In the period of time you owned the property? A That was in the last years. First along they never was up there.

Q Was this roadway ever surveyed, to your knowledge? A I never had it surveyed.

40 Q I mean by the borough officials? A Never. If they did, they did it at night.

William L. Hayes, cross.

Q You say if they did it, they did it at night?

A They must have done it at night. In the daytime I was there.

Q In going to and fro, from your barn to the roadway in front of you, Wall street; how did you leave Wall street? A Backed up. Backed out by the apple tree and went down that lane.

Q You didn't use the other driveway? A No, I didn't use my driveway.

Q You didn't use the other driveway east of your premises? A Well, once in a great while.

Q Isn't it a fact that you had a fence up there, crossing off that roadway there? A No.

Q A wooden fence? A No, I had no fence there.

Q Mr. Lane and his family, and the people who lived in the lane used this road to get to Wall street? A When they come out that way, and when they went out to Locust avenue they used his own lane.

Q That lane was used, but you were the owner of the premises? A Yes, I allowed him to go up and down.

Q Visitors of the Lanes used this road; visitors calling on Mr. Lane? A Yes, sir.

Q Dr. Beach; have you ever seen him going up and down this road? A I have seen him go up and down lots of times.

Q Did you ever stop Dr. Beach? A No, he always went right in the road.

Q The beaten path you speak of, about eight feet wide; where was that located? A Right in the center. It comes about half and half, excepting in the back it tapers.

Q So that when you got out from your stable, or you came in from Wall street, you traveled partly on your own land, and partly on Mr. Til-

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William L. Hayes, cross.

ton's land, or the McIntyre property? A I certainly did.

Q Did you have some agreement between Mr. McIntyre and yourself for the use of that driftway? A Never.

10 Q Then you were trespassing upon Mr. McIntyre's property? A Yes, sir. As long as he allowed me to do it, I kept my grass, but as soon as he kicked then I would have put up a fence. I would have kept it up if I put it up, too.

Q Did you ever put a fence up there? A No, I never put up a fence because he wanted the way.

20 Q Outside of this stone that you placed in the road at the Wall street entrance, what did you do, if anything, to prevent the public from going over that road, back and forth, during the time you owned the property? A The only thing I did was to keep them from running on the grass. I didn't care if they run up there and didn't destroy my grass.

Q When you speak of the grass, do you mean the grass east of the hedge, or between the hedge and the center of the roadway? A Between the hedge and the driftway.

30 Q Between the hedge and the center of the driftway? A Yes sir, sure I did.

Q Did you ever see Mr. William Slocum—
A He never bothered me.

Q —on the premises? A Never seen him there in my life. I have seen him go by on Wall street, but I never seen him on that piece of property. He didn't ever come there and cut a fence down of mine.

40 Q The question was whether you ever saw him there? A I never saw him.

William L. Hayes, re-direct.

Q Were you acquainted with this property as far back as 1898? A I think I had a mortgage on to it then. I won't say positively, Billy.

Q 1898, that is twenty-six years ago? A Well, let me see; I don't know. I couldn't say positively.

Q I show you a photograph here endorsed, "George from Uncle Harry, May 31, 1898," and ask you if you recollect the property as of that time? A In when? 10

Q 1898. I point to this building and ask you if that is the building you owned? A I can't see it, not to recognize it. I didn't bring my spectacles.

Q You are not able to discern it? A I see the forms of it. And here is the old tank up here. 20

Q I show you this roadway; is that the roadway as you remember it, at that time? A Well, it didn't look like that; never did look like that to me.

Q Did you know George Palmer, Harry Palmer's nephew, George Palmer? A I know Palmer over there in the back of Hulicks, there on that back road. I don't know whether I know that fellow there. 30

Re-direct examination by Judge Heisley.

Q Mr. Hayes, you don't own any property there now, that is affected by this dispute, do you? A No, sir, I don't.

Q And you don't own any mortgage on it, and you have no interest in this? A I have no interest in this whatever.

Q You know Mr. Schultz? A I certainly do. 40

William L. Hayes, re-direct.

Q You have said in answer to Senator Stevens' question that you didn't have a fence there. Is it true or not? Do you recollect whether you had a dispute with Mr. Lane, that is Lou Lane, at some time, and you nailed up a board fence closing up the lane. Do you recollect that or not?

10 A If that was done, it was done to keep their cows out. I wouldn't allow their cows in my part of the lane. I wouldn't allow Lane to have his cows in my part of the lane.

Q Did you tell him so? A Yes, sir, I did tell him so.

Q I want to know this. You have said you didn't put up any fence. I am simply asking you to try to take your mind back to a time when you may have had a dispute with Mr. Lou Lane? A I may have done it at the time I was quarreling with him about the cows.

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Q But you don't remember it? A I don't remember it.

Q Was there a sidewalk on the east side of this driftway? Just to the west of this hedge?

A Why yes, I fixed it up and kept the grass out of it, for walking in, when I wanted to walk in.

Q And how far back did that sidewalk go?

A No further than my entrance into the kitchen.

30 Q It didn't go back to the line of this road?

A No, sir, it did not. I say it didn't go back there.

James Schultz, direct.

JAMES SCHULTZ, duly sworn for defendants,
for

Direct examination by Judge Heisley.

Q Where do you live, Mr. Schultz? A In West Long Branch Borough.

Q You know this disputed property, don't you? A Yes, sir.

Q How long have you lived in West Long Branch? A For about twenty-five years.

Q How long have you known this disputed property? A I have known it about twenty years.

Q Do you know the Isaiah Lane farm? A Yes, sir.

Q Did you always live in the neighborhood of that farm? A We were on the farm, or I was, rather, for some time, digging the potatoes after Mr.——— moved off, in the year 1911.

Q And other times did you live in the neighborhood of the farm, or you would go by there frequently? A I lived at Frelinghuysen's place, in the borough.

Q Was it 1911 or 1912 you dug the potatoes? A It was the fall of 1911. In the spring of 1912 I was there.

Q What did you do in the spring? A Sowed the wheat and cut the asparagus.

Q You didn't live on the farm—you simply worked there? A That is all.

Q Mr. Lou Lane had charge of the Lane farm at that time? A Yes, sir.

Q And the next spring you and Louis Parmentier bought the place. That would be in the year 1912? A Yes, sir.

Q Were you there frequently during 1912? A Until September.

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James Schultz, direct.

Q How often did you go there? A Every day, to milk the cows.

Q And during all that time was there a driveway into the Lane farm from Locust avenue, then called Lippincott Road? A Yes, sir.

10 Q And that is still there? A Yes, sir.

Q And was there also another driveway out, by an asparagus bed, to Wall street? A Yes, sort of a lane, but it was so sandy we never used it.

Q It was an outlet? A Yes, sir.

Q It is still there, isn't it? A Yes, sir.

Q The Lane farm, independent of this disputed tract of land, has a driftway out to Wall street, and a fairly good road out to Locust avenue? A Yes, sir.

20 Q Isn't this driftway out by the asparagus bed used a great deal by the people going into the golf club, from Wall street? A I think it is. I wouldn't say positive.

Q Do you recollect, while you were farming this Lane farm of Mr. William Hayes, the man who has just been on the stand, and Mr. Lou Lane, having some dispute? A Yes, sir.

30 Q Were you present? A Very close.

Q Tell us what the dispute was, Mr. Schultz? A Why it was about the cows. Mr. Lane's cows, I believe, got over on Hayes', and there was some dispute at that time.

Q What was the outcome of it? A Mr. Hayes went and got some boards, and from the end of the barn made a temporary fence to the middle of the lane.

40 Q Did it go to the middle of this disputed lane? A To the middle of the disputed lane.

James Schultz, direct.

Q From Hayes' barn, westward, towards the middle of this disputed driftway, is that right?

A That is right.

Q What was the effect of that fence, if you know, on the cows trespassing? A We at one time put a wire from that point across but the fence was only there a few days, and I don't know who took it down. It was taken down one night. 10

Q Was there a wire from the fence to the west side of the driftway? A I put it there myself. That was just to keep the cows out.

Q Keep the cows from going where? A Out on Hayes' property.

Q Out from this disputed tract of land? A Yes, sir.

Q Is this the fact, that that fence and the wire served to keep the cattle from going on this disputed territory, between that fence and the wire, and Wall street? A It was. 20

Q Did this place ever, to your mind, become a public highway, or road, of any kind? A Not only for people to come in after asparagus.

Q Into the Lane farm? A That is all.

Q It wasn't used by the general public? A Not that I ever seen whilst I was there. 30

Q Was it ever worked and graded by the borough, that you know of? A I don't know nothing about that.

Q Who made that sidewalk along the easterly side of the disputed territory? A I don't know. It was there when I was there.

Q How far back does it run, or don't you know? A I don't know, I couldn't say.

Q Did you ever use that piece of land to go back and forth to the Lane farm? A Yes, sir. 40

James Schultz, cross.

Q How did you come to use it? A It was the shortest way in.

Q Did you go there without getting permission or did you get permission? A No permission at all.

Q You didn't ask Mr. Hayes about it? A
10 No, sir, the first trip I went in there with Mr. Lane, and whilst he was there I used that.

Cross examination by Mr. Stevens.

Q Do you know if there was a fence on the west side of this lane, adjoining what is now the Tilton property, in 1911? A There was part of a fence at that time.

Q And were there posts, remains of a fence, dividing the lane from the Tilton property? A
20 Yes, sir, there was board posts, there were remains, but it was in poor shape at that time.

Q And they ran parallel with this road, into the Lane farm? A Yes, sir.

Q On the east side of this roadway or driftway, what separated Mr. Hayes' property from the road? A Why a hedge, a privet hedge.

Q That hedge ran from Wall street; do you recall how far? A I couldn't say, back quite
30 a step.

Q Beyond the barn? A No, it didn't pass the barn.

Q What separated the Hayes farm from this road back of the barn, until you got back to the rear of the plot, a fence? A Well the barn is near about on a line with the Lane property and between the hedge you could drive in either way, on the west side or on the south side to the entrance to the barn.
40

James Schultz, cross.

Q In 1911 or 1912, when you were working on the Lane farm just describe that roadway in from Wall street? A The condition?

Q Yes. A Well it looked just like driving across an old road. It wasn't very well taken care of, but Hayes, I believe, did cut the grass.

Q Was it a dirt surface, or grass? A Dirt surface, a trifle wider than the width of a wagon at that time. 10

Q And how frequently, during the course of a day was this right of way used by people going back and forth? A That is hard to tell. In the asparagus seasons there was quite some, there and in fall there was some, but not many.

Q Did the Lanes go in and out from there? A Not whilst I was there, only in the asparagus season. 20

Q How would they get out to the main road? A By way of Wall street.

Q When they came out, how did they get out to the main road? A By way of Wall street.

Q Do you remember the property back as far as the time when Mr. Frank Antonides lived in the Hayes house? A No, sir.

Q You don't? A No, sir.

Q Have you seen the township authorities working upon this road from time to time? A The only time I ever seen any work done there was when they graded Wall street, they put some dirt in there. The water run from the windmill to Wall street. There was a wash and they filled it up with dirt. That is all I ever remember. 30

Q The people of West Long Branch in the neighborhood never sought the permission of anyone to come in and out of that roadway, did they, to your knowledge? A Not so far as I know. 40

Frederick Beale, direct.

Q People generally used it if they had occasion to go in there? A So far as I know.

Re-direct examination by Judge Heisley.

10 Q During all the time you have known that property there has been a place on the property that has been marked or made bare by traffic, hasn't there? A Yes, sir.

Q Now how wide would you say that portion of the tract which was used for traffic was—what would be your best guess? What is your best opinion? A Well, it was seven or eight feet—I couldn't say exactly—it was wider than a wagon. A wagon is about five feet six inches.

20 Q And the traffic was generally confined to that portion? A Yes, sir.

Re-cross examination by Mr. Stevens.

Q Cars could pass each other going in and out? A Yes, sir.

Q They did do it? A Yes, sir, I have seen them do it.

30 Q So there would be times when there would be more than one wagon going in and out of there? A They would have to wait for each other.

FREDERICK BEALE, duly sworn for defendants.

Direct examination by Judge Heisley.

40 Q Mr. Beale, you live in West Long Branch, don't you? A Yes, sir.

Frederick Beale, direct.

Q And you have lived there a great many years? A Fifty-two years, pretty near.

Q During all that time, I suppose you have known this property? A Yes, as far back as I can remember, you know.

Q Were you ever the assessor of taxes for the Borough of West Long Branch? A Yes, 10
sir.

Q How long? A Seven years.

Q And you were the first assessor, weren't you? A Yes, sir.

Q Did you ever assess this disputed tract? A Well, I could not say. It has been ten years, about ten years since I have been out of office and I couldn't say. I assessed it, as near as I can remember, as a plot.

Q The plot? A That is Mr. McIntyre's 20
lots; I assessed them as a plot.

Q Including this lane? A Well, yes, included Mr. McIntyre's land, and the Hayes land. You see there wasn't any map at that time.

Q No tax map? A No tax map, so I couldn't measure every piece of property there was.

Q Let me ask you generally, did you or did you not, in making up your assessment of land 30
along Wall street, did you include this fifty or sixty feet on which this driveway is located? A I couldn't say.

Q You aren't sure about that? A No, sir.

Q You have known about the driveway, or driftway in there from Wall street? A Yes, I have been in there a good many times, but I never went in that way. I went in off Locust avenue.

Q You never went in this way? A No, sir. 40

Frederick Beale, cross.

Q The main way into the Lane farm was from Locust avenue? A Yes, it was.

Q Have you noticed the strip of land which was driven over, where the wagons, etc., would go over? A Yes, I surely noticed that. You notice that as you go along the road. It is some
10 time since I have been by there now. I couldn't tell exactly how wide it was.

Q I don't want to have you say exactly, but according to your best judgment how wide would you say the worn part of this tract of land was? A I don't believe it would be over twelve feet.

Q And on either side of it would be grass? A Surely, I have always noticed grass there.

Q Have you noticed the Township of Eaton-
20 town or Borough of West Long Branch working it or exercising any control over it? A No, sir.

Cross examination by Mr. Stevens.

Q They may have worked that road without your knowledge? A Yes, sir, surely.

Q You were not in the immediate neighborhood all the time? A No.

Q You didn't live there? A No, maybe
30 three-quarters of a mile from there.

Q When you went around to make your assessments in 1912 or 1914, or prior to that time, when you were the assessor was the Hayes property divided from that road that ran into the Lane farm by some structure, a hedge or a fence? A I think there was a hedge there.

Q And on the opposite side of this land, to the west, was there anything that divided the Tilton property from this lane? A I couldn't say
40 whether there was anything there to divide it or

Frederick Beale, cross.

not, it has been so long ago. Ten years is a good while.

Q Did you ever assess this strip of land that divided the Hayes property, on the east from the Tilton property, on the west? Did you ever assess this property to anybody, for taxes, while you were assessor? A Now I couldn't say whether I did or not. The property was there and it might have went in that plot, you know. There was a plot owned by Mr. McIntyre, Mr. Tilton's property now, and I couldn't say whether I assessed that property or not. 10

Q Would your field map show that? A There wasn't no field map at all.

Q And you didn't describe it by any definite description, so you couldn't tell? A No, only a plot of ground.

Q Are you familiar enough with the property to say whether the people generally, used that road going into the Lane property, whenever they had occasion to? A I knew there was a lot there but I couldn't say how many times they used it. 20

Q Did the public, generally, use it? A I suppose anybody that wanted to go in there used that way if it was nearer to go from Wall street than Locust avenue. I don't know that it was ever prohibited to go in there. 30

Q How long is it since you have been assessor? A I think it was about ten years ago.

Harry Hulick, direct.

HARRY HULICK, duly sworn for defendants,
for

Direct examination by Judge Heisley.

Q Mr. Hulick, you live in West Long Branch?

10 A Yes, sir.

Q And you have lived in that territory all your life, haven't you? A Pretty much all my life.

Q Do you hold any office under the borough at the present time? A Assessor.

Q How long have you been assessor? A About ten or eleven years. I think it is the tenth year now.

Q You know this tract of land in dispute? A
20 Yes, sir.

Q You have often been by there? A Yes, sir.

Q Did you ever know it as a public street? A Never knew it as a public street.

Q What have you seen there? A Just seen people go there that was going up to Mr. Lane's place.

Q How wide a strip of land would the people use, generally? A Just the width of a wagon,
30 or a little wider than a wagon, I suppose ten or twelve feet.

Q It was well worn? A Yes; oh, you could see it.

Q And on either side of it there would be what? A Grass.

Q Have you ever seen it subjected to any use, excepting by people going in and out from Wall street to the Lane farm? A No.

Q It was not used as a main artery of travel?
40 A No.

Harry Hulick, direct.

Q During the time you have been assessor, did you assess this property? A I have part of the time.

Q And to whose property did you assess it? A Part to Mr. Hayes, and part to Mr. McIntyre, when Mr. McIntyre owned it.

Q In the belief that it was private property and not a street? A Mr. Hayes told me that half belonged to him and half to Mr. McIntyre, so I raised both assessments. 10

Q How long ago would you say that was? A I suppose five or six years ago since I done that.

Q I think you did work for the borough in scraping and improving roads of the borough? A Yes, sir.

Q When did you begin doing that? A That was about eleven years ago when I first moved over there where I live now. 20

Q Did you ever do any work on this disputed tract? A No.

Q Were you ever directed by the borough authorities to do any work on there? A No.

Q Did you ever see anybody do any work on it? A I seen Farry scrape snow out of there. He scraped all the way up to Lane's house; just made one road, opened up that strip there.

Q You have seen the tax map of the borough? A Yes, sir. 30

Q And on that map, is it true, that the tract of land in dispute is not marked as a street or avenue? A No, it shows an opening there all right, but it is not marked like the rest of the streets.

Q But it is not marked as a street or avenue? A No, no name or anything on it.

Q Did you ever, in talking with Farry, ask him how he came to scrape the snow out of this lane? A Yes, sir. 40

Harry Hulick, cross.

Q What did he say? A He said he did it just to accommodate the Lanes in there. He said he had never been ordered to do any work on that street.

Q Did he tell you he had never done any work on that road at the request or order of the borough? A I don't think he did.

10 Q But that he once did it at the request of Mr. Hayes? A Yes, he carted in some dirt there.

Q There are no street signs on this road, are there? A No.

Q No lamp posts, telegraph poles, or anything to indicate that it is a street, except that there is a portion of it worn by traffic? A That is all.

20 *Cross examination by Mr. Stevens.*

Q When did you first begin to exempt it from taxation? A Begin to exempt it?

Q Yes. A I never exempted it.

Q It is assessed today for taxes? A Yes, sir.

Q This street? A Yes, sir.

Q Who is it assessed to? A Part to Mr. Hoch, and part to Mr. Tilton now.

30 Q How long has that been? A Ever since Mr. Hayes told me part belonged to him and part to Mr. McIntyre, I suppose maybe five or six years ago.

Q Is it assessed separately from the main tract? A No, assessed right in with the lot.

Q You mean you have added to the valuation? A I have added to the valuation of the two lots.

40 Q Did you ever consult the officials of the borough with respect to that situation? A No.

Harry Hulick, cross.

Q Did you ever bring it to the attention of the officials that you had assessed this lot for taxes? A No, I never bring it to their attention of any property I raise.

Q Don't you know that is a direct continuance of Monroe street? A - No, sir.

Q As a matter of fact, on the map it is so shown. A It is not marked the same on the map, the same as it is on the other side of Wall street. 10

Q Doesn't the map show the continuation of Monroe street to be into the lane? A That is marked different than the other side.

Q On the tax map? A Yes, sir, there is a line drawn right down through the middle of it, and on the other side of Wall street there is not. 20

Q You have seen people use that road for years, have you not? A Seen people use it to go to the Lane farm.

Q In numerous numbers? A Same as you would see any place.

Q What about the general use of it? A You would see some people go up there.

Q Would you see any vehicles passing on that road? A I don't know as I have seen cars passing on that road. 30

Q You never did see one car passing another car on that roadway? A No, sir.

Q There is plenty of room to do it? A If they turn out on the grass.

Q But the beaten path is how wide? A About ten or twelve feet wide.

Q Is there a sidewalk on the Hoch property to the west of the hedge? A Just a grass sidewalk. 40

Harry Hulick, re-direct.

Q And the hedge divides this tract from the place where Hoch lives? A The hedge runs back towards the barn—a privet hedge.

Q Is there any physical line that stands out as a division of the Tilton property from this road? A I don't think there is now.

10 Q Do you remember if there ever was? A There used to be an old fence running along there. I couldn't say whether it is all down or not. I know part of it is down, but I couldn't say whether it is all down or not.

Q You don't mean to say the borough has not worked this road except on the occasions you mention, do you? A Yes, sir.

20 Q That they were the only occasions? A Well, I have seen them cart dirt there, off the roads, off the gutters, and seen them scrape snow.

Q You don't mean to tell the Court here that the borough hasn't done anything else? A Not to my knowledge.

Q Only to your knowledge? A They never done anything else, to my knowledge. I have never seen them do anything else. I couldn't say they never have, but I never seen them do it.

30 Q Do you know whether a survey was ever made of that road by the borough authorities? A When the map was made by the borough, that is the only thing I know about. I don't know of any other survey about it.

Re-direct examination by Judge Heisley.

40 Q The dotted line on this map, the tax map, down the center of this tract; what was that dotted line intended to indicate? A I don't know. I never inquired into the matter.

Sidney R. Throckmorton, direct.

Q You didn't make the map? A No, I didn't make the map.

Q Who made the map? A Mr. Schinn.

Q Made it for the borough? A Yes, sir.

Q Is that line on the line between the property of Tilton and Hoch? A Yes, sir, runs right down the middle of it.

10

Re-cross examination by Mr. Stevens.

Q I ask you if that dotted line is not prolonged east and west, along the center of Wall street? A No, not east. It runs a ways west. I don't think it shows it to the east of that street.

Q In front of the Hoch and Tilton property? A The dotted line runs in front of the McIntyre property. I couldn't say it didn't run across Wall street, but I don't think it does.

20

SIDNEY R. THROCKMORTON, duly sworn
for defendants, for

Direct examination by Judge Heisley.

Q Mr. Throckmorton, you live in West Long Branch? A Yes, sir.

30

Q And you have lived in that territory about how long? A Well, about fifty-three years.

Q That is practically all of your life? A Yes, sir, all my life.

Q Did you use to have a team that did any work on the roads of the Borough of West Long Branch, and Eatontown Township, before the borough was incorporated? A Yes, sir.

Q Did you work for them on the roads of the township and borough? A Worked for the both of them.

40

Sidney R. Throckmorton, direct.

Q Not on any particular road? A Different parts of the borough.

Q Did you ever do any work for the township or borough on this disputed tract of land? A No, sir.

Q No work of any kind? A No, sir.

10 Q Did you ever see anybody doing it for the borough or township? A No, sir.

Q Didn't you, for a while live quite near to this property? A My father used to own the place. My father owned it. There used to be a peach orchard there.

Q How long did you live there? A Lived there until I think it was right around '98, then we sold it to Loveland.

20 Q Do you recall the time when anybody took rubbish from a burned house and put it on this tract of land? A I saw some old slate dumped out there after Mr. Hayes had the fire. I went up to give him a figure on the plumbing work on the house.

Q When was that? A It was when Mr. Hayes restored the house.

Q Would you say it was as much as ten years ago? A I don't think so.

30 Q What is your best judgment, six, seven or eight years ago? A Yes, around that way. I went up there to give him a figure on doing the plumbing and tin work on the house. I told him he ought not dump it there, it would spoil his property.

Q I show you a picture and ask you if that is the refuse you speak about? A That looks like the heap that was dumped there.

Q Was it on the right-hand side of the worn part of the road as you went in from Wall street?

40 A It lay about half way between the edge of the

Sidney R. Throckmorton, cross.

road and the middle of the road. I don't exactly remember, but it was right out in this road.

Q Near where the Hoch house is now? A Yes, sir.

Judge Heisley: I offer the photograph in evidence. 10

(Photograph marked Exhibit D. 1.)

Q Mr. Throckmorton, you have been familiar with this worn track, or portion of this road, haven't you? A Well, I tell you, I never thought it was a driveway or anything, in there. The only one I knew went in from Locust avenue, through the place between the house and barn, and through the asparagus bed, when Sam Sherman used to own it. 20

Q Upon this tract of land you saw the pile of refuse, do you recall of their being marks of cars or wagons running in towards the Lane farm, from Wall street? A No, sir, I don't remember ever being in there at all. I never paid any attention to the road. I never knowed there was anything there. I never noticed any driveway or anything there.

Cross examination by Mr. Stevens. 30

Q (Witness shown Exhibit D. 1.) You are not well acquainted with that situation? A I went up there with Mr. Hayes. I drove in that road and left the horse and wagon there at that time. This rubbish was in there.

Q Don't you ever remember seeing that road in there? A No, sir, I never knowed of any lane that went in there. I went up there the other day after I was subpoenaed on this thing. 40

Sidney R. Throckmorton, re-direct—re-cross.

10 The tracks are there now. It is only just the width of a wagon or a little more, and where it comes out on Wall street it spreads a little bit. But where it goes in across and up to Lane's, it is only just wide enough for a wagon, a seven or eight-foot wagon. The track of a wagon is only five feet six inches, but it is a little wider than that.

Re-direct examination by Judge Heisley.

Q Referring to the portion of the road that lies north of the McIntyre property, and Tilton property, or what is now the Hoch line and the Tilton line; do you recall if that was ever worked, and if so by whom? A Not on Mr. Lane's property. I was there to see Mr. Lane once, and 20 he had his cows there. They went in on this property, and he had a team of horses and a mowing machine and was mowing in that field.

Q Right in this roadway? A Going around the place, three or four acres.

Re-cross examination by Mr. Stevens.

Q How long ago was that? A In the neighborhood of twelve years ago, I should imagine.

30 Q How often were you in that neighborhood, in the neighborhood of this road; how often were you there? A These last few years?

Q Yes. A I used to be in and out when we joined farms. I used to be in and out of Mr. Lane's Locust Avenue Road, across through his peach orchard, because we used to go there and borrow his peaches.

Q Were you there in 1898? A 1898?

Daniel Covert, direct.

Q That is twenty-six years ago. A I think my father sold the place in 1890, and we moved away from there at that time.

Q Do you ever remember, in 1890, seeing a roadway such as is shown on this picture? I ask you if you recognize that house. (I am referring to Exhibit C. 3.) A I remember the house being there when Mrs. Julian was there. I repaired the windmill pipe which was frozen up in the winter time. I went there and dug it up and repaired it.

10

Q Do you know the gentleman on the bicycle? A I know him.

Q Do you know George Palmer? A I know him.

Q Look and see if that is George Palmer. A I haven't got my glasses. I repaired that windmill for Mrs. Julian. I know the Palmer that is living up at West Long Branch. I didn't know the other, who died.

20

Q Then you didn't know George Palmer? A No; the one that is living now I know.

DANIEL COVERT, duly sworn for defendants,
for

30

Direct examination by Judge Heisley.

Q Mr. Covert, I think you are seventy-five years of age. A I think so.

Q And how long have you known this disputed piece of property? A Pretty much all my life.

Q And you used to work on the roads of the Township of Eatontown, didn't you? A Yes, sir.

40

Daniel Covert, direct.

Q And did you also work for the Borough of West Long Branch? A Yes, sir.

Q Did you work generally, on the roads or just on any one particular road? A Once in a while.

Q Did you work on different roads? A Yes, sir.

10 Q Did you ever do any work on this disputed road, either for the Township of Eatontown, or for the Borough of West Long Branch? A No, sir.

Q Did you ever see anybody do it for the township or borough? A No, sir.

Q Do you know that there is a portion of this disputed tract, somewhere near the center where the passing vehicles have worn the surface off? A Yes, sir.

20 Q About how wide would you say that worn portion is? A Ten or twelve feet.

Q And for how long has it been that way, that part worn off? A Quite a good while.

Q A good many years? A A good many years.

Q And how did the rest of the disputed tract look? A Grewed up in grass.

Q Same as any other lot or portion of land? A Yes, sir.

30 Q Was this, to your knowledge, ever a public road or highway? A No, sir.

Q How was it used? A Just passing in and out.

Q To where? A To Lane's.

Q To Lane's farm? A Yes, sir.

Q Did you ever mow this land? A I mowed on Tilton's side.

Q How long ago? A Last year.

Q And before that did you ever mow it? A
40 No.

Henry Woolley, direct.

Cross examination by Mr. Stevens.

Q Mr. Covert, did you know Mr. Louis Lane?

A Yes, sir.

Q Did you ever visit him? A No, sir.

Q Did you ever have occasion to go over this road? A No, sir. 10

Q Ever walk on it? A No, sir.

Q Did you ever visit Mr. Frank Antonides?

A I don't know him.

Q Where do you live? A On the Monmouth Road.

Q Did you ever see people going in and out, traveling on this road? A I never did.

Q Were you in the habit of being in the neighborhood of this road on occasions? A No, not much.

Q How far from this road did you live? A 20
Oh, a mile and a half.

HENRY WOOLLEY, duly sworn for defendants, for

Direct examination by Judge Heisley.

Q Mr. Woolley, you live in West Long Branch? A Yes, sir. 30

Q How long have you lived there? A Seventy-two years.

Q And how near do you live or have you lived to this disputed piece of road? A Well, I suppose for these last fourteen years about a thousand feet.

Q And before the fourteen years, how near did you live to it? A We lived on Cedar avenue at that time. 40

Henry Woolley, direct.

Q That would be a block off? A Yes, sir.

Q You have known this disputed land for at least fifty years? A Yes, sir.

Q Has it ever been, to your knowledge a public road or street, used by the public? A No, sir.

10 Q Did you ever use to work on the road? A No, sir.

Q Did you work for the township? A Yes, sir.

Q And also work for the borough? A Yes, sir.

Q What kind of of work have you been doing? A Different things that needed to be done.

Q Scraping, etc.? A Yes, sir.

20 Q Did you ever do any work on this piece of road? A No, only carted sand in there off the road, where we always carted it, where it badly wanted it. We would give it away. That was all our doings. The borough never authorized it.

Q How did you come to cart it in on this piece of land? A We took it to the nearest place where they wanted it.

Q You say where it was wanted? A Where anybody wanted it.

30 Q Who was the person who wanted it carted in on this piece of land? A I couldn't say. Year before last I was there along and I says, "Mr. Lane, have you got any use for this load?" He said, "You can take it up to the house there and dump it."

Q You have seen this worn portion of this strip of land? A Where I took it in and out?

Q Yes. A Yes, sir.

40 Q How wide would you say that worn portion was? A Well, the width of a wagon, or maybe twelve feet, probably.

Henry Woolley, cross.

Q And what was the condition of the strip of land on either side of the worn strip? A Grass, excepting it would come up where it wasn't traveled or anything.

Cross examination by Mr. Stevens.

Q Mr. Woolley, you visited Mr. Lane, you say? A What do you mean? 10

Q You say you visited Mr. Louis Lane? A Not without I had business in there.

Q You have been in his home? A Yes, sir.

Q How did you go in? A I would come down from where I lived and go on up.

Q And go in this road? A Yes, sir.

Q Did you ever ask permission to go over this property? A No.

Q Did the public generally go over it? A I don't know about that. Oh, sure, I suppose they did the same as I did. 20

Q Did you ever hear of anybody stopped from going in and out there? A Not that I know of.

Q How many years does that go back? A I couldn't say—probably twenty years and more.

Q Before Mr. Louis Lane came there? A Yes, sir.

Q And when Mr. McIntyre owned the place? A I don't know about that—I wouldn't say. 30

Q You remember when Mr. McIntyre owned the property? A I think probably Howard opened it for his own accomodation, going in and out to his stable there.

Q But it went beyond the stable, didn't it? A I don't know whether it went on or not.

Q Let me show you a picture, taken in 1898, and ask you if you remember the property at that time? A Yes, sir. 40

William Malchow, direct.

Q Do you recognize the gentleman on the wheel? A I can't without my glasses. I wouldn't say now who that was.

Q Do you remember George Palmer? A Yes.

Q Can't you place him? A Yes, I think I recognize it.

10 Q Do you remember this road at that time? A I couldn't say, no.

Q As a matter of fact, as far back as you remember it was always used? A That is so, as far as I can remember. Ever since it was laid out.

Q And they have used it generally? A There was no house there as long as I can remember back.

Q Generally, the public used that when they wanted to go back to the Lane farm? A If anybody wants to go to the place.

Q People going along Wall street who wanted to go into Mr. Lane's property, as long as you can remember this road there, have been going in there? A Yes, sir.

30 WILLIAM MALCHOW, duly sworn for defendants, for

Direct examination by Judge Heisley.

Q Mr. Malchow, you have a stone yard up within perhaps a quarter of a mile of this property? A Yes, sir.

Q And you have been there how many years? A Twenty-six.

Q In that same place? A Twenty-six years, 40 in January, in the same place.

William Malchow, direct.

Q And you know this disputed territory, don't you? A Yes, sir.

Q Where they claim there is a road? A Yes, sir.

Q And have you known that road during all the twenty-six years you have lived up there?

A I have known that there was a way of going into Lane's farm. 10

Q From Wall street? A Yes, sir.

Q And was it marked by the fact that it was worn; that the grass was worn off? A You might say a tow-path, a tow-road.

Q It was indicated, was it not, by the fact that the grass was worn off a certain portion?

A Just the roadway.

Q According to your best judgment, how wide a strip of land was the grass worn off of; how many feet wide would you say it was? A What the track of a wagon is, I guess six feet. 20

Q And the rest of the tract was how? A In grass.

Q The same as the other property? A The same as a lot.

Q Do you recall there being a stone for a long time at the end of this disputed tract of land, near where Wall street is; a stone buried and sticking a little above the ground? A Oh, yes, I saw that, and there used to be a post there. 30

Q You recall there was a post there? A Yes, sir.

Q How long ago was that, would you say? A I couldn't tell you exactly, several years; nine or ten years.

Q How big a post was it? A Just an ordinary post, maybe six inches in diameter.

Q How high above the surface of the ground did it stand? A The mouth of the road—the 40

William Malchow, direct.

10 mouth of that cut path, where it went into Lane's farm is probably ten feet, where they kept cutting it on the bank. There was a terrace on the east side of that used path, a terrace about two feet and a half high. This post was set in the ground and it came up to the top of the terrace. On the west side of the entrance it was maybe two feet and a half; you went down a hill and up a hill.

Q From Wall street? A Yes, sir, to get in.

Q How wide would you say that space was, the mouth? A About ten feet.

Q Marked on the east side by a post? A Yes, sir, and now a stone.

Q And on the west side marked by what? A Nothing.

20 Q You said there was a terrace? A Well, there was a bank all the way along where it was cut down so you could get in without bumping up the hill.

Q Do you recall when there was a fence across this disputed territory? A In the back there was a fence across there. I think it is eighteen years. I know that Lige Woolis lived on the farm at that time.

Q Is he still living? A No, he is dead.

30 Q He lived on what farm? A He lived on Lane's farm and I went over to see him one day and I had to stop at this fence. They had some fence rails here and there and a twisted wire on the top. The entrance was in the middle. I think that is eighteen years ago.

Q This fence, where was it as regards the Lane line and the disputed tract? A It run from the north side of Mr. McIntyre's barn, as I recall it, across that place.

Q East and West? A Yes, sir.

40 Q Clear across? A Yes, sir.

William Malchow, cross.

Q Have you any doubt about that? A No, none at all.

Q Do I understand you to say you had to take the bars out to get through? A There was two bars. I took them down and drove through and then put them back.

Q In going from Wall street to the Lane farm, when you came back to the line of where the Hoch barn is now, you say that there was a fence across there and in order to get into the Lane property you had to get out of your wagon, take down two bars and drive through? A Yes, sir, that is right. 10

Q How long was that fence there? A It looked to me as if it had been there for several years. Evidently it had been patched up a number of times. 20

Cross examination by Mr. Stevens.

Q Do you mean to say that since you have known of this roadway there a fence was constructed across the back of the property before you entered the Lane property? A Well, it is right opposite Mr. McIntyre's barn.

Q How long ago was that? A About eighteen years.

Q How do you fix your eighteen years? A Well, I figure it by the length of time that Lige Woolis has lived there. 30

Q Lived where? A On the Lane farm.

Q Was he an employee of Lane's? A No, he lived there.

Q Was it before Mr. Lane came on the farm? A Mr. Lane lived on the farm and then moved away. There have been several tenants on the farm. There was John Dengler and Lige Woolis, and Betz, and a number of them. 40

William Malchow, cross.

Q I think the testimony is that Mr. Lane has been on that farm since 1901, that is twenty-two years ago. A Not altogether.

Q Yes, or his family, the Antonides. A No, sir, in 1901 is twenty-three years. Mr. Lane has been off of there several times. That is a positive fact.

10 Q And he has had tenants in there? A Since 1901 he has had several tenants there. This Binns was there; that is the fellow seven and a half feet tall. He was there fifteen years ago, or ten years.

Q Who was this Binns? A Binns, he lives at Highsfield now. He used to pick peaches off of the trees standing on the ground.

Q You visited the farm frequently, didn't you? A At that time.

20 Q And since? A Oh, I haven't been on the farm. I was over there once to get asparagus.

Q Did you use that road? A I went in that way and come out the other way.

Q There was a driftway or pathway right through? A I went in one way and out the other. You had to climb up a field or a sand hill to get in and jump down a bank to get out.

30 Q How long has that been existing, that situation? A Twenty-six years.

Q That they have been using that road? A I imagine they have been using it for driving in.

Q Did you ever hear of anybody being stopped from going in there? A No.

Q And did the public generally, if they had occasion, go that way? A They went that way and they went the other way. You see, there is a road from Locust avenue.

40 Q And you can go right through? A Yes, sir, some of them drive in one way, and some drive in another.

Joseph Tausig, direct.

Q Did you ever see the fence you speak of there on more than one occasion? A I saw it there on several occasions.

Q So that people coming in there couldn't get by without taking the rails down? A I imagine they put the rails up so as to keep the cows in their pasture.

Q You don't know of any other reason? A I saw cows there.

10

JOSEPH TAUSIG, duly sworn for defendants,
for

Direct examination by Judge Heisley.

Q Mr. Tausig, I believe you are the caretaker for Dr. Hoch, for this house of his? A Yes, sir.

20

Q Adjoining this tract or road? A Yes, sir.

Q And I think you are one of those who helped put the fence across in 1923? A Yes, sir.

Q Do you know about there being a stone anywhere near the center line of this disputed tract in Wall street? A Yes, sir.

30

Q How long has that been there since you know of? A Since the time I was there.

Q How long is that? A Going on two years now.

Q And about how big is that stone? A About a foot square.

Q And how far above the ground does it set? A When I first knew it, it was six inches or more and they kept on knocking it off all the time.

40

Joseph Tausig, direct.

Q And is that stone located on either side of that portion of this disputed property which is worn off by traffic? A Just in the middle, the stone is, to keep them off the grass.

Q The rest of the tract is grass, is it? A Yes, from that line on.

10 Q How far back does the sidewalk on the west side of the property, Dr. Hoch's property, run? A Just to the kitchen door.

Q It doesn't go back to the Lane property at all? A No.

Q Do you recall last year of Louis Lane saying to Dr. Hoch, in your presence and in the presence of Frank Tilton and George W. Van Sickel, that his (Lane's) father, had had permission from McIntyre to go through there over this disputed tract and so had he?" A Yes, 20 sir.

Q Have you any doubt of that? A No.

30 Mr. Stevens: I think I ought to interpose the objection, of course, that Mr. Lane is not the complainant in this suit. Any testimony or conversation they may have had, unless they took it up with Mr. Lane as an officer of the borough, certainly is not relevant and I know the Court is going to take knowledge of that fact, but I want to go on record as objecting.

Judge Heisley: Cross examine.

Mr. Stevens: No questions.

George Van Sickle, direct.

GEORGE VAN SICKLE, duly sworn for defendants, for

Direct examination by Judge Heisley.

Q Where do you live, Mr. Van Sickle? A 204 East 62nd street, New York.

Q And you don't live down here in Long Branch? A No. 10

Q How is it you are down here today? A Well, I worked on doctor's property from the 7th of April until Christmas, last year.

Q Doing what? A Fixing the garage, doing everything.

Q You are a carpenter? A Yes, and painting and things like that.

Q Do you know about this stone? A Yes, sir. 20

Q In the entrance to this alleged driveway? A Yes, sir.

Q How big is it, about? A Well, it is a lump of two or three bricks together; I should judge about six or eight inches square.

Q Were you present, in 1923, when Louis Lane said to Dr. Hoch, and when Frank Tilton was there, that he, (Lane's father) had had permission from McIntyre to go through this lane and so had he? 30

Mr. Stevens: I make the same objection.

A We were putting up the fence and Mr. Lane came across the back of the field with a milk pail. He says, "I see you are putting up the fence posts." He says, "Mr. McIntyre give me permission to use this lane for twenty-three years and my father before me," and Dr. Hoch answered, "Well, now your permission ends." 40

Mrs. Grace Tilton, direct.

And that is the words that was said there in the presence of all of us.

MRS. GRACE TILTON, duly sworn for defendants, for

10

Direct examination by Judge Heisley.

Q Mrs. Tilton, you are the wife of Frank Tilton, are you not? A Yes, sir.

Q How long have you known this property?

A Why I have lived in the house where I am ten years, right next door to the roadway.

Q During the time you have lived there have you ever known this driveway or disputed tract of land, or driftway, to be a general public highway, or street? A No, I can look out of my window and I bet you you won't see three cars go by there a day, outside of Mr. Antonides' and Mr. Lane's.

20

Q Was it ever marked by street signs, lamp posts, telegraph or telephone poles or the like?

A They tried to put telephone poles in but my husband stopped them.

Q Did they ever lay water pipes in there or sewer pipes or anything like that? A No, sir.

30

Q Have you ever seen the township or borough work this road? A Elwood Farry was there once to scrape the snow and my husband asked him who gave him permission and he said he just done it to accomodate the Mayor. At the time Mr. Hayes moved, Mr. Lane went in there on the scraper with Mr. Farry, and I went out and said, "Mr. Lane, what are you doing?" He says, "We are just straightening up the roadway." I says, "This doesn't belong to

40

Mrs. Grace Tilton, direct.

you; you get off there mighty quick." He got off and went up to his barn and got a shovel and rake and laid back the dirt he tore up and raked it over.

Q That was March, 1923? A Last March, and Mr. Farry called me one side and says, "Mrs. Tilton, don't blame me." He said, "Mr. Lane said he wanted the road scraped." I said, "Mr. Farry, you are forbidden in here and you know that, so you keep out of here." 10

Q Had he been forbidden before? A Yes.

Q Who had forbidden him? A My husband.

Q Have you ever seen Mr. Hayes stop any people from going in and out over that road? A I was there when Mr. Hayes stopped Willis Woolis and he drove Raymond Antonides off. 20

Q Every summer you have seen the people going in and out of there? A They just go in and out; a car at a time, after asparagus.

Q Did anybody prevent their going in and out? A I have heard Mr. Hayes order them out.

Q They went in and out? A Yes, sir.

Q They have continued that during the time you have been living there? A Yes, sir.

Q Before you lived there where did you live? A Over on the Monmouth Road. 30

Q Did you know of this road then? A We did have to borrow an asparagus cutter and we went in on Locust avenue.

Q Did you visit the Lane's yourself? A Frank Antonides' brother married my sister.

Q They live in the back? A They lived in the back, yes, sir.

Q Did you visit them? A No, I never visit them. 40

Mrs. Grace Tilton, cross—re-direct.

Q Did you use this road yourself? A No, generally I go across the fields, in my back yard.

Q When you used this driftway you used Mr. Hayes' part of the road? A I generally cut through the hedge, and out that way, and I
10 was right on the Lane property.

Q Did you see the borough authorities grading the road? A No, sir.

Q Did you ever see them scraping the road, except on that one occasion you mentioned? A I saw them bring in a load of dirt, and I have seen Mr. Hayes tip the people for bringing it. I seen Mr. Hayes cart the black soot and spread it out on the road the time the house burned down.

20 *Cross examination by Mr. Stevens.*

Q How long ago was it you said you saw Mr. Hayes order Willis and somebody else off there? A That has been several years ago.

Q How many years ago? A It has been five years ago.

Re-direct examination by Judge Heisley.

30 Q And what were they doing at that time?
A Mr. Hayes kept the grass cut and if he saw a big weed he used to clip it. He always kept it very nice and when the frost was coming out of the ground they used to go over there to get out of the mud.

Q You mean they were going up the middle of the road and would go over on the grass to get a firmer base? A Yes, and that made big
40 ruts in his lawn.

Mrs. Grace Tilton, re-cross—re-direct.

Re-cross examination by Mr. Stevens.

Q He was objecting to their going over his lawn? A He mowed the lawns down.

Q All the way across the road? A No, he mowed to the beaten path.

Q And wasn't he opposing their going along the beaten path of the road? A He told them if they didn't keep in the middle they could use their own roadway. 10

Q And when Mr. Louis Lane was scraping last year was he scraping in the middle or on the side? A In the middle of the road and it isn't over seven or eight feet wide, and the scraper would go a little bit over and he was tearing up the sod and I forbade him.

Q That is what you stopped him from doing? A Yes, sir. 20

Q You were not opposed to their driving along the middle of the road? A I says, "Mr. Lane, you are not satisfied to use the middle of the road, but you take the privilege of cutting a limb off our apple tree."

Re-direct examination by Judge Heisley.

Q What was that about the apple tree? A There is an apple tree on our side. He cut the apple tree limb over on our side. He says, "It leaned over on Frank's car." 30

Q Is it true that these apple trees are old trees? A Very old trees.

Q What was the earliest time that you recall of Mr. Hayes ever putting logs or boards or sticks over any portion of this tract? A That has been five years ago, maybe six.

Q When was the Dr. Hoch house burned? A That has been, about, I guess six years ago. 40

Frank Tilton, direct.

Q And that pile of rubbish has been there ever since? A Not all. You will find a little of the gravel on top of the sand. They asked for a little gravel to put on the top so that they wouldn't cut their tires and things as they went in.

10

FRANK TILTON, duly sworn for defendants,
for

Direct examination by Judge Heisley.

Q Mr. Tilton, you are one of the defendants in this suit? A Yes, sir.

Q How long have you known this property?
20 A Well, I lived up on the Lane farm when I was about ten or twelve years old.

Q How old are you now? A Thirty-three, going on thirty-four.

Q You lived there over twenty years ago?
A Yes, sir.

Q How long did you live on the Lane farm?
A I think we lived there about four or five years.

Q Where have you lived since? A Right
30 around that neighborhood, all except a year or two.

Q Has this tract of land in dispute, to your knowledge, ever been used as a public street or highway? A Never.

Q Or ever, to your knowledge, operated or worked by the Township or Borough of West Long Branch? A Never.

Q There is a driveway where wagons have worn the surface off the ground. How wide
40 would you say that strip of land has generally

Frank Tilton, direct.

been? A Just eight feet, and out to the road it is about twelve. I measured it.

Q Do you know that stone in the mouth of the road? A Yes, sir.

Q How long has that stone been there? A That stone has been there ever since the fire. That is a pier from underneath of the porch.

10

Q How long ago was the fire? A Six years.

Q Was there anything there before that time? A A log.

Q How long was the log there? A The log was there when we moved there.

Q You mean the log standing on there, buried partly in the ground? A Yes, sir.

Q Is it true that that log was there for the purpose of confining traffic to the worn portion of this land? A Yes, sir.

Q Outside of the eight feet, how was the rest of this tract? A In sod.

20

Q Has this tract of land ever been marked by any street signs, or lamp posts or anything of that kind? A No, sir. There is nothing. Last year they put up new signs in the borough, and they put one on the opposite side of the street, on the opposite corner, but they didn't put any on this side.

Q There is a street called Monroe street, isn't there, running east? A Yes, sir.

30

Q And isn't the corner of Monroe and Wall street indicated by a sign? A Yes, sir.

Q But there is none on this side? A No, sir.

Q Did you ever do any work on the roads for the Township of Eatontown? A Yes, sir.

Q Did you ever work this strip of land? A No, sir, I never did.

Q Did you ever see anybody else working it for them? A Never did.

40

Frank Tilton, cross.

Q Were you present, last summer, when Lou Lane said to Dr. Hoch, in your presence, and in the presence of Mr. Van Sickle, that he had had permission from—that his father, Isaiah Lane, had had permission from Mr. McIntyre, and he had had permission for twenty years to use this strip of land? A For twenty-two years he said.

10 Q What did Dr. Hoch say? A Dr. Hoch said the permission run out and it was going to be closed. Mr. Lane wheeled and went up to the house.

Q Is it true that after you bought this property from Mr. McIntyre, that Lou Lane spoke to you about his using this tract of land? A Yes, sir.

Q What did he say? A That was the next morning after I bought it, I saw Mr. Lane coming down to the farm to milk and he stopped me on the grounds. He says, "I hear you have bought the McIntyre property." He says, "Are you going to let us go in and out of here?" I says, "I am, until I get ready to do something with it."

Cross examination by Mr. Stevens.

30 Q You have been there about ten years? A Yes, sir.

Q During those ten years have you seen traffic going in and out? A I have seen cars going there about a month or two during the summer time, during the asparagus time.

Q Some of them go in Wall street and out Locust avenue? A No, I never did.

Q Do you know whether they did that or not?

40 A I don't think I saw anybody do that.

Frank Tilton, cross.

Q They could do that? A They would have to go around the tall grass. They could go out the other way along by the asparagus bed and out by Sam Sherman's house, there is three lots there.

Q You haven't attempted to stop anybody from going in and out? A No, I didn't have no occasion. 10

Q And you know that was the condition that existed there when you first came there? A What is that?

Q That that lot was being used by the public. A I couldn't say it was used by the public.

Q Everybody that wanted to go in there used it, didn't they? A No, not unless they wanted asparagus.

Q You didn't put a fence up to stop them? A No. 20

Q You didn't try to stop people from going in there by putting up some obstacle? A No.

Q You have stood by for ten years and never in your life have tried to stop it? A If I had owned it I would have.

Q The claim is that you do own it right to the center and propose to close the street? A Yes, after I bought it.

Q For ten years you have owned it, haven't you? A I have only owned it two years. 30

Q For two years you haven't attempted it, have you? A Just as I told Mr. Lane, when I got ready to use the property.

Q For two years you didn't stop the public? A Last spring.

Q You have lived there all the time? A Yes, sir.

Q You have seen the public going in and out? A I didn't see the public. 40

Frank Tilton, cross.

Q Anyone who lived in West Long Branch who wanted to visit Mr. Lane used that road?

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

Q Did you ever visit Mr. Lane? A No, sir.

Q Never had occasion to go down in the back of this lane? A No, sir.

10 Q It is a fact that there was a fence along your side of the road? A Never, in my life.

Q Posts were there during your time? A No, sir, nothing but a vacant field.

Q Is there nothing between your house, on one side, and the middle of the road, to separate the road line from your house line? A What do you mean?

Q No fence or anything at all? A No.

Q And there hasn't been in ten years? A Not since we have lived in Mr. McIntyre's house.

20 Q On the opposite side of the road there is a hedge that divides the Hoch property from the road, isn't there? A There is a hedge that runs back a ways.

Q And a fence? A No, no fence.

Q You don't remember a fence having been there? A No fence was ever there, to my knowledge.

Q You won't say there wasn't a fence there?

30 A I never seen no fence. I have lived there all my life, all except a couple of years.

Q Do you mean to say that the fence from the house on to the Lane line did not separate, did not separate the driftway this fifty-foot road from the Tilton property? A I couldn't say that because it doesn't run the whole length of it. It doesn't run back to the Lane property all the way.

Q What provoked your joining in this attempt to close this road last year? A Why

40

Frank Tilton, cross.

when I bought the place I bought from Mr. Tilton, and it said, "adjoining William Hayes."

Q And for a year you had stood by without making a move? A I only owned it about three months before I closed it off.

Q And you got together with Dr. Hoch? A No, I was going to close my part and he wanted to close his off. 10

Q And then you were going to close the road entirely? A Yes, sir, surely. They got two other ways. I thought that was enough.

Judge Heisley: I want to offer something in evidence. We want to offer in evidence for the defendant a deed made by Isaiah S. Lane and wife to J. H. McIntyre, dated November 20th, 1891, recorded in the Monmouth County Clerk's office February 4th, 1892. We are interested particularly in offering the description, which reads this way: 20

"Beginning in the corner of a fence at a stone, thence (1) north 86 degrees, 32 chains and 63 links, to the middle of a proposed street," my point being that that proposed street is this disputed tract.

In addition I offer in evidence a deed from the sheriff of Monmouth County, to William L. Hayes, dated October 25th, 1906, recorded in the Clerk's office of Monmouth County in Book 787 of Deeds, page 157, particularly the description, which in referring to this tract of land says this, 30

"Being in the center line of High street, at the intersection of the said center line with the center line of a street crossing the same from Norwood Park, through land of Isaiah Lane, etc." 40

Dr. John Hoch, direct.

(Deed from sheriff to Hayes marked Exhibit D. 2.)

H.P. 15.
10
20
Judge Heisley: With the permission of the solicitor of the complainant we offer in evidence a map which it is admitted was a map filed by the surveyors of the highway, in Road Book, ~~1215~~ in Monmouth County Clerk's office, the map being recorded March 5th, 1891. This map really is a blue print and the object of the offer is to show that at the time this map was filed or just before it, Wall street ran into the road of N. L. Monroe in a place where it is marked on the map, "Portion Vacated." That road was vacated and in place of it the present road which is marked on the map by the words, "Portion Laid Out," to take the place of the portion vacated and this blue print shows that in 1891; at that time there was an opening, showing Monroe street running south from Wall street to ———— avenue, but there is no corresponding opening showing the continuation of Monroe street on the north side of Wall street.

30

DR. JOHN HOCH, duly sworn for defendants,
for

Direct examination by Judge Heisley.

Q Doctor, you are one of the defendants in this suit? A Yes, sir.

Q And you own the property which was formerly known as the Julian property? A Yes, sir.

40

Dr. John Hoch, direct.

Q How long have you known this disputed tract of land? A Six or seven years.

Q And do you know of the stone which is at the entrance of the worn part of this disputed tract of land, at the mouth of where this road joins Wall street? A Yes, sir.

Q How long has that stone been there? A 10
As long as I can remember.

Q You don't recall when there was a log or stake there? A I don't.

Q How wide has this work strip of land been? A Only the one track.

Q The track of one vehicle? A Yes, sir, one wagon track.

Q How far back from Wall street does the sidewalk run, along the westerly side of the house? A No the entrance of the kitchen. 27

Q It doesn't run back to the Lane farm? A No, sir, never did.

Q Are there any apple trees on a portion of this disputed tract? A In the rear part.

Q Large apple trees? A Yes, sir, very large ones.

Q Been there a great many years, I suppose? A Yes, sir.

Q You have only owned the property about 30
how long? A About two years.

Q The borough has never put any street lamps or signs or sewer and water or public improvements on this street, have they? A No, sir.

Q Do you know whether the corner opposite Monroe street is marked with a street sign? A Yes, sir.

Q Is there any such sign on your side? A No, sir. 40

J. Howard McIntyre, direct.

Q And has there ever been, so far as you know? A No, sir.

Q Do you know Louis Lane? A I do.

Q Do you recall last summer of having a conversation with him in the presence of Mr. Van Sickel and Frank Tilton, about his right to use
10 this strip of land, and he said that Isaiah Lane had given him permission to and his father before him? A Yes, sir, he said that.

Q What did you say? A I told him that now the permission ends.

Q What did he say to that? A Nothing.

Mr. Stevens: No questions.

20 J. HOWARD McINTYRE, duly sworn for defendants, for

Direct examination by Judge Heisley.

Q Mr. McIntyre, how old are you? A Seventy-one.

Q You have always lived in Monmouth County? A Yes, sir.

30 Q And most of your life you have spent in West Long Branch, have you? A Most of it, yes, sir.

Q How long have you been residing at Asbury Park? A Twenty-one years.

Q You once owned the property that is now owned by Dr. Hoch and Mr. Tilton? A Yes, sir.

Q You bought it, I think, of Isaiah Lane, didn't you? A Portion of it, on the rear.

40 Q Way back in '91? A Yes, sir.

J. Howard McIntyre, direct.

Q Who did you buy the front portion of? A Estate of Samuel G. Sherman.

Q Did you buy that before you bought the land from Lane? A I did.

Q Did you build the house on it? A I did.

Q What house did you build? A The large house, now owned by Dr. Hoch.

10

Q And then after a while you sold this property to Mrs. Julian, didn't you? A Mrs. Julian, yes, sir.

Q And then, I believe, it was foreclosed by Mr. Hayes and he bought it in at sheriff's sale? A Yes, sir.

Q Do you recall of Norman R. Monroe coming down the hill and buying what has since been known as Norwood Park? A I do.

Q That is directly opposite this tract of land? A Yes, sir.

20

Q One side of it is bounded by Seidl avenue and the other by Worth street? A Yes, sir.

Q Do you recall of his laying out Monroe street from Norwood street to Seidl avenue? A Yes, sir.

Q At that time was there any street over this disputed territory? A There was not.

Q Or any driveway or anything like that? A Not at that time.

30

Q That is what I mean, at that time. A No.

Q Subsequently there did come to be a driveway in there? A Yes, sir.

Q Was that by arrangement between you and Mr. Monroe? A Mr. Monroe came up to have a talk with me. I told him I thought I would open a roadway in as far as my line and he said that would be very good, and Mr. Lane came along and wanted to know if I was willing to let him come through as far as his farm.

40

J. Howard McIntyre, direct.

Q From Wall street? A Yes. I said, "I am perfectly willing." He was a good neighbor and I felt as if I wanted to accommodate him. That is how he got in there.

Q When was this, about, Mr. McIntyre? A It was the next year after I bought the property. I bought the property in '91 and that was in '92.

10 Q And they began driving in over it? A He did, after I got it scooped out for my own convenience. That is the only way I had to go into my property from Wall street. I had no driveway in through the property.

Q Have you any doubt of what you have just testified to, that he asked for permission? A No.

Q They claim he had the right to do it without your permission? A No.

20 Q And they claim it was a public street? A No.

Q Did anybody ever claim it was a public street? A No.

Q Did the Borough of West Long Branch or Eatontown township ever notify you it was a public street or that they claimed to own it? A No.

30 Q Who paid taxes on the land? A Well, I suppose I did.

Q How did this strip of land over which that worn piece is, how does this strip compare in size with the rest of your lots? A It is about the same size as the lots, sixty feet, or fifty feet, I think.

Q It really makes one of the town building lots? A Yes, sir.

40 Q When you conveyed this property to Mrs. Julian, in your deed you spoke of this piece of land as a proposed street? A I did.

J. Howard McIntyre, direct.

Q Why did you use that expression? A Well, that is the only way to define it that I knew of. I owned it and Mr. Lane came to me and said he would like for himself, and if we could get the permission of those further north, to have that laid out in a public street. I says, "I will be perfectly willing to give it to the township." 10

Q Would that carry the road from Wall street clear through to Broadway? A Yes, sir, that would.

Q That was Lane's suggestion, was it? A Yes, sir, that is his suggestion.

Q Is that what you had in mind? A That is the street I meant.

Q Was that street ever laid out? A No.

Q Do you recall of there being apple trees on a portion of this disputed territory? A Yes, sir. 20

Q How long have they been there? A Ever since I can remember.

Q Thirty years? A Yes, sir.

Q They are not simply saplings or new trees? A They are old trees. They were on there when I bought that strip from Mr. Lane.

Q How wide has the worn strip of this road generally been? A The width of a wagon at that time. 30

Q Do you recall of its ever being crossed off by a fence? A Well, I do.

Q When was that? A That was, I think, in 1899.

Q Who was the owner of it then? A I was part owner and Mrs. Julian was the other owner, of the other part.

Q You owned the west side and she owned the east? A Yes, sir. 40

J. Howard McIntyre, direct.

10 Q Where was the fence put? A I was living in Red Bank at that time and I got a letter from Mrs. Julian stating she was being annoyed with cattle of Mr. Lane's and wanted to know if I would be willing to have the road closed off for her protection and I wrote back that I was perfectly willing if she was being annoyed, and the road was closed off.

Q How long was it closed off? A That I couldn't say.

Q By a fence? A Yes, sir.

Q Did you see the fence? A I did.

Q Did it extend entirely from east to west? A Yes, sir. She put that there to protect her property from the cattle.

20 Q I say, did it cross the property entirely, from east to west? A It did, at that time.

Q How far back does the sidewalk to the west of the Dr. Hoch's house run? A It runs about that line.

Q It didn't run into the Lane farm? A No.

Q Did you ever do anything that was dedicative of this strip of land permanently as a roadway or street for the public use? A I did not.

Q Did you ever sign anything? A No.

30 Q Did Lane ever pay you anything for it? A No.

Q You used it, I think you said, to go to your barn? A Yes, sir, I did, and to get into my property on the west.

Q How long was Lane to have the right to drive in over it? A There was no specified time mentioned.

40 Q Did he ever, at any time during his lifetime, or did Louis Lane, during his lifetime, or Antonides, ever claim to you that they had a

J. Howard McIntyre, cross.

right of way in there, and all that sort of thing?

A No, there was nothing mentioned.

Q Or did they claim it was a public road?

A Nothing mentioned in that respect.

Q Did the Township of Eatontown, or the Borough of West Long Branch, while you were the owner of it, ever work it, improve it, or do anything to it? A No, not at that time. 10

Q You paid taxes on it didn't you? A Yes, sir.

Q Did you ever claim any exemption on account of its being a public highway, or the public having any right in it? A No.

Q Ever fence in this property, or claim it?

A Yes, I put a hedge on the east side, next to the road and his fence on the west side.

Q What did you do that for? A To fence it in so I could turn my horses out into the road. 20

Q Did you do that? A I did.

Q Was it put there to keep your horses from going back on Lane's property or going on to Wall street? A It was a fence in the road running east and west, adjoining Mr. Lane's line.

Q Across this disputed territory? A No, I would pasture my horses in another lot adjoining this proposed road. 30

Cross examination by Mr. Stevens.

Q Mr. McIntyre, you lived in this house that Mr. Tilton bought, did you not? A Yes.

Q And when did you live there? A Why, I think it was—we moved to Red Bank I think in 1897 or 1898. I can't just remember, senator.

Q Back as far as that you moved to Red Bank, did you? A Yes, sir. 40

J. Howard McIntyre, cross.

Q So that you have not lived in the neighborhood since 1897? A No, but I have been frequently there. I have visited my sister and my mother living there.

Q You intended to lay this out as a public road as far back as 1891? A Yes, sir.

10 Q And the only reason it was not dedicated by a deed or some means employed for such purpose, was the fact that it was not cut through to the Eatontown Boulevard? A Yes, sir, that is correct.

Q You never shut off the road so that people couldn't pass down? A No.

Q And that has been opened in that shape, outside of the time Mrs. Julian closed it off in 1899, wouldn't you say ever since? A It has.

Q And the Lanes could go back and forth?

20 A At their pleasure.

Q At all times—nobody to obstruct them? A Yes, sir.

Q And all Lane's friends, and people who had business with Lane, had that privilege? A Yes, sir, certainly did.

Q And that has been an open driftway ever since that time? A Yes, sir, it has.

30 Q Now you have referred to it in all your deeds or conveyances to the people through whom Mr. Tilton and Dr. Hoch claim? A Yes, sir.

Q So that you have referred to this as a proposed road? A Proposed road, yes, sir.

Q And those references are in all of the title deeds? A Yes, sir.

Q You never intended to devote this tract to any other purpose, did you? A I don't know about that, senator. I didn't know what I would do.

40 Q You had divided the Hoch property and you had divided the Tilton property from the

J. Howard McIntyre, cross.

road by a fence that had been constructed, running parallel all the way to the Lane farm? A Yes, sir.

Q Do you know whether you ever paid taxes on this tract? A Well, I didn't pay much attention to the tax bill, but the assessment was raised, about five or six years ago on that property.

10

Q Of course, whether it was raised because the valuation warranted it, or of the rule of the tax board, that it was a corner lot and should have ten per cent. increase on other lots, you don't know what really justified the assessor in increasing the valuation? A I think the assessor told me he had understood I owned to the center of that proposed road and therefore I should be taxed for it.

Q You never, by any act of your own, while you had any interest there, attempted to stop anybody from going through there? A Well, at one time Mr. Dengler lived on the farm and he was very much annoyed with the cows coming down through there. We had the lane fixed up nice, and they were spoiling it. So I went to Mr. Lane and says, "Mr. Lane, without this nuisance is abated, I will have to close off the road." I says, "I will have to do something to protect myself." Whether or not Mr. Dengler told him the circumstances, I don't know, but after that I had no trouble.

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Q When was that, can you fix the time? A It was when I lived in the big house.

Q Eighteen hundred ninety-seven you said you went to Red Bank. A It must have been '93 or '94, I think.

Q Do you know, Mr. McIntyre, since that do you know how heavy the travel was over this driftway or road? A I didn't pay much attention to it, senator. The last few years I have not

40

J. Howard McIntyre, cross.

been in West Long Branch only occasionally to see my sisters and I didn't pay any attention to it at all.

Q Do you know what the borough may have done; any work that they did? A I don't know of any work at all that they have done.

10 Q May I ask you if you ever had that tract surveyed for the purpose of dedication? A No.

Q Is it a fact that Mr. De Nise had at one time made the survey for this road? A I don't remember that, senator.

Q No fence, to your knowledge, ever was placed across the front of the road, at Wall street? A No, not until it was fenced off by Dr. Hoch.

20 Q As a matter of fact do you know that on many of the corners in the Borough of West Long Branch there are not street signs, no posted signs, naming the streets? A No, I suppose there are not.

Q I show you a picture, bringing you back to 1898, and ask you if you recognize the lay-out on this Exhibit C. 3, as about what it was when you lived in that neighborhood? A That looks natural.

30 Q And the picture shows a man on a bicycle, but is he on the Lane farm or on your property? A I really don't know.

Q Here is the barn on the back of the Julian house. A Then he must be on the property that I owned.

Q On the property that you owned? A Yes, sir.

Q Over here in the corner of the right-hand side of the picture; is that the road out to Wall street? A I can't say.

40 Q That is generally the lay-out, as you remember it, at that time? A Yes, sir, it is.

Frank Antonides, direct.

Q The road into the Lane farm, or your farm, as it existed at that time? A Yes, sir.

(All exhibits offered for identification are hereby considered to be marked in evidence.)

10

Continuation of testimony in the above-entitled cause before Nicholas W. Bindseil, Master in Chancery of New Jersey, at the City Hall, Long Branch, New Jersey, on Thursday May 29, 1924, at 1 P. M.

Appearances:

William A. Stevens, Esq., for complainant.

Benjamin P. Morris, Esq., for defendants.

FRANK ANTONIDES, heretofore sworn, recalled in rebuttal for complainant.

20

Direct examination by Senator Stevens.

Q Mr. Antonides, where do you live? A West Long Branch.

Q Mr. Antonides, in the testimony of Mr. Hayes, a witness produced for the defendant, on page 5 (Book 2) of the typewritten testimony, Mr. Hayes' attention was directed to a certain stone alleged to have been placed in the roadway at the mouth of Wall street, and when asked "When did you put that stone there?" he said, "About five or six years ago. Six years ago, about." Do you know when that stone was placed there? A Yes, sir; placed there in the year 1922, the late summer.

30

Q Was it a stone, or will you describe what it was? A It is brick plastered together; it is a part of the old culvert from Cedar avenue,

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Frank Antonides, direct.

at the junction of Monroe street. When the city built the improved road there, they tore that culvert out and that stone was taken from there, along with some old gravel from Cedar avenue, and placed on the road, and the brick was in it at the time.

10 Q Was it placed there by Hayes? A No, it was carted in there by the truck drivers.

Q And allowed to remain in the roadway?

A It was there at one side and we took it and put it down there on the corner.

Q Who did that, Hayes? A He put it down on the corner, yes.

Q And that was about a year and a half ago? A Yes.

20 Q Do you recall having ever seen a post there prior to the stone being put there? A No.

Q Was there ever a stone there during your memory? A No.

Q And your memory goes back how many years? A At that particular spot, about twenty-three years.

Q Did Mr. Hayes ever dig a hole and place a post in that position? A Not to my knowledge.

30 Q Did you ever see a post there during the twenty-three years? A Never to my knowledge.

Q During the time that you lived there and used that lane or roadway, Mr. Antonides, were you ever enjoined from using it, by Mr. Hayes? A Never.

40 Q I call your attention to the testimony of Mr. Hayes, found on page 9 of his direct examination, in which he was asked: "Did you ever tell Isaiah Lane or Mr. Antonides that you would close the place up if they didn't stop running around all over it?" And he answered, "I cer-

Frank Antonides, direct.

tainly have." Did he ever say that to you? A He never did.

Q Was Mr. Hayes accustomed to stopping people from using that roadway? A Not to my knowledge.

Q While you were there? A No, sir.

Q Did you ever hear of anyone having been stopped by Mr. Hayes? A No. 10

Q What did these people go in and out there for? A Pleasure and on business.

Q In Mr. Hayes' examination, he was asked, "Is it a fact or not that automobiles pass through there," and he answered, "They got to come there to get this asparagus. I drove lots of them out of there, but they never come up there again." Is that true or untrue, of your own knowledge? A To my own knowledge, I never heard tell of it, that he ever kept anyone out. 20

Q You were living on the premises at that time, were you not? A I have been living on the farm since 1912.

Q Mr. Schultz, in his direct examination, was asked the following question: "And the next spring you and Louis Parmentier bought the place. That would be in the year 1912?" And he answered, "Yes, sir." Did Mr. Schultz ever own this Lane farm? A Never.

Q Did they ever lease it? A Never. 30

Q Did they ever farm it? A No, sir, he only worked for Mr. Lane during the fall of 1911 and spring of 1912 and gathered the crops in 1911.

Q Mr. Malchow, in his testimony for the defendant, testified, in reply to the following question (page 44): "Do you recall when there was a fence across this disputed territory?"

"A. In the back there was a fence across there. I think it is eighteen years. I know that Lige 40

Frank Antonides, direct.

Woolis lived on the farm at that time." I ask you, Mr. Antonides, is that true or not? A No, sir.

Q Was there ever a fence across the back of this road? A Not in twenty-three years, to my knowledge.

10 Q Was the road ever shut off, during those twenty-three years, to your knowledge? A Not until 1923.

Q Not until the occasion for the bringing of this suit? A Yes, sir, that is right.

Q Do you remember of a man by the name of Binz having lived there, who later went to reside at Hightstown, on the farm? A A man named Burt.

Q Mr. Malchow, in his direct testimony, on page 46, in answer to the question "He had
20 tenants in there?" he says, "This Binz was there; that is the fellow seven and a half feet tall. He was there fifteen years ago, or ten years," Was that the man? A No, he is a man about the size—a little shorter than I am, but he had a brother living in Englishtown that was about seven feet tall; he used to be police officer at Asbury Park, but he never lived there.

Q But during that time was there a fence across the back? A No.

30 Q Mr. Malchow on page 47 of his direct testimony was asked, "Did you ever see the fence you speak of there on more than one occasion?" "A I saw it there on several occasions." "Q So that people coming in there couldn't get by without taking the rails down? A I imagine they put the rails up so as to keep the cows in their pasture." Was there any rail fence across the back of this property cutting off the roadway from Wall street into the Lane farm? A No,
40 sir.

Frank Antonides, cross.

Cross examination by Mr. Morris.

Q Mr. Antonides, how long have you lived at West Long Branch this last time, since you came back? You haven't lived all the time, the last twenty-five years, at West Long Branch, have you? A No; I have lived there since May 7, 1904, continually, in West Long Branch. 10

Q When did you live at Hazlett or at Middletown or do business up there? A I used to live at Chapel Hill.

Q When did you live at Chapel Hill? A 1900 was the last year I lived there.

Q And then when you came back, where did you live? A In 1901 I lived a part of the time at Atlantic Highlands and the other part down with my sister; in 1902 and 1903 I lived at East Long Branch. In about 1904, May 7, I lived in the present Dr. Hoch's house. 20

Q In the Julian house? A Yes.

Q How long did you live there? A Until 1907 or 1908.

Q Aren't you wrong about that? A No, sir.

Q And wasn't it 1911? A No, sir.

Q Don't you know that the Lane farm stood idle in 1911? A The Lane farm did not stand idle in 1911. 30

Q You say that as a fact? A Yes.

Q And didn't you move up there in the fall of 1911? A No, sir, I moved there March 19, 1912.

Q You moved there in 1912? A Yes, on the farm.

Q Prior to the time of your going to the Julian house, which you say was in what year? A 1904 I went to the Julian house. 40

Thomas Covert, direct.

Q And what year did you vacate the Julian house? A I think it was in 1908, about a year after Mr. Hayes bought the property in at Sheriff's sale?

Q Someone is wrong about that. A I say they are.

10 Q Do you remember there was a fire in the Julian house? A Yes.

Q Do you remember when that fire was? A I do not know the exact date, but I think about in 1915 or 1916.

Q Don't you recall that this heap of bricks that was put in on that corner was placed there as a part of the debris from that fire? A No, sir, it was not.

20 Q And during the time that you lived in the Hoch house, before you moved on the farm property, where did you work in the days; where did you spend your days? A I spent my days in the Long Branch freight station.

Q So that you were away from home from seven o'clock a little after, every morning, until late in the afternoon? A No, sir; I was away from home from quarter of eight in the morning until twelve o'clock; from one to four-thirty.

30 Q So that the only time you were home between breakfast and supper was the hour for lunch? A Yes.

Q You don't know what went on in your absence, do you? A No.

Q You say that you don't remember seeing a post there, but you don't mean to say that it wasn't done by others, do you? Because you don't remember it doesn't say that it was not there? A I don't remember ever seeing it there.

Thomas Covert, direct.

IN CHANCERY OF NEW JERSEY.

Between

THE BOROUGH OF WEST LONG
BRANCH,

Complainant,

vs.

JOHN HOCH, FRANK M. TILTON
and GRACE TILTON, his wife,
Defendants.

On Bill, &c. 10

It is hereby stipulated and agreed by and between William A. Stevens, solicitor of the complainant, and Benj. P. Morris, as solicitor of the defendant in the above entitled cause, that the following testimony taken in the form of questions and answers and cross examination, shall be read and received by the vice chancellor on final hearing as though the said witness were produced and appeared in open court. 20

It is also stipulated and agreed that the testimony as hereafter produced shall be taken by Cora M. Throckmorton of Long Branch, N. J.

THOMAS COVERT, a witness produced on the part of the defendants, being duly sworn according to law, upon his oath deposes and says: 30

Witness being duly sworn by Mr. W. A. Stevens.

Examination by Benj. P. Morris.

Q Where do you reside Mr. Covert? A On the corner of Wall and Cedar.

Q In the Borough of West Long Branch? A Yes. 40

Thomas Covert, direct.

Q How long have you resided there, or in that immediate neighborhood? A Ever since I was born.

Q What is your age? A Sixty-four.

Q Do you know where the defendant Mr. Frank Tilton lives, and the defendant Mr. Hoch?

A Yes.

10 Q How far is that from your home? A About a quarter of a mile.

Q Are you familiar with the locality and the location of the houses and the streets? A Yes.

Q Do you know what sort of property it is lying between Mr. Tilton's lot and Mr. Hoch's house? A Lots and driftway to Hoch's barn and lane from Hoch's barn or driftway in to Lane's house.

Q Who lived in the Hoch house for 15 or 20 years prior to Mr. Hoch? A William Hayes.

Q Who else before him? A Julian.

Q Who built the house? A Howard McIntyre.

Q Is there a barn on the lot in the rear of the house? A Yes.

Q Do you know whether this roadway was then and has since been used by the owners of the corner house to get to their barn? A Yes.

30 Q Will you tell us what sort of a looking road it is, is it a driveway? A I should call it a driftway into the barn and Lane's house, cannot be called by anything else.

Q Single track road it? A Single track.

Q Is it a well defined street? A No.

Q Are there any sidewalks or curb on the same north of Wall street? A Not that I have ever seen.

40 Q Has the roadway ever been cut down or driftway cut down to make it match the street and look like a road? A No.

Thomas Covert, direct.

Q Has it ever been graded to your knowledge? A No, not to my knowledge.

Q Were you ever employed, Mr. Covert, by the authorities having jurisdiction over this lot or roadway, that is by the present authorities of the Borough of West Long Branch, or formerly the Township of Eatontown? A Yes.

10

Q How long? A Last thirty-five years.

Q How long has your employment continued? A Ever year more or less through the year.

Q Have you been employed by the present borough authorities during the past year? A Yes.

Q During all this time since you have known the road and been employed by the various authorities do you know whether it has ever been worked as a street? A Not to my knowledge, no, never.

20

Q If it had been worked or graded, you would have known it? A I ought to, I pass by it enough.

Q Has it ever been used as a public thoroughfare? A Not to my knowledge.

Q Were you ever requested by the authorities or by the overseer of the streets to do any work on this road? A Never.

30

Q Did you at any time ever do anything in connection with the road for any one else? A Never been worked, although Mr. Hayes asked for three or four loads of dirt carted in there.

Q Did you do that for Mr. Hayes? A Yes, sir.

Q Do you know whether or not there is any other roadway into the Lane farm? A Yes.

Q How many? A One on Locust avenue and there used to be one on Wall street.

40

Thomas Covert, cross.

Q Which is the one used most? A The one on Locust avenue.

Q How long has that been there? A Ever since I can remember.

Q Long before Mr. McIntyre laid his property out into lots? A Before he owned it.

10 Q You say there is still another lane in from Wall street? A Yes, used to be the old road.

Q Then it is not necessary to the enjoyment of the Lane farm to have another road in on the south side? A No.

Q You say during all the time you have known this place and worked around there, it has never been a public road? A No.

Cross examination by William A. Stevens.

20 Q Are you in any way related to Mr. Hoch?
A No.

Q How long have you known him? A I am not personally acquainted.

Q Are you in any way related to Mr. Tilton?
A No.

Q Are you related to Mrs. Grace Tilton? A No, sir.

30 Q How long have you known of the existence of the driftway as you term it between the Tilton property and the Hoch property? A I could not remember the years, quite a few years.

Q Can you tell somewhere how long it has existed? A I do not think I could.

Q Has it been more than twenty years? A I would not say yes or no.

Q Do you remember when Julian lived in the Hoch house? A Yes.

40 Q When he lived in the Hoch house was this so-called driftway divided or separated by a

Thomas Covert, cross.

fence or a hedge or something of that sort on the west side of the Hoch property? A I remember about a fence being there.

Q Do you recall a fence being there? A Yes.

Q Immediately adjacent to the Hoch property? A On the west.

Q What separated the driftway from the Julian property? A Nothing only the fence. 10

Q Was there a fence adjacent to the Tilton lot? A I do not recall.

Q Is it a fact that the driftway was bounded on the east by a hedge and on the west by a rail fence? A I would not say, rail or hedge.

Q Can you say about how wide the space was, between the hedge on the one side and the fence on the other? A No.

Q I want to show you what the official map of the Borough of West Long Branch shows, this is Wall street, lot 36 is the Hayes property and lot 37 is the Tilton property, I show you in between these two properties a strip of land, is that what you have reference to as the driftway? A As I remember it. 20

Q To the north is a 38.35 acres tract, is that the Lane tract referred to? A Yes.

Q From following that map can you tell how wide that driftway is? A No. 30

Q But that is the driftway you speak of? A Yes.

Map of the Borough of West Long Branch, marked Exhibit 1 for identification only.

Q In the time you have known of the existence of this driftway have you ever known of its being shut off at the mouth of Wall street, so that no one could not come in or out? A No. 40

Thomas Covert, cross.

Q Did you ever know if the owners of the Tilton property on the one side and the owner of the Hoch property on the other side, ever attempted to close it? A No.

Q It has always been opened? A To the best of my knowledge.

10 Q It has always been open and used as a driftway? A To those two places.

Q Terminating in the Lane farm? A Yes.

Q Who uses that driftway? A The Lane family, the owners of the McIntyre property.

Q Were people in the habit of driving in to get vegetables? A I do not know.

Q You do not know whether any one did go in or out? A No.

Q Have you ever seen Mr. William M. Slocum, councilman in charge of the streets of the
20 borough? A No.

Q Did you work for him? A I have worked under their street committee.

Q He was chairman? A I think so.

Q Was he in the habit of instructing you? A Never.

Q You never have yourself worked that driftway as a public road? A No.

Q Will you say that it has not been worked?
A Not that I have ever seen?

30 Q But you would not say never? A I have never seen it.

Q Did you ever see Charles Poole working on the driftway for the borough? A No.

Q Did the borough curb the road? A Never.

Q Do you know whether or not on the east side of this strip of land in controversy there is a sidewalk? A Yes.

Q How far does this sidewalk run north of Wall street? A Runs as far back as the
40 McIntyre property to the Lane land.

Thomas Covert, cross.

Q That is a well-beaten path? A No.

Q Is it graveled? A I have never seen any gravel.

Q You do not know what it is composed of?

A Grass and sod, that is all I ever seen.

Q In the rear of the Hoch property this driftway lead out west to the driftway and then through the driftway to Wall street? A In the rear of the Hoch property? 10

Q There is considerable property in the rear?

A Yes.

Q In other words there is no driveway to or from the stable to Wall street except over the driftway? A All that I ever knew anything about.

Q Does the hedge that separates the driftway from Mr. Hoch's property run the whole length of his property? A I do not know how far it runs back. 20

Q Do you know whether there are any water pipes buried in the roadbed of this driftway? A That I do not know, none that I know of.

Q Are there any sewer pipes? A Not that I know of, never seen any.

Q Are there any telephone wires strung along it? A Up the driveway you mean? 30

Q Yes. A No, I could not say, I never noticed any.

Q Are there any telegraph poles along the so-called driftway? A If there are any, I do not remember, there might be, I have not noticed the last year or two.

Q How long have you worked for the township or borough? A Thirty-five years or more.

Q In that neighborhood? A Yes, for the township and for the borough. 40

Thomas Covert, re-direct.

Re-direct examination by Benj. P. Morris.

Q Mr. Stevens refers to all the property between Tilton's lot and Mr. Hoch's house as a driftway, and you have testified you do not know how wide that lot may be? A No.

10 Q I now ask you what land or how much of that lot between Tilton's lot and Hoch's house is actually taken up by the driftway? A I should say ten or twelve feet.

Q It is a single track road? A That is all I have ever seen shown or used.

Q How long have you seen this road? A Two or three times day.

Q Does it show any evidence of being used very much by the public or any one else? A No.

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Conclusions of Vice-Chancellor.

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between

THE BOROUGH OF WEST LONG
BRANCH,

Complainant,

vs.

JOHN HOCH, *et als.*,

Defendants.

On Bill, &c.

10

Submitted October 1, 1924.

Decided October 8, 1924.

Mr. William A. Stevens for complainant.

20

Mr. Benjamin P. Morris and Mr. Wilbur A.
Heisley for defendants.

FOSTER, V.-C.

Complainant seeks an injunction to restrain defendants from closing or obstructing what is alleged to be a public street or road in the Borough of West Long Branch.

The answer denies the lands in question to be a public road, and claims they have been used for travel only by permission of the owners of the fee, and also claims the lands have been so used for a width of only twelve or fifteen feet, as against the borough's claim of a public use of fifty or sixty feet.

30

The proofs show that the road in question was opened about 1892, by J. H. McIntyre, the owner of the fee, both for his own accommodation to reach High street, now called Wall street, from his property and also with the intention of having it become a public street, extending

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Conclusions of Vice-Chancellor.

10 northerly from Wall street to Broadway, whenever the owners of lands north of his property would open the street through their lands. For his own convenience in driving to and from his property into Wall street, Mr. McIntyre lowered the strip used for the roadway about eight or ten inches below the grade of the adjoining land, for a width of fifty or sixty feet and for a length of 252 feet, 6 inches extending northerly through his lands from the northerly side of Wall street. On the southerly side of Wall street, directly opposite this roadway, Norman L. Munro, about the same time had opened and dedicated a street of like width extending southerly through his property and which has since been known as Monroe avenue. At this time, in 1892, the property was in Eatontown Township, and in 1908, it was incorporated as part of the territory of the Borough of West Long Branch.

20 Mr. McIntyre had purchased part of his property in 1891, from one Isaiah Lane, and on opening the roadway, Lane asked for and McIntyre gave him permission to use it to enable Lane to drive into his farm, in the rear of McIntyre's lands, from Wall street.

30 The McIntyre place eventually changed owners and was divided into two parcels, the portion lying to the east of the roadway being now owned by the defendant Hoch, and the westerly portion by the defendant Tilton.

40 Since 1892, the roadway has been used continuously not only by the occupants of the Lane farm, but also by the general public and particularly by people who purchased farm produce from the Lane's and by others who drove through the roadway and around Lane's house into the public street known as Locust avenue,

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for the purpose of reaching the golf links and for other purposes.

On the westerly side of the road there was a fence for a number of years and on the easterly side—fifty or sixty feet distant, there was a privet hedge and also a sidewalk or foot path. Some graveling, filling in and scraping has been done on the traveled part of the roadway by both the township and borough, during the past twenty or twenty-five years, and during the last eight to ten years some effort was made by the owners of what is now the Hoch property, to obstruct, or to confine the travel to the middle of the driveway, by placing posts, or rails, or stones, or pieces of brick, or a fence, on the easterly side or at the entrance to the driveway from Wall street, to keep vehicles off the grass part of the roadway and to compel them to use the graveled portion, which is said to be from twelve to twenty feet in width, and which is approximately in the middle of the roadway; these obstructions were promptly removed by the borough officials and were ignored by the traveling public.

The clear preponderance of proof shows this roadway to have been continuously used by the public as a street or road since 1892, and this fact is conceded by counsel for defendants, on pages 49 and 50 of the transcript. But it is contended that this user was not adverse to the defendants' right, because such use was originally expressly granted and permitted by defendants' predecessor in title, Mr. McIntyre.

There is not the slightest evidence to support this contention; the record does show that McIntyre in 1892, gave Isaiah Lane permission to use the road and it also shows that the defendant, Dr. Hoch, notified Louis Lane, the

Conclusions of Vice-Chancellor.

son of Isaiah, in 1922, that this permission was then and there revoked.

10 No such permission was ever given to or asked for by the public. On the opening and grading of the road by Mr. McIntyre in 1892, the public began to use it and has continued to do so up to the present time, without interruption and without serious interference from any owner of the abutting properties, until defendants erected a fence at the Wall street entrance to the roadway in 1923, which the borough officials removed and which resulted in this litigation.

20 Defendants further contend that the proofs do not show the public use of the roadway for its full width of fifty or sixty feet, for the evidence is that the traveled and also the graveled part of the roadway has been from five to twenty-four feet in width, but it is also in evidence that when the usual traveled track was blocked with snow, or was for any other reason, unsuitable for travel, that the public drove over and used the grass part of the roadway, extending from the gravel to the side of the road, and that this was done so frequently as to become an annoyance to Mrs. Julian, Mr. Hayes and other former owners of the Hoch property, and it was for this reason
30 that some of the obstructions mentioned, such as the post and rails and pieces of a brick or culvert pier were placed on the grass part of the roadway.

The proofs are convincing that the roadway in question is by reason of its continued adverse use since 1892 a public street, to the width it was originally opened by Mr. McIntyre and which I understand corresponds to the width of Monroe avenue on the south side of Wall street.

40 Under the authority of *R. R. Co. v. Parker*, 41 Eq. 489; *Renwick v. Hay*, 106 Atl. 547; *Man*

Conclusions of Vice-Chancellor.

v. *Vockroth*, 94 Eq. 511, and other cases, the power of the Court to grant the relief sought under the situation here presented, showing what may be properly regarded as repeated trespasses on a public right, is well settled, and a decree will be advised for complainant.

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*Final Decree.***FINAL DECREE.**

Filed December 5, 1924.

10 This cause coming on to be heard in the presence of William A. Stevens, solicitor of the complainant, and Wilbur A. Heisley and Benjamin P. Morris, solicitors of the defendants, and the Court having examined the pleadings, and having taken proofs orally and in open court, and heard and considered the brief of counsel thereon:

20 And it appearing to the satisfaction of the Court that the roadway in question, extending northwardly from Wall street to the farm known as the Isaiah S. Lane farm to the width it was originally opened, which for the purposes of this suit it is agreed is fifty feet, being twenty-five feet on each side of the center line as designated and shown on the Tax Assessment map, by reason of its continued adverse use since 1892, is a public street, and it also appearing that the defendants, John Hoch, Frank Merrit Tilton and Grace Tilton, and their agents and servants, or one or more of them, with force and against the consent of the complainant deliberately closed said street and caused a fence to be erected across the front thereof on or near the property line paralleling Wall street, in the Borough of West Long Branch, thereby obstructing and interfering with public travel thereover, and did attempt with force and arms to erect barriers upon said roadway for the purpose of closing the same to public use, as set forth in the bill of complaint, and that the complainant is entitled to the relief prayed for by it in its bill of complaint filed
40 herein:

Final Decree.

It is, on this 5th day of December, 1924, ORDERED, ADJUDGED and DECREED, that the said defendants John Hoch, Frank Merrit Tilton and Grace Tilton, and their agents and servants, and each and every one of them, be and they are hereby enjoined and commanded henceforth and forever to desist and refrain from in any manner obstructing said roadway to the width aforesaid as a public street or highway in said borough. 10

It is further ORDERED, that the said defendants pay to the complainant the costs and disbursements of this suit to be taxed, together with a counsel fee of One Hundred Dollars and disbursements for transcript of testimony which is hereby allowed to said complainant.

E. R. WALKER,

C. 20

Respectfully advised:

JOHN E. FOSTER,
V.-C.

The decree as herein set forth with interlineations on page 1, is hereby consented to.

WILLIAM A. STEVENS,
Solicitor for Complainant.

30

BENJAMIN P. MORRIS,
Solicitor for Defendants.

(Note: "Interlineations on page 1" above referred to are as follows: "which for the purposes of this suit it is agreed is fifty feet, being twenty-five feet on each side of the center line as designated and shown on the Tax Assessment map.")

*Notice of Motion to Amend Final Decree.***NOTICE OF MOTION TO AMEND FINAL
DECREE.**

To William A. Stevens, Esq., Solicitor of Com-
plainant.

SIR:

10 TAKE NOTICE, that on Tuesday, February 3,
1925, at 10 o'clock in the forenoon, at the Chan-
cery Chambers in the City of Newark, New Jer-
sey, before Hon. John E. Foster, the Vice-Chan-
cellor to whom the above-stated cause stands re-
ferred, we shall move to amend the final decree
in above-entitled cause, made December 5, 1924,
in the following particulars:

1. By striking from the second paragraph in
said decree the following words:

20 "which for the purposes of this suit it is
agreed" and inserting in lieu thereof the
words "which the Court finds."

2. By amending the consent appended to said
decree, so that the same shall reads as follows:

"The decree as herein set forth with inter-
lineations on page 1 is hereby consented to
as to form."

30

Yours, etc.,

COLLINS & CORBIN,
Solicitors for Defendants.

Consent to Motion to Amend.

**LETTER CONSENTING TO MOTION TO
AMEND.**

WILLIAM A. STEVENS
Long Branch, N. J.

Feb. 9, 1925.

Re: West Long Branch vs. Hoch.

10

Messrs. Collins & Corbin,
Counsellors-at-law,
243 Washington St.,
Jersey City, N. J.

Gentlemen:—

I enclose herewith notice of motion to amend final decree in the manner therein set forth, which I very gladly consent to. Inasmuch as the day fixed for the application has passed, I suggest that you insert therein a new date to suit the convenience of the Court and yourself. Kindly send me a copy of the order as soon as it is entered.

20

I expected to stop at your office in Jersey City last Friday, but got tied up in another matter in New York, which prevented me from coming.

Very truly yours,

WAS/B
Encl.

(Sgd) W. A. Stevens,
per B

30

*Order Amending Final Decree.***ORDER AMENDING FINAL DECREE.**

Filed February 14, 1925.

On notice to the solicitor of complainant and on consent of said solicitor evidenced by his letter dated February 9, 1925, annexed to the notice of motion herein:

It is on this 14th day of February, A. D. 1925, on motion of Collins & Corbin, solicitors for and of counsel with the defendants, ORDERED, that the final decree in above entitled cause, made December 5, 1924, be and it is hereby amended as follows:

2. By amending the consent appended to said decree, so that the same shall read as follows: "The decree as herein set forth with interlineations on page 1, is hereby consented to as to form."

E. R. WALKER,
C.

Respectfully advised:

JOHN E. FOSTER,
V.-C.

Substitution.

**ORDER FOR SUBSTITUTION OF
SOLICITORS.**

Filed February 14, 1925.

On the annexed consent of Benjamin P. Morris, solicitor of defendants, in the above-entitled cause:

10

It is on this 14th day of February A. D. 1925, ORDERED, that Collins & Corbin, be and they are hereby substituted as solicitors of the defendants, in the place and stead of said Benjamin P. Morris.

E. R. WALKER,
C.

Respectfully advised.

JOHN E. FOSTER,
V.-C.

20

SUBSTITUTION.

I consent to the substitution of Collins & Corbin as solicitors of the defendants in the above suit.

BENJ. P. MORRIS,
Solicitor of John Hoch, Frank
M. Tilton and Grace Tilton,
his wife.

30

Dated, January 15, 1925.

40

*Notice of Appeal.***NOTICE OF APPEAL.**

Filed February 18, 1925.

10 The defendants hereby appeal from the final
decree made in this cause, as amended by order
made February 14, 1925, and from the whole
and every part thereof to the Court of Errors
and Appeals in the last resort in all causes.

Dated, February 17, 1925.

COLLINS & CORBIN,
Solicitors of Defendants.

GEO. S. HOBART,
Of Counsel.

20 I conceive there is good cause for appeal in the
above-stated cause.

GEO. S. HOBART,
Of Counsel with Defendants.

30

40

Petition of Appeal.

PETITION OF APPEAL.

Filed February 18, 1925.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of John Hoch and Frank M. Tilton and Grace Tilton, his wife, the appellants in the above cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the fifth day of December, in the year one thousand, nine hundred and twenty-four, as amended by order made the 14th day of February, 1925, wherein the said The Borough of West Long Branch was complainant, and the said John Hoch and Frank M. Tilton and Grace Tilton, his wife, were defendants, in this respect, to wit: that the said decree adjudges that the complainant was entitled to the relief prayed for in the bill of complaint with costs.

And your petitioners humbly appeal from the whole of the said final decree on the ground that the same is erroneous, for that, the said bill of complaint should have been dismissed with costs to your petitioners, the defendants therein.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in all things, reversed, set aside and for nothing holden.

And that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors of Appellants.

GEO. S. HOBART,
Of Counsel with Appellants.

Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed May 17, 1925.

The answer of the above-named respondent to the petition of appeal of the above-named appellants.

10 This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits that a final decree was, on the 5th day of December, in the year one thousand nine hundred and twenty-four, as amended by order made the 14th day of February, one thousand nine hundred and twenty-five, entered in the Court of Chancery in the cause for that purpose, and mentioned in the petition as is therein stated; but as to the
20 substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be adjudged to this respondent.

WILLIAM A. STEVENS,

Solicitor and of Counsel with Respondent.

30

Consent to the filing of the above answer as within time is in this manner indicated.

HOBART & MINARD,

Solicitors and of Counsel with Appellants.

Order for Substitution of Solicitors.

**ORDER FOR SUBSTITUTION OF
SOLICITORS.**

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

THE BOROUGH OF WEST LONG
BRANCH,

Plaintiff-Respondent,

vs.

JOHN HOCH, *et als.*,

Defendants-Appellants.

10

*On Appeal
from
Chancery.*

On the annexed consent.

20

It is on this 17th day of April, A. D. nineteen
hundred and twenty-five ORDERED, that Messrs.
Hobart & Minard be and they hereby are sub-
stituted as solicitors of defendants-appellants in
the place and stead of Collins & Corbin.

We consent to the making and filing of the
foregoing order.

COLLINS & CORBIN,
Solicitors of Defendants-Appellants.

30

40

*Exhibits.***EXHIBITS.****C. 1.**

Page 11 of Tax Map of Borough of West Long Branch, made by J. W. Seaman, City Engineer, dated March 25, 1915. (See phostatic
10 copy.)

C. 2.

Page 14 of said Tax Map. (See phostatic
copy.)

C. 3.

Photograph marked "George from Uncle Harry, March 31, 1898." (Not printed.)

20

D. 1.

Photograph of road showing heap of rubbish.
(Not printed.)

D. 2.

30

CHARLES ASA FRANCIS, Sheriff,

to

WILLIAM HAYES.

Sheriff's
Deed.

Dated Octo-
ber 25, 1906.

Recorded
Book 787,
p. 157.

On Novem-
ber 8, 1906.

Cons. \$500.00.

40

CONVEYS ALL that lot, tract or parcel of land
and premises hereinafter particularly described,

Exhibits.

situate, lying and being in the Township of Eatontown, in the County of Monmouth and State of New Jersey, at WEST LONG BRANCH,—

BEGINNING in the centre line of High Street, at the intersection of said centre line with the centre line of a street crossing the same from Norwood Park, through land of I. S. Lane and running thence (1) North fifteen minutes West Two Hundred and Fifty Two Feet Six Inches to a stake in the centre line of said street, running through Lane's property; Thence (2) South eighty five degrees and forty minutes East One Hundred and Seventy Six Feet Nine Inches to a stake; Thence (3) South four degrees thirty minutes East Two Hundred and Twenty Five Feet Seven Inches to the centre line of High Street; Thence (4) along the centre line thereof South eighty five degrees and thirty minutes West One Hundred and Ninety Three Feet and Two Inches to the point or place of Beginning;

BEING the same premises conveyed to the said Josephine Julian by deed of James Howard McIntyre and wife, bearing date March 1, 1897, and recorded in the Monmouth County Clerk's Office in Book 585 of Deeds page 340 Ec.

30

Exhibits Offered But Not Marked.

Deed from Lane to McIntyre. (See abstract following.)

Map filed in Road Book K, page 15. (See phostatic copy.)

Photograph of Wall street. (Not printed.)

40

*Exhibits.***DEED.****Lane to McIntire.**

		War. Deed.
		Bk. 583, pg.
10		304.
	ISAIAH S. LANE and MARY A.,	Dated Nov.
	his wife,	20, 1891.
	to	Ack. Nov.
		20, 1891.
	JAMES HOWARD MCINTIRE.	Rec. Feb.
		4, 1897.
		Cons. \$325.00
20		Gr. fee.
		Hab. fee.

Conveys all &c. premises in the Township of Eatontown, Monmouth County, New Jersey, near the village of West Long Branch, adjoining land of the aforesaid—

BEGINNING in the corner of a fence at a stone, thence (1) North eighty six degrees West two chains and sixty three links to the middle of a proposed street; thence (2) north eighty nine degrees and fifteen minutes West, twelve chains and eight links to the southwest corner of the field West of the said Isaiah S. Lane's house, by the road; thence (3) south eighty four degrees and forty five minutes East fourteen chains and eighty six links to a corner—a fence; thence (4) North, seventy links to the beginning, containing sixty hundreds of an acre, more or less.

Cov. of ownership.
 40 “ against encumbrances
 “ of right to convey
 “ of warranty.

7

8

33¹⁰ A

66²⁶ A

76⁸³ A

38³⁵ A

MT. CARMEL CEMETERY
EXEMPTED

2⁸⁵ A

7⁰⁰ A

Exhibit C. 1.

Page 11 of Borough Map.

-  LOT NUMBER
-  BLOCK NUMBER
-  ADJOINING SHEET

24

10

14

15

PARKER ROAD

LOCUST AVENUE

LOCUST

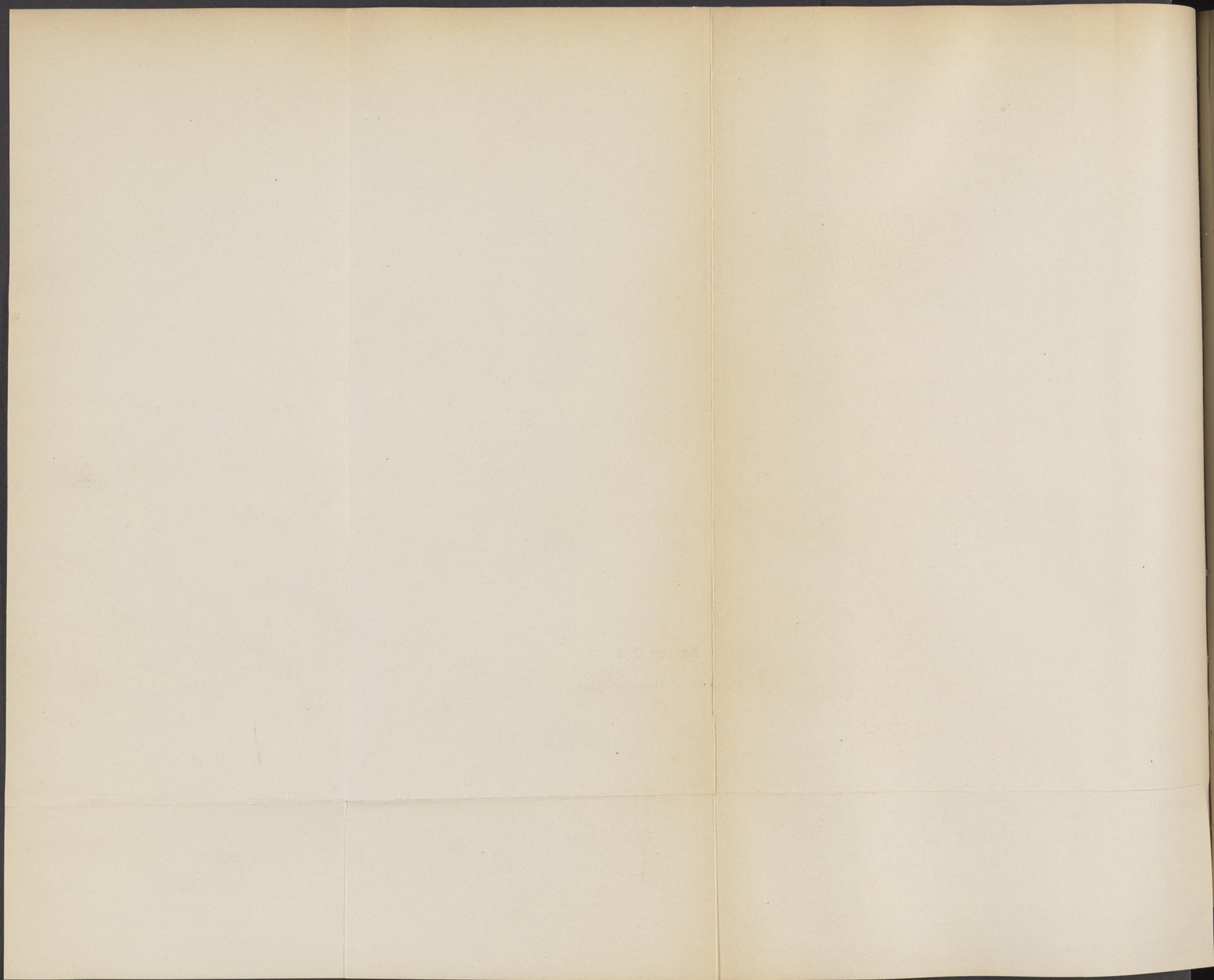
STREET

ELMWOOD AVE.

PINEWOOD AVE.

TRACING OF SHEET NO 11 OF BOROUGH MAP OF WEST LONG BRANCH N.J.
 SCALE 1"=100' JUNE 2ND 1925 DATE ENDED





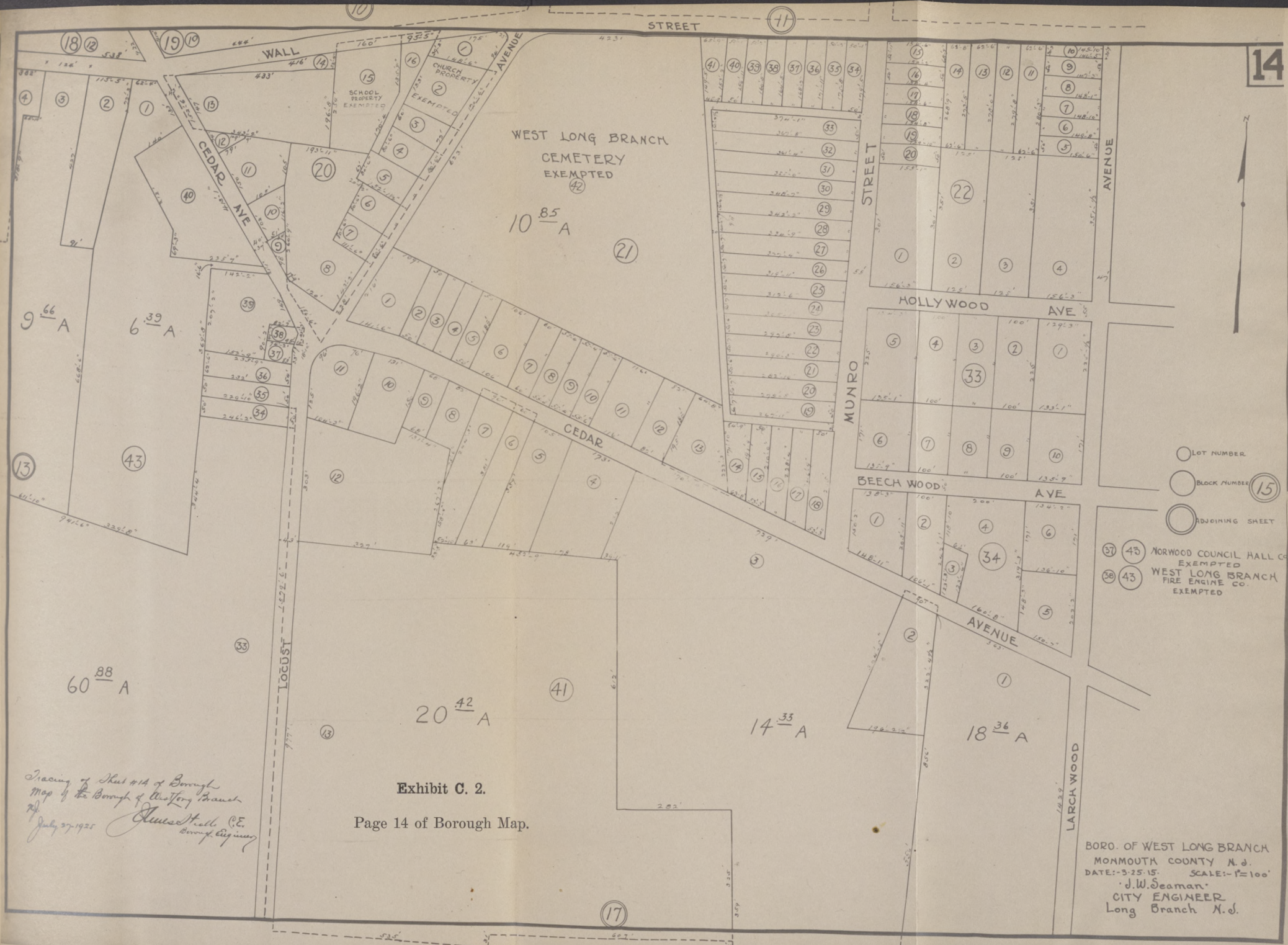
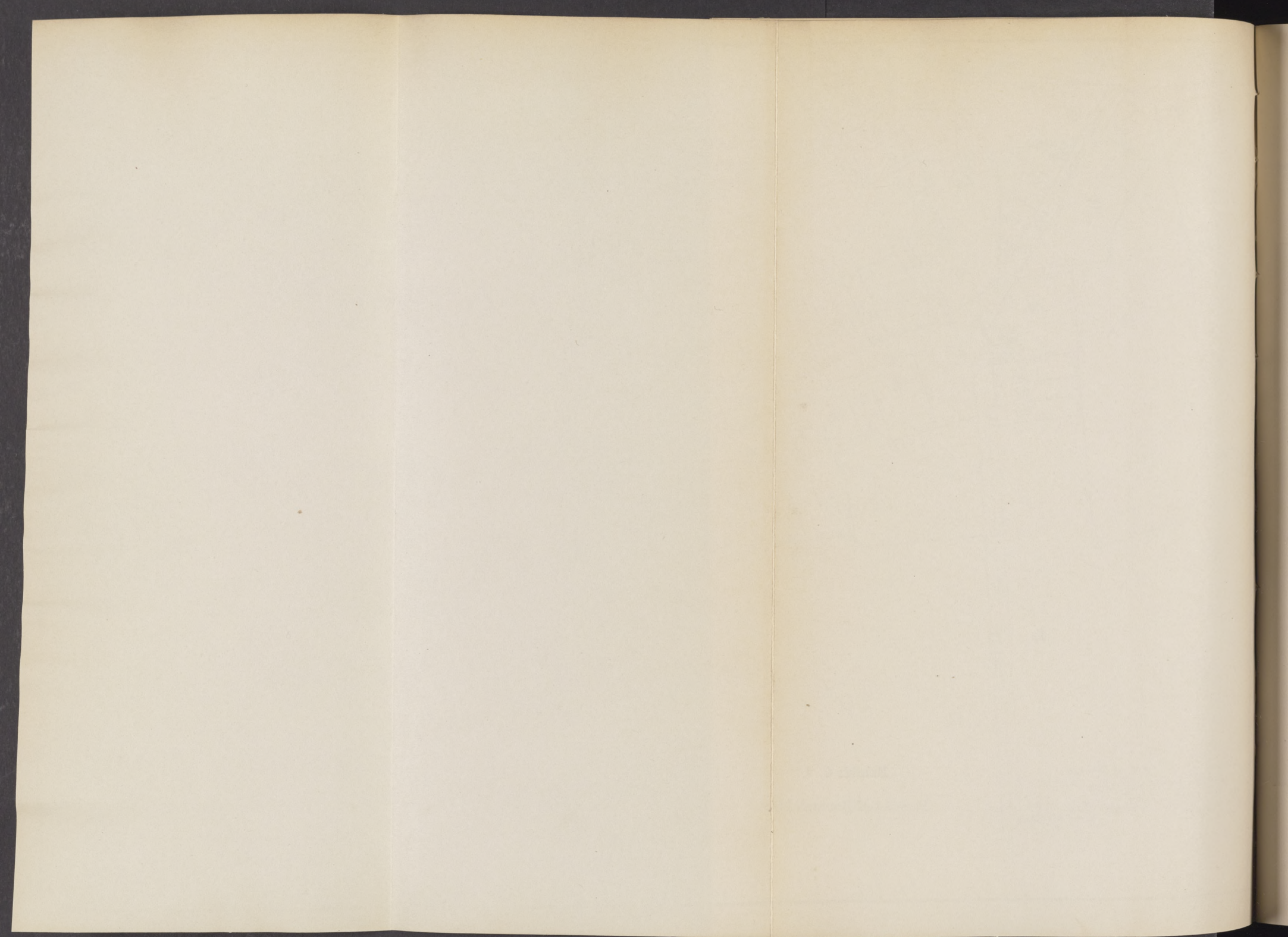


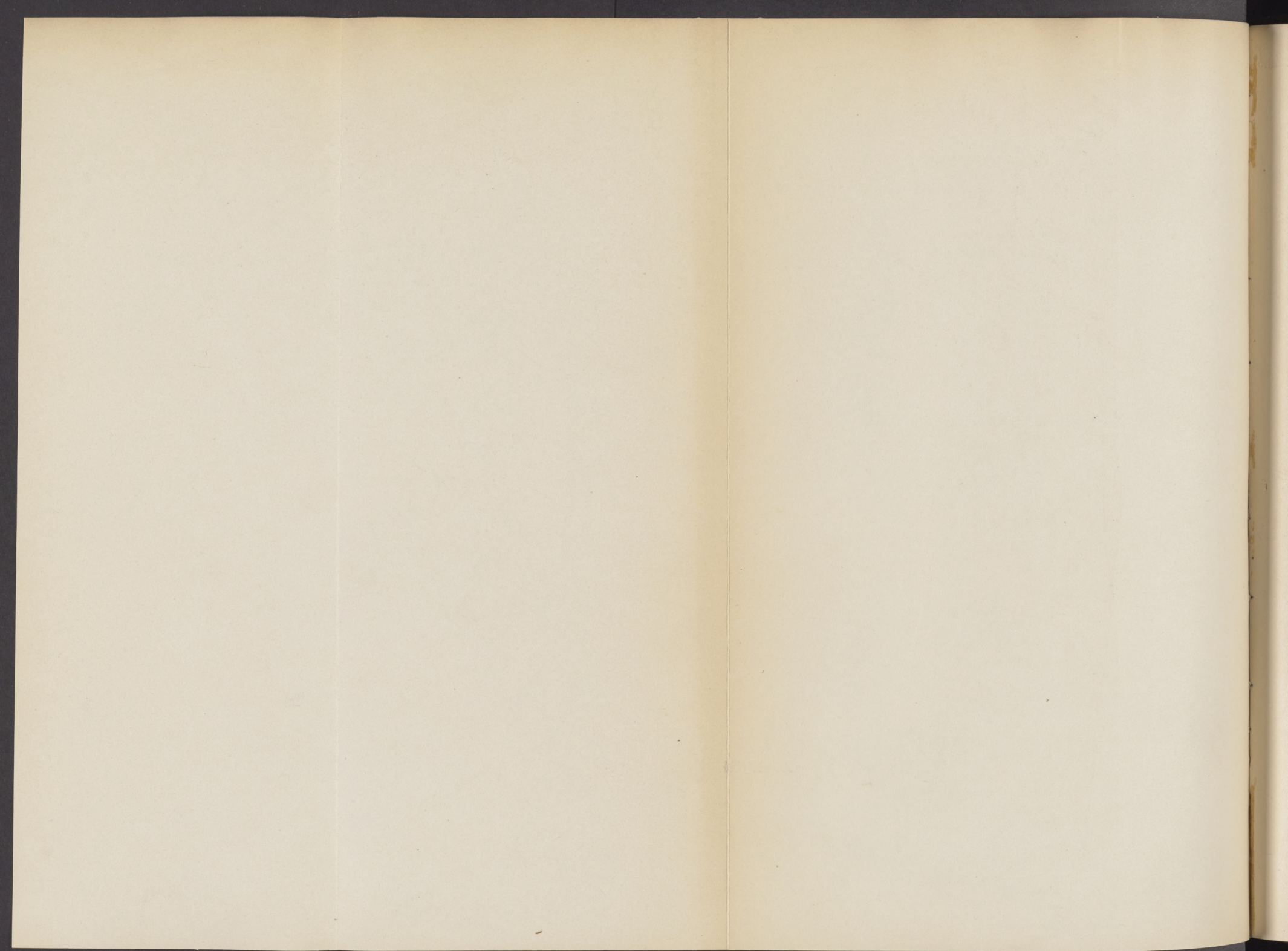
Exhibit C. 2.

Page 14 of Borough Map.

Tracing of Sheet #14 of Borough
Map of the Borough of West Long Branch
July 27-1925
James Hall, C.E.
Borough Engineer

BORO. OF WEST LONG BRANCH
MONMOUTH COUNTY N.J.
DATE: 5-25-15. SCALE: 1"=100'
J.W. Seaman
CITY ENGINEER
Long Branch N.J.





New Jersey Court of Errors and Appeals

Between

THE BOROUGH OF WEST LONG
BRANCH,

Complainant-Respondent,

and

JOHN HOCH and FRANK M.
TILTON and GRACE TILTON,
his wife,

Defendants-Appellants.

*On Appeal
from
Chancery.*

BRIEF IN FAVOR OF DEFENDANTS- APPELLANTS.

(1)

Statement of the Case.

This is an appeal from a decree of the Court of Chancery, (advised by Foster, V.-C.), in which that court adjudged that the appellants, (hereinafter called defendants), and their agents and servants, be enjoined from obstructing a certain roadway to the width mentioned in the decree as a public street or highway in the Borough of West Long Branch—the respondent, (hereinafter called the complainant); and ordering that the defendants pay the costs of the complainant with counsel fee and disbursements (p. 183, ll. 5-20).

The recitals in the final decree describe the roadway in dispute and the alleged obstruction thereof by the defendants, as follows:

“And it appearing to the satisfaction of the Court that the roadway in question, extending northwardly from Wall street to the

farm known as the Isaiah S. Lane farm to the width it was originally opened, which for the purposes of this suit it is agreed is fifty feet, being twenty-five feet on each side of the center line as designated and shown on the Tax Assessment map, by reason of its continued adverse use since 1892, is a public street, and it also appearing that the defendants, John Hoch, Frank Merrit Tilton and Grace Tilton, and their agents and servants, or one or more of them, with force and against the consent of the complainant deliberately closed said street and caused a fence to be erected across the front thereof on or near the property line paralleling Wall street, in the Borough of West Long Branch, thereby obstructing and interfering with public travel thereover, and did attempt with force and arms to erect barriers upon said roadway for the purpose of closing the same to public use, as set forth in the bill of complaint, and that the complainant is entitled to the relief prayed for by it in its bill of complaint filed herein" (p. 182).

The defendants appeal from the whole of the said final decree on the ground that the bill of complaint should have been dismissed with costs.

The claim of the complainant is that the roadway has become a public street by adverse user for more than twenty years, or by the recognition or adoption thereof by the municipality; the defendants deny that the roadway has been used continuously by the general public for more than twenty years, or that it has ever been recognized or adopted by the municipality and set up the additional claims:

(a) That even if the roadway has been used for more than twenty years, such user was permissive instead of adverse, and was limited to those to whom the original permission was given,

or to those having business or social relations with the permittee and his successors in interest.

(b) That in any event, the evidence did not show user of any kind (whether adverse or permissive) either to the width claimed in the bill—to wit, 59 feet; or even to the width adjudged in the final decree, to wit, 50 feet, but on the contrary, that the user did not extend to more than a width of, at most, 15 feet.

(2)

Specification of Grounds of Appeal.

The defendants appeal from the final decree of the Court of Chancery on the ground that the said decree adjudges that the complainant was entitled to the relief prayed for in the bill of complaint with costs; whereas, the defendants allege that said decree is erroneous, for that, the said bill should have been dismissed with costs, (p. 189, ll. 20-30).

(3)

BRIEF OF THE ARGUMENT.

Summary of Pleadings.

The questions of fact and of law may be conveniently stated by a summary of the allegations of the bill and answer.

Paragraphs 1 and 2 of bill.

Complainant is a municipal corporation of this state and has been in control and charge of streets since 1908; prior thereto the territory embraced within the present Borough was a part of the Township of Eatontown.

Answer—Admitted.

Paragraphs 3, 4 and 5.

For more than twenty-five years there has existed a public road which is the continuation of Monroe street, extending northwardly from Wall street to the Isaiah S. Lane farm.

Said roadway north of Wall street is laid out at a uniform width of fifty-nine feet and runs northwardly from Wall street for a distance of approximately two hundred fifty-two (252) feet to the said Lane farm.

Said road has been recognized as a public road by the Township of Eatontown prior to the incorporation of the Borough of West Long Branch for more than twenty years and has been so treated as a public road since the incorporation of said Borough.

Answer—Denied.

Paragraph 6.

Said road has been graded, gravelled and scraped at public expense from year to year and has never been closed until just prior to the filing of this bill; for more than twenty (20) years it has been bounded on the east by a hedge fence and on the west by a rail fence. The road is shaped and crowned and the gutters on each side are clearly defined, and on the east side north of Wall street there is a sidewalk well established; and a roadway leading from the premises on the east side opens into said road over which the several owners and residents of said property have traveled.

For many years this road has been used by the owners and tenants of the Lane farm, and by persons to pass through to the said farm for the purpose of purchasing produce and the like.

On or about January 1, 1922, one John Hoch purchased the premises fronting Wall street which immediately bounds the road in question on the east side; and in the deed to said Hoch, from Hayes, dated December 31, 1921, it is declared that said premises begin in the center line of Wall street at

the intersection of said centre line with the centre line of a street crossing same through Norwood Park to lands of the said Lane, the westerly boundary line in said deed following the centre of said street.

On or about June 24, 1922, Frank M. Tilton and wife purchased of McIntyre, the premises located on the north side of Wall street which adjoins said street in question on the west, and in said deed it is declared that the premises so purchased begin at a point in the centre line of Wall street which is also the centre line of a proposed street running north from Wall street to the Lane property.

On or about June 2, 1923, the defendants, with force and against the consent of the complainant closed said street and have caused to be erected across the front thereof on the property line paralleling Wall street a fence, and have likewise at other points crossing said street in question caused fences to be constructed completely shutting off to those who have been in the habit of using said street the right of ingress and egress; and complainant having directed and caused said fences to be taken down and said obstructions removed, said defendants did with force and arms again replace said obstructions and barriers and have closed said road to the use of the public and those who have been accustomed to enjoying the same for many years.

Answer—Denied except as to allegations of ownership by the defendants of the property adjoining the easterly and the westerly sides of the road in question. Also: Hoch claims to own the easterly half of said road, and Tilton the westerly half thereof.

Further answer of Defendants.

Paragraph 5.

The land in dispute never was, nor is it now, a public street, nor has it ever been subjected to the use of the public, nor has the public, or said complainant, any right therein, or any privilege of using the same as a public street.

Paragraph 6.

One, James H. McIntyre, the owner of property lying on the south side of Wall street, contemplated the possibility of extending Monroe street northerly through the lands of said McIntyre and other lands to the north, including the Lane farm, and others, a distance of a mile to a public road; said McIntyre, then being the owner of a tract of land, including the premises in dispute, lying on the north side of Wall street, was agreeable to the proposed extension of Monroe street, and in subsequent conveyances made by him of lands adjoining the disputed premises on its easterly and westerly sides he referred to the disputed tract as a "proposed street," but never in any way did he cause the same to become a public street, nor did he ever dedicate either in writing or by his act the said disputed tract, or any part of it to public use, and said extension was never consummated.

Paragraph 7.

The said Isaiah S. Lane, asked the permission of McIntyre to use a portion of the said disputed tract as a private driveway leading from Wall street to his said farm, to be used by the said Lane and his family and employee and by such persons as might desire to use the same as a means of access to the said farm, upon the condition that said use should be continued only for so long and under such conditions as should be according to the pleasure of McIntyre.

Paragraph 8.

To the present time said disputed premises have continuously been in the possession and under the control of the said McIntyre and his successors in title; and the said Lane, in his lifetime, and his successors in title, have been permitted by the said McIntyre and his successors, upon request, to use a small portion of the disputed premises for the purpose of access from Wall street to the said Lane farm.

Paragraph 9.

Lane and his successors asked and received from McIntyre permission to use the premises as aforesaid upon said terms and conditions, and they never at any time, until very recently, have asserted any right to use the premises in dispute.

Paragraph 10.

McIntyre and his successors have frequently, since the making of the said arrangement, effectually shut off the said disputed tract from Wall street by erecting across the same fences and barriers and other obstructions, so that no one, even the occupants of the Lane farm, could use the same; and said acts were not contested or disputed. For many years the said McIntyre, and his successors, have maintained a large stone near the centre of the disputed tract, which stone still remains and was intended and accepted by the said occupants of the said Lane farm as the boundary line of the small strip of land which they should be permitted to use as a means of access from Wall street to said farm.

Paragraph 11.

The said complainant, as a representative of the public, never had, or now has, any right in the disputed tract; the only right that any owner or occupant of the Lane farm had to use the same was with

the permission of McIntyre, and his successors; and such right and permission have long since been revoked and the defendants are the absolute owners of the disputed tract and in possession of the same.

I.

There is no evidence that the alleged roadway was ever recognized or adopted as a public street by the Borough of West Long Branch, or by its predecessor, the Township of Eatontown.

The bill alleges that the roadway in dispute has been recognized as a public road by the Township of Eatontown and thereafter by the complainant, the Borough of West Long Branch (which was carved out of the Township in 1908) for more than 20 years, and has been treated as a public road since the incorporation of the Borough; the bill then alleges that the road has been graded, graveled and scraped at public expense from year to year and has never been closed until shortly prior to the filing of the bill; that for more than 20 years the roadway had been bounded on one side (the east) by a hedge fence and on the other (the west) by a rail fence; that the road was shaped and crowned and the gutters on each side were clearly defined; and that on the east side north of Wall Street there was a well-established sidewalk. All these allegations were denied.

There was no claim that the roadway had ever been laid out or accepted as a public street by any resolution or ordinance or other official act of the complainant or of its predecessor municipality. On the contrary, so far as there was any official action by the complainant there was a recognition that the premises in question were privately owned; Hulick said he had been the as-

essor of the complainant for 10 years and that he had assessed the roadway partly to one Hayes (who was the predecessor in title of the defendant Hoch) and partly to one McIntyre (who was the predecessor in title to the defendant Tilton), and that he had raised the assessments five or six years ago (p. 120, ll. 1-21; p. 121, ll. 1-15).

The collector of taxes was asked whether the roadway had ever been assessed to either Hoch or Tilton, and said he did not know anything about it (pp. 92-93). But *Hayes*, the former owner of the Hoch lot, said that he paid taxes on all of it, and that two or three years ago the assessment had been increased (p. 106, ll. 1-20).

Beale, former assessor of the Borough, said that as near as he could remember he assessed the entire property as a "plot" including the "lane" in question. There was no tax map at that time. He was not sure whether this assessment included the roadway in question (p. 117).

McIntyre, who owned the property for many years, paid taxes on it and never claimed any exemption on account of any public rights therein (p. 159, ll. 10-20). The assessment was raised five or six years ago, the assessor saying that he understood the witness owned to the centre of the "proposed road" and therefore should be taxed for it (p. 161, ll. 10-20).

The evidence stands without contradiction that the property in dispute has always been assessed as private property.

This evidence is confirmed by the further undisputed fact that the official tax maps of the complainant, which were adopted March 25, 1915, and which were offered in evidence by the com-

plainant as Exhibits C. 1 and C. 2 (pp. 11-12) show on their face a clear distinction between that part of Munro Street which lies to the south of Wall Street (being the same street which is described in the deeds as High Street) and the alleged extension of Munro Street—which is the roadway in dispute—to the north of Wall Street. Photostatic copies of these exhibits on a reduced scale will be found in the back of the printed book. It will be observed that Exhibit C. 2 (being page 14 of the Borough Map) shows Munro Street to the south of Wall Street; and like every other public street indicated on the map, Munro Street is marked by heavy lines indicating street boundaries; but when we turn to Exhibit C. 1 (being page 11 of the Borough Map) we find that the heavy lines indicating Munro Street, which are found on the south side of Wall Street, do not extend to the northerly side thereof; but, on the contrary, there is a broken line (in the middle of Munro Street extended) for a distance of 252 feet and 6 inches, which is the exact distance of the roadway in dispute; this is indicated on the map as beginning in the exact centre of the intersection of Wall Street (running east and west) with the intersection of Munro Street (running north and south).

These official maps show that so far from there being any “recognition” of the premises as a public street, the complainant itself, when it adopted these maps in 1915, recognized that the premises did not constitute a public street, but, on the contrary, were in private ownership.

An effort was made by the complainant to show that work had been done on the roadway by the municipality, but the evidence does not justify any such conclusion.

Dr. Beach, a former member of the Borough Council, said that "the last four or five years" the borough "put dirt in there and scraped it" (p. 13, l. 20). But he also said that he did not think the street was ever "graded" (p. 18, l. 1); except that ten or fifteen years ago the land in the alleged street at the point where it intersects Wall Street was "cut down" (p. 18, l. 35). The occasion for that, however, was a change in the location of Wall Street (formerly known as High Street) when the surveyors of the highway straightened that street in 1891 (the change in the location is shown on the map filed in Road Book K p. 15 of Monmouth County, photostatic copy of which appears in the back of the printed book).

The witness explained that when he referred to the "dirt" which the borough put on the street, he was speaking of the "gravel" taken from the old Monmouth Road which Hayes, the former owner of the Hoch property, allowed the contractor who was working on Monmouth Road, to put on the street, and he finally admitted that he was not ready to swear that the borough put on this gravel. All the borough did was to "scrape" it (p. 21, ll. 3-33).

The witness finally limited the "scraping" to a man who he thought was Mr. Farry, saying that he saw him scraping it four or five years ago and that he was the assistant superintendent of the Borough in charge of the streets, and with that exception that was all that he had ever seen (p. 21, l. 30, to p. 22, l. 3).

Slocum, member of the Borough Council for 18 years and in charge of the Street Department for two years, said with reference to the side-

walk "There is a place where the sidewalk *was*." In answer to further questions he said:

"The Court: Do people walk there?

The Witness: They used to walk there.

Q You mean there was a well-beaten path? A I couldn't tell you that.

Q What is it today? A It is mostly grass now.

The Court: You mean the path is overgrown, or the road?

The Witness: No, on the sidewalk. It hasn't been kept cut out" (p. 25, ll. 25-38).

He also said that the borough had scraped the road, carted gravel in there, and usually ploughed it out in case of snow (p. 26, l. 1).

So far as the gravel is concerned, he then stated he knew nothing about it except what he had been told; that he had never seen gravel carted there; all he saw was the gravel after it had been put there. The man who is supposed to have put it there, according to this witness, was one Elwood Farry (p. 26, ll. 1-30).

On cross examination he admitted that he did not know whether the municipality had ever done any work on the alleged street before seven years ago (p. 27, l. 40).

Antonides, Mayor of the Borough, also said gravel had been carted on to the premises, but he did not know under whose direction (p. 33, ll. 23-40).

"Q What care has the municipality given to this road? A They took waste gravel, or worn out gravel from the different streets and they put the gravel there when they built the new State Highway on Cedar Avenue.

Q You have heard it stated that somebody by the name of Hayes carted gravel in there? A Never seen Mr. Hayes cart gravel.

Q Who carted gravel in there? A Mr. Farry, and the contractor carted gravel in there.

Q Under whose direction? A I don't know about that.

Q Do you know where the contractor carted the gravel in there to? A Yes, sir.

Q Did he do it? A Yes, sir.

Q And Mr. Farry carted gravel in there?

A Yes, sir."

In answer to a question from the court as to whether the Borough paid to have gravel put on the road, he said: "No, the gravel the borough put on, they took and cleaned out of the gutters from other streets" (p. 34, l. 20).

He also said there were no telegraph poles or wires over Wall Street, nor any sewer outlet under the street; that there was a private water main which ran into the kitchen of the Hoch property, but that this was "just out of the line" (p. 34, l. 30, to p. 35, l. 10).

He then said that the first work that was ever done by the municipal authorities upon the alleged street was about seven years ago and that "in all" he saw 35 or 40 loads of "waste dirt" carted there from other roads (p. 37, l. 35, to p. 38, l. 10).

He also referred to a "path" which was put there one winter by Mr. Hayes (predecessor in title of the defendant Hoch) (p. 39, ll. 10-30). The borough, however, had nothing to do with this path; all that it amounted to was that Hayes put some boards on the ground one winter when the frost was coming out of the ground. The boards extended only as far as the driveway leading to the barn of Hayes (p. 39, ll. 10-35).

He admitted that the borough authorities had put up road signs in the borough "pretty gen-

erally" (p. 39, l. 40), but that the only sign near the disputed property is almost directly opposite, indicating Munro Street *on the other side* of High Street (or Wall Street as it is called on the borough maps) (p. 40, ll. 1-10).

Chimney, Recorder of West Long Branch. He was asked about the sidewalk on the east side and said there was one there until "last summer," and that it was "part of the way in" (p. 42, ll. 1-18). When asked what happened to it, he said: "Well it has been filled in and sodded, just the entrance. The rest of it is in grass, in sod" (p. 42, l. 20).

He said that he had seen the roadmen in there with the scraper several times (p. 42, l. 25), but as to the work of Mr. Farry, he never saw him cart dirt there but had seen him "leveling it off" (p. 44, ll. 10-15).

The only grading of the street that he knew of was some years ago when the grade of Wall Street was changed. He said that at that time "the road was cut down so as to get in and out of there" (p. 44, l. 25). *He could not say who did the cutting* (p. 44, l. 30). The part which was cut down—whoever cut it—was about 15 or 20 feet wide (p. 44, l. 38).

The only man he saw leveling the dirt was Farry (p. 46, l. 15). He also saw other men employed by the borough at times. "I saw them working there when the road was first opened, but I don't know who did it" (p. 46, l. 30).

It is not clear just what the witness meant by the "first" opening of the road. If he refers to the change in location of Wall Street and the re-grading of that street, that work was done about

30 years ago, but there is nothing in the evidence of this witness to show that the borough had ever done any work on the premises in question since that time except on the occasion when he said he saw Farry level the dirt.

Charles A. Poole, former member of the Borough Council, said he did not know that the road had ever been under the control of the borough and then testified:

“Q Have you ever seen the borough authorities working on the road? A Not the borough authorities, no.

The Court: Have you ever seen the township authorities working on it?

The Witness: When it was in Eaton-town Township, I remember seeing the Overseer of the Roads, grading it down to the roadway” (p. 49, ll. 12-20).

He further said that he never saw Farry work on the roads; that he had seen the municipal authorities work on it when they sloped it back 10 or 15 feet when it was higher than Wall Street so as to make it easy of access. This was prior to 1908.

“That is the only time you ever saw the township work on it? A That is all” (p. 50, l. 20, to p. 51, l. 10).

Palmer. Lives about half a mile from the roadway. At one time there was a path leading from Wall Street to the stable of the Hoch property (p. 52, l. 20; p. 53, l. 10). There was a bank on each side of the “road,” which was about 50 feet wide, and the path where the cars go is not half of that, with grass on each side (p. 54, ll. 1-15).

Hyer. Noticed the “sidewalk” on the east side but had never noticed anyone using it (p.

57, ll. 11-20). When asked as to the work by the municipal authorities he said:

“Q And have you seen the road worked by the municipal authorities? A No, sir.

Q Have you seen dirt or gravel placed upon that road? A I wouldn't say, positively. I had better not say anything.

Q Do you know whether the road has been taken care of? A I am pretty sure.

Judge Heisley: Not unless you know it.

The Court: If you don't know, that is the proper answer.

The Witness: I don't know.

Q Do you know whether snow has been scraped from the street by the municipal authorities? A I couldn't swear to it, no'' (p. 56, l. 32, to p. 57, l. 10).

William L. Poole. Saw the overseer of the township plough up the road 22 years ago. This was done for a width of 16 to 20 feet (p. 63, ll. 20-40).

He had also seen Farry work on the road. “I have seen him scrape on the road. I wouldn't say positive I ever seen anything else” (p. 64, l. 15).

Also saw some gravel put on the road which was taken from the state road. This was put on by the contractor and Farry “took care of it afterward” (p. 64, ll. 20-40).

Lane. Lives on what is known as the Lane Farm (p. 68, ll. 20-40). Twenty-four years ago the municipal authorities took dirt from the sidewalk and put it in the middle, leaving five or ten feet for each sidewalk (p. 69, ll. 10-40). The witness supervised the grading (p. 70, ll. 1-10).

Sherman (referring to the roadway). “Do you remember its being graded and patched up? A No, sir” (p. 79, l. 30). He further said that he had seen Farry scrape it several times

and had seen "them" cart gravel in there covering a space of 22 feet (p. 80, l. 30, to p. 81, l. 10).

White. Marshal of the Borough.

"Q Did you ever do any work on the road itself? A I did work on the roads but not on that road.

Q Have you seen the borough work that road, scrape it? A Yes, I think I have.

Q Are you sure? A Yes, I am sure, I have seen the borough scrape it.

Q How long ago? A Perhaps three or four or five years, I couldn't tell about that.

Q Have you seen any gravel being placed on the road? A I don't remember about that.

Q Is it graveled? A I don't think it is, if my memory serves me right.

The Court: When were you last on the road?

The Witness: I think I worked on the road last, about five years ago.

Q Who were you working for then? A Working for the borough.

The Court: What did you do on the road?

The Witness: Cut the grass and pulled it" (p. 95, ll. 1-30).

Farry. Works for the borough, taking care of the roads. This is the man referred to by several witnesses as having carted gravel to the alleged road or as having scraped it. He said "I have carted stuff in there" (p. 83, l. 35).

"I carted gravel in there, and spread it" (p. 84, l. 20). He began to do work on the street seven years ago. He then testified as follows:

"Q Tell the Vice-Chancellor what else you have done.

The Court: During the past seven years what have you done on it?

The Witness: I have scraped it, and opened the snow on it in the winter, and

Mr. Hayes and Mr. Lane asked me if I wouldn't cart some gravel in there and fill up the mud holes.

Q Did you do it? A Yes, and filled up the mud holes and spread it.

Q At the expense of the borough? A Lane and Hayes didn't pay for it.

Q What else have you done? A That is about all I have done.

The Court: Did you put any more gravel on except this to fill up these holes?

The Witness: Filled up the holes and I had men there to spread it.

Q From time to time you have dumped a load in there and spread it? A Yes, sir.

Q And you generally gave it some supervision? A Yes, sir.

Q Were you told to do this by any borough official or did you do it on your own responsibility? A *I done it to accommodate Mr. Hayes and Mr. Lane.*

Q Are you employed by the month? A Yes, sir.

The Court: *Did you put in vouchers for work on this road?*

The Witness: *No, sir.*

The Court: How did the mayor and council know you were doing work on this road?

The Witness: It didn't take me long.

The Court: *Did you tell them?*

The Witness: *No, I didn't tell them.*

The Court: Was there any street committee?

The Witness: No.

The Court: Did they see you working there?

The Witness: I don't know.

The Court: Did they know you were working there?

The Witness: I don't know whether they did or not.

The Court: Was Mr. Slocum there at any time to see you working on that road?

The Witness: I don't know.

The Court: Why did you work on that without an order of the township authorities?

The Witness: *I just done it as a favor.*

The Court: Why didn't you charge Mr. Hayes?

The Witness: We was good friends.

The Court: Why didn't you charge Mr. Hayes instead of the borough?

The Witness: *I didn't ever charge anybody.*

Q Now, when the State Highway Commission carted the gravel in there from the State road, did you spread it? A No, sir.

Q Who spread that? A I don't know.

Q Was there such dirt carted in there?

A I saw the trucks in there dumping it.

Q You didn't supervise the spreading of it? A No, sir, I had nothing to do with it.

The Court: When you cleared the snow and dumped that gravel and scraped the road, did you do it as an accommodation for Mr. Hayes and Mr. Lane, or as work of the borough?

The Witness: *No, I did it because Mr. Hayes and Mr. Lane asked me.*

The Court: *You didn't do it as part of your borough work?*

The Witness: *No, sir''* (p. 84, l. 30, to p. 87, l. 5).

He further said that the dirt he put on this road he had to get rid of somewhere and this was the most convenient place, and he carted the surplus dirt a little almost every year, except the last year or two (p. 87, ll. 20-40).

When asked as to what he had done in the way of scraping the road, he testified as follows:

"Q When you scraped the road, would you do that at the request of Mr. Lane and

Mr. Hayes? A Sometimes I would, and sometimes I wouldn't. I would go in there anyway.

Q What prompted you on other occasions to go in there and scrape the road?

The Court: When Hayes and Lane didn't ask you to?

The Witness: Because it was packed up with snow.

Q I mean when there wasn't snow, in the spring and summer? A I didn't go in there very often, only when the roads were bad and cut up" (p. 88, ll. 10-30).

DEFENDANTS' WITNESSES.

Morris, Collector of Eatontown Township, was subpoenaed to produce the books and other papers of the township to see whether that township had ever spent any money on the roadway. He went back to the year 1900 with the vouchers and the year 1873 for the minutes and ordinances.

"Q Now, in your research have you found any reference of any kind, or anything relating to doing of work or furnishing material, or exercising of authority by the township committee over this disputed territory? A I have not. I want to say I have examined the minutes from 1873 very carefully up to 1908, when West Long Branch Borough was separated from Eatontown Township, and I can find nothing there relating to this road or street in question.

Q And as to the bills during the other dates you mentioned; you find no bills? A The bills are made out, not specifying the road they are made out for. It is assessment tax work.

The Court: Without indicating where the men worked?

The Witness: Yes, sir.

The Court: So, if a man had worked a day, or part of a day on this Monroe

street, there would be nothing on the vouchers to indicate that?

The Witness: No, sir" (p. 77, ll. 1-30).

Hayes. Predecessor in title of the defendant Hoch. Neither the Township of Eatontown nor the Borough of West Long Branch ever did any work on the premises in question, nor improved it. If he asked for some sand to fill up the holes, it would be brought to him. No claim was ever made by the township or the borough that they had a road at that point. Some dirt was carted there off of the Monmouth Road. "I went there and asked for it, and asked the man carting it, and he brought it over there and I tipped him for bringing it in there" (p. 99, l. 1). The borough had nothing whatever to do with it. Farry never worked on the road except at the request of the witness. One time there was a "hollow" and something was put in it; that was because the water used to stand there *not far from an apple tree which stood out in the road* (p. 99, ll. 20-40). This was a fine old tree, about two feet in diameter at the base (p. 100, ll. 1-10).

Witness bought the property 17 years ago. In order to keep people who went into the Lane farm to the beaten path, he used to lay out a lot of old planking (p. 102, ll. 1-20). This he did half a dozen times. No one in behalf of the borough ever complained about the planks or protested against them (p. 102, ll. 30-40).

At some time the county contractors carted dirt there and put it on the street. This was done at the request of the witness. "The borough had nothing to do with it whatsoever" (p. 103, l. 10).

Referring to the work which Mr. Lane said he had done on the road as supervisor for the

Township of Eatontown, witness said that he knew Lane, and that he was "a nice old man," and one time he remarked to Lane, "Let me have a cart, I will fill up that hole," to which Lane replied, "Will, I'll come down and help you." And the hole was accordingly filled up (p. 103, ll. 10-20).

Referring to the cutting of the grass on the premises in question, witness said that he cut it down with a scythe because he didn't like the looks of it, but used a lawnmower only on his own side (p. 104, ll. 1-25).

As to the scraping of the road he said:

"Q Do you say the borough officials did not take charge of this roadway and scrape it? A Never. They scraped it once or twice at my request. It got muddy and I asked those fellows to scrape it down. I says, 'You might as well do it for me.' I says, 'I pay about as big a tax as anybody here.' So he run up there.

Q Who was that? A Farry, I believe his name was.

Q How many times did they do that? A About four or five times, not any more.

Q In the period of time you owned the property? A That was in the last years. First along they never was up there.

Q Was this roadway ever surveyed, to your knowledge? A I never had it surveyed.

Q I mean by the borough officials? A Never. If they did, they did it at night" (p. 106, ll. 20-40).

With reference to the alleged sidewalk on the east side of the roadway, the witness said that he fixed this up and kept the grass cut as far back as the entrance to his kitchen (p. 110, ll. 10-30).

Schultz. Has known the property 20 years. Knows nothing about the roadway being worked or cleared by the borough (p. 113, l. 30).

In 1911 or 1912 the roadway "looked like driving across an old road." Hayes cut the grass and there was a dirt surface a trifle wider than the width of a wagon (p. 115, ll. 1-10). The only time he saw the township authorities work on the road was when Wall Street was graded. Some dirt was put in there to fill in a wash-out (p. 115, ll. 30-35).

Throckmorton. Used to work on the roads of the township and the borough. He never did work on the roadway in question and never saw anybody else do work there.

"Q Referring to the portion of the road that lies north of the McIntyre property, and Tilton property, or what is now the Hoch line and the Tilton line; do you recall if that was ever worked, and if so by whom? A Not on Mr. Lane's property. I was there to see Mr. Lane once, and he had his cows there. They went in on this property, and he had a team of horses and a mowing machine and was mowing in that field.

Q Right in this roadway? A Going around the place, three or four acres" (p. 128, ll. 1-20).

Daniel Covert. Used to work on the roads for the township and the borough. Never worked on the roadway in question nor saw anybody else work there. All of the roadway is "grewed up in grass" except a worn strip about ten or twelve feet wide (p. 130, ll. 20-30).

Woolley. Also used to work for the township and the borough. Never did any work on this roadway except he carted sand there "where we always carted it, where it badly wanted it. We

would give it away. That was all our doings. The borough never authorized it" (p. 132, ll. 20-24).

He further stated he would cart the sand where anybody wanted it and when he saw Lane (one of the former owners) he would ask him if he had any use for "this load" and Lane replied "You can take it up to the house there and dump it" (p. 132, ll. 30-40).

Malchow. The land in question is "in grass" the same as the other property except where the grass is worn off for the width of a wagon track, about six feet (p. 135, ll. 10-30).

Mrs. Tilton (one of the defendants). The driveway was never marked by street signs, lamp posts, telegraph or telephone poles. "They tried to put telephone poles in but my husband stopped them." There are no water pipes or sewer pipes.

Farry was there once to scrape the snow and when the witness' husband asked who gave him permission he said he did it to "accommodate the Mayor" (who lived with Lane). She further testified:

"At the time Mr. Hayes moved, Mr. Lane went in there on the scraper with Mr. Farry, and I went out and said, 'Mr. Lane, what are you doing?' He says, 'We are just straightening up the roadway.' I says, 'This doesn't belong to you; you get off there mighty quick.' He got off and went up to his barn and got a shovel and rake and laid back the dirt he tore up and raked it over.

Q That was March, 1923? A Last March, and Mr. Farry called me one side and says 'Mrs. Tilton, don't blame me.' He said, 'Mr. Lane said he wanted the road scraped.' I said, 'Mr. Farry, you are forbidden in here and you know that, so you keep out of here.'

Q Had he been forbidden before? A Yes.

Q Who had forbidden him? A My husband'' (p. 142, l. 35 to p. 143, l. 18).

She never saw the borough authorities grade the road or scrape the road except on the one occasion. She had seen a load of dirt brought in and Hayes tip them for bringing it. She also, another time, saw Hayes cart the black soot and spread it on the road the time the house burned down (p. 144, ll. 10-20).

She also testified that Hayes kept the grass cut and if he saw a "big weed" he would clip it (p. 144, ll. 30-35).

Referring to Mr. Lane, who was "scraping" in the middle of the road about seven or eight feet wide, she said that he tore up the sod and she forbade him to do so; she also objected to his cutting a limb off the apple tree (p. 145, ll. 20-30).

Frank Tilton (one of the defendants). The roadway has never been worked by the township or by the borough (p. 146, ll. 30-40). It has never been marked by street signs or lamp posts. When new signs were put up in the borough one was placed on the opposite corner but none on the roadway in question (p. 147, ll. 10-30). He had done work on the roads for the township but never on this strip of land and had never seen anybody else work it (p. 147, ll. 30-40).

Dr. Hoch (one of the defendants). The sidewalk does not run back as far as the Lane farm but only to the entrance to the kitchen of the Doctor's house. There are some very large apple trees growing in the rear part of the disputed premises, which have been there a great many years.

There are no street lamps or signs or any public improvements on the street in question (p. 153, ll. 20-40).

McIntyre. Formerly owned the property which is now owned jointly by the defendants Tilton and Hoch. Was the owner from 1891 to date of Sheriff's deed to Hayes November 8, 1906. Neither the borough nor the township ever notified him that it was a public street or claimed to own it (p. 156, ll. 20-30). The land in dispute was about the same size as the lots in that vicinity, 50 or 60 feet, and really made one of the town building lots (p. 156, ll. 30-40).

The street was never laid out. *There have been apple trees on it ever since the witness could remember, that is for at least thirty years* (p. 157, ll. 10-30).

Neither the township nor the borough ever worked the roadway or improved it (p. 159, ll. 10-30).

Thomas Covert. The roadway in question is a "single track driftway." There are no sidewalks or curb. It has never been cut down to make it match the street and look like a road. It has never been graded. Witness has been employed by the municipal authorities for thirty-five years. The roadway has never been worked as a street to his knowledge; Hayes asked for three or four loads of dirt to be carted in there and witness did it for him (pp. 170-171).

There is a sidewalk on the east side which runs back to the Lane property (p. 174, l. 40). This is not a well-beaten path. Witness has never seen any gravel there, and the sidewalk is composed of "grass and sod" (p. 175, l. 10).

It should be noted that the mayor is the son-in-law of Lane and lives in Lane's house. It was natural for Farry to scrape out the snow so that Lane's family (including his son-in-law, who happened to be mayor) could conveniently get out. This was an act of personal accommodation to the mayor, as a citizen, just as it was a personal accommodation to Hayes to dump waste material, from the street gutters, which had to be disposed of somewhere, in the driveway that led to Hayes' barn. Moreover this is entirely consistent with the theory of permissive right hereafter discussed. It is not uncommon for municipal employees to do personal favors for the mayor.

It was also natural, when the grade of the street in front of Hayes' house (now Hoch's) was lowered, for the municipal employees to cut down, to meet the new grade, the entrance to this road to enable the owner to get to his barn; in fact it was the duty of the municipality to do so, in order to minimize or obviate the damages which Hayes would otherwise have been entitled to.

There is another significant fact disclosed by the testimony of Mrs. Tilton (p. 144, ll. 10-20). When an attempt was made to erect telephone poles in this alleged street, Mr. Tilton stopped the work and forbade the erection of the poles. These poles were intended for a telephone line to the mayor's house. If he, at that time, considered this to be a public street would he have permitted this obstruction to his telephone service? Would he have allowed the use of the longer route via Locust Street, where this pole line was afterwards constructed? The answer is plain, since he did not insist upon the right to use the road in question.

Under this evidence the complainant failed to establish the allegations of the bill that the "road" had been graded, graveled and scraped at public expense. The evidence to the contrary is overwhelming. At times some dirt or gravel was thrown into the middle of the roadway for a width of five or ten feet, but this was done purely as a neighborly act for the accommodation of some of the former owners and to enable the borough to conveniently dispose of waste material which would otherwise have to be carted away, and was never authorized or approved or paid for by either the Township of Eatontown or by the Borough of West Long Branch. On this phase of the case there is no reasonable basis for an adjudication that the roadway was a public street. This claim may therefore be eliminated from further consideration and we now come to the next and principal question.

II.

The decree of the Court of Chancery is erroneous because the evidence did not justify the conclusion that the roadway, by reason of its continued adverse user, was a public street; on the contrary the conclusion to be drawn from the evidence is that

(a) Such user as there was of the roadway in its inception was permissive and continued so to be.

(b) The user was not continuous for twenty years but was interrupted during that period.

(c) In any event the user was not by the general public but was limited to such persons as desired to obtain access to the property located to the north of the roadway for the pur-

pose of doing business with the owners or occupants of said property.

In discussing the questions on this phase of the case, it should first be observed that a party who claims the right of possession by adverse user has the burden of proof.

"The doctrine of adverse possession is to be taken strictly, and such possession is not to be made out by inference, but by clear and positive proof." *Shields v. Ivey*, 52 N. J. L. 280.

"A possession which is permitted to prevail against a clear title by record should be clearly proven to be accompanied by all the requisites of an adverse occupation, including positive evidence of the continuity and territorial extent of the possession." *Baldwin v. Shannon*, 43 N. J. L. 596 at p. 603.

These rules as to the burden and the *quantum* of proof apply to a municipality which seeks to establish a public use and to take from another the possession of his property.

18 C. J. p. 93, Sec. 101.

Darling v. Jersey City, 73 N. J. Eq. 318.

(a) *The user was permissive.*

The roadway in question runs between two lots, which on page 14 of the Tax Map (Exhibit C. 2) are numbered 36 and 37—the former being the property now owned by the defendant Hoch and the latter being the property now owned by the defendant Tilton. The rear portions of both of these lots, as well as the disputed premises, were formerly owned by one McIntyre, who purchased same from Isaiah Lane by deed dated November 20, 1891. (See Case, p. 194.) The front portions of the lots (that is, the portions facing Wall Street) were bought by McIntyre from the

Sherman Estate prior to the time of the purchase from Lane (p. 154, l. 20 to p. 155, l. 5).

Thereafter McIntyre sold the lot now owned by Hoch to one Julian by deed dated March 1, 1897 (p. 193, l. 25). By foreclosure proceedings this lot came into the ownership of one William Hayes. (See Sheriff's deed dated October 25, 1906, Exhibit D. 2, p. 192.) Hayes in turn sold to the defendant Hoch by deed of December 31, 1921.

The lot now owned by the defendant Tilton was bought from McIntyre on June 24, 1922.

McIntyre was sworn as a witness for the defendants and described the circumstances under which the alleged street first began to be used. He said that Mr. Monroe bought some land which was opposite the land in question and laid it out as Norwood Park, and at that time he laid out a street which he called Monroe Street (described on the tax map as "Munro" Street). At that time the witness said there was no street over the disputed territory or any driveway.

"Q Subsequently there did come to be a driveway in there? A Yes, sir.

Q Was that by arrangement between you and Mr. Monroe? A Mr. Monroe came up to have a talk with me. I told him I thought I would open a roadway in as far as my line and he said that would be very good, and Mr. Lane came along and wanted to know if I was willing to let him come through as far as his farm.

Q From Wall Street? A Yes. I said, 'I am perfectly willing.' He was a good neighbor and I felt as if I wanted to accommodate him. That is how he got in there.

Q When was this, about, Mr. McIntyre? A It was the next year after I bought the property. I bought the property in '91 and that was in '92.

Q And they began driving in over it?

A He did, after I got it scooped out for my own convenience. That is the only way I had to go into my property from Wall Street. I had no driveway in through the property.

Q Have you any doubt of what you have just testified to, that he asked for permission? A No'' (p. 155, l. 32 to p. 156, l. 18).

The witness further said that nobody ever claimed it was a public street; that neither the Borough of West Long Branch nor the Township of Eatontown ever claimed to own it and that he paid taxes on it (p. 154, l. 9).

When the witness sold part of the property to Julian, he described the strip in question as a "proposed street" (p. 156, l. 40). The same expression "proposed street" is used in the deed from Lane to McIntyre (p. 194, l. 32).

The witness said that he used that expression because that was the only way he knew to define what he intended.

"I owned it and Mr. Lane came to me and said he would like for himself, and if we could get the permission of those further north, to have that laid out in a public street. I says, 'I will be perfectly willing to give it to the township' " (p. 157, ll. 3-10).

Under that arrangement the road would have been carried from Wall Street to Broadway. But that street was never in fact laid out (p. 157, l. 18).

According to the witness Lewis Lane, a son of Isaiah Lane, who was called for the complainant, the reason the road never went through to Broadway was because one of the neighbors to the north made a kick about it and refused to allow the street to be opened through his property (p. 72, ll. 1-10).

McIntyre further said that there was no specified time mentioned as to how long Lane was to have the right to drive in over the roadway and that neither Isaiah Lane during his lifetime, nor Lewis Lane, nor Antonides—who occupied the Hoch property as a tenant from 1904 to 1908—(p. 31, l. 32) ever claimed to have a right-of-way, and they never mentioned it as a public road (p. 158, l. 35-p. 159, l. 10).

Isaiah Lane having died before the dispute arose, his testimony was not available, but the evidence of his son Lewis confirms the testimony of McIntyre as to the circumstances under which Isaiah was given permission to use the disputed tract as a means of access to his farm located at the rear of the McIntyre property. Lewis Lane testified that McIntyre and himself never said anything about the use of the roadway, but Lewis had heard his father Isaiah say “he was going to continue the road to the main street out here” (p. 71, ll. 30-40); thus confirming to that extent the testimony of McIntyre.

Further corroboration of McIntyre’s testimony is found in the fact that admittedly the roadway does not extend any further than the Lane farm (p. 20, l. 5), and ends in Lane’s backyard (p. 81, ll. 20-30). The testimony of McIntyre is again corroborated by the testimony of Judge Chimney, a witness called for the complainant, who said that McIntyre and Lane’s father intended to have the road run through to Broadway, about a mile to the north (p. 45, l. 35, to p. 46, l. 10).

This testimony is further corroborated by Hayes, who owned and occupied the property from October, 1906, to December, 1921. He said that on several occasions while he lived there

he put sticks and pieces of lumber on the grass so as to keep the people who were going to the Lane farm on the beaten path (p. 102, ll. 10-15); that none of the public authorities ever complained about this or protested against it (p. 102, l. 40); that Isaiah Lane had died before the witness moved onto the property; and that he had told Isaiah's son "Lou" when the witness first moved there and had also told their tenant, Antonides, that he would close up the place if they did not stop running around over it (p. 103, l. 30). He further said that Lane never made any claim that the property was a public road or that it belonged to the borough. To quote from his expressive answer on this point: "That is a new line. Billy got that up for them" (apparently referring to counsel for the complainant) (p. 103, l. 40).

Hayes further said that he "allowed" Mr. Lane and his family and their visitors to use the road (p. 107, l. 25); also that he had no agreement with McIntyre as to the use of the road and that he was trespassing on McIntyre's property, and he did this as long as McIntyre "allowed" him (p. 108, l. 10).

Mrs. Tilton, one of the defendants, said that both she and her husband had forbidden Farry to scrape the road and that she was present when Hayes stopped some people and drove off Raymond Antonides (p. 143, ll. 10-20); that she also protested to Lewis Lane against his turning up the sod when he was scraping the middle of the road (p. 145, ll. 10-20).

McIntyre's testimony is further confirmed by the evidence of several witnesses who testified to a recent interview with Lou Lane. These witnesses were Tausig, the caretaker for the de-

fendant Hoch; Van Sickle, who occasionally worked on the Hoch property, and the defendants, Frank Tilton and Hoch. According to the evidence of these four witnesses, Lewis Lane said to Dr. Hoch *that his, Lane's, father had had permission from McIntyre to go through the disputed tract and he, Lewis Lane, also had permission* (p. 140, ll. 10-20). This interview was described by Van Sickle as follows:

"We were putting up the fence and Mr. Lane came across the back of the field with a milk pail. He says, 'I see you are putting up the fence posts.' He says, 'Mr. McIntyre give me permission to use this lane for twenty-three years and my father before me,' and Dr. Hoch answered, 'Well, now your permission ends.' And that is the words that was said there in the presence of all of us" (p. 141, l. 32, to p. 142, l. 2).

Frank Tilton described the same interview as follows:

"Q Were you present, last summer, when Lou Lane said to Dr. Hoch, in your presence, and in the presence of Mr. Van Sickle, that he had had permission from—that his father, Isaiah Lane, had had permission from Mr. McIntyre, and he had had permission for twenty years to use this strip of land? A For twenty-two years he said.

Q What did Dr. Hoch say? A Dr. Hoch said the permission run out and it was going to be closed. Mr. Lane wheeled and went up to the house" (p. 148, ll. 1-15).

The same witness further said that Lewis Lane asked permission of him, Tilton, to go in and out; Lane was on his way to the farm to milk and stopped Tilton and asked, "Are you going to let us go in and out of here?" to which Tilton replied: "I am until I get ready to do something with it" (p. 148, ll. 15-35).

The defendant Hoch testified to this same conversation saying, "He (Lewis Lane) said that Mr. McIntyre had given him permission to use the strip and his father before him" (p. 154, l. 10). The defendant further testified, "I told him that now the permission ends," to which Lane made no reply (p. 154, ll. 10-15).

Lewis Lane admitted that he had had a meeting with these gentlemen, but denied that anything was said about permission and said that the conversation related to the width of the driveway (p. 75, ll. 10-40).

We therefore have the undisputed testimony of McIntyre that the user was permissive—corroborated in many respects by witnesses called in behalf of the complainant, together with the evidence of four witnesses who said that Lewis Lane himself asked that the "permission" to use the driveway be continued (denied by Lane, but not otherwise controverted).

The outstanding feature of this aspect of the case is that not a single witness denies that McIntyre gave Isaiah Lane permission to use this roadway. Even Lewis Lane does not deny this. All he denies is that he said anything about such permission in the talk he admits he had with Dr. Hoch in the presence of the witnesses Tausig, Van Sickle and Tilton.

The evidence, therefore, shows conclusively that the use of the roadway in its inception was permissive. As it was permissive in the first instance the legal presumption is that the nature of the user continued to be permissive; and such is the necessary conclusion in the absence of any clear evidence that the user became adverse.

There is no evidence of any change in the nature of the user; on the contrary the testimony

is convincing that the actual use of the roadway in question was by the members of the Lane family or by persons having social or business relations with them.

The fact of dedication depends upon the intent of the owner. No intent to dedicate can be shown by permissive use of land. 18 C. J., p. 101, sec. 115.

The opinion of the Vice-Chancellor deals with this claim as to the permissive use as follows:

"Mr. McIntyre had purchased part of his property in 1891, from one Isaiah Lane, and on opening the roadway, Lane asked for and McIntyre gave him permission to use it to enable Lane to drive into his farm, in the rear of McIntyre's lands, from Wall Street" (p. 178, ll. 22-28).

* * * * *

"The clear preponderance of proof shows this roadway to have been continuously used by the public as a street or road since 1892, and this fact is conceded by counsel for defendants, on pages 49 and 50 of the transcript. But it is contended that this user was not adverse to the defendants' right, because such use was originally expressly granted and permitted by defendants' predecessor in title, Mr. McIntyre.

There is not the slightest evidence to support this contention; the record does show that McIntyre in 1892, gave Isaiah Lane permission to use the road and it also shows that the defendant, Dr. Hoch, notified Louis Lane, the son of Isaiah, in 1922, that this permission was then and there revoked.

No such permission was ever given to or asked for by the public. On the opening and grading of the road by Mr. McIntyre in 1892, the public began to use it and has continued to do so up to the present time, without interruption and without serious interference from any owner of the abutting properties, until defendants erected a fence

at the Wall street entrance to the roadway in 1923, which the borough officials removed and which resulted in this litigation" (p. 179, ll. 25-40; p. 180, l. 15).

With the greatest respect to the court we submit that the Vice-Chancellor's conclusions on this feature of the case, are clearly erroneous. It will be observed that the opinion concedes that the *original* user was permissive, and then says that "there is not the slightest evidence" to support the contention that the user was not adverse. But the evidence we have cited above shows not only that the original user was permissive but that it *continued* to be of that character. It may be that no such permission was ever given to or asked for "by the public," but that does not affect the conceded fact that in the first instance the permission was given to and asked for by Isaiah Lane. The only way in which permission is given to the public is by an express dedication of land for public purposes, or by an acceptance of such dedication by proper municipal action. The "public" as such, never asks for permission. The opinion has confused the use of the roadway by members of Lane's family with the use by a few other individuals who took advantage of such permission, without stopping in every case to ask for similar permission. The Vice-Chancellor is also in error in concluding that the "public" used the roadway in question, as we show under sub-head C hereinafter. The persons who used the roadway were either members of Lane's family or persons who had occasion to go to the Lane farm. The roadway was not used by the public as such. A user founded upon permission cannot be changed into an *adverse* user merely because someone or several of the public trespass upon the land so used. See authorities cited under sub-head C.

(b) *The user was not continuous.*

There is abundant evidence to show that various obstructions in the way of fences, boards, logs, stones and rubbish were placed on in or across the alleged road on numerous occasions before the defendants acquired title.

Antonides, the chief witness for the complainant, said there was a large stone embedded in the soil and sticking above the surface, along the easterly edge of the beaten track, and that this was put there by Hayes about a year and a half before the trial; that this stone was a piece of the brick foundation of his house, and that he, the witness, moved it out of the road and Hayes put it back (p. 38, ll. 30-40; p. 163, ll. 30-40). He admitted that two or three years before Hayes had put boards on the grass (p. 39, ll. 15-20). He was asked about a fence that had been placed across the roadway and kept there for a week during the time that the title was in Julian (McIntyre conveyed to Julian on March 1, 1897, and the title then passed to Hayes by Sheriff's deed of October 25, 1906). The witness said that he did not remember about this fence and when asked whether he would say that it was not done, the only answer he made was: "I say it wasn't done in the last two or three years" (p. 39, ll. 10-20).

Chimney. He first said that he did not know of any obstructions in the street until "last year" when the wire fence was put up. But on cross examination he admitted he had seen a log or a stake put on the curb line in Wall Street to keep people from running against the high bank and that this had disappeared, he did not know how (p. 47, ll. 1-20). He also admitted that he had seen "a bunch of brick" (p. 45 l. 5); and that this

had been there about a year and a half and when one was knocked away it was replaced by another (p. 47, ll. 20-40).

Palmer. Saw the wire fence last summer. There was a "place" on the side of the Tilton lot (the west side) which was higher than the road (p. 52, ll. 10-20).

Hyer. Remembers a fence which was placed by McIntyre on the west side. This was on the dividing line between the Tilton property and the road. It was put there to "pasture the cattle in." Did not see any obstructions until the road was closed up in June of 1923 (pp. 58-59). He never saw the stone that the other witnesses mentioned but said "It might have been there. There has always been a heap of rubbish or something of that sort along there" (p. 60, ll. 1-10).

William L. Poole. He saw the fence that was put on the roadway last summer (that is summer of 1923) (p. 61, l. 38) and when asked whether he had seen any obstructions prior to that time, he replied: "I seen a fence across the sidewalk, keeping the cows off the lawn on the east side" (p. 61, l. 40). He said that this fence was back in Julian's time (this would be sometime between 1897 and 1906). He remembered it because he was working for Mrs. Julian at the time and she called his attention to it (p. 62, ll. 1-20). On cross examination he gave further details as to the Julian fence and said *it came out eight or nine feet, just beyond the sidewalk* and ran back the length of the lot (p. 67, l. 25 to p. 68, l. 10).

He was also asked about the stones or bricks and said:

"This here red thing to me looked like a piece of dirt. I seen it there, not a very long time, but it didn't strike anything be-

cause it looked to me as if the cars going in keep on the right side of it. The cars going in would keep on the right-hand side of it, keep to the right of it" (p. 62, ll. 25-30).

Lewis Lane. He said that there had never been any obstructions for twenty-three or twenty-four years, but in reply to a question from the court he admitted he knew about the "large brick" and also about "an old stake" which Mr. Hayes had put there (p. 72, l. 20 to p. 73, l. 10). This stake was about four feet long and was put there to keep people on the beaten path (p. 73, ll. 30-40).

Sherman. Never saw any obstructions except that Hayes put some sticks along the sidewalk two years ago (p. 80, l. 5).

It will be observed that on the complainant's own showing there were bricks or stakes put in the roadway at various times and on one occasion during the Julian ownership a fence was built which extended out beyond the sidewalk.

The evidence of the defendants gives further details as to the various obstructions.

Hayes, who was the owner of the Hoch lot from 1906 to 1921 listed the obstructions as follows:

1. An apple tree which stood twenty-five or thirty feet from the Lane property, "out in the road" (p. 99, ll. 20-30). This is a fine old tree with a diameter of two feet at the base (p. 100, ll. 1-5).

2. A stone, about three feet long, which the witness put at the easterly end of the worn portion, in the edge of the grass. He put it there five or six years ago (p. 100, ll. 15-30).

3. A log which the witness had put in before the stone. He did not know the length but said with reference to it "I dug it down as far as I could dig with a spade" (p. 100, l. 40).

After putting the stake in position, he said the Antonides boys pulled it up one night and the witness told them he would "skin them if he caught them again" (p. 101, ll. 1-10).

4. Stakes or boards. These were laid there by the witness the first year he moved in—which would be in 1907 (p. 101, ll. 10-20); he took title October 25, 1906, but allowed the then tenant, Antonides, to remain until the end of the year, and then put in the stakes or logs the second year after he bought it (p. 101, ll. 10-35).

The witness described these stakes as a lot of old planking, kindling wood which he put on the grass so as to keep people who were on their way to the rear farm on the beaten path (p. 102, ll. 1-20).

5. A board fence. The witness was not clear in his recollection about putting up a board fence as a result of a dispute with Lou Lane, but he did recall that he told Lane he couldn't put his cows in the road and said that he "may have" put up a fence at the time he was quarreling about the cows (p. 101, ll. 10-20).

Another witness—*Schultz*—said that he worked on the Lane farm in 1911-12 while Lou Lane was in charge and that while he was working there, there was a dispute between Lane and Hayes at which Schultz was present. The quarrel was about some cows which had got on Hayes' property and Hayes then built a fence "from the end of the barn to the middle of the lane" (p. 112, ll. 20-40).

The fence ran west from Hayes' barn to the middle of the disputed driftway (p. 113, l. 1). *There was also a wire which ran across to the west side of the driftway which was put there to keep the cows out* (p. 113, ll. 1-20).

Another witness for the defense, *Throckmorton*, said that after Mr. Hayes' house burned, which was six or eight years ago, "rubbish" was taken from the house and put on the roadway; that it was about half way between the edge of the road and the middle of the road near where Dr. Hoch's house is (p. 126, l. 20 to p. 127, l. 5).

Malchow. Nine or ten years ago there was a stone at the end of the roadway near Wall Street, which stuck a little above the ground.

There also used to be a post six inches in diameter which was set in the ground and came to the top of the bank (p. 135, l. 30-p. 136, l. 10).

He also recalled that there was a fence across the road "in the back." The witness remembered this fact because he had to stop at this fence on his way to visit one Woolis who lived on the Lane farm. "They had some fence rails here and there and a twisted wire on the top. The entrance was in the middle. I think that is eighteen years ago" (p. 136, ll. 30-35). The fence ran east and west clear across the roadway from the north side of McIntyre's barn (p. 136, ll. 30-40). *Witness had to take down two bars to get through and, after driving through, he put them back again.* The fence looked as if it had been there for several years as it had been patched up (p. 137, ll. 1-20). On cross examination he said he saw this fence on several occasions and that he "imagined" the rails were put up so as to keep the cows in the

pasture, as he saw several cows there (p. 139, ll. 1-10).

It is true that the testimony about this fence was denied by the complainant's star witness, the Mayor of the Borough (p. 166), whose personal interest clearly appears, but Malchow had not the slightest interest in any of the parties and his testimony to the contrary is very clear and positive and was in no way shaken under a vigorous cross examination.

Tausig. There was a stone about a foot square near the centre line of the roadway which had been there ever since he acted as caretaker for the defendant Hoch—which was about two years. The stone sets about six inches or more above the ground and is in the middle of the roadway (p. 139, l. 20-p. 140, l. 5).

Van Sickle. Said that he knew of the stone at the entrance to the driveway; that there was a lump of two or three bricks together, about six or eight inches square (p. 141, l. 25).

Mrs. Tilton. There is a very old apple tree on her side of the roadway (p. 145, ll. 30-35); she remembered the logs or boards which Hayes put on the tract five or six years ago (p. 145, ll. 35-40); the house was burned six years ago and the pile of rubbish has been there ever since, but not all of it as a little gravel was put on top so as not to cut the tires (p. 146, ll. 1-10).

Mr. Tilton. The stone has been in the mouth of the road ever since the fire six years ago. Before that time and when he moved in there, there had been a log which was partly buried in the ground.

Dr. Hoch. Has known the disputed tract six or seven years and the stone has been in the

mouth of the road as long as he can remember. Did not recall about the log or stake (p. 153, ll. 1-10). There are very large apple trees at the rear of the disputed tract which have been there a great many years (p. 153, ll. 20-30).

McIntyre. There are apple trees on the roadway which have been there for thirty years. They were there when witness bought the land from Lane (in 1891) (p. 157, ll. 20-30). *In 1899 a fence was built across the road. This was done by Mrs. Julian in order to keep off Lane's cattle. The fence went all the way across from east to west* (p. 158, ll. 10-20). He could not say how long the fence was there (p. 158, l. 12).

The Vice-Chancellor in his opinion says:

“These obstructions were promptly removed by the borough officials and were ignored by the traveling public” (p. 179, ll. 23-25).

The evidence, however, does not show that the borough officials, as such, ever removed any of the obstructions until the defendants built a fence at the entrance of the roadway in 1923. The evidence also shows that the obstructions caused by the various stakes, bricks, stones and logs were observed by the persons who used the roadway and that the obstructions were recognized by such persons as a limitation upon the use of the entire width of the roadway. So far as concerns the fence, which Mr. Malchow described as being across the road eighteen years ago, the right to maintain this fence was recognized at that time because according to this witness it was his practice after taking down the bars to put them back again.

So far as the several apple trees are concerned, no one denied that they are still in the

roadway and have been there continuously for upwards of thirty years; certainly they have never been moved by the borough officials or by anyone else, and they could not very well be "ignored" by users of the highway as some of the trees are two feet in diameter.

(c) Such user as there was of the alleged street was limited to persons who had business or social relations with the owners or occupants of the farm adjoining the northerly end of the street.

The final decree recites that the roadway in question extends northwardly from Wall Street to the Lane farm (p. 182, ll. 15-20). The bill of complaint alleges that the roadway extends in that direction for a distance of about 252 feet to the said farm (p. 1, ll. 30-35). The exact distance shown on the Tax Assessment Map (Exhibit C. 1) is 252 feet and 6 inches (p. 11, l. 35, p. 12, l. 1). This is the exact length of the property line of the lots on either side of the roadway as evidenced by the deed from Sheriff Francis to Hayes on October 25, 1906, Exhibit D. 2 (p. 193, l. 12).

The northerly limit of the alleged street is the line which separates the Lane farm from the property of the defendants. It will therefore be observed that the alleged street does not connect with other streets and does not lead anywhere except to the southerly edge of the Lane farm; and hence any of the general public who may have heretofore used or may hereafter use it as a public street have had and will have nowhere to go when they reach the end of the street except the field or backyard of Lane—unless they turn around and come right back again to where they started. It is true there is

some evidence which indicates that at times people who were on their way to the golf links would use the street, but the golf links are located on Locust Avenue and there is no possible way of reaching the links from the disputed street by a through route therefrom, except by driving through the yard and fields of Lane, pulling down several fences on the way, unless the golf player, after leaving Lane's backyard, turns to the west and drives out to Locust Avenue by means of another route which runs westerly from Lane's front yard to Locust Avenue.

The physical situation has an important bearing on the purpose for which persons have used the alleged street; the evidence shows very clearly that such use was not by the general public at all, but only by a few persons who had business or social relations with Lane, and who at times, for their own convenience, used this back door entrance to Lane's house instead of the front door entrance from Locust Avenue.

The evidence on this point is as follows:

Dr. Beach has used the street to go in and out to Lane's house. He said he used it "whenever there was sickness in the family" (p. 13, l. 40).

When asked whether anyone else used it, he said: "Different parties. He rented it out by the season. They had a great many people going in and out to buy things" (p. 14, ll. 1-5).

The road from Wall Street ends at Lane's farm. There is also a way of reaching the farm from Locust Avenue (p. 20, ll. 1-20).

Slocum. He said the road has "always been used by the public to drive in and out" (p. 24, l. 30); and he said this had been done for twenty-five to thirty years (p. 24, l. 25). He said he had

seen "them" driving in and out and that he himself went in "for different purposes." It is obvious, however, that he went there only when he had business with Lane as he afterwards said that he knew lots of automobiles would go in there in the summer time and that Lane had a market there where people would go to get produce (p. 26, l. 35,-p. 27, l. 20). Although the witness had said he had seen the "public" use the street for twenty-five or thirty years, he finally limited it to twelve years; and further admitted that the road only goes in to the Lane farm and he did not know of its going "anywheres" (pp. 27-28). Later he again qualified this by saying that he remembered that people had used it to buy produce for twelve years and that he also remembered people using it for more than twelve years. He did not, however, specify for what purpose it was used prior to the twelve years, his testimony on this being vague and indefinite (p. 29, ll. 20-40).

Mayor Antonides. He lived on the property now owned by the defendant Hoch from 1904 to 1908, and since 1912 has lived in the Lane homestead (p. 31, l. 30,-p. 32, l. 10). When asked who used the road, he replied "the public in general" (p. 33, l. 5). When he first began to use the road twenty-three years ago, he said it was for the purpose of visiting Miss Lane, whom he afterwards married (p. 33, ll. 10-20).

When he was a tenant in the Hoch property he used this road as a driveway to Wall Street. (Of course he did, it was then and still is the driveway in and out of that property.) There was also a driveway on the east side of the house, so that one could enter that property either from "Monroe Street" or in the "regular driveway" (p. 35, l. 35).

There are two entrances to the witness' farm house, one from Locust Avenue and the other from Wall Street; there is also a sort of a driveway on the east line to the golf grounds, which runs by the asparagus bed; the farm has a frontage on Locust Avenue and on Wall Street (p. 36, l. 30, to p. 37, l. 20).

Chimney. The road has been used by "the public" since about 1891 (p. 41, l. 28). After which he qualified this by saying:

"Q What travel passed through? A Quite a lot of travel through there, people going in to procure produce from the Lane property" (p. 42, l. 33).

The witness described the use that he himself made of the road by saying:

"I bought a horse and went into Mr. Lane's property. I went in there to get a wagon to go to Asbury Park" (p. 45, l. 20).

Charles A. Poole. Has driven on the road only a few times a year or so ago (p. 48, l. 40). He said it had been opened twenty-five or thirty years and that it leads to Lane's house (p. 49, ll. 1-10). He has seen people going in and out but not frequently (p. 50, l. 5).

Palmer. This man was a brother-in-law of Mr. Julian who owned the property in 1897 (p. 51, l. 35). He said he had used the road himself when he went to buy asparagus from Mr. Lane and that he could go in any time (p. 52, ll. 20-30).

Hyer. Has used the road to visit Mr. Lane's father and Mr. Antonides; also saw it used by "the public," saw people traveling back and forth (p. 56, ll. 1-10). He did not specify who the people were and for all that appears they may have used the road, like the others, for the purpose of going to Lane's farm in order to visit the occupants or to buy produce.

William L. Poole. He at first said the road had been opened to "public travel" for twenty-four years and that he had seen people going to and fro; and that people used it to "cut through" to Locust Avenue (p. 61, ll. 1-30). Then he qualified this general statement by saying that back in Julian's time (which would be sometime between 1897 and 1906) a fence was put up extending into the road and beyond the sidewalk (p. 61, l. 40, to p. 62, l. 10). He further qualified it by saying that he went in there to buy corn or "something like that" (p. 65, l. 15). So far as concerns the travel by "the public" he said:

"Q And that is all people would use that for, it would be to go into Lane's farm? A They go into there to buy stuff.

Q The only reason you know of that people would use that road would be to have business or social relations with people living on the Lane farm? A I couldn't say.

Q Is there any other reason for going in there? A I don't know" (p. 65, ll. 14-22).

He further said that the road from Locust Avenue goes in as far as Lane's barnyard and that the road from Wall Street goes as far as the barnyard and continues "right on" (p. 66, l. 30, to p. 67, l. 1).

It may be observed in connection with this testimony that there was no claim made by the complainant that the road had become a public road from the line of Hoch and Tilton either up to or through Lane's barnyard. For some mysterious reason the public part of the road comes to a sudden stop the moment it gets to a point exactly 252 feet and 6 inches from Wall Street, which point exactly coincides with the northwest corner of the Hoch property.

Lewis Lane. He at first made the general statement that "the public" used the road. Then his testimony continued as follows:

"The Court: What for?

The Witness: To come into my place to use the other road.

The Court: To go out Locust Avenue?

The Witness: At that time I was living on the farm and they used to come in there. There was a driveway there and a man could drive in there. If he wished he could go on through and come out the other road. When coming up Third avenue we drive in there, turn there and go back.

The Court: You mean a man could go out Locust avenue?

The Witness: Yes, sir.

Q And people who came in Locust avenue could go on through there, out Monroe street? A Yes, sir, they did it this last summer.

Q They did it last summer? A Yes, sir, until it was closed up.

Q After it was opened they continued to make use of this road? A Yes, sir.

Q How many people a day went through, on an average? A There has been six or seven cars in at a time, at the barn, buying asparagus, or produce. They came in that way most of the time. They come in that way and from Locust avenue, and go on out Locust avenue to the golf clubs. Then they come in from the golf clubs and go out the other way, this last summer.

The Court: Through Monroe street?

The Witness: Yes, sir" (p. 70, l. 28, to p. 71, l. 25).

He further stated that so far as he was concerned he liked to have anyone come in there to do business with him, but that he did not try to stop them even if they didn't do business with him (p. 74, ll. 20-40).

Sherman. He said he used the road a good deal to "go across to the golf club" (p. 79, l. 15). Whether he went to the golf club on foot or horseback or by auto does not appear. So far as his own family is concerned, he said they did not use it unless they happened to be going to Mr. Lane's (p. 80, l. 35). He also described the road leading into Lane's from Locust Avenue and apparently tried to give the impression that it was a regular thoroughfare for horses and automobiles from Wall Street via the road in question and Lane's barnyard to points along Locust Avenue, but on cross examination he said that the other road stopped at Lane's yard; that both the roads ran between Lane's house and his wagon house and that the situation simply was that there was an opening between the farm house and the out-buildings, with an entrance from Locust Avenue and another entrance from Wall Street (p. 81, ll. 20-40). He was then asked how he got to the golf links when he used the roadway and replied: "*I go in there and across Mr. Lane's field*" (p. 82, l. 10). His testimony in this respect is no doubt strictly accurate, as the physical situation is such that it is quite impossible to reach the golf club from the alleged street except by going across Lane's fields—and no one pretends that there is any roadway across any of Lane's fields.

Farry. Said that he thinks the road has been "open" about thirty-five years, but he could not say about the use except in the last eight years (p. 83, ll. 10-30); that he never used the road himself but knew of it because he had carted "stuff" there (p. 83, l. 35); that he knew of the road because he had seen "rigs" go in there (p. 84, l. 10). He was not asked as to the reason why they went in there. For all that appears they

went on business with Lane. He further said that he had seen people go through the farm from Locust Avenue and through Munroe Street into Wall Street, and that he had been in and out there. He did not say for what purpose they went in and out and for all that appears they went on business with Lane.

Atchison. "It has been a means of ingress and egress for public travel" (p. 91, l. 35). Witness has traveled over it himself (p. 92, l. 5). He did this on one occasion when the snow was impassable on Wall Street and he couldn't get past (p. 92, ll. 15-20). He was not asked for what purpose other people had used the road.

White. He was asked as to the use of the road and said: "They used it for driving out and in there" (p. 94, l. 30). Just what the witness meant by this is not clear. For all that appears he may have referred to Lane himself or to Lane's family or tenant. He finally testified, after several leading questions:

"Q Were the public in the habit of using it? A So far as I know it was.

Q Have you seen it used? A Yes, sir.

Q By the public? A Yes, sir" (p. 96, ll. 1-10).

Just what he meant by "the public" does not appear, nor does it appear for what purpose they were using it.

The foregoing is substantially all of the evidence offered by the complainant to sustain the allegation of public user. The only use, except to reach Lane's house, testified to by anybody, was to reach the golf course. There is no evidence to indicate this use has continued for twenty years. Neither is there any evidence to show that the golf course has been in existence

for twenty years. The testimony clearly indicates the contrary. Only two witnesses mention the use of this road as an access to the golf links—Lane (p. 70, l. 28 to p. 71, l. 25), who says this use occurred “this last summer,” and Sherman (p. 71, l. 25) who does not specify when or for how long he used to “go across to the golf club.” But admits, that in so using the road, “I go in there and across Mr. Lane’s field” (p. 82, l. 10). The fair inference therefrom is that the persons who used this roadway were either the owners or occupants of the Lane farm, or such people as from time to time had occasion to go to the farm for business or social purposes. This evidence is not inconsistent with the evidence heretofore cited, indicating that the origin of the user was the *permission* given to Lane. The mere fact that some members of the public may have used the roadway without asking permission, either of Lane or of the adjoining landowners, would not convert a private road into a public road.

The use of the road by persons who had business at the Lane farm, or even by a few members of the public who may not have had any business there, would not establish title by adverse user, especially in the absence of proof of an intention of the defendants or of their predecessors in title to allow the general public to use the road. As was said in the case of *Wood v. Hurd*, 34 N. J. L. 87, at page 91:

“It must be a use by the public of the neighborhood, not an action confined to one or two individuals. By such individual use, if adverse, title to a right of way may be acquired by the individual, but no right in the public can be founded upon it.”

This *dictum* was quoted with approval by this court in *Riverside v. Pennsylvania R. R. Co.*, 74 N. J. L. 476, holding that a municipality may bring an action of ejectment to establish the existence of a public highway.

In *Marino v. Central Railroad*, 69 N. J. L. 628, held that a public right of way across the property of a railroad company was not established by evidence that the company had constructed and maintained planking for a convenient means of passage thereover at a point where the tracks intersected lands of an individual and was built upon a part of the lands which had been condemned for railroad use, even though many people other than the owner were accustomed to cross the track. Referring to the construction of the planking the court said:

“But these acts on the part of the railroad company will not justify the inference that it recognized a public user and subjected its railroad tracks to a public right of way. There was a duty imposed upon it to provide a suitable wagon way connecting the intersected lands.

The construction and subsequent maintenance of such a convenient crossing is referable to that duty, and in the absence of other evidence could not afford any indication of intent thereby to create a public way. The way which the railroad company was under a duty to maintain was in favor of the owner of the intersected lands or his grantees. It was not, however, limited to the particular person. The right to pass would inhere not only in the owner, but in those representing him, as his servants, his guests, &c. Manifestly, the railroad company did not indicate an intent to permit the public generally to pass this crossing by mere evidence that people had passed it. It was not bound to maintain a guard there and exclude from

crossing those who were not authorized to cross. The failure to exercise the power of rejection, under the circumstances, would not, without other evidence, impose a public character upon the crossing."

So in the present case if the original permission was given to the original owner of the Lane farm, it might be said that not only the owner but those having business with him would have a right of passage from Wall Street to the farm as long as the permission was not revoked; but this would not indicate an intent to permit the public generally to use the roadway, or at least would not change the private right into a public right simply because some people other than Lane or his guests used it without first asking permission of the defendants or their predecessors.

The recent decision of this court in *Olsen v. Erie R. R.*, 124 Atl. 367 is in point. There the question was whether a certain crossing over a railroad track was private or public. The court held that,

"The use necessary to establish a public railroad crossing by prescription must be that of individuals, whose presence thereon is attributable only to their membership in the general public and not to their relationship to the owners or users of the property to which it gives access."

In the course of the opinion the court said:

"One of the essential attributes of a prescriptive right is the use by the public of the neighborhood. * * * In our view, such a public use is not made out by proof of the use of a crossing, either by the employees of or those having business with the concerns to whose plants or docks it gives access, * * * or by one individual * * *." (Citing cases.)

Decisions in other states to the same effect are collated in 18 Corp. Juris, page 105, Sec. 120. Several of these relate to the use of farm lanes. We quote from the case of *Hall v. McLeod*, 2 Metc. (Ky.) 98, 74 Am. D. 400.

“A different doctrine would have a tendency to destroy all neighborhood accommodation in the way of travel; for if it were once understood that a man, by allowing his neighbor to pass through his farm without objection over the passway which he used himself, would thereby, after the lapse of twenty or thirty years, confer a right on him to require the passway to be kept open for his benefit and enjoyment, a prohibition against all such travel would immediately ensue.”

Whatever doubt, if any, there was as to the purpose for which the roadway was used, was cleared up by the defendant's testimony which may be summarized as follows:

Hayes, former owner and occupant of the Hoch property (pp. 97-8); was acquainted with the road in dispute. Its primary purpose was to reach his barn. It was “nothing but a driftway, a wagon path” (p. 104, l. 35). It was used by people who had business with Lane.

“Q When you first came there, Mr. Hayes, was this road used by traffic? A No. Once in a while a man would go up to see the Lanes.

Q Is it a fact or not that automobiles passed through there? A They got to come there to get this asparagus. I drove lots of them out of there, but they never come up there again.

Q You mean you would go out— A Yes, and tell them this was private property” (p. 105, l. 38 to p. 106, l. 5).

* * * * *

Q Mr. Lane and his family, and the people who lived in the lane used this road to get to Wall Street? A When they come out that way, and when they went out to Locust avenue they used his own lane.

Q That lane was used, but you were the owner of the premises? A Yes, I allowed him to go up and down.

Q Visitors of the Lanes used this road; visitors calling on Mr. Lane? A Yes, sir.

Q Dr. Beach; have you ever seen him going up and down this road? A I have seen him go up and down lots of times.

Q Did you ever stop Dr. Beach? A No, he always went right in the road" (p. 107, ll. 18-35).

Schultz. The road was not used by the general public. It was for people to come into the Lane farm after asparagus (p. 113, ll. 20-30). It was also used by the Lanes to get to Wall Street (p. 115, ll. 15-25).

Beale. Knows about the "driftway" from Wall Street but never went in that way. Went in from Locust Avenue which was the main road to the Lane farm (p. 117, l. 35 to p. 118, l. 1). Could not say how many times people used the road. Anybody that wanted to go in there used that way as it was nearer than Locust Avenue (p. 119, ll. 20-30).

Hulick, Borough Assessor. Never knew the road "as a public street" (p. 120, l. 25). Just saw people go there up to Lane's place (p. 120, l. 28). Nobody used it except people going in and out to the Lane farm (p. 120, l. 38). "You would see some people go up there" (p. 123, l. 25). Never saw cars pass on that road, there is room to do it if they turn out on the grass (p. 123, ll. 30-40).

Throckmorton.

“Q Mr. Throckmorton, you have been familiar with this worn track, or portion of this road, haven’t you? A Well, I tell you, I never thought it was a driveway or anything, in there. The only one I knew went in from Locust avenue, through the place between the house and barn, and through the asparagus bed, when Sam Sherman used to own it.

Q Upon this tract of land you saw the pile of refuse, do you recall of their being marks of cars or wagons running in towards the Lane farm, from Wall street? A No, sir, I don’t remember ever being in there at all. I never paid any attention to the road. I never knowed there was anything there. I never noticed any driveway or anything there” (p. 127, ll. 12-30).

This witness used the Locust Avenue road to Lane’s when he went there to “borrow” their peaches (p. 128, ll. 30-40).

Daniel Covert. Is seventy-five years of age and has known the disputed property “pretty much” all his life. It was never a public road and was used to pass in and out to Lane’s farm (p. 130, ll. 30-40). Last year the witness “mowed” the “street” on Tilton’s side (p. 130, ll. 35-40).

Woolley. Has known the disputed land for at least fifty years. It has never been a public road or used by the public (p. 132, ll. 1-10). Witness would use the road when he wanted to visit Lane. He never asked permission to go over it and he “supposed” they did the same as he did (p. 133, ll. 10-20). The public used the road whenever they wanted to go to the Lane farm (p. 134, ll. 10-25).

Malchow. Has known the road as a way of going to the Lane farm (p. 135, l. 10). It was a tow-path, a tow-road (p. 135, l. 15). He went to the Lane farm once, to get asparagus. "I went in one way and out the other. You had to climb up a field or a sand hill to get in and jump down a bank to get out" (p. 138, ll. 20-30). You can drive in from that road or from Locust Avenue. Some drive in one way, and some drive in another (p. 138, ll. 30-40).

Mrs. Tilton, one of the defendants. Has lived next door to the roadway for ten years.

"Q During the time you have lived there have you ever known this driveway or disputed tract of land, or driftway, to be a general public highway, or street? A No, I can look out of my window and I bet you won't see three cars go by there a day, outside of Mr. Antonides' and Mr. Lane's" (p. 142, ll. 18-25).

People go in and out; a car at a time, after asparagus. Have heard Mr. Hayes order them out (p. 143, ll. 20-30). Witness does not use the road herself but goes across the fields (p. 144, ll. 1-5).

Mr. Tilton. The land in dispute has never been used as a public street (p. 146, l. 35). Have seen cars going there about a month or two during the summer time, during the asparagus time (p. 148, l. 35). Nobody went in there unless they wanted asparagus (p. 149, l. 18).

McIntyre. After describing the arrangement by which he gave permission to Lane to come through to his farm (p. 155, ll. 30-40; p. 157, ll. 1-10), he said that the Lanes could go back and forth "at their pleasure"; also his friends and people who had business with him (p. 160, ll. 10-30).

Thomas Covert. The roadway has been used by the owners of the corner house to get to their barn (the corner house is the one now owned and occupied by the defendant Hoch). "I should call it a driftway into the barn and Lane's house; cannot be called by anything else" (p. 170, l. 30). It has never been worked as a street and has never been used as a public thoroughfare (p. 171, ll. 20-30). It has been used as a "driftway to those two places." It was used by the Lane family and the owners of the McIntyre property (p. 174, ll. 1-20).

Mayor Antonides was then called in rebuttal for the complainant and denied some parts of the testimony offered by the defense, particularly with reference to the obstruction of the roadway by stones and logs and fences, but said not a word further about the use of the roadway; and did not in any way question the evidence which showed that the persons who used the road were those who were coming to the Lane farm, either to buy farm produce or to call on the members of the family.

In his opinion the Vice-Chancellor said:

"Since 1892, the roadway has been used continuously not only by the occupants of the Lane farm, but also by the general public and particularly by people who purchased farm produce from the Lane's and by others who drove through the roadway and around Lane's house into the public street known as Locust Avenue, for the purpose of reaching the golf links and for other purposes" (p. 178, ll. 34-40; p. 179, l. 2).

Here again the Vice-Chancellor has confused the "general public" with those who used the roadway for the purpose of going to the Lane farm, either the owners or occupants of the farm, or persons having business or social rela-

tions with the owners or occupants. It is evident that the location of the golf links was not fully explained to the Vice-Chancellor, as these links cannot be reached by the use of this roadway, unless one continues from the northerly terminus of the roadway, (252 feet and 6 inches from the centre of Wall Street), by means of the road leading to Lane's backyard, and then after reaching the backyard continues across a part of Lane's farm or turns to the west and passes out from Lane's backyard through Lane's private entrance to Locust Avenue and then again proceeds northerly along Locust Avenue until the links are reached.

Even if the original user of the roadway was not permissive, proof that it was used as a means of convenient access to the Lane farm by persons who had business there is not sufficient to make out a case of adverse user. It might well be that the adjoining property owners would not interfere with the use of the roadway by persons who had business with their neighbors but that is far different from user by the general public.

III.

Such user as there was of the alleged roadway even if adverse rather than permissive, and even if continuous rather than interrupted, and even if by the general public rather than limited to the friends or customers of Mr. Lane, did not extend to the entire width of the alleged roadway as claimed in the bill of complaint nor to the width of fifty feet as recited in and determined by the decree of the Court of Chancery; at most the Court might have found that such user covered a width of not more than fifteen feet.

Beach. The "traveled track" was never wider than the ordinary vehicle would go, maybe twenty feet. But during the past ten years the path must be twenty-five or thirty feet (p. 18, ll. 18-30).

Slocum. The "road" is between fifty and sixty feet wide (p. 25, ll. 1-5). The witness was evidently referring to the *claimed* width of the road as he later said that the "white strip" on the photograph marked Exhibit D. 2 shows the place where vehicles come and go, with grass at the sides. The witness was asked if the picture shows the used portion and whether that was about the extent of the used portion, to which he answered, "Well, I don't know if it was any wider, much" (p. 29, ll. 1-25).

Antonides. The road is "about sixty feet wide" (p. 32, l. 20). This witness also is obviously referring to the *claimed* width, as he admitted that on each side of the "pathway" grass was growing now and that there was only one traveled track (p. 32, ll. 20-40).

Chimney. The "graveled" track was fifteen or twenty feet wide (p. 44, ll. 30-40).

Palmer. It is the fact that there has never been more than one beaten path through the driveway (p. 53, l. 20). When questioned as to the width of the driveway he testified as follows:

“Q There has been a driveway all the way through? A Yes, sir.

Q But only on a strip ten or twelve feet wide? A Maybe more, maybe less, I couldn't say.

Q Only a small portion of that land has been used by people going in and out, to and from the Lane Farm? A I suppose that is so.

Q Isn't that so? A I don't know. It might be twenty feet; it might be more or less. I couldn't say” (p. 53, ll. 25-35).

Hyer. The road must be fifty or sixty feet wide (p. 55, l. 18). This witness also was referring to the *claimed* width of the road as he speaks of the sidewalk on the east side, of the hedge on the same side and of the fence on the west side (p. 57, ll. 10-30).

William L. Poole. Twenty-two years ago the overseer of the township ploughed up the road sixteen or eighteen or twenty feet (p. 63, ll. 20-40). Afterward the witness said he was not “positive” how much was ploughed—it was “somewheres” about sixteen or twenty feet. The strip of land is wide enough for three cars, which at eight feet for each of them, would be about twenty-four feet; the worn portion was about twenty-four feet wide (p. 67, ll. 1-25).

Lane. The road is wide enough to drive three cars at once (p. 73, l. 12; p. 74, l. 15).

Sherman. The road runs into Lane's backyard; the traveled portion is twenty feet wide; it has been that way ever since the gravel was put on it; that is the portion that is used by the public; the gravel goes back past the end of the

barn; "they didn't gravel Lane's backyard between his house and his barn" (p. 81, l. 25, to p. 82, l. 30).

Atchison. The road is approximately the same width as Monroe Street (p. 92, l. 8). This witness was obviously referring to the claimed width as he said on cross examination that he did not mean that the "used" portion was fifty feet wide, but only "the crown of the road" (p. 93, ll. 18-22).

DEFENDANTS' WITNESSES.

Hayes. The strip of land that was used by the people who went into the Lane farm at the "worn" portion was not over eight feet; it was a little wider than a wagon. Five feet is the tread of a wagon. It was about eight feet (p. 104, ll. 18-25).

The beaten path, about eight feet wide, was located "right in the center. It comes about half and half, excepting in the back it tapers" (p. 107, l. 35).

Schultz.

"Q Was it a dirt surface, or grass? A Dirt surface, a trifle wider than the width of a wagon at that time (p. 115, l. 10).

Q During all the time you have known that property there has been a place on the property that has been marked or made bare by traffic, hasn't there? A Yes, sir.

Q Now how wide would you say that portion of the tract which was used for traffic was—what would be your best guess? What is your best opinion? A Well, it was seven or eight feet—I couldn't say exactly—it was wider than a wagon. A wagon is about five feet six inches.

Q And the traffic was generally confined to that portion? A Yes, sir" (p. 116, ll. 6-20).

Beale.

“Q Have you noticed the strip of land which was driven over, where the wagons, etc., would go over? A Yes, I surely noticed that. You notice that as you go along the road. It is some time since I have been by there now. I couldn't tell exactly how wide it was.

Q I don't want to have you say exactly, but according to your best judgment how wide would you say the worn part of this tract of land was? A I don't believe it would be over twelve feet.

Q And on either side of it would be grass? A Surely, I have always noticed grass there” (p. 118, ll. 3-18).

Hulick.

“Q How wide a strip of land would the people use, generally? A Just the width of a wagon, or a little wider than a wagon, I suppose ten or twelve feet.

Q It was well worn? A Yes, oh, you could see it.

Q And on either side of it there would be what? A Grass (p. 120, ll. 28-35).

Q Would you see any vehicles passing on that road? A I don't know as I have seen cars passing on that road.

Q You never did see one car passing another car on that roadway? A No, sir.

Q There is plenty of room to do it? A If they turn out on the grass.

Q But the beaten path is how wide? A About ten or twelve feet wide.

Q Is there a sidewalk on the Hoch property to the west of the hedge? A Just a grass sidewalk” (p. 123, ll. 28-40).

Throckmorton.

“Q Don't you ever remember seeing that road in there? A No, sir, I never knowed of any lane that went in there. I went up there the other day after I was subpoenaed on this thing. The tracks are there now. It is only just the width of a wagon or a little

more, and where it comes out on Wall Street it spreads a little bit. But where it goes in across and up to Lane's, it is only just wide enough for a wagon, a seven or eight-foot wagon. The track of a wagon is only five feet six inches, but it is a little wider than that" (p. 127, l. 37, to p. 128, l. 10).

Daniel Covert. The worn portion is near the center and is about ten or twelve feet wide. The rest of it is "closed up in grass," the same as any other lot (p. 130, ll. 20-30).

Woolley. The worn portion is the width of a wagon or maybe twelve feet; on either side is grass (p. 132, l. 35, to p. 133, l. 5).

Malchow. You might say it was a "tow-path." The roadway was worn off. That was the width of the track of a wagon; "I guess six feet;" the rest of the track was in grass, the same as the lot (p. 135, ll. 15-25).

There was a post in the mouth of the road; where it went into the Lane farm is probably ten feet where it was cut in on the bank. There was a terrace about two feet and a half high. The post was set in the ground and came to the top of the terrace. To get in from Wall Street, "you went down a hill and up a hill." That space, the mouth, was about ten feet wide. The bank was cut down, "so you could get in without 'jumping up' the hill" (p. 136, ll. 1-25).

Mrs. Tilton. Mr. Hayes cut the grass to the "beaten path." Mr. Lane scraped in the middle of the road; "it is not over seven or eight feet wide" (p. 145, ll. 1-15).

Mr. Tilton.

"Q There is a driveway where wagons have worn the surface off the ground. How wide would you say that strip of land has

generally been? A Just eight feet, and out to the road it is about twelve. I measured it" (p. 146, l. 38, to p. 147, l. 4).

McIntyre. The worn strip was the width of a wagon (p. 157, l. 30).

Thomas Covert.

"Q Do you know whether this roadway was then and has since been used by the owners of the corner house to get to their barn? A Yes.

Q Will you tell us what sort of a looking road it is, is it a driveway? A I should call it a driftway into the barn and Lane's house, cannot be called by anything else.

Q Single track road is it? A Single track.

Q Is it a well defined street? A No.

Q Are there any sidewalks or curb on the same north of Wall street? A Not that I have ever seen.

Q Has the roadway ever been cut down or driftway cut down to make it match the street and look like a road? A No (p. 170, ll. 26-40).

Q Mr. Stevens refers to all the property between Tilton's lot and Mr. Hoch's house as a driftway, and you have testified you do not know how wide that lot may be? A No.

Q I now ask you what land or how much of that lot between Tilton's lot and Hoch's house is actually taken up by the driftway? A I should say ten or twelve feet.

Q It is a single track road? A That is all I have even seen shown or used" (p. 176, ll. 1-15).

On this phase of the case the Vice-Chancellor said:

"Defendants further contend that the proofs do not show the public use of the roadway for its full width of fifty or sixty feet, for the evidence is that the traveled and also the graveled part of the roadway has been from five to twenty-four feet in

width, but it is also in evidence that when the usual traveled track was blocked with snow, or was for any other reason, unsuitable for travel, that the public drove over and used the grass part of the roadway, extending from the gravel to the side of the road, and that this was done so frequently as to become an annoyance to Mrs. Julian, Mr. Hayes and other former owners of the Hoch property, and it was for this reason that some of the obstructions mentioned, such as the post and rails and pieces of a brick or culvert pier were placed on the grass part of the roadway" (p. 180, ll. 15-32).

But the evidence does not show that the parts of the roadway outside of the centre thereof, and for a short distance on either side of the centre, were *continuously* used by the public or by anybody else. On the contrary, it was only on rare occasions that anybody used any part of the highway outside of the immediate centre. The mere fact, if it be a fact, that other portions of the highway were used at rare intervals would not justify the contention that the entire width was used to such an extent as to become adverse. The principle is well settled that where an adverse user is claimed, such user, if proved at all, is limited to the space actually used. Moreover, even on the statement of the evidence by the Vice-Chancellor it is apparent that the parts of the roadway on either side of the centre thereof were frequently obstructed *for the very purpose of preventing the use thereof by anybody*—even by persons who were going to or coming from the Lane farm. The evidence is conclusive that whatever user there was of this roadway did not extend to a width of more than about fifteen feet.

IV.

The complainant has an adequate remedy at law.

At the final hearing of the cause before the Vice-Chancellor, the question of the right of the Court of Chancery to determine the issues was promptly raised before any testimony was taken; and a stipulation was thereupon entered on the record that the court should proceed to hear the witnesses, notwithstanding this question, and that if the court concluded that the issues required a determination at law, the cause could be removed to a court of law—the testimony taken in the Court of Chancery to be used in the trial at law, with leave to the parties to take further testimony in such issue (p. 9). Under this stipulation the question is presented whether the Court of Chancery has jurisdiction to determine the right of the municipality to the premises by virtue of the alleged adverse user as against the claim of the defendants to the right of possession under the title conveyed to them by deed. The Vice-Chancellor concluded that the Court of Chancery had power to grant relief on the theory that that court should enjoin “repeated trespasses on a public right” (p. 181, ll. 1-10), citing,

South Branch Railroad Co. v. Parker, 41 N. J. Eq. 489;

Renwick v. Hay, 90 N. J. Eq. 148;

Man v. Vockroth, 94 N. J. Eq. 511.

We respectfully submit that the Vice-Chancellor erred in reaching this conclusion. There is nothing peculiar about the present case to distinguish it from the ordinary dispute arising by reason of a claim of title by adverse user as against a claim of title by deed. There is no

allegation in the bill of complaint that the complainant will suffer irreparable injury, and there is not the slightest proof of any such injury. Moreover, as we have shown under point II, sub-head (c), practically the only persons who have used the roadway are those who have business relations with the owners or occupants of the Lane farm. If those persons, or any of them, should suffer any real injury or if the owners or occupants of the Lane farm should suffer any real injury by reason of the wrongful closing of the roadway, they have a complete remedy at law against the defendants, all of whom are fully responsible. Moreover, even if the roadway in question should be fenced off by the defendants, the owners or occupants of the Lane farm and persons having business with them have another means of approach to the front door of the farm house by means of the road leading from Locust Avenue, which is just around the corner from the roadway in dispute.

Where there is an adequate remedy at law and the damages are not irreparable, equity will not take jurisdiction to determine legal rights in real estate; in those cases where equity does act there must be some special ground of equity jurisdiction. These principles are so well settled that it is not necessary to discuss the decisions in detail. Many of them are collated in Volume 4, New Jersey Digest, Col. 6827, sections 49 to 53.

The dispute between these parties as to the title to the land in question can be determined by an action of ejectment. It has been held that such an action will lie to determine the claim of a municipality that certain land has become

a public highway by adverse user, *Riverside v. Pennsylvania R. R. Co.*, 74 N. J. L. 476.

The cases cited in the opinion of the Vice-Chancellor in support of the power of that court to determine the legal title do not justify the court's conclusion.

In *South Branch R. R. Co. v. Parker*, 41 N. J. Eq. 489, the dispute was between certain railroad corporations and an individual as to whether a certain alleyway was or was not a public street. No municipality was a party. The bill of complaint was dismissed on the ground that the evidence failed to show adverse user, and hence, the case does not in any way involve the question of the right of the Court of Chancery to grant relief to a municipality on the theory that the defendants have made or threaten to make "repeated trespasses on a public right."

In *Renwick v. Hay*, 90 N. J. Eq. 148, the dispute was between individuals as to their rights in certain private roads, each party claiming rights in or over the lands of the other. The opinion recognizes the rule that a substantial legal dispute over a private right of way is not ordinarily cognizable in a court of equity, and that the rights of the parties must be settled at law (citing cases at 90 Eq., p. 152), but the motion to dismiss the bill of complaint was denied on the ground that in view of the peculiar facts of the case, the rights of the parties could not be settled at law and that, therefore, the Chancery Court should settle the conflict, in analogy to a bill of peace. The decision is in no way inconsistent with the usual rule that legal disputes as to title must be settled in courts of law, rather than in courts of equity, unless the

case presents one of the features peculiar to equitable jurisdiction.

In *Man v. Vockroth*, 94 N. J. Eq. 511, this court affirmed a decree of the Court of Chancery (on the opinion below—121 Atl. 589), which determined the extent of the user of a right of way, and restrained the attempted exercise of user in excess of the right thus determined. No municipality was a party to the case. The jurisdiction of equity was sustained on the ground that the remedy at law “would be totally inadequate” (p. 514). The opinion distinguished the case of *Imperial Realty Co. v. West Jersey and S. R. R. Co.*, 79 N. J. Eq. 168, on the ground that there was no issue as to the physical location or boundaries of the right and that the entire question of the extent of the rights of the parties rested upon the legal construction of certain provisions in the deeds (p. 515).

Such a case is obviously very different from the present where there is a sharp dispute of fact, both as to the existence of any right by adverse user, and also as to the extent of such right.

The present case is similar, so far as this point is concerned, to the decision of this court in the *Imperial Realty* case, *supra*, where the decision of the Court of Chancery was reversed on the ground that the complainant should have established at law the extent of its right before filing its bill. We quote from the opinion as follows:

“It is the settled law of this state that where the fundamental right under which the complainant prays equitable relief is the legal title to an easement in lands of the defendant, and that right is in substantial dispute,

its establishment at law is necessary to justify the interference of a court of equity. *Todd v. Staats*, 60 N. J. Eq. (15 Dick.) 507; *Borough of South Amboy v. Pennsylvania Railroad Co.*, 77 N. J. Eq. (7 Buch.) 242; *Mason v. Ross*, 77 N. J. Eq. (7 Buch.) 527. The learned vice-chancellor who heard the cause in the court below, while recognizing the existence of this rule, considered that it did not apply to the case in hand because he found, from the proofs submitted, that the legal right of the complainant was not substantially in dispute, its existence being made clear, as he conceived, by facts which were not denied. He, for this reason, proceeded to final hearing on the merits, without first requiring the complainant to establish the existence of its alleged easement by an action at law.

"We are not entirely satisfied that the dispute between the parties as to the present existence of the right asserted by the complainant was unsubstantial. But, be that as it may, there was certainly much more than a formal dispute with relation to the extent of that right. The complainant asserted that it had an easement of way over all portions of a strip of land twenty feet in width, belonging to the defendant, and this claim was disputed by the defendant. The vice-chancellor concluded that the complainant had failed to establish its easement to the full extent of its claim, and held that under the proofs its right was clear only to a way ten feet in width; and then restrained the defendant from interfering with the complainant in its use of the way as so defined. In the late case of *Borough of South Amboy v. Pennsylvania Railroad Co.*, *supra*, the primary matter in dispute was the width of a public road. After a consideration of the proofs submitted the court of chancery adjudged that it was 'at least two rods wide,' and undertook to settle the rights of the parties upon that basis. It was held in this

court that the action of the court of chancery was unwarranted for the reason (among others) 'that the proper forum for settling the width of a highway is a court of law, and the proper method for its correct determination is a trial by jury.' *Opinion*, p. 246. The principle underlying the decision is, of course, that the extent of a purely legal right, as well as the existence thereof, is a matter to be settled at law, and until it is so settled, the aid of a court of equity in its enforcement cannot properly be invoked."

This case has been followed by several later decisions both of this court and of the Court of Chancery.

In *Ostrander v. United New Jersey R. R. & C. Co.*, 83 N. J. Eq., 645, Kalisch, J., speaking for the court, said:

"The right of the court of chancery to entertain jurisdiction at the present time is not challenged in the answer. But this was not necessary. In *Mason v. Ross*, 77 N. J. Eq. 527, it appears that the defendant did not challenge the jurisdiction of the court of chancery, but this court, speaking through Chief-Justice Gummere, held that the question whether a right of way over the lands of one place exists in favor of another is purely a legal one, and, where the existence of such an easement is in dispute, the proper tribunal in which to settle it is a court of law; and that if the defendant had challenged the right of the court to entertain jurisdiction at this time, the bill would have been dismissed for lack of it, but that not having been done, the proper course for the court to have pursued was to retain the bill until the complainant had had a reasonable opportunity to establish her title at law. The decree was reversed so that the course indicated in the opinion could be pursued.

It can make no difference that the bill of complaint in this instance is for specific per-

formance of a covenant out of which the easement arises, since the substantial question raised by the bill and answer is whether the complainant has legal title to the easement.

It is wholly immaterial under what form of bill the question arises. The disputed question must be first settled at law and in favor of complainant before it is entitled to the relief sought by the bill."

In *Thropp v. Public Service Electric Co.*, 84 N. J. Eq. 144, the question was as to the right of the Electric Company to occupy with its poles certain land in a public highway, the title to which was in the abutting owner. The decree of the Court of Chancery was reversed on the ground that it had no jurisdiction to determine the title. Gummere, C. J., speaking for this court, said:

"Before considering the meritorious questions involved in this litigation, it is necessary to determine whether the case presented comes within the cognizance of a court of equity; for, unless it does, the decree appealed from is without legal force. That, on the one hand, the right of the defendant to occupy, by legislative authority, land in a public highway the title to which is in the complainants (if such right exists); and that, conversely, the right of the complainants to oust the defendant from the possession of this land, if the defendant is in the wrongful occupation thereof, are, each of them essentially, legal, not equitable in character, cannot be doubted. *Mayor, &c., of Jersey City v. Gardner*, 33 N. J. Eq. 622; *French v. Robb*, 67 N. J. Law 260. As a general proposition it may be said that, in this state, where the dispute between the parties is over a purely legal right in land, the proper, and, indeed, the only, tribunal in which to settle it, is a court of law. *Borough of South Amboy v. Pennsylvania Railroad Co.*, 77 N. J. Eq. 249; *Mason v. Ross*, 77 N. J. Eq. 527;

Imperial Realty Co. v. West Jersey and Seashore Railroad Co., 79 N. J. Eq. 168. It is true that this rule is not universal; but the occasions in which it is not applicable are rare. The various classes of cases in which the power of equity to entertain jurisdiction over such disputes exists are specified by this court in *Hart v. Leonard*, 42 N. J. Eq. 416. It is not necessary to recite them here. A reference to the opinion in that case will show that the facts of the present case do not bring it within any of the excepted classes."

In *Weehawken Township v. West Shore R. Co.*, 118 Atl., 258, a bill was filed to restrain the defendants from interfering with jitneys in the use of property at the West Shore Ferry. It appeared that the fundamental question was one of title. Griffin, Vice-Chancellor, said:

"Thus the complainant asks this court to try the legal title to an easement in the lands of defendant, concerning which (to say the least) the right is substantially disputed. Such a case is solely within the jurisdiction of the courts of law. *Borough of South Amboy v. Pennsylvania R. R. Co.*, 77 N. J. Eq. 242, 76 Atl. 1038. In this case the Court of Errors and Appeals cited *Todd v. Staats*, 60 N. J. Eq. 507, 46 Atl. 645, and quoted the rule therefrom as follows:

'When the fundamental right, on which the complainant prays equitable relief, is the legal title to an easement in land of the defendant, and that right is in substantial dispute, the establishment of the right at law is necessary to justify the interference of a court of equity.' "

We, therefore, submit that in view of the substantial dispute as to whether any right whatever had been acquired by adverse user, and as to whether such right, if acquired, extended to the width of fifty feet (as decreed by the Court of Chancery) or extended only to a width of

had no jurisdiction to determine the rights of the parties; or at least that if the bill of complaint is not dismissed for lack of jurisdiction, the final decree of the Court of Chancery should have been withheld until after the rights of the parties had been adjudicated by an action at law in accordance with the suggestion and stipulation made by counsel at the time of the final hearing of the cause.

V.

The complainant is not entitled to costs.

The final decree directs the defendant to pay the complainant the costs and disbursements of the suit, with a counsel fee of \$100, besides the disbursements for transcript of the testimony. The bill of complaint sought to establish a roadway fifty-nine feet wide, (p. 1, l. 35). The final decree limited the width to fifty feet, (p. 182, l. 21). The complainant therefore failed to establish a case to the extent claimed by it; under these circumstances, we submit that the defendants should not be mulcted for costs or counsel fee, even if the decree in other respects is affirmed.

VI.

Conclusion.

The decree of the Court of Chancery should be reversed with costs with instructions to dismiss the bill of complaint; or at least to withhold any final decree therein until the issue of title has been adjudicated by an action at law.

HOBART & MINARD,
Solicitors of Defendants-Appellants.

GEORGE S. HOBART,
DUANE E. MINARD,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

THE BOROUGH OF WEST LONG
BRANCH,

Complainant-Respondent,

and

JOHN HOCH and FRANK M.
TILTON and GRACE TILTON,
his wife,

Defendants-Appellants.

*On Appeal
from
Chancery.*

BRIEF OF RESPONDENT

STATEMENT.

This is an appeal from a final decree consented to by the solicitors of the respective parties (Case, P. 183, lines 20-30) and advised by Vice-Chancellor Foster. The decree declares a certain roadway in the Borough of West Long Branch to be a public street and enjoins the appellants, their agents and servants from obstructing it. (Case, P. 182-183).

The Bill of Complaint alleges, among other things, that for more than twenty-five years last past there has existed in what is now the Borough of West Long Branch, a public roadway extending northerly from Wall Street for a distance of approximately two hundred and fifty-two feet to a farm known as the Lane Farm; that in June, 1923, appellants, with force and against the consent of

complainant, deliberately closed the street in question by erecting a fence across the front thereof on the property line in question, paralleling Wall Street, thus attempting to bar the public from the use thereof. The respondent, however, caused this obstruction to be removed.

The answer denies that the land in dispute is a street, avenue or public place and denies that it was ever subjected to the use of the public. The sixth paragraph of the answer, however, alleges that one James H. McIntyre, the owner of the property lying on the south side of Wall Street, "contemplated the possibility" of extending Monroe Street, referred to in the Bill of Complaint, northerly through the lands of said McIntyre and other lands lying to the north of the land in dispute, including the property mentioned in the decree as the property of Isaiah H. Lane farm, and that

"said McIntyre, then being the owner of a considerable tract of land, including the premises in dispute, * * * * * was agreeable to the said proposed extension of Monroe Street and that in subsequent conveyances made by him of lands adjoining the disputed premises on its easterly and westerly sides he referred to the disputed tract as a proposed street,"

but that the extension was never consummated because owners of other lands lying to the north of the disputed tract "declined to accede to the proposition of the extension." The answer further alleges that the said Lane asked permission of the said McIntyre to use a portion of the disputed tract as a private driveway leading from the Lane Farm to the said Wall Street

"to be used by the said Lane and his family and employees and by such persons who might desire to use same as a means of access to the

said Lane Farm and upon the distinct and express condition that said permission and use should be continued only for so long and under such conditions which should be agreeable and according to the pleasure of the said McIntyre; that the defendants and their predecessors in title have always asked permission to use the disputed lands and that the said McIntyre and Lane effectually set off the said disputed tract on Wall Street by erecting across same fences and other barriers."

Here then is a sharply defined issue.

Immediately after issue was joined, stipulation was entered into by counsel for complainant and defendants that testimony be taken in the form of questions and answers and cross-examination and that such testimony should be read and received by the Vice-Chancellor on the final hearing. This testimony was taken as stipulated before Cora M. Throckmorton of Long Branch, New Jersey, and was submitted to the Vice-Chancellor on final hearing, (See P. 9, lines 26-35). It is the testimony of Thomas Covert. (P. 169-176). After this and immediately preceding the final hearing counsel called the court's attention to

"the fact that there was a possibility under the pleadings and issues presented thereby, as well as possibly under the proofs to be offered, a question of law, and counsel have made the further suggestion to the court that inasmuch as the case has been formally set down for hearing today, after some months' delay, that the court *should proceed to hear the witnesses notwithstanding the question of law*, and then if the court concludes that the issues require a determination at law, the cause can be removed

to the court of law and the testimony here to be taken can be used in the trial of the issues at law, and the parties can reserve the right to take further testimony in the issue at law." (Case, P. 9, lines 30-40, P. 10, lines 1-14).

I am calling the court's attention to this phase of the case at this time, 1st, because the appeal, as stated in appellant's brief (P. 2) as well as in the petition of appeal (P. 189), is based only upon the ground that the Bill of Complaint should have been dismissed with costs; and 2nd, because it is my purpose to insist, later on, that the appellant's fourth reason for a reversal is predicated upon the assertion "that the complainant has an adequate remedy at law," despite the fact that they knew all this from the very beginning, but waived aside this point by stipulation and by the "suggestion" of counsel that the court should "proceed to hear the witnesses, notwithstanding the question of law, and that if the court concludes that the issue requires a determination at law, the cause can be removed," etc., which procedure of the court was substantially that adopted in the case of *Ostrander vs. United N. J. R. R. & C. Co.*, 83 Eq. 645, where Justice Kalisch, speaking for the court, says that:

"The proper course for the court to have pursued was to retain the Bill until the complainant had had a reasonable opportunity to establish her title at law."

Appellants had all this opportunity, but, as stated before, waived it aside. Moreover, after the court had patiently listened to the testimony of all the witnesses at the suggestion of counsel as aforesaid and without attempting to invoke the aid of a court of law, counsel consented to the decree advised by the court. (See P. 183).

POINT I.

IT IS NOT NECESSARY THAT THE ROADWAY BE RECOGNIZED OR ADOPTED AS A PUBLIC STREET BY THE BOROUGH OF WEST LONG BRANCH OR BY ITS PREDECESSOR, THE TOWNSHIP OF EATONTOWN.

There has been much discussion, and some conflict of opinion, as to the nature of the presumption or principle upon which rest most of the modern decisions concerning prescriptive easements. Is it a presumption of law or of fact? Is it conclusive or disputable? Is it confined to the presumption of a grant? The summary of most of the answers of today on both sides of the Atlantic is that, when all the requisites of adverse user or enjoyment have been proved, there arises a conclusive presumption of law that the claimant of the easement had at one time a right by grant, or in some other lawful form, over the servient premises.

LEHIGH VALLEY R. R. CO. vs. McFARLAN.

(43 Law 605)

"An exclusive enjoyment of an easement, in any particular way, for twenty years, *without interruption*, becomes an adverse enjoyment sufficient to raise a presumption of title as against a right in any other person, which might have been, but was not asserted."

(1825) Campbell vs. Smith

8 Law 140

(1834) Shreve vs. Voorhees

3 Eq. 25

(1837) Hulme vs. Shreve

4 Eq. 116

(1842) Shields vs. Arndt

4 Eq. 234

- (1844) Thorpe vs. Corwin
20 Law 311
- (1845) Society vs. Holsman
5 Eq. 126
- (1847) Stuyvesant vs. Woodruff
21 Law 133
47 Am. Dec. 156
- (1848) Delaware etc. Canal Co. vs. Wright
21 Law 469

"Mere denials of a right by prescription, or complaints, remonstrances, or prohibitions of user, unaccompanied by any act which in law would amount to a disturbance, and be actionable as such, will not prevent the acquisition of the right."

LEHIGH VALLEY R. R. C. vs. McFARLAN
(43 Law 605)

Since, however, there can be no logical presumption of a grant to such an indefinite and constantly changing thing as the general public, the principle at the foundation of "public prescription" for streets and highways must be simply the indisputable assumption after such rights have been enjoyed in the requisite manner for the necessary period, that they had a "legal origin" of some kind. They may have commenced as dedicated servitudes or as rights taken by eminent domain, or otherwise. The precise nature of the origin is immaterial. The fiction is that it had a legal beginning of some sort, and practically all of the states of this country recognize and protect the resultant highway rights and privileges.

SMITH vs. STATE

(23 Law 130)

(Reeves on Real Property, Vol. 1, pages 216 and 217, and cases therein cited).

The Smith case (*supra*) was on an indictment charging a nuisance in obstructing a public highway in the Town of Paterson, by erecting a building, the front walls of which were erected upon the street. The charge of the court to the jury, among other things, was that,

"A public highway in New Jersey may be established (as the counsel of both parties agree) whether, 1st, by the act of surveyors of the highways in laying out the road according to the statute, 2nd, by the uninterrupted use and enjoyment of the road as a highway by the public for a period of not less than twenty years, 3rd, by the dedication of the land by its owner to the use of the public as a highway."

In another portion of the opinion the Court says that:

"After a street has been used and built up along a party line, and adjoining owners have acquiesced in the line so built upon and treated it as the true line of the street for forty or fifty years, they can not be permitted to change or correct the course of the street by showing that the surveyors laying it out give it a definite direction.

"The use of land by the public as a highway or street for more than twenty years, and the acquiescence of the owner in such use, is conclusive proof of dedication.

"The practical location of boundaries upon which others have been induced to act shall conclude *at once those who adopt such location, even if erroneous.*"

This case is cited with approval in the case of the Township of Raritan vs. Port Reading R. R. Co.

The question, then, is whether there is sufficient evidence before the court to prove that the street in question was enjoyed as a roadway or street by the general public for the requisite length of time, and had it been open and notorious, continued and uniform, peaceable and uninterrupted, with an adverse claim of right, and with the acquiescence of the owner of the land who was, at the time of the beginning of such enjoyment, free from disability to resist its imposition upon his property? Did the predecessors in title of the defendants "acquiesce" and "treat" the disputed premises as a street? Appellee contends that by a great preponderance of evidence, these facts are clearly established, first, by the deed from Isaiah H. Lane and Mary A., his wife, to James Howard McIntyre, found on page 194 of the State of the Case, which conclusively proves that it was "with the acquiescence of the owner of the land, who was, at the time of the beginning of such enjoyment, free from disability to resist its imposition upon his property." He "proposed" the imposition under his hand and seal. He created a "location of boundaries upon which others have been induced to act." Second, by the evidence of practically all of the witnesses, who testified that the premises in question were used by the public as a public highway, as testified to by Dr. Edward Beach, for thirty-eight years last past, and by practically all the others, since 1892. A casual reading of the testimony is convincing on this point. But, without taking the time to quote from the evidence of these several witnesses, the court's attention is respectfully called to the fact that counsel conceded this to be so. The statement made by counsel for the appellants is to be found on page 55 of the State of the Case. It reads as follows:

"We are not going to dispute this at all that the public has used this road. We are not go-

ing to dispute it. We are going to say it was done by permission that Mr. McIntyre gave Mr. Isaiah Lane, and simply by a permission, and that the permission was revoked. We are not going to deny that people went in there."

THE COURT: "How is your conduct going to affect the public, if the public used it without authority? The cases are clear that if you acquiesce in the use of a road for twenty years or more, that the user gains an adverse right of it."

JUDGE HEISLEY: "That is the law of adverse user for twenty years. The authorities hold that if you grant a right today, the public gets no right by using it at the same time."

SENATOR STEVENS: "Our case is entirely on the case of adverse user."

The court below was led to accept this as a verity and did so accept it in formulating his conclusions. (See Vice-Chancellor's conclusions, P. 179, lines 25-33).

Whether or not the complainant "recognized" or "adopted" the lands in question as a public street is, therefore, immaterial.

POINT II.

THE DECREE OF THE COURT OF CHANCERY, DECLARING THAT THE STREET IN QUESTION WAS A PUBLIC STREET, WAS THE ONLY LOGICAL CONCLUSION THAT THE COURT COULD ARRIVE AT FROM THE EVIDENCE. THE USE OF THE STREET BY THE GENERAL PUBLIC DID NOT HAVE ITS INCEPTION BY PERMISSION OF THE OWNER OF THE LAND IN QUESTION AND THE USE OF THE LAND WAS NOT LIMITED TO SUCH PERSONS AS DESIRED TO OBTAIN ACCESS TO THE PROPERTY LOCATED ON THE NORTH LINE OF BROADWAY FOR THE PURPOSE OF DOING BUSINESS WITH THE OCCUPANTS OF THE SAID PROPERTY.

The disputed lands in question were formerly owned by Isaiah H. Lane and wife, who, on November 20, 1891, conveyed, by Deed of Warranty, to James Howard McIntyre. It will be noted that the description of this deed states the first course as follows:

"Beginning in the corner of a fence at a stone, thence (1) north sixty-eight degrees west two chains and sixty-three links to the middle of a proposed street." (Portion of the premises in question). Prior to that, McIntyre had purchased other property from the Sherman estate. On March 1, 1897, McIntyre sold the lot now owned by defendant Hoch to one Julian. On October 25, 1906, one Hayes bought the lot in question under foreclosure proceedings, and Hayes in turn sold to the defendant Hoch on December 31, 1921. On June 24, 1922, McIntyre sold the lot now owned by defendant Tilton. All of the last mentioned deeds refer to the "proposed street." (P. 156, line 40).

There can be no doubt that the so-called "proposed street," first "proposed" by Lane and wife to McIntyre, was from that time on, and prior thereto, used by the general public for things other than business with the Lanes. Palmer, one of complainant's witnesses, said:—

"I thought it belonged to Monroe Street. That was my understanding." (P. 52, lines 30-40).

LEWIS LANE:

"How many people a day went through on an average?"

ANSWER: "There have been six or seven cars in at a time at the barn buying asparagus or produce. They came in that way most of the time. They come in that way and from Locust Avenue and go out Locust Avenue to the golf clubs, then they come in from the golf clubs and go out the other way." (Case, P. 71, lines 10-20).

The witness Lane is the son of Isaiah Lane, who conveyed the lands to McIntyre. (P. 68, lines 20-25). All of the witnesses, and particularly Mr. Antonides, who lived both at the Lane Farm and on the Hoch Property, swear to the continuous use of the lands in question by the general public for longer than the period required by law. Counsel for appellants admit the same thing. (P. 55, lines 18-38). Therefore, whether the Borough officials, as such, caused the street in question to be paved, graveled or signs placed thereon, as in other parts of the Borough, is of no effect. The court, from the evidence, clearly had the right and was correct in assuming that, by the preponderance of proofs, the general public, without permission, but with the clear acqui-

escence of the owners of the land from at least the time that Lane conveyed to McIntyre, (November 20, 1891), until the present time, used the premises in question as a street and the only attempt to cut the public off was at the time the fence in question was erected.

"The open, notorious, continued and adverse use of a driveway and foot path across the lands of another, from a residence or place of business to a public road for more than twenty years, affords a conclusive presumption of a written grant of such right of way."

CLEMENT vs. BETTLE.

(65 Law 675).

Defendants may have intended, as their answer alleges, that the road

"be used by the said Lane and his family and employees and by such persons who might desire to use same as a means of access to the said Lane Farm and upon the express conditions which should be agreeable and according to the pleasure of the said McIntyre."

They may have whispered "permission" to use the disputed lands among themselves, but the general public never knew it and they never effectually attempted to set off the lands in question—they never remonstrated

"by any act which in law would amount to a disturbance, and be actionable as such," as they were required to do.

LEHIGH VALLEY R. R. C. vs. McFARLAN
(supra).

They did no such thing until 1923, and as alleged in the Bill of Complaint.

POINT III.

IT IS A QUESTION OF FACT, FROM THE EVIDENCE, WHETHER OR NOT THE STREET IN QUESTION EXTENDED THE ENTIRE WIDTH OF THE STREET AS CLAIMED IN THE BILL OF COMPLAINT. THIS QUESTION THE COURT HAD A RIGHT TO DECIDE AS A QUESTION OF FACT AND WAS JUSTIFIED IN CONCLUDING THAT THE STREET WAS OF THE WIDTH DECLARED IN THE BILL OF COMPLAINT.

POINT IV.

THERE IS NO MERIT IN THE ISSUE RAISED BY APPELLANTS' FOURTH POINT BECAUSE THEY SUGGESTED, ACQUIESCED AND FINALLY STIPULATED THAT THE COURT OF CHANCERY TAKE COGNIZANCE OF ALL THE QUESTIONS INVOLVED AND AGREED TO THE DECREE.

I shall not again refer to these suggestions and stipulations.

Appellants' fourth point relies upon the well-known rule that the Court of Chancery will not take cognizance of a substantial dispute over the fact of adverse user, the defendants in such disputes being entitled to have the question settled by the verdict of a jury. It will be noted, however, that the cases referred to in substantiation of this point in appellants' brief as well as all of the cases on that point are predicated upon the "fact" of adverse user. In

the case of *Hart vs. Leonard*, 42 Eq. 416, the court holds that:

"A substantial dispute * * * * * is not ordinarily cognizable in a Court of Equity." Judge Dixon, speaking for the court in that case, says that:

"The case in hand does not come within any of these classes. It bears no trace of resemblance to any except those of the third or sixth class. But the third class does not include it, BECAUSE THE EVIDENCE SHOWS A SUBSTANTIAL DISPUTE OVER THE FACT OF ADVERSE USER WHICH THE DEFENDANT IS ENTITLED TO HAVE SETTLED BY THE VERDICT OF A JURY."

The *Leonard* case (*supra*) is referred to in the case of *Dill vs. The Board of Education of Camden*, 47 Eq. 422.

In the case of *South Amboy vs. P. R. R. Co.*, 77 Eq. 242, the court remarks that,

"if there is a substantial dispute as to the facts or law, and the question is in doubt, a trial at law will be required before equity will intervene."

In the case of *Attorney General vs. Heihson*, 18 Eq. 410, the Chancellor remarks that the Court of Chancery has the power to cause nuisances to be removed and abated, both public and private, but,

"it will only exercise that power when the fact of nuisance 'is beyond doubt,' or has been settled by a verdict at law."

In the case of *Todd vs. Statts*, 60 Eq. 507, the court holds that where the fundamental right on

which the complainant prays equitable relief is the legal title to an easement in lands, and that right "is in substantial dispute" the establishment of the right at law is necessary to justify interference of the Court of Equity. This case further holds that,

"when the complainant's bill prays affirmative relief based on the existence of such a right and the right is denied by the answer, IT IS PROPER FOR THE COURT OF CHANCERY TO RETAIN THE CAUSE UNTIL THE COMPLAINANT HAS HAD REASONABLE OPPORTUNITY TO ESTABLISH HIS TITLE AT LAW."

In the case of Imperial Realty Co. vs. West Jersey, etc., 79 Eq. 168, Chief Justice Gummere, in speaking for the Court of Errors and Appeals, says that,

"it is the settled law of this state that where the fundamental right under which the complainant prays equitable relief is the legal title to an easement in lands of the defendant, and THAT RIGHT 'IS IN SUBSTANTIAL DISPUTE' ITS ESTABLISHMENT AT LAW IS NECESSARY TO JUSTIFY INTERFERENCE BY A COURT OF EQUITY."

The learned Chief Justice then continues as follows:

"The learned Vice-Chancellor who heard the cause in the court below, while recognizing the existence of this rule, considered that it did not apply to the case in hand because he found, from the proofs admitted, that the legal right of the complainant was not substantially in dispute, its existence being made clear, 'as he conceived by facts which were not denied.' He, for this reason, proceeded to a hearing on the mer-

its without first requiring the complainant to establish the existence of its alleged easement by an action at law."

In the case *sub judis* there was no dispute, "substantial" or otherwise, that would or did take the case out of the jurisdiction of the Court of Chancery. This is clear, by the admission of counsel, which admission is to be found on page 55 of the State of the Case and heretofore quoted in full. The court was familiar with the point of law under discussion. Its attention was called to that fact immediately preceding the hearing. Nevertheless, counsel suggested to the court that inasmuch as the case had been formally set down, "the court should proceed to hear the witnesses, notwithstanding the question of law."

It was the court, then, that stated that if the issues required a determination of law, "the cause can be removed to the Court of Law and the testimony here to be taken can be used in the trial of the issues at law." Thus, the court adhered to the practice of retaining the cause "until the complainant has had reasonable opportunity to establish his title at law," as held in the case of *Todd vs. Statts*, (*supra*). Appellants have not seen fit to further acquaint the court below with the fact that they required or demanded trial by jury. They did not, "within a reasonable time," seek the aid of a Court of Law. Because by appellants' suggestion they permitted the court below to retain the cause, hear the evidence, advise a decree and then consent to the decree. True, that afterwards the counsel of both parties agreed that the consent to the decree be amended. (See P. 184). But this does not alter the very important facts that counsel for appellants suggested that the court retain the cause; that they did not avail themselves of the opportunity afforded by the court to

have a trial by jury, because they conceded that there was no dispute about public user, and that they afterwards consented to the decree.

There being no dispute of *public user* of the lands in question, substantial or otherwise, as conceded by counsel (P. 55, lines 20-40), and the appellants suggesting that the court retain the issues and afterwards, and at least by their acquiescence—they doing nothing within a reasonable time to demand from the court below a trial by jury in the Court of Law—permitting the court to advise a decree and afterwards consenting to that decree, the decree should not be reversed with costs and should not be dismissed, for the reasons aforesaid.

Respectfully submitted,

WM. A. STEVENS,
Solicitor of Complainants-Appellee.

