

NEW JERSEY COURT OF ERRORS
AND APPEALS.

SEASIDE REALTY AND IMPROVE-
MENT COMPANY,
Prosecutor,
Plaintiff in Error } In Error to Supreme
vs. } Court.
ATLANTIC CITY,
Defendant in Error }

BRIEF FOR DEFENDANT IN ERROR. 10

The Prosecutor procured a certiorari to remove to the Supreme Court for review an ordinance approved October 13, 1899, to open a public park, &c. along the beach, or ocean front of Atlantic City, and a resolution, passed January 8th, 1906, for the purchase by the city of the State's lands along said ocean front. Such a purchase is authorized by the Supplement of 1903 (P. L. 387) to the Riparian Act.

On application, in behalf of the defendant, the Justice, who allowed the writ, modified his allocatur so as to ex-20
clude the ordinance from its operation. The Supreme Court in the opinion read by Mr. Justice Reed, on the decision of the cause, justified this course as a matter of practice, and declared that had the modification not been made, the Court would, in the exercise of sound discretion, have dismissed the writ so far as it challenged the ordinance—for reasons which seemed to be conclusive. (Case p. 47, folio 30, et seq.)

As this judicial action is not subject to review in this Court we shall ignore the "Reasons" attacking the ordi-30
nance.

On the merits of the resolution for the purchase of riparian lands, the opinion of Mr. Justice Reed deals adversely, in a most satisfactory way, with all the points made by the Prosecutor in the brief of its Counsel in the Supreme Court.

So that no feature of the cause may be overlooked, we will frame our argument, in support of the judgment, in the order of the "Reasons" assailing the resolution.

10 It may be remarked in passing that the prosecutor's standing is only that of a general taxpayer; and as such it would not be entitled to be heard with respect to the ordinance. The resolution, of course, involving as it does municipal liability, is open to its attack for alleged invalidity. The reason that the Prosecutor has no standing as a landowner is that on February 6th, 1900, Charles Evans, its predecessor in title, conveyed to defendant, for public park purposes, all land lying oceanward of the interior line of the boardwalk—which interior line was above, or to the landward, of high water mark of the Atlantic Ocean. (See Stipulation, Case p. 20, folio 30, et
20 seq.) The Prosecutor, therefore, is not the raparian owner.

FIRST AND FOURTH REASONS.

These challenge the power of Atlantic City to pass the ordinance on which must rest the resolution for purchasing the State's land; and, therefore, although the regularity of the ordinance is not open to attack, the right to pass such an ordinance at all must be vindicated by the defendant. Such right is clear under the Act of 1894 (P. L. p. 146) which, however, is assailed by the fourth of
30 the Prosecutor's reasons as unconstitutional in that it is a special law regulating the internal affairs of cities. The constitutionality of like legislation has been upheld by the Supreme Court not only in the case in hand, but in *Bowker vs. Wright*, 25 Vt. 130, and in *Johnson vs. Ocean City*, 64 Atl. Rep. 987.

The Act empowers cities located on or near the ocean, embracing within their limits, or jurisdiction, any beach or ocean front, to open and lay out a public park or place for public resort or recreation on or along the beach or ocean front of such city, and to purchase or condemn lands, property and rights therefor, and to preserve the same from obstruction or encroachment, and to devote the lands within the limits of such park, or place of resort, to such use exclusively. That this is a constitutional classification seems too plain for contrary argument. It falls within the test of generality so lucidly set forth in the Supreme Court in *Anderson vs. Trenton*, 13 Vr. 486, often cited with approval in opinions read by this Court, and authoritatively declared by this Court itself in *Hammer v. Richards*, 15 Vr. 667. ¹⁰

FIFTH REASON.

The claim is made in this Reason that the statute and ordinance are unreasonable in that they give to those owners who dedicate to the city a greater right than those who refuse to dedicate in that, as is claimed, the owners in one case are entitled to the benefit of accretions and in the other not. There is nothing in the ordinance on the subject; and if there were, for the reasons above stated, the Prosecutor could not be heard to attack it. Section 5 of the Act of 1894 (P. L. 146) does provide that in agreements with landowners for dedication provision may be made for change of location so as to give the landowner the benefit of accretions by moving the inside line of the park oceanward. The statute being constitutional, the matter was one addressed to legislative discretion, but if this Court thinks it worthy of consideration—as the Supreme Court did not—it is sufficient to say that every landowner has the right to secure possible accretions by signing a deed of dedication; and that if he elects not to join in such conveyance, and condemnation ensues, the ³⁰

value of the right to accretions will be determined and paid for by the municipal condemnation. There is no discrimination resulting in procedure mapped out by the statute.

SIXTH AND SEVENTH REASONS.

These challenge the power to buy and the means to purchase land under water by Atlantic City for a public park. The Act of 1903 (P. L. 387) affords the power while the Act of 1895 (P. L. 464) provides for the means
10 of payment. The opinion of Mr. Justice Reed is convincing on these points.

EIGHTH, NINTH AND TENTH REASONS.

These attack the Act of 1903 (P. L. 387) and present the subject mainly discussed in the Supreme Court. The opinion of Mr. Justice Reed, is a complete and ^{an} answerable vindication of the statute. We will supplement it by calling attention to the fact that the Act of 1903 extends to all municipalities having, or thereafter to have, public parks along, or fronting upon any of the "tide waters of
20 the statute," and not merely to those along the ocean front.

To the argument not dealt with in the opinion that the Act of 1903 deprives the riparian owner of his property without due process of law, it is sufficient to say that the prosecutor, as above pointed out, is not a riparian owner. If he were there is nothing in the argument; for it is well established that the state is absolute proprietor of lands below high water mark.

Stevens vs. Paterson & Newark R. R. Co., 5 Vr., 552;
Hoboken & Penna. R. R. Co., 124 U. S. 656.

The privilege given to shoreowners in the general riparian acts is a mere matter of grace.

In *Jersey City vs. Am. Dock & Imp. Co.*, 25 Vr., 215, the claim of Jersey City to recover in ejectment lands under water granted by statute was resisted by a subsequent grantee of the riparian commission, which commission had acted under the mistaken notion that Jersey City's grant had lapsed. The Commission's grant had been to the shoreowner, and it was contended that even if that grant as such failed nevertheless Jersey City could not re-¹⁰cover because of a clause in the act granting the basin to the City, which declared that "nothing in this act shall prejudice or impair the rights of the shoreowners to said lands." Beasley C. J., disposed of the argument as follows, page 222:—

"It was argued that this defendant, as the owner of the ripa, had certain rights in the tract of lands in dispute which the plaintiff was bound to extinguish, before it could take possession. With respect to the nature of the rights thus asserted, the arguments of counsel were discreetly vague; and it must be owned that it is not easy to suggest, or even to imagine, what 'right to' these premises existed in this defendant as shoreowner. Under the force of certain statutory provisions, the interest of the shoreowner in the submerged lands in front of his property is this: When such lands are to be sold, the riparian commissioners are directed to appraise them, and, by way of preference they are then to be offered to the riparian proprietor at the price thus fixed. It is obvious that such a pre-emption gives to the owner of the ripa no present right in or to the property; it touches neither the title or possession; it is a privilege, the fruition of which is entirely future and potential merely, and appears to be defeasible at all times by the act and at the will of the state. It is difficult to believe that this

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uncertain and precarious prerogative was that right of the shoreowner in these submerged lands that is preserved beyond impairment by this proviso. But at present this inquiry is immaterial, for it is certain that there is no such title or right vested in this defendant that can serve as a bar to the present action. The statute has vested the proprietary right in the plaintiff, and its right of possession is made to depend, not on the extinguishment of any supposed equity seated in the shoreowners, but on the single condition to pay to the state the sum ascertained by the riparian commissioners."

The judgment in this case was affirmed by this Court in 1892, but through some inadvertence no note of such affirmance appears in the reports. The case went to the U. S. Supreme Court on writ of error, which was dismissed April 13th, 1896, "for the want of jurisdiction," 41 L. Ed. U. S. Sup. Ct. Rep. 317.

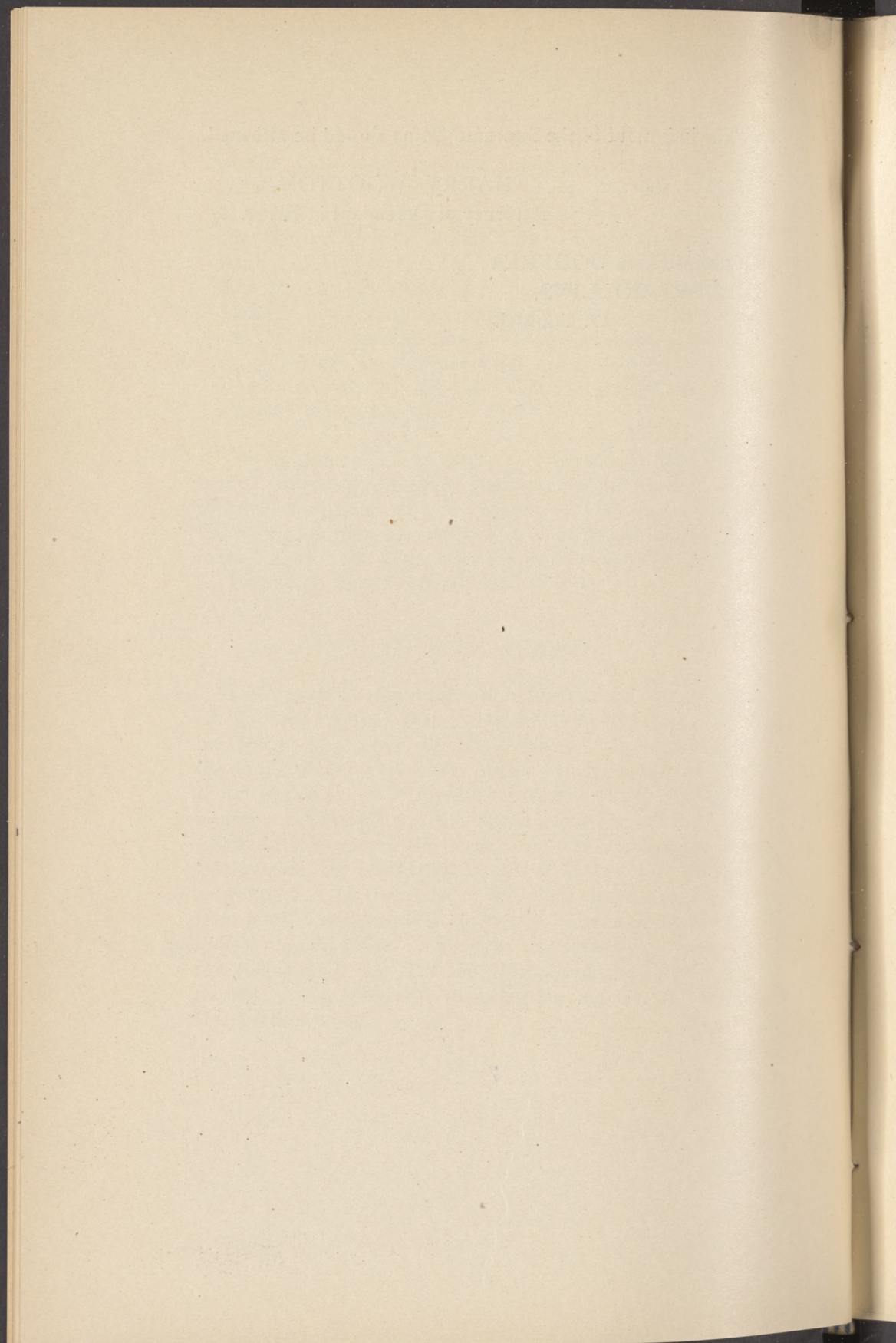
ELEVENTH REASON.

20 It is argued in this reason that because the Act of 1894 (P. L. 146) requires that the ocean park authorized shall be forever kept open and unobstructed, the purchase of the lands of the state under water which cannot be filled in or improved, will involve a waste of the taxpayer's money. Inasmuch as the entire purchase of the park would be frustrated if the ocean front were liable to be sold by the state, the acquisition of that front becomes a necessary incident to the park itself. The state owning the land could very properly restrict its purchaser to the adjacent municipalities. All that was necessary to answer the constitution was that the price should be fixed in the manner provided by law in fixing the amount to be paid for riparian lands.

The judgment of the Supreme Court should be affirmed.

HARRY WOOTTON,
Attorney of Defendant in Error.

GODFREY & GODFREY,
GILBERT COLLINS,
Of Counsel.



NEW JERSEY
Court of Errors and Appeals.

SEASIDE REALTY AND IM-
PROVEMENT COMPANY, }
Prosecutor,—Plaintiff in Error, }
ATLANTIC CITY, }
Respondent,—Defendant in Error. }

Brief for Plaintiff in Error.

There is under review by the writ in this cause an ordinance of Atlantic City, the object of which is to lay out and open a public park on the ocean front, and a resolution, the object of which is to have Atlantic City purchase from the Riparian Commissioners of the State of New Jersey, certain land on the ocean front of Atlantic City, between high-water mark and the exterior line established by said commissioners.

1. There is no power vested in Atlantic City to pass the resolution, nor is there any power to appropriate or spend money for the object stated. The language of the resolution is: "Be it resolved, that the Finance Committee be hereby authorized to purchase from the State Board of Riparian Commissioners, all riparian land not heretofore purchased by individuals, on the ocean front of Atlantic City, paying therefor the fee fixed by the said

State Board of Riparian Commissioners out of the beach front park funds." This resolution does not state what is in view by Atlantic City, nor is there evidence from which the Court can intelligently gather such information. We know, however, that the object of the resolution is to purchase riparian land so as to create a park, such as is defined in the ordinance under review.

The resolution rests for its support upon the ordinance, and the ordinance rests for its support upon an act of the Legislature, entitled "An act to enable cities in this State, located on or near the ocean, and embracing within their limits or jurisdiction, any beach or ocean front, to open and lay out a public park, etc.," approved April 26th, 1894, Pamphlet Laws of that year, page 146. The act cited is named in the ordinance as the basis of its support. By the act certain conditions must be performed before the city is authorized to purchase or condemn lands. The things that must be done as appears by section two, are: That the city must determine to open and lay out a park; it must cause the interior or inland line of the same to be established and suitably marked on the ground, and cause a description of the same to be filed in the office of the city clerk. So far as the evidence discloses, these conditions have not been performed. It is true that the ordinance recites that the city has determined to open and lay out a park, but there is no declaration in the ordinance of compliance with the other conditions, assuming that the ordinance would be proof of such compliance, which of course it would not. For lack of compliance with the conditions precedent to the right to purchase or condemn lands, the resolution authorizing such purchase is premature and must be set aside.

2. Assuming that the resolution is not premature, we insist that there is a lack of power to purchase the interest of the State in the land under water. The cited act does not vest the city with authority to purchase such interest. Its language is plain, and limits the city to the right to purchase the interest of the owners of the

riparian to land between high-water mark and the exterior line, as established by the Riparian Commissioners. There is no language in the act which justifies the construction of a power to purchase the State's interest, and no implication to that effect can be warranted. The language is: "It shall and may be lawful for the common council or other governing body of such city to purchase or condemn all the lands, real estate, property and rights of persons and corporations, situate, lying and being within and between the line so established and the exterior line now or hereafter established by the said Riparian Commissioners, along and in front of the property over and across which such interior line has been established, etc."

The preceding portion of the act relates to the establishment of the interior line of the public park. There is no other act which authorizes the city to purchase for the object named, and it must vindicate the resolution by the cited act. The act limits the city to the purchase of the lands of *persons* and *corporations* situate, lying and being within and between the line so established, etc. The State is neither a person nor a corporation within the fair rendering of those words. Any doubt, however, as to what was intended by the use of the words: "Persons and corporations," is removed by section five, which provides that the city may accept "from any *person* or *persons* or *corporations*, owning lands, property or rights, which, by the provisions of this act, such city is authorized to purchase or condemn, a dedication of such property, lands and rights." That section makes it plain that the city is vested with the right to purchase only such land as it has the right to condemn, or of those who have the right to dedicate. Plainly, the city could not condemn the State's interest, nor could the State dedicate. (See *Henderson vs. Atlantic City*, 64 *Equity* 583.)

It may be claimed that the necessary power is given by an act entitled "A further supplement to an act to ascertain the rights of the State and the riparian owners

in the lands lying under the waters of the bay of New York, etc.," Pamphlet Laws of 1903, page 387, but we assert with confidence that this act possesses no such power. It was undoubtedly intended to aid in the proposed project of Atlantic City, but it is futile to that end, as we shall presently show.

3. There is no appropriation out of which the city can legally pay for the land proposed to be purchased from the State, nor is there any fund legally created out of which payment can be made. Whatever the fact may be, there is no evidence to show such an appropriation or fund. It is true the stipulation says: "That on January, 8th, 1906, there was in the city treasury of Atlantic City the sum of one hundred and twenty thousand six hundred and twenty-two dollars and sixty-eight cents, the proceeds from the sale of said bonds with interest." Our point is that there was and is no authority in Atlantic City to issue bonds for the purpose named in the act of 1894. That act is silent on the subject of the issuance of bonds, and there is no act of which we have knowledge that permits the issuance of such bonds. It is true that the ordinance states that the bonds are to be issued under and in pursuance of an act of the Legislature, entitled "An act to authorize cities in this State to issue bonds in certain cases," approved March 22d, 1895. This act is on page 464 of the Pamphlet Laws of that year.

The last-named act is no authority for the issuance of bonds for the purpose named in the ordinance. In the first place, that act permits the issuance of bonds only when there is no adequate provision otherwise made for the raising of money to pay for the objects named in said act. There is nothing in the case to indicate, or from which the Court can conclude that Atlantic City was without adequate provision to raise the money necessary to pay for the land needed for a public park, if it had the right to purchase such land. Moreover, that act provides for the issuance of bonds to raise money to pay for lands within the limits of cities. The

land proposed to be purchased is beyond high-water mark and without the limits of Atlantic City.

The act is also special, regulating the internal affairs of cities, in that it applies only to cities and limits the issuance of bonds for the purpose of purchasing lands or interest in lands. Such a classification is specious and unwarranted under the Constitution, and the cases declaratory thereof. It must also be borne in mind that neither the act of 1894, which authorizes the creation of a public park, nor the act of 1895, which may authorize the issuance of the bonds in question, can be applicable to the present situation, for the reason that, after all, the resolution under review must have for its support the act of 1903, above cited. Since that act was passed, long after the act of 1894 and 1895, it will be seen that they cannot be held to apply to the situation in hand. It was not until the act of 1903 became operative that Atlantic City could purchase the State's interest in land, as against the owner of the ripa. The plain purpose of that act was to exclude the owner of the ripa from the right to secure the interest of the State in land under water abutting his property.

4. The act of 1903, above cited, is unconstitutional. It is unconstitutional because its object is not expressed in its title, it is special, regulating the internal affairs of cities; it contains more than one object; deprives the owner of the ripa of the right of the equal protection of the law; takes from him his property without compensation, and deprives him of the same without due process of law. The title of the act is, 'A further supplement to an act to ascertain the rights of the State and the riparian owners in lands lying under the waters of the bay of New York.' The object of the act as shown by its body, is to enable certain cities to secure from the State its interest in land under water, to the exclusion of the owner of the ripa.

The object is not expressed in the title. Certainly it needs no extended argument to show that an act which has for its object the aiding of a municipality to estab-

lish a public park on lands under water, and which gives to such municipality the exclusive right to purchase such land from the State, and deprives the owner of the riparian right, is not expressed in a title which says an act to ascertain the rights of the State and the riparian owners. There is nothing in the body of the act which at all deals with the rights of the State and the riparian owners. No one looking at the title of the act could, in their wildest flight of imagination, suspect what was hidden in the body of the act.

The act is clearly special as regulating the internal affairs of cities, in that all cities are not comprehended by its provisions. It can only apply to cities which have heretofore or may hereafter lay out public parks and which have authority so to do, and which, with such authority, exercise it by ordinance. Such a classification will not bear the constitutional test. It should apply to all municipalities with a like situation, and without regard to whether a park has been or may hereafter be provided for by ordinance.

The act is also unconstitutional for the reason stated in *Henderson vs. Atlantic*, above cited. The effect of that decision is that the Legislature is without power under the Constitution and State legislation to deprive the school fund of the benefit of money realized from the sale of riparian lands. It is true that the act involved in the case cited permitted the Riparian Commissioners to sell to a municipality for a nominal consideration, but the same spirit is manifested in the act of 1903. While the Riparian Commissioners cannot sell to the city for a nominal consideration, it is prohibited from selling to any other than a municipality, while there is no obligation upon the municipality to purchase. The practical effect of the legislation is, that while there may be thousands of owners ready, willing and anxious to purchase the State's interest, and pay therefor a valuable consideration, the commissioners cannot sell nor can the school fund receive the benefits of such sales, while the municipalities stand by and say we do not care to purchase.

5. The act of 1894, designed to enable cities on or near the ocean to lay out a public park, is unconstitutional because it is special, regulating the internal affairs of cities. Our point is that the rights given to cities on or near the ocean to purchase or condemn lands between high-water mark and the exterior line established by the Riparian Commissioners, should extend as well to all cities fronting tidal waters. We are unable to perceive what there is peculiar to cities located on or near the ocean, which should give them the right to the exclusion of other municipalities so situated or other cities and municipalities fronting other tidal waters, to have the benefit of the act. It is well known that there are towns, townships and boroughs located on or near the ocean, and there are cities and other municipalities located on or near tidal waters, which might with advantage create a public park on lands between high-water mark and the line as fixed by the said Riparian Commissioners. Why, then, should such a beneficial act be limited to cities on or near the ocean.

We do not overlook the case *Bowker against Wright*, in 54 *Law* 130, where the Supreme Court held as constitutional the act which authorizes cities in this State, located on or near the ocean, to lay out and open streets and drives, etc., but the opinion in that case, we think, clearly distinguishes it from this, and the reasoning there does not apply here. We quote this pertinent language from that case: "The sixty feet street below high and low water mark, along and upon the ocean front, is to be laid out and opened so that upon and over it there shall be constructed a public board or plank walk, twenty-four feet in width, of a permanent and substantial character, elevated on piles or posts. This is essential to render these walks at all times fit for public use and to resist the washing and flow of ocean tides and storms to which they are exposed. They are also to be wholly or in part the public land below high or low water mark, or lands covered by water. For this public land taken there can be no assessment made for benefits or for dam-

ages in the usual form. The care and maintenance of them will also be necessarily different from that bestowed on other highways away from the sea." The distinctions indicated by the foregoing language and which, in the opinion of said Court, generalizes the statute involved, are not manifested in the case of the creation of a public park on lands under water, where nothing is to be done upon the land. No structures are or can be erected. In short, the whole scheme of the legislation is to prevent structures beyond high-water mark.

6. The resolution should be set aside because it contains an unwarranted delegation to the Finance Committee of City Council, and is without limitation or restriction as to the amount to be expended in such purchase. The resolution does not manifest on the part of council the exercise of that care and deliberation to which taxpayers are entitled. Council itself should have made the purchase, and it should have known how much was to be paid for the land which was to be purchased, and how much money it would cost to make the purchase. For aught that appears, there may not be money enough on hand with which to pay for the purchase. Such a vague and indefinite resolution should be set aside for lack of judicial character.

7. The ordinance in question should be set aside because property owners whose property may be assessed for benefits had no notice of the intention to introduce or pass. This point is ruled by the case of *Scars against Atlantic City*, 60 Atl. Rep., 1093. It is true that after the writ was allowed the writ modified its effect by precluding from consideration the point now made, but we insist that he was without jurisdiction; the writ having been allowed and returned, any modification of its legal force could only be granted by the Court in bank.

For the reasons stated we respectfully submit that the ordinance and resolution under review should be set aside.

THOMPSON & COLE,
Attorneys for Plaintiff in Error.

N. J. Court of Errors & Appeals

SEASIDE REALTY AND IMPROVEMENT COMPANY,
(Prosecutor) Plaintiff in Error,
vs.

ATLANTIC CITY,
(Respondent) Defendant in Error.

ON ERROR.

STATE OF CASE.

THOMPSON & COLE, Esqs.,
Attorneys for Plaintiff in Error.

HARRY WOOTTON, Esq.,
Attorney for Defendant in Error.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

NEW JERSEY, SS.

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting:

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Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Seaside Realty and Improvement Company, prosecutor, and Atlantic City, respondent, on certiorari, manifest error hath intervened, to the great damage of the said prosecutor, as it is said; we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fourth Tuesday of May next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done; and that you also return with said writ the record and proceedings certified into the Supreme Court under the writ of certiorari out of that court.

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Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the 15th day of May, nineteen hundred and seven.

S. D. DICKINSON,
Clerk.

THOMPSON & COLE,
Attorneys.

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The answer of William S. Gummere, Chief Justice, within named:

The record and proceedings of the plea whereof mention is within made, with all things concerning the same, together with the record and proceedings certified into the Supreme Court under the writ of certiorari, to the Court of Errors and Appeals in the last resort in all causes, within specified, at the day and place contained, I certify in a certain schedule to the writ as I am within commanded.

WILLIAM S. GUMMERE,
Chief Justice.

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NEW JERSEY SUPREME COURT.

State of New Jersey to Atlantic City, the **10**
[L. s.] Common Council of Atlantic City, and Ed-
ward R. Donnelly, Clerk thereof, Greeting:

We being willing, for certain reasons, to be certified
of a certain ordinance of Atlantic City, entitled "An Or-
dinance to lay out and open a public park or place for
public resort and recreation along the beach or ocean
front of Atlantic City, &c.," approved October 13th,
1899, and of a certain resolution of the Council of said
city concerning the purchase of riparian land, passed **20**
January 8th, 1906, do command you, that you certify
and send to our Justices of our Supreme Court, at Tren-
ton, on the eighth day of February next, as well the said
ordinance and resolution, with all things touching and
concerning the same, as fully and entirely as they re-
main before you, together with this, our writ, that we
may cause to be done thereupon what of right and ac-
cording to law and justice ought to be done.

Witness, HON. WM. S. GUMMERE, Chief Justice of
our said Supreme Court, this nineteenth day of January,
in the year of our Lord one thousand nine hundred and **30**
six.

WM. RIKER, JR.,
Clerk.

THOMPSON & COLE,
Attorneys.

[ENDORSED.]

NEW JERSEY SUPREME COURT.

THE SEASIDE REALTY AND IMPROVEMENT CO.,

Prosecutor,

10

vs.

ATLANTIC CITY,

Respondent.

 CERTIORARI.

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Returnable February 8th, 1906.

 THOMPSON & COLE,
 Attorneys.

Let this writ be sealed.

 F. J. SWAYZE,
 Justice Supreme Court.

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Upon condition that the case shall be argued at February term, 1906.

NEW JERSEY SUPREME COURT.

THE SEASIDE REALTY AND IM-	}	CERTIORARI.	10
PROVEMENT Co.,			
Prosecutor,			
vs.			
ATLANTIC CITY,	}		
Respondent.			

The return of Atlantic City to the writ in the above case is as follows:

ORDINANCE 233, BY MR. HANN—FIRST READING.

Regular meeting held July 24, 1899. 20

An ordinance to lay out and open a public park or place for public resort and recreation along the beach or ocean front of Atlantic City; establishing the interior or inland line of such park, or place of public resort and recreation and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor and for the assessment of property benefited thereby, was taken up, read a first time by its title, ordered to have a second reading and referred to Committee on Ordinances. 30

ORDINANCE 233—SECOND READING.

Adjourned meeting held July 31, 1899.

An ordinance to lay out and open a public park or place for public resort and recreation along the beach

- or ocean front of Atlantic City, establish the interior or inland line of such park or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby, was taken up and read a second time. Mr. Barton moved that
- 10 further consideration of the ordinance be postponed until the next regular meeting. This motion did not prevail. Yeas, Messrs. Barton (1). Nays, Barrett, Beyer, Clement, Garnich, Hann, Ireland, Kelley, Knauer, Lingerman, Lee, Leeds, Long, Parker, Southwick (14). The ordinance was read again a second time, considered by sections, amended, agreed to, ordered to have a third reading, by the following vote: Yeas, Messrs. Barrett, Beyer, Clement, Fleming, Garnich, Hann, Ireland, Kelley, Knauer, Lingerman, Lee, Leeds, Long Parker, Southwick (15). Nays, Barton (1).
- 20

ORDINANCE 233—PLACED BACK ON SECOND READING.

Regular meeting held August 14, 1899.

Mr. Lee moved that Ordinance No. 233, entitled "An Ordinance to lay out and open a public park, &c.," be recalled and placed on the calendar for second reading. "So ordered."

- 30 On motion, further consideration of the ordinance was postponed until Council, as committee of the whole, could meet on the beach to inspect the line established by said ordinance.

ORDINANCE 233—SECOND READING.

Regular meeting held August 28, 1899.

An ordinance to lay out and open a public park, or place for public resort and recreation, along the beach or ocean front of Atlantic City, establishing the interior

or inland line of such park or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby, was taken up, read a second time, considered by sections, amended, agreed to, ordered to have a third reading.

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ORDINANCE 233—THIRD.

Regular meeting held October 9, 1899.

An ordinance to lay out and open a public park, or place for public resort and recreation, along the beach or ocean front of Atlantic City, establishing the interior or inland line of such park, or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby, was taken up, read a third time; upon the question shall this ordinance pass, it was decided as follows: Yeas, Messrs. Barton, Barrett, Beyer, Clement, Doughty, Fleming, Garnich, Hann, Ireland, Kelley, Knauer, Lingerman, Lee, Leeds, Long, Parker, Southwick (17). Nays, none. President declared the ordinance duly passed and ordered presented to the Mayor.

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TO AUTHORIZE FINANCE COMMITTEE TO PURCHASE
FROM STATE BOARD OF RIPARIAN COMMIS-
SIONERS CERTAIN RIPARIAN LAND.

Regular meeting held January 8, 1906.

Resolution by Mr. Beyer:

Be it resolved, that the Finance Committee be hereby authorized to purchase from the State Board of Riparian

Commissioners all riparian land not heretofore purchased by individuals on the ocean front of Atlantic City, paying therefor the fee fixed by the said State Board of Riparian Commissioners out of the Beach Front Park Funds.

Mr. Beyer moved the adoption of the resolution as read.

- 10 Mr. Bowker moved that this matter be referred to the Streets, Walks and Drives Committee, in conjunction with the City Engineer, to find out how many feet will be purchased and what the actual cost will be to purchase this property. The amendment was lost by the following vote: Ayes, Messrs. Bowker and Johnson (2). Nays, Messrs. Beyer, Buzby, Donnelly, Long, Mathis, Parker, Phoebus, Reilly, Riddle, Rutter, Thompson, Vanaman, Westcott and Leeds (14). The original motion was then carried: Ayes, 14; nays, 2.

20 RESOLUTION RELATIVE TO PURCHASE OF LAND ON THE OCEAN FRONT FOR THE PURPOSE OF A PUBLIC PARK.

Resolution by Mr. Beyer:

- 30 Whereas, the City Council of Atlantic City, a municipal corporation of the State of New Jersey, has, by ordinance, pursuant to the power and authority conferred upon said City Council by the Legislature of the State, determined to open and lay out a public park, or place for public resort or recreation, on and along the beach or ocean front of said city, and to purchase or condemn lands, property and rights therefor, and

Whereas, pursuant to authority conferred by law, the boundaries of said public park, or place for public resort, have been fixed and established, and

Whereas, a large number of the owners of such beach front lands embraced within the limits of said public park, or place for public resort, have executed and delivered to said city dedication deeds for such public park, or place for public resort; therefore, be it

Resolved, that the Finance Committee of said city are hereby authorized to ascertain from the owner or owners of such beach front lands not yet acquired, if his, her or their lands, property, or rights can be purchased by said city for the uses and purposes as authorized by the statute for such public park, or such place for public resort, and also to ascertain the terms and conditions upon which each of such purchases can be had and to make reports thereof; and be it

Further resolved, that such reports shall be upon separate property and shall be made from time to time to City Council. 10

Upon motion of Mr. Beyer the resolution was adopted by the following vote: Ayes, Messrs. Beyer, Bowker, Buzby, Donnelly, Johnson, Long, Mathis, Parker, Phoebus, Reilly, Riddle, Thompson, Vanaman, Westcott and Leeds (15). Nays, Mr. Rutter (1).

AN ORDINANCE.

20

An ordinance to lay out and open a public park or place for public resort and recreation along the beach or ocean front of Atlantic City, establishing the interior or inland line of such park or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby. 30

Section 1. Be it ordained by the City Council of Atlantic City, that in pursuance of the power and authority conferred upon the City Council of Atlantic City by an act of the Legislature of this State, approved April twenty-sixth, eighteen hundred and ninety-four, entitled "An

act to enable cities in this State located on or near the ocean and embracing within their limits or jurisdiction any beach or ocean front to open and lay out a public park or place for public resort or recreation on and along the beach or ocean front of such city, and to purchase or condemn lands, property and rights therefor, and to preserve the same from obstruction or encroachment," constituting chapter ninety-three of the session laws of eighteen hundred and ninety-four, the City Council of Atlantic City does hereby determine to open and lay out a

10 park or place of public resort and recreation along the beach or ocean front of said city within the limits and jurisdiction of said city, and does hereby determine, fix and establish the interior or inland line of the same, as required by the said act, as follows:

Beginning in the south line of Caspian avenue, at a point distant three hundred and sixteen (316) feet eastwardly from the west line of Maine avenue; thence (1) southwardly to the south line of Pacific avenue at a point distant two and thirty-six hundredths (2 36-100) feet

20 westwardly from the west line of Maine avenue; (2) southwestwardly to the middle line of New Hampshire avenue at a point distant four hundred (400) feet southwardly from the south line of Pacific avenue; (3) southwardly to the middle line of Massachusetts avenue at a point distant one thousand and seventy-three (1,073) feet southwardly from the south line of Pacific avenue; (4) southwardly to the middle line of Connecticut avenue at a point distant thirteen hundred and thirty-five (1,335) feet southwardly from the south line of Pacific avenue;

30 thence (5) westwardly to the middle line of St. Charles Place at a point distant one thousand four hundred and thirty (1,430) feet southwardly from the south line of Pacific avenue; (6) westwardly to a point distant twenty-five (25) feet westwardly from the east line of Maryland avenue and one thousand four hundred and sixty (1,460) feet southwardly from the south line of Pacific

avenue; (7) westwardly parallel with Pacific avenue to the middle line of North Carolina avenue; (8) westwardly to a point distant one thousand three hundred and eighty-five (1,385) feet southwardly from the south line of Pacific avenue and one hundred and twenty-five (125) feet westwardly from the middle line of Tennessee avenue; (9) westwardly to a point distant two hundred and five (205) feet westwardly from the middle line of New York avenue and twelve hundred and forty-four (1,244) feet southwardly from the south line of Pacific avenue; (10) westwardly to a point distant ninety-five (95) feet eastwardly from the middle line of Illinois avenue and one thousand one hundred and fifty-three (1,153) feet southwardly from the south line of Pacific avenue; (11) westwardly to a point in Park Place distant nine hundred and seventy-one (971) feet southwardly from the south line of Pacific avenue and two hundred feet eastwardly from the middle line of Ohio avenue; (12) westwardly to the middle line of Arkansas avenue at a point distant seven hundred and seventy-three (773) feet southwardly from the south line of Pacific avenue; (13) westwardly to the middle line of Mississippi avenue at a point distant six hundred and eighty (680) feet southwardly from the south line of Pacific avenue; (14) westwardly to the middle line of Iowa avenue at a point distant five hundred and ten (510) feet southwardly from the south line of Pacific avenue; (15) westwardly to the east line of Albany avenue at a point distant three hundred and forty-one (341) feet southwardly from the southeast corner of Albany and Pacific avenues; (16) westwardly parallel with Atlantic avenue to the middle line of Jackson avenue.

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Provided that the inland line of said park joining the two points fifty feet on either side of the above corners shall be the arc of a circle tangent at said points and not the broken line above described.

Sec. 2. And be it ordained, that the limits and boundaries of said park or place for public resort and recrea-

tion be and the same are hereby fixed, established and described as follows:

10 Beginning in the south line of Caspian avenue, at a point distant three hundred and sixteen (316) feet eastwardly from the west line of Maine avenue; thence (1) southwardly and westwardly along the interior or inland line of said park or place for public resort and recreation, as above described, to the middle line of Jackson avenue; (2) southwardly along the middle line of Jackson avenue to the exterior line established by the commissioners appointed under the authority of the act, entitled "An act to ascertain the rights of the State and of riparian owners in lands lying under the waters of the bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four, and the supplements thereto; (3) eastwardly and northwardly along said exterior line the several courses and distances thereof to the south line of Caspian avenue extended; (4) westwardly along said line of Caspian avenue to the place of beginning.

20 Sec. 3. And be it ordained, that all the lands lying oceanward from the interior line so established and within the limits and boundaries above defined, be and the same are hereby devoted to public use as a public park or place for public resort and recreation exclusively, and for such use shall be kept open and unobstructed forever, in the manner and to the extent as in and by the said act is directed and prescribed.

30 Sec. 4. And be it ordained, that the City Surveyor be and he is hereby directed to make a survey and description of the said line so fixed and established and cause the same to be suitably marked upon the ground by substantial posts or piling sunk in the soil, and prepare a map showing and indicating the said line and giving a description thereof, and he is hereby directed to file the said map and description in the office of the City Clerk of Atlantic City, where the same shall remain on record.

Sec. 5. And be it ordained, that the City Solicitor be and he is hereby empowered, in the name and on behalf of the said city, to cause to be condemned for the purposes of said public park any and all lands, property and rights within the limits of the said park, as hereby established, which shall not be dedicated to such use by the owners thereof and accepted by the city, as provided in the said act, or shall not be purchased by said city for such purpose.

Sec. 6. And be it ordained, that for the purpose of providing the money to pay the costs, damages and expenses incurred in the opening and laying out of the said park and acquiring the lands, property and rights therefor, bonds of the city of Atlantic City to an amount not exceeding one hundred thousand dollars shall be issued and disposed of and the proceeds thereof used exclusively for the purposes above stated. All such bonds so issued shall be denominated Atlantic City Park bonds, and shall run from the date of their issue for a term of thirty years and shall bear interest at the rate of four and one-half per cent. per annum. Such bonds shall be in the denomination of one thousand dollars each and be in the following form: 10

UNITED STATES OF AMERICA.

No. \$1,000

The City of Atlantic City, in the State of New Jersey. 30

Atlantic City Park Bond.

Know all men by these presents, that the city of Atlantic City, in the State of New Jersey, for value received, is indebted to the bearer hereof in the sum of one thousand dollars, which the said city of Atlantic City

promises to pay the bearer on the first day of July, in the year of our Lord one thousand nine hundred and twenty-nine, with interest thereon, at the rate of four and one-half per cent. per annum, payable semi-annually, on the first days of January and July, in each year, upon the presentation and surrender of the coupons hereto annexed as they severally become due, both principal and interest payable in lawful gold coin of the United States of America, at the Union National Bank of Atlantic City.

- 10 This bond is one of a series of one hundred bonds, numbered from 1 to 100 inclusive, each of like date and amount, aggregating the principal sum of one hundred thousand (\$100,000) dollars—all of which bonds, including this bond, shall become due and payable on the first day of July, 1929, and are issued under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An act to authorize cities in this State to issue bonds in certain cases," approved March 22, 1895, and it is hereby certified and recited that all
- 20 acts, conditions, and things, precedent to and in the issuance of the said bonds, have been duly done, happened and performed, in regular and due form, as required by law, and that said issue of bonds together with the other indebtedness of the said city do not exceed any limitation prescribed by the statutes or Constitution of the said State; and that the faith, credit and property of the said city are inviolably pledged for the payment of all of the said bonds. This bond shall pass by delivery or it may be registered by its owner in the books of the City Treasurer of Atlantic City. After registration of
- 30 ownership certified hereon by the Treasurer no transfer except upon the books of the treasurer shall be valid unless the last transfer shall have been to bearer and the transferability thereof by delivery thus restored, but this bond shall continue subject to successive registration and transfer to bearer as aforesaid, at the option of the holder. The transferability of the coupons by delivery shall not be affected by the registry of the bonds.

In witness whereof, the city of Atlantic City has caused its corporate seal to be hereto affixed and attested by its clerk and this bond to be signed by its mayor and countersigned by its treasurer and has also caused the coupons hereto annexed to be signed with the engraved or lithographed signature of its treasurer, as of the first day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

Mayor of Atlantic City.

10

Attest:

Clerk.

Countersigned:

Treasurer.

With coupons in the following form attached to said bonds for the payment of the semi-annual interest: 20

STATE OF NEW JERSEY.

No.....

\$22.50

The City of Atlantic City in the State of New Jersey will pay to the bearer on the first of..... 19...., twenty-two dollars and fifty cents in lawful gold coin of the United States, at the Union National Bank of Atlantic City, being six months' interest then due on Atlantic City Park Bond No.....

30

Dated July 1st, 1899.

The principal and interest of such bonds to be payable at the Union National Bank of Atlantic City. The principal of said bonds to be paid at said bank when they fall

due, and the semi-annual interest thereon on the first days of January and July in each year, and such bonds may be registered at the option of the holder in the office of the City Treasurer.

10 Sec. 7. And be it ordained, That when the costs, damages and expenses incident to the opening and laying out of the said park and the acquiring of the lands, property and rights necessary therefor have been ascertained the City Solicitor of said city, on behalf of said city, is hereby authorized and directed to proceed in the manner prescribed by law to cause an assessment to be made on all the properties situated within the limits of the said city benefited by the opening and laying out of the said park to the extent of the special and peculiar benefits conferred upon the owner or owners of such property thereby in proportion to the benefit each shall be deemed to acquire.

20 Sec. 8. And be it ordained, That all benefit assessments thus made, when collected, shall be paid to the Commissioner of the Sinking Fund of the said city and held and invested by him, and the same with the proceeds thereof shall be applied exclusively to the payment of the principal and interest of the bonds issued under the authority of this ordinance; and the balance required for the payment of such principal and interest, if any, shall be raised by taxation as required by law.

Passed at a regular meeting of City Council, October 9, 1899.

JAMES D. SOUTHWICK,
President.

30 Attest:
E. D. IRELAN,
City Clerk.

Approved October 13, 1899.

JOSEPH THOMPSON,
Mayor of Atlantic City.

CITY OF ATLANTIC CITY.

DEPARTMENT OF CITY GOVERNMENT.

I, EDWARD R. DONNELLY, Clerk of the city of Atlantic City, in the county of Atlantic, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance passed by the City Council of the city of Atlantic City, signed by its president, and approved by the Mayor of said city, on the thirteenth day of October, A. D. 1899, as taken from and compared with Book C of Ordinances now on file in my office. 10

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Atlantic City, this twenty-second day of January, 1906.

EDWARD R. DONNELLY,
City Clerk.

[SEAL.]

20

I, EDWARD R. DONNELLY, City Clerk of the city of Atlantic City, in the county of Atlantic and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the minutes of the various meetings of the City Council of Atlantic City relative to the introduction and final passage of an ordinance, entitled "An ordinance to lay out and open a public park or place for public resort and recreation along the beach or ocean front of Atlantic City, establishing the interior or inland line of such park or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefitted thereby," approved by the Mayor October 13, 1899. 30

I further certify that the foregoing return contains true and correct copies of two resolutions, relative to the purchase of riparian land, which were adopted at a regular meeting of the City Council of Atlantic City, held January 8, 1906.

In witness whereof, I have hereunto set my hand and affixed the official seal of the city of Atlantic City this twenty-second day of January, 1906.

EDWARD R. DONNELLY,
City Clerk.

10 [SEAL.]

NEW JERSEY SUPREME COURT.

20	SEASIDE REALTY AND IMPROVE- MENT COMPANY, vs. ATLANTIC CITY.	}	ON CERTIORARI. REASONS.
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The prosecutor assigns the following reasons for setting aside and declaring as null and void the ordinance and resolution under review by the writ in this cause:

- 30
1. Because the City Council of Atlantic City was without power to pass the ordinance.
 2. Because the ordinance was passed without notice, actual or constructive, to the owners of property to be affected by assessment of benefits authorized under said ordinance.
 3. Because said ordinance was not read three times, as required by law, and was not introduced and passed as required.

4. Because the statute which purports to authorize the passage of the ordinance under review is unconstitutional in that it is special, regulating the internal affairs of cities.

5. Because the statute which purports to authorize the passage of such ordinance and said ordinance are unreasonable, in that they give to those owners who dedicate to the city a greater right than those who refuse to dedicate; in the one instance, the owners are entitled to the benefit of accretions and in the other not.

6. Because Atlantic City was and is without power to buy land under water for purpose of a public park. **10**

7. Because Atlantic City is without a fund from which it can legally use money to pay for the purchase of land under water.

8. Because the act of 1903, which purports to give to certain municipalities the exclusive right to purchase land under water, is unconstitutional, in that its object is not expressed in its title and is special, regulating the internal affairs of cities.

9. Because the act purporting to give to certain municipalities the exclusive right to purchase land under water is in violation of the Constitution of the United States, in that it deprives the owners of the ripa of the equal protection of the law, takes from him his property without compensation and deprives him of his property without due process of law. **20**

10. Because the act purporting to give to certain municipalities the exclusive right to buy land under water is in violation of the Constitution of New Jersey and legislation thereunder, in that it deprives the State School Fund of the benefit of the sale of land under water in this, that it authorizes the Riparian Commissioners to sell to such municipalities at a sum fixed and to deny to the owners of the ripa the right to a deed, although such owner may be willing to pay a price in excess of that fixed by such Commissioners. **30**

11. Because the act which purports to give Atlantic City the right to lay out a public park on the ocean front

prohibits the use of the land to be acquired for that purpose to be in any way built upon, while the only benefit which can accrue to an owner under a grant from the State is the right to fill in said land, the effect of which will be that Atlantic City will expend the money of the taxpayers without receiving any consideration.

THOMPSON & COLE,
Attorneys of Prosecutor.

10

NEW JERSEY SUPREME COURT.

SEASIDE REALTY COMPANY,

vs.

ATLANTIC CITY.

ON CERTIORARI.

DEPOSITIONS.

20

TESTIMONY

Taken before William M. Clevenger, one of the Supreme Court Commissioners of the State of New Jersey, at the City Clerk's office, in the City Hall, Atlantic City, N. J., on Wednesday, the second day of May, 1906, at the hour of eleven o'clock in the forenoon, pursuant to notice hereto attached.

Present: THOMPSON & COLE, representing Plaintiff.
HARRY WOOTTON, representing Atlantic City.

30

CLAUDE W. MYROSE, as stenographer, was first duly sworn.

By consent of the parties an adjournment was taken to the office of William D. Clevenger, Bartlett Building, Atlantic City, N. J., on Saturday, May 5, 1906, at 10 o'clock in the forenoon.

NEW JERSEY SUPREME COURT.

SEASIDE REALTY COMPANY,

vs.

ATLANTIC CITY.

ON CERTIORARI.

DEPOSITIONS.

TESTIMONY

10

Taken before William M. Clevenger, one of the Supreme Court Commissioners of the State of New Jersey, at the office of the Commissioner, Bartlett Building, Atlantic City, N. J., on the fifth day of May, 1906, at the hour of ten o'clock in the forenoon, pursuant to adjournment.

Present: THOMPSON & COLE, representing Plaintiff.

HARRY WOOTTON and B. C. GODFREY, representing Defendant. 20

It is stipulated between the parties hereto by the respective attorneys that the following are facts and admitted without the necessity of formal proof:

That the prosecutor is a New Jersey corporation; that by deed dated April 19, 1904, and recorded in the Clerk's office of the county of Atlantic, at Mays Landing, in Book 301 of Deeds, page 157, William H. Bartlett, a single man, conveyed to it that certain tract of land and premises situate, lying and being in the city of Atlantic City, bounded and described as follows: 30

Beginning in a point in the easterly line of Pennsylvania avenue one thousand two hundred and sixty feet southwardly from the southerly line of Pacific avenue

(which point is northwardly from and to the landward side of the Boardwalk in this stipulation hereinafter mentioned) and runs thence (1) eastwardly parallel with Pacific avenue one hundred and fifty feet to the West line of a twenty feet wide alley; thence (2) southwardly parallel with Pennsylvania avenue along the westerly line of said alley four hundred and sixty-four feet to the high water line of the Atlantic ocean; thence (3) southeastwardly along the high water line of the Atlantic ocean about one hundred and fifty feet to the easterly line of Pennsylvania avenue; thence (4) northwardly along said line of Pennsylvania avenue four hundred and ninety-six feet to the place of beginning.

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That the prosecutor is not the owner of the State's right beyond high water mark, but has applied to the Riparian Commissioners for a deed for the same and agreed to pay five dollars per front foot on the ocean for said right in excess of the amount fixed or to be fixed by the Riparian Commissioners to sell to Atlantic City under the statute; and that the said Commissioners have refused to make a conveyance to the prosecutor because of the statute which requires that such conveyance be made to Atlantic City and have agreed to sell to Atlantic City; that no notice, constructive or otherwise, was ever published or served on the prosecutor or its predecessor in title of an intention to pass the ordinance entitled "An Ordinance to lay out and open a public park or place for public resort," etc., approved October 13, 1899.

20

(The stipulation concerning notice of an intention is made subject to its relevancy.)

30

That on the 6th day of February, 1900, Charles Evans was owner in fee of a certain tract of land in the city of Atlantic City, described as follows:

Beginning in a point in the easterly line of Pennsylvania avenue, at a point distant nine hundred and thirty-six feet south of Pacific avenue, and running thence (1) eastwardly parallel with Pacific avenue one hundred and

fifty feet to the West line of a twenty feet wide alley; thence (2) southwardly along the west line of said alley, seven hundred and eighty feet more or less to the high water line of the Atlantic Ocean; thence (3) southwestwardly along the high water line of the Atlantic Ocean about one hundred and fifty feet to the east line of Pennsylvania avenue; thence (4) northwardly along said easterly line of Pennsylvania avenue eight hundred and twenty feet more or less to the place of beginning.

That on or about the 6th day of February, A. D. 1900, said Evans executed and delivered to the city of Atlantic City a deed marked Exhibit D1, the land described therein including all that portion of the tract lastly described which laid between the interior line of the Boardwalk, hereinafter mentioned, and the Atlantic Ocean, the interior line of the Boardwalk, at its intersection with Pennsylvania avenue, being one thousand four hundred and sixty feet south from Pacific avenue. 10

That the said Evans and wife, by deed dated October 31, 1903, and recorded in the County Clerk's office of Atlantic county, in Book 296 of Deeds, page 51, conveyed said tract last described in fee to William H. Bartlett. 20

That the premises conveyed by Bartlett to the prosecutor are a portion of the same conveyed by Evans to Bartlett.

That at the time of the conveyance from Evans to Bartlett and from Bartlett to the prosecutor there was constructed over and upon a portion of the aforesaid lastly described land an elevated boardwalk of wood and steel construction, built over and upon a sixty feet wide public street, known as the Boardwalk, the inner or landward line of which street is the inner line of the public park heretofore laid out and established as the ocean front of Atlantic City by an ordinance marked Exhibit D2 in this cause, and which sixty feet wide street was opened and dedicated by deeds signed by 30

Charles Evans and others prior to February 6, 1900.

That bonds of Atlantic City to the amount provided in said ordinance, Exhibit D2, were sold by Atlantic City for the purpose intended by said ordinance.

That on January 8, 1906, there was in the City Treasury of Atlantic City the sum of one hundred and twenty thousand six hundred and twenty-two dollars and sixty-eight cents, the proceeds from the sale of said bonds, with interest.

- 10 That the high water line of the Atlantic Ocean on February 6, 1900, was oceanward of the interior line of the public park described in the deed from Evans to Atlantic City.

Deed dated February 6, 1900, from Rebecca R. Ramsey and others to Atlantic City, acknowledged the same day, and recorded on August 8, 1900, in Deed Book 248, at page 221, &c., is offered in evidence and marked Exhibit D1.

- 20 Certified copy of an ordinance entitled "An Ordinance to lay out and open a public park, or place for public resort and recreation, along the beach or ocean front of Atlantic City, establishing the interior or inland line of such park, or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the cost, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby," passed October 9, 1899, approved October 13, 1899, was offered in evidence and marked Exhibit PD2.

I hereby certify that the foregoing is the testimony taken before me as Supreme Court Commissioner.

WILLIAM M. CLEVINGER.

EXHIBIT D1.

This agreement, made the sixth day of February, in the year of our Lord nineteen hundred, between Rebekah E. R. Ramsey and Milne Ramsey, her husband, Charles Evans, Frederick Hemsley, Joseph Fralinger, William H. Wyld, Joseph H. Borton, J. Haines Lippincott, Henry W. Leeds, Daniel S. White, Jr., Hannah E. Kelley, Daniel W. Myers, Jacob C. Myers, James B. Reilly, David Roberts and Joseph H. Roberts, parties of the first part, and Atlantic City, a municipal corporation of New Jersey, a party of the second part. 10

Whereas, the city of Atlantic City is one of the cities of the State of New Jersey, located on or near the Atlantic Ocean, and embracing within its limits or jurisdiction certain beach or lands fronting upon the ocean;

And Whereas, the City Council of Atlantic City, being the governing body of said city, having resolved to open and lay out along such beach or ocean front a public park or place for public resort and recreation, and to devote the lands within the limits of such park or place of resort to such uses exclusively, under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An Act to enable cities in this State, located on or near the ocean and embracing within their limits or jurisdiction any beach or ocean front, to open and lay out a public park or place for public resort or recreation on and along the beach or ocean front of such city, and to purchase or condemn lands, property and rights therefor, and to preserve the same from obstruction or encroachment," approved April twenty-sixth, eighteen hundred and ninety-four; 20 30

And Whereas, the said City Council of the said city for this purpose did, on the ninth day of October, eighteen hundred and ninety-nine, duly pass an ordinance of the said city to lay out and open such park and to establish the interior or inland lines thereof, as follows:

- Beginning in the south line of Caspian avenue, at a point distant three hundred and sixteen (316) feet eastwardly from the west line of Maine avenue; thence (1) southwardly to the south line of Pacific avenue at a point distant two and thirty-six hundredths (2 36-100) feet westwardly from the west line of Maine avenue; (2) southwestwardly to the middle line of New Hampshire avenue at a point distant four hundred (400) feet southwardly from the south line of Pacific avenue; (3) southwestwardly to the middle line of Massachusetts avenue
- 10** at point distant one thousand and seventy-three (1,073) feet southwardly from the south line of Pacific avenue; (4) southwestwardly to the middle line of Connecticut avenue at a point distant thirteen hundred and thirty-five (1,335) feet southwardly from the south line of Pacific avenue; (5) westwardly to the middle line of St. Charles Place at a point distant one thousand four hundred and thirty (1,430) feet southwardly from the south line of Pacific avenue; (6) westwardly to a point distant twenty-five (25) feet westwardly from the east line of
- 20** Maryland avenue and one thousand four hundred and sixty (1,460) feet southwardly from the south line of Pacific avenue; (7) westwardly parallel with Pacific avenue to the middle line of North Carolina avenue; (8) westwardly to a point distant one thousand three hundred and eighty-five (1,385) feet southwardly from the south line of Pacific avenue and one hundred and twenty-five (125) feet westwardly from the middle line of Tennessee avenue; (9) westwardly to a point distant two hundred and five (205) feet westwardly from the
- 30** middle line of New York avenue and twelve hundred and forty-four (1,244) feet southwardly from the south line of Pacific avenue; (10) westwardly to a point distant ninety-five (95) feet eastwardly from the middle line of Illinois avenue and one thousand one hundred and fifty-three (1,153) feet southwardly from the south line of Pacific avenue; (11) westwardly to a point in Park Place distant nine hundred and seventy-one (971) feet south-

wardly from the south line of Pacific avenue and two hundred (200) feet eastwardly from the middle line of Ohio avenue; (12) westwardly to the middle line of Arkansas avenue at a point distant seven hundred and seventy-three (773) feet southwardly from the south line of Pacific avenue; (13) westwardly to the middle line of Mississippi avenue at a point distant six hundred and eighty (680) feet southwardly from the south line of Pacific avenue; (14) westwardly to the middle line of Iowa avenue at a point distant five hundred and ten (510) feet southwardly from the south line of Pacific avenue; (15) westwardly to the east line of Albany avenue at a point distant three hundred and forty-one (341) feet southwardly from the southeast corner of Albany and Pacific avenues; (16) westwardly parallel with Atlantic avenue to the middle line of Jackson avenue.

10

Provided, that the inland line of said park joining the two points fifty feet on either side of the above corners shall be the arc of a circle tangent at said points and not the broken line above described.

And did therein fix and establish the limits and boundaries of said park or place for public resort and recreation, as follows:

20

Beginning in the south line of Caspian avenue at a point distant three hundred and sixteen (316) feet eastwardly from the west line of Maine avenue; thence (1) southwardly and westwardly along the interior inland line of said park or place for public resort and recreation, as above described, to the middle line of Jackson avenue; (2) southwardly along the middle line of Jackson avenue to the exterior line established by the Commissioners appointed under authority of the act entitled "An Act to ascertain the rights of the State and of Riparian owners in lands lying under the waters of the Bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four, and the supplements thereto; (3) eastwardly and north-

30

wardly along said exterior line the several courses and distances thereof to the south line of Caspian avenue extended; (4) westwardly along said line of Caspian avenue to the place of beginning.

10 And Whereas, the said City Council, in pursuance of the power and authority given by said act, and in pursuance of its provisions, has caused the inland line of the said park to be established and suitably marked upon the ground, and has caused a description of the same to be filed in the office of the City Clerk of the said city in pursuance of and in conformity with the provisions and directions of the said act;

And Whereas, the said city has heretofore constructed within the limits of the said park for a considerable distance along and near to the inland line so established, an elevated boardwalk and proposes hereafter to continue such construction along the entire line;

20 Now for the purpose of enabling the said city to use the lands lying oceanward from the inland line so established and within the boundaries above designated as a public park and place of resort and recreation, in pursuance of the provisions of the said act.

30 This Indenture Witnesseth, that the parties of the first part for and in consideration of the premises, and of the sum of one dollar, lawful money of the United States of America, well and truly paid by the said party of the second part to the said parties of the first part, at and before the sealing and delivering of these presents—receipt of which is hereby acknowledged—and in consideration of the benefit and advantage to be derived by the parties of the first part, by the laying out of the said park and building said walk, and in consideration also that the lands of the said parties of the first part will not be condemned as is provided by the act of the legislature and ordinance above referred to, have and by these presents do, for themselves and each of them, their heirs, successors and assigns, give, grant, bargain, sell and

convey to the said party of the second part and its successors, all their and each of their right, title and interest in and to the above described tract of land and every part and parcel thereof, including such parts and parcels thereof as are, or may be, covered by water; to have and to hold the said premises, with all and singular the appurtenances, unto the said party of the second part, and its successors, for and only for use as a public park or place of resort and recreation, giving to said party of the second part, and to its successors, however, the right to construct, re-construct, repair, complete and maintain, upon the land so conveyed along the interior or inland line of said park or place for public resort as established as aforesaid, an elevated public boardwalk, in accordance with the provisions of the said act, but subject to the following conditions and restrictions: That no railroad nor street railway shall ever be constructed, operated or maintained over, upon or across any portion of the premises hereby granted and conveyed, and that said land shall never be used for any railroad purposes or uses whatever.

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And the said party of the second part hereby covenants and agrees to and with the said grantors parties of the first part, and to and with each and every one of them, and to and with their and each of their assigns, as follows:

First. To maintain the said elevated boardwalk as now constructed or hereafter constructed or extended, along the inland line of the land hereby conveyed as an open public walk.

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Second. To permit the owners of property contiguous thereto lying inland from the line so established and marked to connect their and each of their lands and properties with such elevated boardwalk by building and maintaining proper approaches for this purpose on the inland side thereof, and to permit said grantors, their

heirs and assigns, to lay down and maintain underneath the surface of their respective lands hereby conveyed a pipe or pipes from their adjoining lands to and into the waters of the ocean in front thereof, for the purpose of obtaining and conveying sea water to their adjoining lands and premises.

10 Third. That whenever a formation of land by accretion shall occur within the bounds of the land hereby conveyed to such an extent that the high water line of the ocean shall not be less than three hundred feet oceanward from the inland line so established, the grantee and its successors, shall, upon the written request of the grantors, their heirs and assigns, owning not less than three contiguous city blocks of the land hereby conveyed upon such accretion may have formed, cause the elevated boardwalk, erected thereon, to be moved oceanward three hundred feet or any less distance that such owners and the party of the second part may agree upon; and whenever the said elevated boardwalk shall 20 be moved oceanward by virtue of this provision, the inland line of the said park shall be moved oceanward to correspond therewith, and all the land hereby conveyed, lying inland from the line so re-established shall be released from the dedication hereby made and revert to the owners thereof, their heirs or assigns.

30 Fourth. That the lands hereby granted and dedicated to public use shall forever be and remain open so that the view oceanward from the said elevated public walk erected and to be erected as above mentioned shall be free, open and unobstructed, and that no use shall be made of the said land by the grantee, its successors or assigns, inconsistent with its use as a public park or place for public resort and recreation.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals and the said

party of the second part has caused its corporate seal to be hereunto affixed, and attested by its proper officers, the day and year first above written.

REBEKAH E. RAMSEY,	[SEAL.]	
MILNE RAMSEY,	[SEAL.]	
CHARLES EVANS,	[SEAL.]	
FRED'K HEMSLEY,	[SEAL.]	
JOSEPH H. FRALINGER,	[SEAL.]	
WM. H. WYLD,	[SEAL.]	
JOSEPH H. BORTON,	[SEAL.]	10
J. HAINES LIPPINCOTT,	[SEAL.]	
LEEDS LIPPINCOTT,	[SEAL.]	
HENRY W. LEEDS,	[SEAL.]	
DANIEL S. WHITE, JR.,	[SEAL.]	
HANNAH E. KELLEY,	[SEAL.]	
DAN'L W. MYERS,	[SEAL.]	
JACOB C. MYERS,	[SEAL.]	
JAMES B. REILLY,	[SEAL.]	
DAVID ROBERTS,	[SEAL.]	
JOS. H. ROBERTS,	[SEAL.]	20

ATLANTIC CITY,

By F. P. STROY,

Mayor.

Attest:

E. D. IRELAN,
City Clerk.

Signed, sealed and delivered in the presence of
CARLTON GODFREY.

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STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

Be it remembered, that on this seventh day of August, in the year of our Lord one thousand nine hundred, before me, the subscriber, a Master of the

10 Court of Chancery of said State, personally appeared Emery D. Irelan, Clerk of the city of Atlantic City, who being by me duly sworn, doth depose and make proof to my satisfaction that he well knows the corporate seal of the city of Atlantic City named in the foregoing deed or agreement; that the seal thereto affixed is the proper corporate seal of the said city; that the same was so affixed thereto and the said deed or agreement was signed and delivered by order of City Council of Atlantic City, by Franklin P. Stoy, who was at the date and execution thereof Mayor of the said city, in the presence of the said deponent, as the voluntary act and deed of the said city, and that said deponent did thereupon attest and sign the same as subscribing witness.

E. D. IRELAN.

Sworn and subscribed before me at Atlantic City the date aforesaid.

CARLTON GODFREY,
M. C. C. of N. J.

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STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC, } ss.

30 Be it remembered, that on this sixth day of February, in the year of our Lord one thousand nine hundred, before me, a Master in Chancery of New Jersey, personally appeared Rebekah E. R. Ramsey and Milne Ramsey, her husband, Charles Evans, Frederick Hemsley, Joseph Fralinger, William H. Wyld, Joseph H. Borton J. Haines Lippincott, Harry W. Leeds, Daniel S. White, Jr., Hannah E. Kelley, Daniel W. Myers, Jacob C. Myers, James B. Reilly, David Roberts and Joseph H. Roberts, who, I am satisfied, are the grantors

named in the above deed, and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purpose therein expressed. And the said Rebekah E. R. Ramsey, being by me privately examined, separate and apart from their said husbands, did further acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, freely, without any fear, threat or compulsion of their said husbands. All of which is hereby certified. 10

CARLTON GODFREY,
M. C. C.

[ENDORSED.]

DEED.

REBEKAH E. R. RAMSEY AND OTHERS, 20

TO

ATLANTIC CITY.

Received August 8th, 1900, and recorded in the Clerk's office of Atlantic county, at Mays Landing, in Book 248 of Deeds, folio 221, etc.

LEWIS P. SCOTT,
Clerk. 30

Record return to Godfrey & Godfrey.

EXHIBIT D2.

AN ORDINANCE.

An ordinance to lay out and open a public park or place for public resort and recreation along the beach or ocean front of Atlantic City, establishing the interior or inland line of such park or place of public resort and recreation, and the limits and boundaries thereof, and providing for the issuing and sale of bonds to defray the costs, damages and expenses incurred in the opening and laying out of such park and acquiring the lands, property and rights necessary therefor, and for the assessment of property benefited thereby.

Section 1. Be it ordained by the City Council of Atlantic City, that in pursuance of the power and authority conferred upon the City Council of Atlantic City by an act of the Legislature of this State, approved April twenty-sixth, eighteen hundred and ninety-four, entitled "An act to enable cities in this State located on or near the ocean and embracing within their limits or jurisdiction any beach or ocean front to open and lay out a public park or place for public resort or recreation on and along the beach or ocean front of such city, and to purchase or condemn lands, property and rights therefor, and to preserve the same from obstruction or encroachment," constituting chapter ninety-three of the session laws of eighteen hundred and ninety-four, the City Council of Atlantic City does hereby determine to open and lay out a park or place of public resort and recreation along the beach or ocean front of said city within the limits and jurisdiction of said city, and does hereby determine, fix and establish the interior or inland line of the same, as required by the said act, as follows:

Beginning in the south line of Caspian avenue, at a point distant three hundred and sixteen (316) feet east-

wardly from the west line of Maine avenue; thence (1) southwardly to the south line of Pacific avenue at a point distant two and thirty-six hundredths (2 36-100) feet westwardly from the west line of Maine avenue; (2) southwestwardly to the middle line of New Hampshire avenue at a point distant four hundred (400) feet southwardly from the south line of Pacific avenue; (3) southwestwardly to the middle line of Massachusetts avenue at a point distant one thousand and seventy-three (1,073) feet southwardly from the south line of Pacific avenue; (4) southwestwardly to the middle line of Connecticut avenue at a point distant thirteen hundred and thirty-five (1,335) feet southwardly from the south line of Pacific avenue; thence (5) westwardly to the middle line of St. Charles Place at a point distant one thousand four hundred and thirty (1,430) feet southwardly from the south line of Pacific avenue; (6) westwardly to a point distant twenty-five (25) feet westwardly from the east line of Maryland avenue and one thousand four hundred and sixty (1,460) feet southwardly from the south line of Pacific avenue; (7) westwardly parallel with Pacific avenue to the middle line of North Carolina avenue; (8) westwardly to a point distant one thousand three hundred and eighty-five (1,385) feet southwardly from the south line of Pacific avenue and one hundred and twenty-five (125) feet westwardly from the middle line of Tennessee avenue; (9) westwardly to a point distant two hundred and five (205) feet westwardly from the middle line of New York avenue and twelve hundred and forty-four (1,244) feet southwardly from the south line of Pacific avenue; (10) westwardly to a point distant ninety-five (95) feet eastwardly from the middle line of Illinois avenue and one thousand one hundred and fifty-three (1,153) feet southwardly from the south line of Pacific avenue; (11) westwardly to a point in Park Place distant nine hundred and seventy-one (971) feet southwardly from the south line of Pacific avenue and two hundred feet eastwardly from

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the middle line of Ohio avenue; (12) westwardly to the middle line of Arkansas avenue at a point distant seven hundred and seventy-three (773) feet southwardly from the south line of Pacific avenue; (13) westwardly to the middle line of Mississippi avenue at a point distant six hundred and eighty (680) feet southwardly from the south line of Pacific avenue; (14) westwardly to the middle line of Iowa avenue at a point distant five hundred and ten (510) feet southwardly from the south line of Pacific avenue; (15) westwardly to the east line of Albany avenue at a point distant three hundred and forty-one (341) feet southwardly from the southeast corner of Albany and Pacific avenues; (16) westwardly parallel with Atlantic avenue to the middle line of Jackson avenue.

10 Provided that the inland line of said park joining the two points fifty feet on either side of the above corners shall be the arc of a circle tangent at said points and not the broken line above described.

20 Sec. 2. And be it ordained, that the limits and boundaries of said park or place for public resort and recreation be and the same are hereby fixed, established and described as follows:

30 Beginning in the south line of Caspian avenue, at a point distant three hundred and sixteen (316) feet eastwardly from the west line of Maine avenue; thence (1) southwardly and westwardly along the interior or inland line of said park or place for public resort and recreation, as above described, to the middle line of Jackson avenue; (2) southwardly along the middle line of Jackson avenue to the exterior line established by the commissioners appointed under the authority of the act, entitled "An act to ascertain the rights of the State and of riparian owners in lands lying under the waters of the bay of New York and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four, and the supplements thereto; (3) eastwardly and northwardly

along said exterior line the several courses and distances thereof to the south line of Caspian avenue extended; (4) westwardly along said line of Caspian avenue to the place of beginning.

Sec. 3. And be it ordained, that all the lands lying oceanward from the interior line so established and within the limits and boundaries above defined, be and the same are hereby devoted to public use as a public park or place for public resort and recreation exclusively, and for such use shall be kept open and unobstructed forever, in the manner and to the extent as in and by the said act is directed and prescribed.

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Sec. 4. And be it ordained, that the City Surveyor be and he is hereby directed to make a survey and description of the said line so fixed and established and cause the same to be suitably marked upon the ground by substantial posts or piling sunk in the soil, and prepare a map showing and indicating the said line and giving a description thereof, and he is hereby directed to file the said map and description in the office of the City Clerk of Atlantic City, where the same shall remain on record.

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Sec. 5. And be it ordained, that the City Solicitor be and he is hereby empowered, in the name and on behalf of the said city, to cause to be condemned for the purposes of said public park any and all lands, property and rights within the limits of the said park, as hereby established, which shall not be dedicated to such use by the owners thereof and accepted by the city, as provided in the said act, or shall not be purchased by said city for such purpose.

Sec. 6. And be it ordained, that for the purpose of providing the money to pay the costs, damages and expenses incurred in the opening and laying out of the said park and acquiring the lands, property and rights therefor, bonds of the city of Atlantic City to an amount not exceeding one hundred thousand dollars shall be issued and disposed of and the proceeds thereof used exclusively for

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the purposes above stated. All such bonds so issued shall be denominated Atlantic City Park bonds, and shall run from the date of their issue for a term of thirty years and shall bear interest at the rate of four and one-half per cent. per annum. Such bonds shall be in the denomination of one thousand dollars each and be in the following form:

UNITED STATES OF AMERICA.

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No. \$1,000

The City of Atlantic City, in the State of New Jersey.

Atlantic City Park Bond.

20 Know all men by these presents, that the city of Atlantic City, in the State of New Jersey, for value received, is indebted to the bearer hereof in the sum of one thousand dollars which the said city of Atlantic City promises to pay the bearer on the first day of July, in the year of our Lord one thousand nine hundred and twenty-nine, with interest thereon, at the rate of four and one-half per cent. per annum, payable semi-annually, on the first days of January and July, in each year, upon the presentation and surrender of the coupons hereto annexed as they severally become due, both principal and interest payable in lawful gold coin of the United States of America, at the Union National Bank of Atlantic City.

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This bond is one of a series of one hundred bonds, numbered from 1 to 100 inclusive, each of like date and amount, aggregating the principal sum of one hundred thousand (\$100,000) dollars—all of which bonds, including this bond, shall become due and payable on the first day of July, 1929, and are issued under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An act to authorize cities in this

State to issue bonds in certain cases," approved March 22, 1895, and it is hereby certified and recited that all acts, conditions, and things, precedent to and in the issuance of the said bonds, have been duly done, happened and performed, in regular and due form, as required by law, and that said issue of bonds together with the other indebtedness of the said city do not exceed any limitation prescribed by the statutes or Constitution of the said State; and that the faith, credit and property of the said city are inviolably pledged for the payment of all of the said bonds. This bond shall pass by delivery or it may be registered by its owner in the books of the City Treasurer of Atlantic City. After registration of ownership certified hereon by the Treasurer no transfer except upon the books of the treasurer shall be valid unless the last transfer shall have been to bearer and the transferability thereof by delivery thus restored, but this bond shall continue subject to successive registration and transfer to bearer as aforesaid, at the option of the holder. The transferability of the coupons by delivery shall not be affected by the registry of the bonds.

In witness whereof, the city of Atlantic City has caused its corporate seal to be hereto affixed and attested by its clerk and this bond to be signed by its mayor and countersigned by its treasurer, and has also caused the coupons hereto annexed to be signed with the engraved or lithographed signature of its treasurer, as of the first day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

[SEAL.]

Mayor of Atlantic City.

Attest:

Clerk.

Countersigned:

Treasurer.

With coupons in the following form attached to said bonds for the payment of the semi-annual interest:

STATE OF NEW JERSEY.

No. \$22.50

10 The City of Atlantic City in the State of New Jersey will pay to the bearer on the first of 19...., twenty-two dollars and fifty cents in lawful gold coin of the United States, at the Union National Bank of Atlantic City, being six months' interest then due on Atlantic City Park Bond No.

Dated July 1st, 1899.

The principal and interest of such bonds to be payable at the Union National Bank of Atlantic City. The principal of said bonds to be paid at said bank when they fall due, and the semi-annual interest thereon on the first **20** days of January and July in each year, and such bonds may be registered at the option of the holder in the office of the City Treasurer.

Sec. 7. And be it ordained, That when the costs, damages and expenses incident to the opening and laying out of the said park and the acquiring of the lands, property and rights necessary therefor have been ascertained the City Solicitor of said city, on behalf of said city, is hereby authorized and directed to proceed in the manner prescribed by law to cause an assessment to be **30** made on all the properties situated within the limits of the said city benefited by the opening and laying out of the said park to the extent of the special and peculiar benefits conferred upon the owner or owners of such property thereby in proportion to the benefit each shall be deemed to acquire.

Sec. 8. And be it ordained, That all benefit assessments thus made, when collected, shall be paid to the

Commissioner of the Sinking Fund of the said city and held and invested by him, and the same with the proceeds thereof shall be applied exclusively to the payment of the principal and interest of the bonds issued under the authority of this ordinance; and the balance required for the payment of such principal and interest, if any, shall be raised by taxation as required by law.

Passed at a regular meeting of City Council, October 9, 1899.

JAMES D. SOUTHWICK, **10**
President.

Attest:

E. D. IRELAN,
City Clerk.

Approved October 13, 1899.

JOSEPH THOMPSON,
Mayor of Atlantic City.

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I, EDWARD R. DONNELLY, Clerk of the city of Atlantic City, in the county of Atlantic, State of New Jersey, do hereby certify that the foregoing is a true copy of an ordinance passed by the City Council of the city of Atlantic City, signed by its president and approved by the Mayor of said city on the thirteenth day of October, A. D. 1899, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Atlantic City, this first day of May, 1906. **30**

[SEAL.] EDWARD R. DONNELLY,
City Clerk.

NEW JERSEY SUPREME COURT.

THE SEASIDE REALTY AND IM-
 PROVEMENT COMPANY,
 Prosecutor,
 10 vs.
 ATLANTIC CITY,
 Respondent.

} CERTIORARI.

To C. L. Cole, Attorney for Prosecutor:

20 Take notice, that the undersigned challenges the prosecutor's right to bring its above action and its interest in the subject matter of its above suit; and that the undersigned will deny that the prosecutor has any interest in the subject matter of its above action and has any standing in this court.

Respectfully,
 HARRY WOOTTON,
 Attorney for Respondent, Atlantic City.

NEW JERSEY SUPREME COURT.

SEASIDE REALTY AND IMPROVE-
MENT COMPANY,

Prosecutor,

vs.

ATLANTIC CITY,

Respondent.

ON CERTIORARI.

RULE FOR JUDG-

MENT.

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This cause having been regularly listed and being moved in the presence of Harry Wootton, Esq., attorney for Atlantic City, and C. L. Cole, of Thompson & Cole, attorneys for prosecutor, and the Court having read and considered the proceedings, and having heard and considered the arguments of the respective attorneys, and being of the opinion that the proceedings under review should be affirmed and the writ dismissed,

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It is, on this eighteenth day of May, 1907, on motion of Harry Wootton, attorney for Atlantic City, ordered that the record and proceedings certified by the writ in this cause be and the same are in all things affirmed and the writ dismissed.

On motion of

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HARRY WOOTTON,
Attorney of Respondent.

OPINION.

SEASIDE REALTY & IMPROVEMENT CO. *vs.*
ATLANTIC CITY.

(Supreme Court of New Jersey, Nov. 12, 1906.)

10 I. MUNICIPAL CORPORATION—CONSTITUTIONAL LAW—
LOCATION OF PARKS.

The act (P. L. 1894, p. 146) conferring powers upon cities located on or near the ocean to lay out parks is constitutional.

[Ed. Note.—For cases in point, see Cent. Dig., Vol. 36, Municipal Corporations, sec. 712.]

2. STATUTES—TITLE OF ACT—SPECIAL LEGISLATION.

20 The act (P. L. 1903, p. 387) providing that the State's land, within the limits of a park laid out by any city under the provisions of the act of 1894, p. 146, may be granted by the riparian commissioners to such city, is constitutional. Its subject is expressed in its title. It is not special legislation regulating the internal affairs of cities. It does not deprive the free schools of the State of the income appropriated to their support.

[Ed. Note.—For cases in point, see Cent. Dig., Vol. 44, Statutes, sec. 103, 136-139, 150, 177, 182, 204.]

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3. CERTIORARI—PROCEDURE.

The order of a Justice of the Supreme Court, who had allowed a writ of certiorari striking out one of the reasons filed—such reason attacking an ordinance which had been in existence over six years without being questioned—is approved.

(Syllabus by the Court.)

Certiorari by the Seaside Realty & Improvement Company against Atlantic City, to review a resolution of the city. Writ dismissed.

This writ brings up an ordinance of Atlantic City approved April 13, 1899, and a resolution of common council passed January 8, 1906. The ordinance was passed to carry out a scheme provided for in the statute passed in 1894 (P. L. 1894, p. 146). The first section of the act of 1894 provided that "it shall be lawful for the common council or other governing body of any city in this State, located on or near the ocean and embracing within its limits or jurisdiction any beach or ocean front, to open and lay out on or along such beach or ocean front, a public park or place of public resort or recreation." The second section provides that "whenever the common council or other governing body shall determine to open or lay out such a park or place for public resort or recreation, it shall first cause the interior or inland line of same to be established and suitably marked upon the ground, and cause a description of same to be filed at the office of the city clerk of said city there to remain of record; and such interior or inland line shall not be established further inland than ordinary high water mark along such beach or ocean front and may extend along the same within the limits of such city or along any part thereof." Section third provides that when such interior line has been established it may be lawful for the common council to purchase or condemn all the land, real estate, property, and rights of persons and corporations situated, lying and being within and between the lines so established and the exterior line now or hereafter established by the State Riparian Commissioners along and in front of property, over and across which such interior line has been established and to devote the same exclusively to public use as a public park or place of public resort and recreation, and keep the same forever open and unobstructed for such public use. By the ordinance, the city council determined

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- to open and lay out a park or place of public resort and recreation, and determined, fixed, and established the interior or inland line for same, as required by the preceding statute, specifically stating the boundaries of said park. It empowered the city solicitor to cause the land within the limits of said park to be condemned, and directed the issue of bonds to raise money to pay for same. The resolution brought up rests upon the act of 1903, page 387. This act provides that whenever any public park has been,
- 10** or shall hereafter be, laid out or provided for by ordinance, under the authority of any act of the Legislature, along or fronting upon any of the tide waters of this State, such municipality may apply to the Riparian Commissioners for a grant or conveyance to such city or municipality of lands under water within the limits of said park. The second section provides that "the commissioners may, upon the payment therefor of a consideration, the amount of which shall be fixed in the manner now provided by law for the fixing of the amount of consideration to be paid for the grant of riparian land by said commissioners, make all such grants or conveyances applied for as aforesaid of the land under water owned by the State extending from the inland limits of such park to the exterior line established or to be hereafter established by the said commissioners." The resolution of January 8, 1906, authorized the finance committee to purchase from the State Board of Riparian Commissioners all riparian lands not before purchased by individuals on the ocean front, paying therefor the fee fixed by the Commissioners.
- 20**
- 30** Argued June term, 1906, before FORT, GARRETSON and REED, JJ.
- Thompson & Cole, for prosecutor. Godfrey & Godfrey, for Atlantic City.
- REED, J. (after stating the facts). Taking up the attacks leveled against the proceedings brought up in an

orderly manner, I will first speak of the alleged unconstitutionality of the act of 1894, upon which act the validity of the ordinance and the resolution rests. It is asserted that the statute is special, because it does not include in the scope of its operations other cities not located near or on the ocean, but which may have a beach front. It seems useless to say more than was said in the opinion in the case of *Bowker vs. Wright*, 54 N. J. Law, 130, 23 Atl., 116, and in *Johnson vs. Ocean City* (decided at the present term) 64 Atl. —, involving a statute similar in substance to the act of 1904. 10

It is next said that the act of 1903 is unconstitutional for several reasons: First, because its object is not expressed in its title; second, because it is special and regulates the internal affairs of cities; and third, because it strips the owner of the ripa of equal protection of the law, and of his property without compensation. The act is entitled, "A further supplement to an Act to ascertain the rights of the State and of riparian owners in lands lying under the waters of the bay of New York and elsewhere in the State." The original act dealt with the methods by which the owner of the ripa could acquire title and when title should be granted to persons other than the owner of the ripa. This supplement only modifies the pre-existing law in respect of the rights of such owners by providing that no right shall exist in the owner where the land is specially located. This legislation seems to be fairly within the purview of the title of the act. Nor, secondly, does it seem to be special regulation of the internal affairs of cities, for, as already remarked, the park scheme itself is general and not special legislation; nor, thirdly, does it strip the riparian owner of his property without compensation, for he has no property in lands below high water mark, save such as he derives from the statute; and the State can lease or sell, or refuse to lease or sell to any person it chooses to select. 20 30

It is again objected that the act of 1903 runs counter to the rule in *Henderson vs. Atlantic City*, 24 N. J. Eq.,

583; 54 *Atl.*, 533, in which case it was declared that the statute which gave away riparian lands infringed the constitutional provision which devotes the income from such lands to the support of free schools. The present statute provides that the lands shall be sold upon payment of the amount fixed in the manner now provided by law for the fixing of the amount of consideration to be paid for the grant of riparian lands by the riparian commissioners. Thus the city is to pay according to the

10 schedule of rates fixed for all purchasers. This schedule is presumed to be made in pursuance of the exercise of a reasonable discretion lodged in the commissioners. The insistence of the prosecutor, if conceded, would lead to the necessity of putting every sale or lease up to public auction, so that the school fund may receive the greatest possible advantage. But this insistence cannot be allowed, for such was not the legislative intention. The schools became entitled to the moneys received from the sale and rentals of land under water by the act of 1894,

20 p. 123. For twenty-five years previously a system of renting and selling these lands at prices fixed by commissioners and other State officials had prevailed. It cannot be supposed that the Legislature in 1894 intended to change the system by which these lands had been disposed of by the State. So we think there is no substance in this point.

Again, the resolution of January 8, 1906, authorizing the purchase from the riparian commissioners of the State lands within the limits of the park, is attacked, because no

30 power to purchase from the State is granted by the act of 1894. The insistence is that the power granted in that act is only to purchase or condemn all the lands, real estate, property, and rights of persons and corporations between the interior line established by the ordinance, and the exterior line established by the riparian commissioners, and that the State is neither a person nor a corporation within the meaning of the statute.

At this stage of the discussion, however, I think it useless to discuss this question of statutory construction, because we have concluded that the act of 1903 is a constitutional act, and if this act is valid it contains a plenary grant of power to the State, through its commissioners, to sell, and to Atlantic City, through its Common Council, to purchase these lands.

It is again objected that there is no provision for paying for the lands which the resolution directs the finance committee to purchase. Where power is given to a municipality to incur an indebtedness, the power exists, certainly, until it appears that there is some statutory limitation to the expenditure of money which will suspend the power, or there is some prescribed method for payment which has become impossible. Nothing of the kind appears in the case. The act of 1895, page 464, confers power upon cities to issue bonds to raise money to pay for lands purchased for public purposes within the limits of the said city. It is true, the counsel for the prosecutor contends that, by the terms of this statute, this action can be taken only when no adequate provision is made or authority given to provide for the payment of lands purchased for public purposes, and insists that there is nothing to show that Atlantic City was without adequate provisions to raise the money in this instance. It is at once perceived that the argument is self-destructive, for, if the city had adequate provision, the reason urged against the resolution falls to the ground, and, if they had not, they could issue bonds.

There is another reason appearing upon the record which challenges the validity of the ordinance of 1889 because, as is alleged, it was passed without notice to the property owners liable to be assessed. This reason the justice who allowed the writ, after its allowance and upon the hearing of the parties, directed to be struck out. The power of the Justice to take this course is challenged by the counsel for the prosecutor. It is entirely settled

that a writ of certiorari is an extraordinary writ. The allowance of it is not a matter of strict right, but rests largely in the discretion of the Court or Justice. The instances in which a writ has been refused on the ground of laches of the prosecutor or because its allowance would result in an injury to public interests, are numerous. The power to dismiss a writ, after allowance, for the same reasons, is recognized in numerous cases. If the allowance can be refused, or the writ dismissed upon these grounds, there is no perceivable reason why the matters to be reviewed by the writ may not be circumscribed by the Court. The proceedings brought up very often consist of consecutive municipal acts, some of them occurring years before, and others quite recently. The more recent ones may depend for their validity and construction upon the anterior proceedings, and so all are essential to determine the validity of the former. All are therefore properly included in the return to a writ. But this furnished no reason why the latter proceedings should necessarily be subjected to an independent attack. They may have existed so long unchallenged, and their disturbance would so injuriously affect public interests that a writ directed to them alone would either not be allowed or, if allowed, dismissed.

This seems to be the posture in the present case. The ordinance attacked was passed in April, 1899. The scheme it was intended to carry into effect was one of great interest to the citizens of Atlantic City and to the visitors thereto. Until the issuing of this writ, it had stood unchallenged. In the meantime evidence may have been lost and property rights, by virtue of it, acquired by the city. During all this time statutes have been passed to effectuate the scheme, and important litigation concerning it has occupied the attention of the courts. All this must have been known to every person interested. It is true that the present prosecutor, so far as appears, was not the owner of property liable to be affected by

it at the time of the passage of the ordinance, for his interests seem to have been acquired by quite recent purchases of lands adjoining the proposed park. But conceding that he acquired a footing by his purchase, to sue out this writ, he took that interest as it existed in his vendors, and their delay in questioning the validity of the ordinance from April, 1899, up to the time of the allowance of this writ is imputable to him. If the action of the Justice in striking the reason from the record is reviewable, which is not decided, we are of the opinion that this action was entirely justifiable; and, if the reason had been permitted to stand, yet in the exercise of the discretion lodged in this court, the writ, so far as it challenges the ordinance, would be dismissed.

For the reasons stated, we think the writ should be dismissed.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

	SEASIDE REALTY AND IMPROVE-	}	
	MENT COMPANY,		
10	(Prosecutor) Plaintiff in Error,		ON ERROR.
	VS.		ASSIGNMENTS OF
	ATLANTIC CITY,		ERROR.
	(Respondent) Defendant in Error.		

Seaside Realty and Improvement Company, plaintiff in error, comes now and assigns the following causes of error:

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1. Because the Supreme Court held the resolution to be good when it should have held that the same was without the power of Atlantic City to pass.
 2. Because the Supreme Court held the act under which the resolution was passed to be valid, when it should have held that the same was unconstitutional and void, for the reasons set forth in the Supreme Court.
 3. Because the City of Atlantic City was without power to pass the resolution, because the power should have been exercised by ordinance rather than by resolution.
 - 30 4. Because there was nothing before the Court to show that the City Council of Atlantic City had ever laid out or accepted the public park contemplated by the act purporting to give authority to pass the resolution under review.
 5. Because the act purporting to give authority to pass the resolution under review is unconstitutional because the object is not disclosed by its title; because it com-

prises more than one object; because it is special, regulating the internal affairs of cities; deprives owners of riparian land in certain cities of rights given to other riparian owners, and violates the Constitution in depriving the school fund of the proceeds of the sale of riparian land.

6. Because the Supreme Court rendered a judgment for the city of Atlantic City when it should have rendered a judgment for the Seaside Realty and Improvement Company.

THOMPSON & COLE,
Attorneys for Plaintiff in Error.

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