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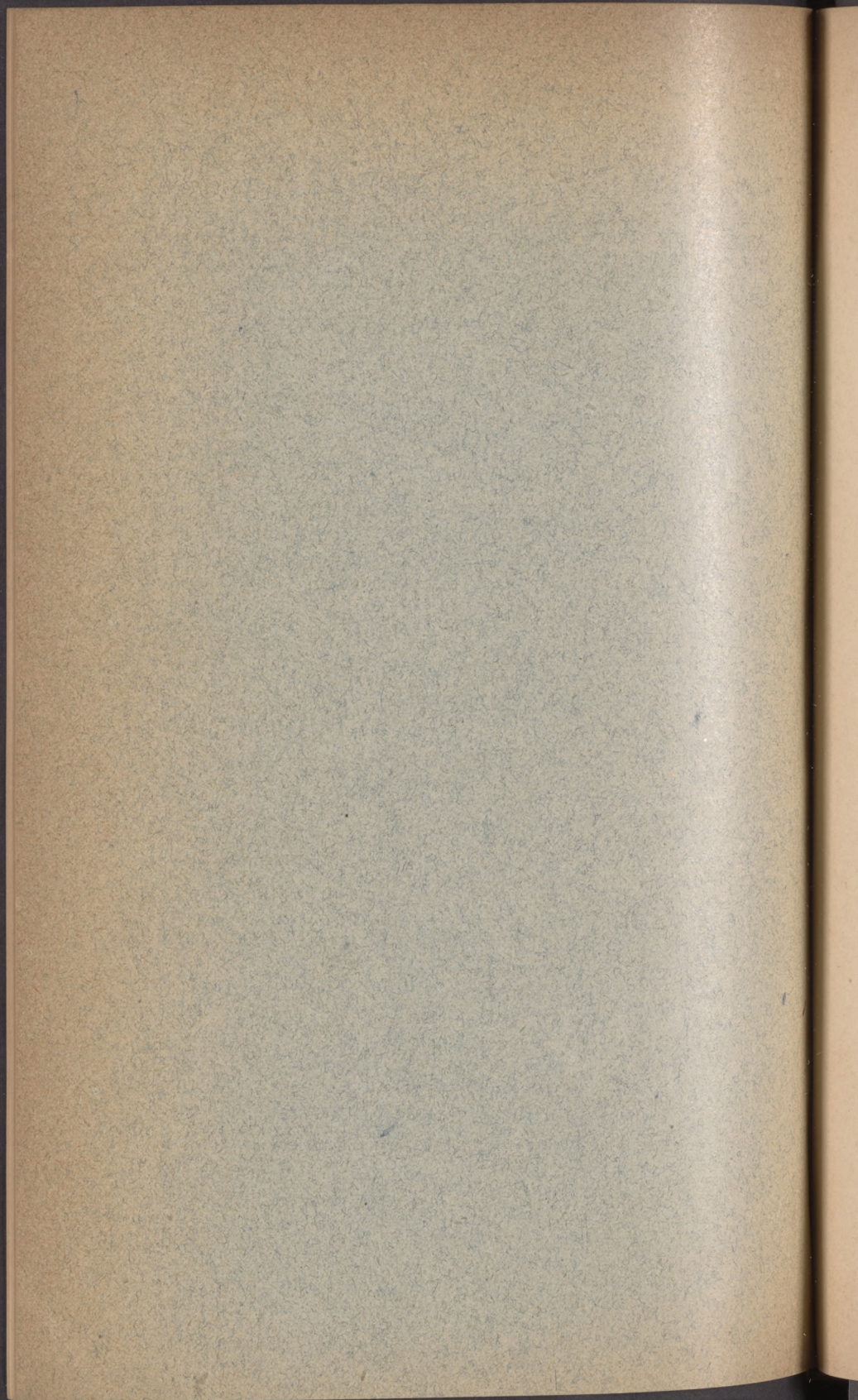
COURT OF ERRORS AND APPEALS

J. WILBUR PRICE,

v.

The Inhabitants of the City of
Plainfield.

} In
Ejectment.



THE COURT OF COMMONS
IN PARLIAMENT ASSEMBLED

IN SENATE

THE PARLIAMENT OF GREAT BRITAIN

IN SENATE

THE PARLIAMENT OF GREAT BRITAIN

IN SENATE

COURT OF ERRORS AND APPEALS.

J. WILBUR PRICE.

Plaintiff in Error,

vs.

THE INHABITANTS OF THE

CITY OF PLAINFIELD,

Defendants in Error.

} *In Error*

Points of Plaintiff in Error.

I. The plaintiff below had no title or right of possession, and therefore could not maintain the action, and should have been non-suited, or the charge to that effect prayed for by defendant below, and refused, should have been given.

II. The court below erred in admitting evidence of the declarations of previous owners of the land in question, made after they had conveyed away all their interest in said land; and also in admitting evidence of the conversations of the Trustees of the Plainfield College, held in the absence of defendant below.

III. The court below erred in refusing to charge as requested by the defendant below—

1. Because the acts relied on as proving dedication were equivocal in character and might be construed to be evincive of a dedication of the land in question as a private and not a public park, or as a park for the benefit of the owners of adjoining or contiguous property, and not of the public.

2. Because there being no grantee capable of taking the dedication at the time it was claimed to have been made, the construction least injurious to the grantor ought to have been taken.

3. Because the defendant below was entitled to have the question of intention to dedicate considered by the jury, in view of all the facts in the case, which were to be reconciled by the jury, with the intention to dedicate to a public use as a park, before a verdict could be rendered for plaintiff below.

IV. The court below erred in charging against the objections of the defendant below—

1. That the map produced on the trial must have a legal force and effect in the case, if actually filed in the register's office.

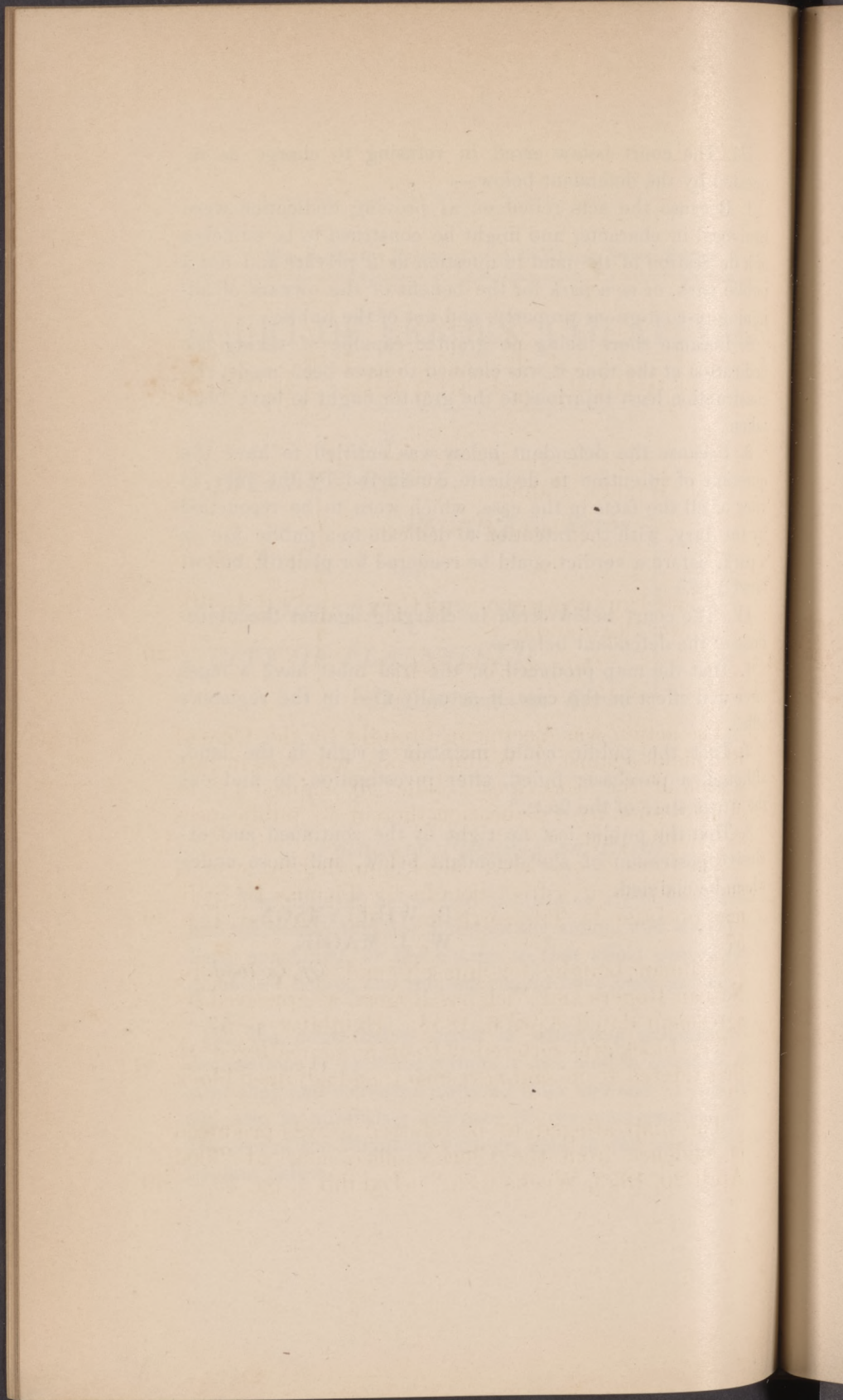
2. That the public could maintain a right in the land, although a purchaser failed, after investigation, to find out the "true state of the facts."

3. That the public lost no right by the continued and exclusive possession of the defendant below, and those under whom he claimed.

B. WILLIAMSON,

W. J. MAGIE,

Of Counsel.



Court of Errors and Appeals. 10

J. WILBUR PRICE,

Plaintiff in Error,

vs.

THE INHABITANTS OF THE CITY
OF PLAINFIELD,

Defendants in Error.

In Error to
Sup. Court.

20

The action was ejectment, brought by the City of Plainfield against J. Wilbur Price, who was in possession of the *locus in quo*. The City claimed a right of possession by a dedication thereof to public uses as a public park.

The *locus in quo* was a block bounded by streets, and was part of a tract bought by Thomas B. Stillman of Isaac D. Titsworth in 1852. Exhibit 1, p. 30 57.

Stillman bought for himself and Clark Rogers, Nathan Rogers and Nicholas Rogers, as appeared by agreement dated April 6, 1853. Exhibit 2, p. 57.

The block was lettered "Q" on a map alleged to that referred to in said agreement, and adjoined block "K."

The map alleged to be referred to was produced in evidence from the Clerk's office, marked "filed April 20, 1853, Weeks Cl'k." Exhibit 3, pg. 59. 40

Evidence was received that the map during the time between the date of alleged filing and the trial had been looked for in the said Clerk's office without success.

On that map block "Q" had the word "Park" upon it and had no lot divisions.

On this map and on evidence of declarations of parties dedication was claimed.

- 10 For the defence it was shown that block K was conveyed by Stillman to Nathan Rogers April 6, 1853, and by said Rogers to E. Dean Dow, Aug. 27, 1856. Exhibit 4, pg. 59, and Exhibit 9, pg. 61. And block Q was conveyed by Stillman to Dow Aug. 22, 1856. Defts' Exhibit pg. 62.

- Both blocks were conveyed by Dow to Plainfield College for Young Ladies (a corporation under the statute) Nov. 1, 1867. Defts.' Exhibits, pg. 62. And
20 block Q was conveyed by said corporation to the defendant below July 6, 1876.

And that block Q had been fenced and used by the respective owners under the above mentioned conveyances.

POINT I.

- 30 1. The plaintiff below had no title or right of possession, and therefore could not maintain the action, and should have been non-suited, or the charge to that effect prayed for by defendant below, and refused, should have been given.

The objection to the right of the plaintiffs below to bring the action was made first by a motion to non-suit, which was overruled although the Justice before whom the case was tried expressed some doubts whether the objection was not good. See
40 pg. 25 and seq.

The objection was again made by an exception to a part of the charge. See pages 46 for exception and 37 for the part of charge excepted to.

To clearly understand the position, we ask attention to the following public laws of which the Court will take judicial notice.

The Township of Plainfield was created by Act approved February 4, 1847, Ll. 1847, pg. 29. By this act the usual powers were given to the township and no more.

The City of Plainfield (the plaintiffs below) was created by Act approved April 2, 1869, Ll. 1869, pg. 1241.

Note particularly.

1. The City comprised but a part of the Township.
2. The Township was not dissolved but continued to exist both over the City and over adjoining territory.
3. The City existed coevally with the Township over a part of the Township and over part of its citizens.

This peculiar condition remained until the legislative session of 1878 when the Township was dissolved.

Supplements to the charter were passed as follows:

| | | |
|-----------|----------|----|
| Ll. 1870, | pg. 1059 | |
| “ 1871, | “ 1189 | 30 |
| “ 1872, | “ 1134 | |
| “ 1873, | “ 482 | |
| “ 1874, | “ 303 | |

Again note particularly, that neither in the charter nor any supplement thereto was any power given to lay out parks or public squares, or to condemn lands for such purposes, or to care for, fence, grade or improve public parks or squares, or to raise money for such purposes.

So far as public parks or squares are concerned the City was given no power whatever.

Note further that the evidence fixed the dedication, if any, at a time prior to the incorporation of the City, and while the only municipal organization affecting the locality was that of the Township; and the suit was brought by the City while the Township was still in existence.

10 Upon this we insist.

1. Ejectment is a possessory action and the plaintiff therein must show *a right of possession*. Tillinghast Adams, Ch. III.

2. The power of a municipal corporation to bring ejectment for lands devoted to a public use, depends not upon their incorporation, *but upon their being charged by law with some right or duty respecting such lands, which duty can not be discharged without their being in exclusive possession*.

20 The broad ground asserted in the Supreme Court in *Methodist Church vs. Hoboken*, 4 Vr., 13, that "the right to maintain appropriate actions for the vindication of the public right in lands dedicated to a public use, is lodged in the local public authorities has not been adopted in this Court, and cannot be, we submit, unless no regard is paid to the nature of the action of ejectment.

In *Hob. L. and I. Co., V. Hoboken*, 7 Vr. 540,
30 544, the true ground of the right to this action on the part of municipality was developed by Depue, J., "where the public easement is such that possession, exclusive of any interference by the owner of the fee, is essential for its improvement, regulation and enjoyment. the only appropriate action to obtain possession is ejectment.

* * * * *

"By the charter of the City, *its municipal authorities are charged with duties in relation to opening*
40 *streets, and paving them and putting them in condi-*

tion for public use, and amending and repairing which require a possession as exclusive as in the case of public squares."

That controversy was in respect to streets.

The Dummer case, Spencer 86, was in respect to a market square, and the act of incorporation gave to the municipal authorities the usual power over squares.

10

But in the case of Bor. of Chambersburg v. Manko 10 Vr. 496, this Court has expressed the true rule in a case in point.

The action was ejectment in respect to a street. It was claimed on two grounds:

1. On the charter, by which however the Court held no power was conferred.

2. "On the implied right, as the local municipal authority to represent the public in the assertion and defence of the public use of the highway." Page 20 497.

On this second point, Dixon J. speaking for the court says: "The action of ejectment is a possessory action and the power of the municipality in each case to maintain it, depends upon the fact *that its duties in regard to the streets AND PUBLIC GROUNDS are such as require a right of exclusive possession*, page 498.

* * * * *

"the range of inquiry is, first, whether the public easement in the *locus in quo* is such as to require a right of exclusive possession and secondly whether the plaintiff is necessarily or designed by the Legislature to be the entity through whom that possession is to be maintained. pg. 498

(The *locus in quo* being a street the first inquiry was answered affirmatively.)

"The response to the second inquiry will be found by ascertaining on whom has been cast the general duty of preserving the road in fit condition for public enjoyment."

40

While it has been settled in respect to Townships that considering their obligation to repair roads and their liability to indictment for neglect of that obligation, they have a special interest in public highways, which will entitle them to injunction.

E. & A. R. R. v. Greenwich, 9 C. E. Gr. 217.
10 C. E. Gr. 565.

And upon the same principles ejection might lie for land within a public highway. Such a public use as that of a public park is unknown in our general law respecting townships.

Some "entity" must be created by law to preserve such a public use which should be charged with duties and functions requiring exclusive possession, before, on the principles of the above case, ejection will lie. If no such "entity" exist, or no special duty be imposed respecting such public use, the redress of the public for an encroachment on that use, must be by other remedies.

Again—If the right to this action devolves on the local municipality within which the land is situated, not because of its special duties or liabilities in respect to the public use to which the land is devoted, but by reason of its representing the public in the assertion of public rights, we further submit that this action should have been brought by the Township of Plainfield.

The township was the local municipal authority when dedication was made, if at all. It continued to exist and to represent the public. The creation of the City over less territory and fewer inhabitants could not change the right of the township nor its relation as a representative of the public.

POINT II.

II. The court below erred in admitting evidence of the declarations of previous owners of the land

in question, made after they had conveyed away all their interest in said land; and also in admitting evidence of the conversations of the Trustees of the Plainfield College, held in the absence of defendant below.

The evidence admitted against objection was of two kinds :

1. The declarations of persons who once owned the property, made after they had parted with their 10 title.

a. Declarations of Clark Rogers, who parted with all his interest in the property in 1856 :—

Made in 1864, testimony of Henry Smith,
pg. 30, top.

Made in 1861, testimony of Lamphear, pg. 31.

“ “ 1864, “ “ “ “ 32.

b. Declarations of Thomas B. Stillman, who parted with his title in 1856 :—

Made in 1860, testimony P. P. Good, pg. 34. 20

“ “ 1864, “ Maiture, pg. 36.

The essence of dedication is the intention of the owner. The dedication must be by the owner of some interest in the land.

Dillon Mun. Corp., § § 498, 499.

No admission made by a grantor after the conveyance of his estate is evidence against his grantee.

Beekman Montgomery 1, McC. 106.

The ground on which admissions bind those in 30 privity with the party making them is that they are identified in interest, *and of course the rule extends no further than this identity.*

1 Green evid. § 189.

There can be nothing in this case to take it out of the inexorable rule that forbids the admission of evidence by which a grantor by declarations made afterwards can defeat his own title.

The question was of vital importance. The map 40

was of doubtful effect, or at the least capable of another construction, and there were no other declarations.

In the charge pg. 44, J. VanSyckel admitted the rule of law, but justified the admission of the evidence of Stillman's declarations, on the ground that it tended to rebut a possible inference that Stillman had no intention to dedicate, lines 20—25.

10 But it was quite as inadmissible for that purpose as it was to prove intention.

The admission of the declarations of Clark Rogers, the Judge made no attempt to justify and we respectfully submit, was clearly erroneous.

Again, the admission of evidence of declarations made by Trustees of the Plainfield College, owners of land, was equally objectionable. pg. 27

20 The declarations were not made in the presence of Price nor brought to his notice. They were expressions of opinion of some of the Trustees. Others disagreed and their opinions prevailed, for a deed was made.

Admissions of Directors are not evidence against Corporation.

Angell & Ames, Corp. § 309.

POINT III.

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III. The court below erred in refusing to charge as requested by the defendant below.

1. Because the acts relied on as proving dedication were equivocal in character and might be construed to be evincive of a dedication of the land in question as a private and not a public park, or as a park for the benefit of the owners of adjoining or contiguous property, and not to the public.

This point includes the 1st 2d and 4th requests to
40 charge on pg. 48.

The evidence of the map and the language claimed as dedicatory, were entirely consistent with the intention to devote the Block in question to the use of a private park or for a pleasure ground for the benefit of adjoining owners.

Of such private parks, Gramercy Park, and the former St. John's Square in New York are familiar examples. No public use exists in those cases, the land is devoted to the benefit of the adjoining owners, and the use is appurtenant to their land. 10

In this case, we were entitled, so far as the map was concerned to a different construction. The construction of J. Van Syckle, pg. 40, bot. is erroneous;

Bouvier, Law Dic. Park, "enclosure over one's own grounds."

Webster, Park, "an enclosed place in cities for exercise and amusement."

It is not necessarily for public use.

20

But so far as dedication was claimed by declarations, we were entitled, if the words were ambiguous and the intention to devote to a PRIVATE use equally derivable from the language, to a charge leaving the question of intention clearly to the jury.

In this respect the charge was greatly to our disadvantage and we submit erroneous.

2. Because the defendant below was entitled to have the question of intention to dedicate considered 30 by the jury, in view of all the facts in the case, which were to be reconciled by the jury, with the intention to dedicate to a public use as a park, before a verdict could be rendered for plaintiff below.

The facts of non-user by the public, consecutive conveyances by the owner of the fee, for valuable consideration and continuous possession by consecutive owners, were all properly to be considered by the jury in making up their judgment on the case.

Wood vs. Hurd, 5 Vr. 88.

40

The charge was not explicit on the matter which was the subject of this request and we were entitled to the charge.

POINT IV.

IV. The court below erred in charging against the objections of the defendant below—

10 That the public lost no right by the continued and exclusive possession of the defendant below, and those under whom he claimed.

This raises the question of the applicability of the maxim "nullum tempus occurrit regi" to a municipal corporation acting as an agent in asserting a public right for the benefit of its citizens.

The charge, pg. 47, l. 10, distinctly declares that the public lose no right by lapse of time.

20 In this discussion no question will be made in regard to the applicability of the maxim to the State. What is insisted, is that the maxim is to be limited in its application to the State alone and cannot be extended to subordinate public agents, because they lack the attributes of sovereignty which pertain to the State and which alone justify the maxim.

This distinction was made in our State, in respect to the proprietors, after they had, by "the surrender of their powers of government," lost "the prerogative and attributes of sovereignty."

30 *Cornelius v. Geberson, 1 Dut. 29.

Similar conclusions were reached in a similar case in Maryland.

Kelly's Lessee v. Greenfield, 2 Har. & McH. 137.

The exemption which pertains to the State in its capacity as sovereign, has in well considered cases been held not to extend to subordinate corporations, although acting as public agents.

40 Dillon Mun. Corp., §529.

"It was held in N. Carolina that though no laches are imputed to the State, yet it is not the case to those bodies to whom the execution of a public trust is committed, and therefore where the County Court brought an action of assumpsit against a Treasurer of public buildings the statute was held to be a bar." Angell on Lim, § 38.

Citing *Armstrong v. Dalton*, 4 Devereux 568.
(Not in Library.) 10

See also *N. Hempstead v. Hempstead*, 2 Wend. 137.

Birch v. Alexander, 1 Wash., 37 Va. Ct. appeals.

Russel v. Baker, 1 Har. & J., 79., appeals.

City of Galveston v. Menard, 23 Tex., 349, 408-

Rowan's Ex'rs v. Town of Portland, 8 B. Mon., 259.

"The dedication was not to the use of the Commonwealth as a corporate being and invested no title or interest in it. The maxim "nullum tempus, &c.," 20 is therefore inapplicable. And there is nothing to exempt the right, which vested really in the Town and its citizens to be upheld by them for the public, from the operation of the statute of limitations, or from the presumption arising from adverse possession as in ordinary cases of private rights.

See to same effect *Alves v. Henderson*, 16 B. Mon., 178.

Dudley v. Frankfort, 12 B. Mon. 617. 30

School Directors v. Goerges, 50 Mo. 194.

Doctrine of "nullum tempus, &c.," does not apply to any of the sub-divisions of a State such as Counties, Cities or municipal corporations.

Evans v. Erie Co., 66 Pa. St., 222.

J. Sharswood. The statute of limitations runs against a County. The prerogative "nullum tempus" is that of the sovereign alone. Her grantees, though artificial bodies created by her, are in the same category with natural persons. 40

City of Cincinnati v. 1st Pres. Ch., 8 Ohio, 298.

This case was almost identical with that now in question. The plot had been set apart "for a public use." A church had been built and maintained thereon and the protection of the statute claimed. It was discussed with very great ability and the court held that the maxim was restricted in its application to a claim by the sovereign power and could not apply to a municipal corporation seeking to enforce
10 a public use.

COURT OF ERRORS AND APPEALS

J. WILBUR PRICE,

v.

The Inhabitants of the City of
Plainfield.

In
Ejectment.

Writ of Error.

[Filed June 20, 1877.]

New Jersey, ss.—The State of New Jersey to
[L. S.] our Justices of our Supreme Court of Judicature
of the State of New Jersey, greeting :

Forasmuch as in the record and proceedings, and also in
the giving of judgment of a plea, which was in our said
Supreme Court before you, between The Inhabitants of the
City of Plainfield, plaintiff, and J. Wilbur Price, defendant,
of a plea of ejectment, as it is said manifest error hath inter- 10
vened to the great damage of the said J. Wilbur Price, de-
fendant, as we are by his complaint informed :

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 nineteenth day of June 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.

Witness our Chancellor and President Judge of our said Court of Errors Appeals, at Trenton aforesaid, the fourteenth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

HENRY C. KELSEY, *Clerk.*

SUYDAM & JACKSON, *Attorneys.*

The answer of the justices of the Supreme Court of New Jersey within named:

20 The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [L. S.]

A true copy.

HENRY C. KELSEY, *Clerk.*

Copy of Judgment.

As yet of the seventh day of August, A. D. eighteen hundred and seventy-six.

30 Witness: MERCER BEASLEY, Esq., *C. J.*
BENJ. F. LEE, *Clerk.*

Union County, ss.—“The Inhabitants of the City of

Plainfield," the plaintiff in this action, by William B. Maxson, their attorney, demands of J. Wilbur Price, the defendant therein, the possession of all that tract or plot of land, with the appurtenances, situated in the city of Plainfield, in the county of Union, containing three acres, more or less, and designated as "Park," on Block "Q," on the map known as "Map of Building Lots in Plainfield, N. J., (New York, 1853,)" owned by I. B. Stillman, Clark Rogers, Nathan Rogers, Nicholas Rogers, on file in the office of the register of deeds of Essex county, filed on the twentieth day of April, 1818, eighteen hundred and fifty-three, and bounded, on said map, on the northeast by Dunham street, on the southeast by Ninth street, on the southwest by Union street, and on the northwest by Eighth street; and the plaintiff says that their right to the possession of the same accrued on the twenty-first day of April, eighteen hundred and sixty-nine, and that the defendant wrongfully deprives them of the possession thereof, to their damage one hundred dollars.

And the said J. Wilbur Price, by Suydam and Jackson, his attorneys, appears and defends this action, and says that he is not guilty of the injury whereof the said The Inhabitants of the City of Plainfield hath complained in its declaration, nor of any part thereof, and of this he puts himself upon the country, and the said The Inhabitants of the City of Plainfield doth the like.

Therefore, let a jury thereupon come before the Chief Justice, or some other justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Elizabeth, in and for the county of Union, on the first Tuesday of April, in the year of our Lord one thousand eight hundred and seventy-seven, by whom, &c., and the same day is given to the parties aforesaid, there, &c.

And now, at this day, to wit, the fifth day of June, A. D. eighteen hundred and seventy-seven, before our said Supreme Court, at Trenton, came the said plaintiffs by their attorney aforesaid, and the justice before whom, &c., having sent hither his record had before him, in these words, to wit:

Afterwards, that is to say, on the seventh day of May, in the year of our Lord one thousand eight hundred and sev-

enty-seven, at a Circuit Court held at Elizabeth, in and for the county of Union, before the Honorable Bennet Van Syckel, one of the justices of the Supreme Court of Judicature of the State of New Jersey, according to the form of the statute in such case made and provided, came as well the within named "The Inhabitants of the City of Plainfield," as the within named J. Wilbur Price, by their attorneys within named; and the jurors of the jury being summoned to try the said issue also came, who, to try the truth of the matters
10 within contained, being elected, tried and being duly sworn, on their oath say, that the said J. Wilbur Price is guilty of the trespass and ejectment above laid to his charge, in manner and form as the said "The Inhabitants of the City of Plainfield" complained against him, and they assess the damage of the said "The Inhabitants of the City of Plainfield," over and above their costs and charges, to six cents.

Therefore, it is considered that the said "The Inhabitants of the City of Plainfield" do recover, against the said J. Wilbur Price, their term yet to come of and in the tenements
20 aforesaid, with the appurtenances, together with their damages, in form aforesaid found to six cents, and also eighty-six dollars and ninety-seven cents for their costs and charges by the said court now here adjudged to the said "The Inhabitants of the City of Plainfield," and with their assent; and thereupon the said "The Inhabitants of the City of Plainfield" pray the writ of the State of New Jersey to be directed to the sheriff of the county of Union aforesaid, to cause them to have possession of their said term yet to come, of, in and to the tenements aforesaid, with the appurtenances,
30 and it is granted them returnable, &c.

Judgment signed this fifth day of June, A. D. eighteen hundred and seventy-seven.

M. BEASLEY, C. J.

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the seal of said court, at Trenton, this eighteenth day of June, A. D. eighteen hundred and seventy-seven.

[L. s.]

BENJAMIN F. LEE, *Clerk.*

Testimony.

Afterwards, to wit, on the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-seven, the above cause came on to be tried before the Honorable Bennet Van Syckel, one of the associate justices of the said court, at the Circuit Court held at Elizabeth, in and for the said county of Union, upon the pleadings, whereupon a jury was empaneled for the trial thereof, and the plaintiff's counsel having opened his case to the jury, offered in evidence—

1. A deed from Isaac D. Titsworth and wife to Thomas B. Stillman, dated December 27th, 1852, recorded April 11th, 1853, duly acknowledged December 27th, 1852, embracing the lot mentioned in the declaration, and marked *Exhibit No. 1* on the part of the plaintiff. 10

2. An agreement between Thomas B. Stillman, Clark Rogers, Nathan Rogers, and Nicholas Rogers, dated April 6th, 1853, and recorded April 20th 1853, and marked *Exhibit No. 2* for plaintiff. 20

3. A map referred to in the agreement between said Stillman and said Rogers brothers, and marked, "Filed April 20th, 1853—Weeks, Cl'k."

And then called *John R. Weeks*, who was sworn, and gave evidence as follows :

By Mr. Maxson—

Q. Mr. Weeks, you were county clerk of Essex county in 1853?

A. I was, sir.

Q. And as such, the custodian of the public records?

A. Yes, sir.

Q. Please look at that map—state whether or not that map was filed with you at the time purported, in your office?

A. That map is endorsed with the words, "Plainfield, filed April 20th, 1853—Weeks, Cl'k," in my handwriting.

Q. In your handwriting?

A. In my handwriting.

By the court—

Q. That was while you were clerk?

10 A. Yes, sir; I was clerk at that time.

By Mr. Maxson—

Q. And that was filed in the county clerk's office?

A. Yes, sir.

Q. How long did you remain county clerk?

A. Until November, 1854.

Q. And that map went with your successor in office?

A. That map went from me to my successor, among all the other files of the office.

Q. And you have had frequent occasion to use it, sir,
20 since?

A. I have used it several times since, down to as late as 1856; there is a private mark here, which shows that I used it in 1856; I can't tell how many times since?

Q. You have used it since?

A. I used it as late as 1856.

Q. And in the register's office, was it then, or in the county clerk's office?

A. In the county clerk's office.

Q. And have you used it since 1856, that you remember?

30 A. I won't say that I ever used it, sir, to my recollection; I don't say this from recollection, remember; I say positively, because of that memorandum made by me, at the time, upon the paper; my recollection, of course, is very dim, with reference to the filing of papers.

Q. And the map remained in your office as a part of the public record?

A. It passed from me to my successor, Mr. Terhune, who was elected in November, 1854.

Q. Filed in that way, as you filed other maps?

A. Yes, sir.

Q. No exception made to this and any other?

A. No, sir; no difference between this and a hundred others.

Cross-examined by Mr. Magie—

Q. What memorandum fixes the 1856?

A. On this map, in pencil mark, you will find book-marks, 10
Y 9, 192, Y 9, 194; those are book-marks of books of record in 1856, so I must have used it as late as that, perhaps later; that book runs about from August to December, 1856.

By Mr. Williamson—

Q. Where was the proper deposit of that map in the office?

A. At the time it was filed, we had no such files as they have now; this map was folded up and put in a drawer with a hundred other maps, I should think, more or less, some of 20 which were folded, some rolled.

Q. You have, I understood you to say, no recollection with regard to that map, independent of the memorandum upon it?

A. None whatever, sir, except there are various pencil marks upon that map, which show that I have had it from time to time, as late as 1856; but that is my handwriting, without any kind of question, and it would not have been there if that date was not a correct one.

Q. Has there been a change in the office with regard to 30 keeping these records of maps?

A. They are now kept in tin cases, numbered and indexed.

Q. Indexed?

A. Yes, sir.

Q. When did they commence indexing these maps?

A. I can't tell you, sir.

Q. You left the office when?

A. November, 1854.

Q. You have made a great many searches, Mr. Weeks, since ?

A. A great many ; yes, sir.

Q. Now, according to the best of your recollection, when do you recollect of their commencing to index these maps ?

A. Well, I think it was during the time that Mr. Stapf was register.

Q. That was what year ?

10 A. I think Mr. Stapf was elected in—I don't remember the year, sir, but there is a witness here who can tell you the year precisely, if you want it.

Q. It was after 1860 wasn't it ?

A. My impression is it was after 1864.

Q. Have you any recollection when you first saw this map which has been shown to you to-day ; has it been shown to you before ?

A. Some gentlemen called to see me some months since, inquiring about the map, and a day or two afterward I was in
20 the register's office, and I looked and saw it then.

Q. And where did you find it ?

A. I found it in its tin case, in its place ; I saw it again this morning previous to coming here.

Q. That is the original, is it ?

A. Yes, sir.

Q. Did you bring it here ?

A. No, sir ; I did not bring it here.

Q. How did it come here ?

Mr. Maxon—The register of Essex county brought it on
30 a subpoena.

By Mr. Magie—

Q. Was that your usual way of signing your name as clerk at that time ?

A. No, sir.

Q. How did you use to sign it ?

A. J. R. Weeks.

Q. Was not that your invariable custom all the time you were clerk, so far as you now recollect ?

A. If you had asked me without my seeing that in my handwriting, I would have said yes; but seeing that, I know I must have signed it in a hurry.

Q. But for your seeing that which you think is in your handwriting, you would have said you never wrote your name, "Weeks, Cl'k," while you were clerk?

A. My signature as clerk I was compelled to make it short, because I had to sign it so often, so I wrote it "J. R. Weeks, clerk," almost invariably; I should have said invariably, except as I see that. 10

By Mr. Maxson—

Q. But you have no doubt that this map was filed at the time you there designate?

A. None whatever, sir, and none whatever about that being my handwriting; I am just as certain as that I am here.

By Mr. Williamson—

Q. But you are not certain where you put it, because you say you don't recollect ever having seen it in the office?

A. Where I put it?

Q. Yes; you said it was thrown with other papers or other maps, but you don't say that you threw it there; where was this map deposited? 20

A. Well, it was the rule of the office to deposit it, immediately upon its being filed, in that drawer in which we kept our maps, to keep the dust off of them.

Q. You don't remember ever having seen it there, do you?

A. No, I have no recollection of seeing it there; my memorandums are the date to show that I have used it two or three times.

By Mr. Maxson—

Q. You don't remember seeing it in any other place than that drawer? 30

A. No, sir; I never saw it anywhere except in the office.

Henry C. Soden, called for plaintiff, being sworn, testified as follows—

By Mr. Maxson—

Q. Mr. Soden, you are the present register of Essex county?

A. Yes, sir.

Q. And how long have you been in that position, sir?

A. Since November, 1874.

Q. Who was your predecessor, sir?

A. Julius Stapf.

Q. And, as register of that county, you have custody of the public records, as the county clerk use to?

10 A. I believe I have; yes, sir.

Q. Please look at that map, and tell us whether that map is a map on file in your office?

A. It is.

Q. Received by you from your predecessor?

A. Yes, sir.

Cross-examined—By Mr. Magie—

Q. Mr. Soden, at the time you became register, did they index the maps as they were filed?

A. Yes, sir; it was done before I came there.

20 Q. It had been done before you came?

A. Yes, sir.

Q. Do you know when it began, in point of fact—when they commenced to index the maps?

A. I do not; I cannot say positively; it is only hearsay.

Q. Do you know whether that index extended over the maps previously filed?

A. A portion of it.

Q. Why do you say a portion?

A. From hearsay.

30 Q. It then did not include all the maps—the index?

A. This index at the present time, I don't think does.

Q. When did you first see the map which you have in your hand—at the time it came to you from your predecessor?

A. When I received a subpoena, sir, to come down to this court.

Q. Where was it then?

A. In a tin case in the office.

Q. That was the first time you had seen it?

A. I believe that is the first time I have seen it to my recollection.

Q. You say it came down to you from your predecessor?

A. Yes, sir.

Q. Do you mean that you received it in that tin case from Mr. Stapf?

A. I mean to say that I did; yes, sir.

Q. Well, do you say that of your personal knowledge, or only because you received all the cases in general from him? 10

A. That is the only way that I know, receiving all the records in general.

Q. Then you have no personal knowledge that this was in a tin case at the time you became register?

A. I have not.

Q. You say this was in a tin case—alone or with other papers?

A. Alone, sir; the cases are made separate, and a map is filed away in that case.

Q. And they are designed each for a map—a tin case? 20

A. Whenever a map is brought in, the cases are numbered from 1 to about 258, I think, and when a map is brought in we index it and file it away in the number of that tin case.

Q. Then it takes the number that suits the time when it is brought in?

A. Well, that is the way I have been in the habit of doing with them, sir.

Q. Do you know what number of case this was in?

A. 226 I think, if I remember rightly.

Q. Is the case here? 30

A. No, sir.

Q. Have you a memorandum that would tell?

A. I have.

Q. What is it?

A. 226.

Q. Why didn't you bring the case with you?

A. I didn't think it was necessary, sir; I could have brought it.

Q. Can you tell me what the last number of case is?

A. The last number of case that has a map in?

Q. Yes?

A. I can't tell that.

Q. Can you give me any idea what it is?

A. I should think along 230 or 240.

Q. 230 or 240?

A. Somewhere about that.

Q. Then this is only a few cases back in sequence from the last case that now has a map filed in it?

10 A. I should so take it; yes, sir.

Q. About what time would that represent—about how long ago?

A. I don't understand you, sir.

Q. You say that the present number of case in which there is a map is about 230; this was case 226; judging from that sequence of numbers, about how long ago was that map put in case 226?

A. That I have no idea; I found the cases when I went there.

20 Q. You did not find 226 cases full of maps?

A. I think that was there when I went there, it is a thing very seldom done in the office—the filing of a map—probably we don't file five in a year.

Q. On the case itself, what is the endorsement—what is that marked; anything but the number?

A. That is all.

Q. Where else is that number entered?

A. In the book of indexes.

Q. Have you that book with you?

30 A. No, sir.

Q. Will that book show the date at which the entry was made in the index?

A. Yes; the index shows it.

Q. The index shows that?

A. Yes, sir.

Q. What was the date of the entry in that index of that map?

A. April 20th, 1853.

Q. In the index?

A. Yes, sir.

Q. I am sure you don't understand me, Mr. Soden, because I understood you to say previously that these indexes were not commenced until during Mr. Stapf's time?

A. That is my impression, but I do not know it; I say I don't know anything positive about it; it is a mere impression that I have got, that they were commenced in Mr. Stapf's time; I found them there when I went there.

Q. Will the index show the date of the filing of the map, or the date of the entry in the index—that is what I want to 10 get at—which does the index show?

A. It shows the date of the filing of the map.

Q. Now, I asked you before if it showed the date of the entry in the index?

A. It shows the date of the filing of the map, sir.

Q. And not the entry or the index?

A. The index is what I am speaking about; that is the only thing that we have that furnishes any record of this map; they are entered in that index, and the date in that is the same as on this map. 20

Q. You have clerks under you in the office?

A. Yes, sir.

Q. Which one has charge of the index?

A. A lady clerk that I have there, by the name of Chevalier.

By Mr. Maxson—

Q. Since you have been in office there has been no time but you could have found that map if you had been applied to, sir?

A. I have no doubt of it, sir. 30

By Mr. Magic—

Q. Do you mean that you could always have found that map there since you have been register?

A. I have no reason to doubt it, sir.

Q. That is not the question; do you personally know it?

A. I never had occasion to look for the map; I never did look for it.

Q. Then you only say that on the ground that the records you have are there where they ought to be?

A. Yes, sir.

J. J. Cardner, called by the plaintiff—sworn, testifies as follows. Examined by Mr. Maxson—

Q. Doctor, you are a practicing physician in New York?

A. I am ; yes, sir.

Q. And some years ago resided in Plainfield?

A. Yes, sir.

Q. Did you know Thomas B. Stillman, in his life?

A. I did.

10 Q. You married an adopted daughter of his, I believe?

A. Yes, sir.

Q. And were intimate with him, were you not?

A. I was intimate with him, yes, sir.

Q. Did you know his signature and handwriting, sir?

A. I did.

Q. Please look at the words "for record, T. B. Stillman," there, and state to the court and jury whether that is in the handwriting of Thomas B. Stillman (showing map), his signature, or a fac-simile of it?

20 A. I think it is his.

Q. You think it is his?

A. I think it is.

Q. You have seen him writing often?

A. Yes, sir.

Q. And know his signature?

A. Yes, sir ; I think it is his ; it might be a fac-simile.

Q. Did I understand you to say that the words "for record" were in his handwriting?

A. I consider it in his handwriting.

30 Q. You regard it all as his handwriting?

A. Yes, sir.

No cross-examination.

[Plaintiff offers the map in evidence, marked plaintiff's *Exhibit 3* of this date.]

John R. Dunham, called for plaintiff, sworn, testified as follows :

By Mr. Maxson—

Q. You are a civil engineer by profession ?

A. I am.

Q. Reside in the city of Plainfield ?

A. Yes, sir.

Q. Have practiced your profession there for some time ?

A. Yes, sir.

Q. Please look at that map, plaintiff's *Exhibit 3*, and say are you conversant with the property delineated thereon ?

A. Yes, sir ; I am. 10

Q. Look at that deed ; you have seen that deed before, plaintiff's *Exhibit 1* ?

A. Yes, sir.

Q. And have compared the property with a view of ascertaining whether the property delineated on that map is embraced in the description in the deed ?

A. I have.

Q. Is the property delineated on that map embraced in the description in that deed, sir ?

A. Yes, sir ; it is. 20

No cross-examination.

[Plaintiff offers in evidence deed Thomas B. Stillman to Nathan Rogers, dated April 6th, 1853, conveying a certain parcel of land, known and distinguished in the map now on file in the clerk's office of the county of Essex, in block letter K, recorded 26th November, 1853, acknowledged 30th September of the same year. Deed objected to on the ground that the map relied on in this case is a map filed on the 20th of April, 1853, and this deed is dated prior to the filing of the map, and it referring to a map then on file, it cannot be considered as referring to this map, which was afterward filed. Objection overruled and deed admitted in evidence, to which defendants except. Deed marked plaintiff's *Exhibit 4*, of this date.] 30

[Plaintiff also offers in evidence deed Thomas B. Stillman to Nicholas Rogers, dated 16th April, 1853, acknowledged 18th April, 1853, recorded 26th November, 1853. Same ob-

jection, ruling and exception. Deed marked plaintiff's *Exhibit 5*, of this date.]

[Also, deed of Thomas B. Stillman to Clark Rogers, dated the same day, April 6th, 1853, acknowledged April 18th, 1853, recorded November 26th, 1853. Same objection, ruling and exception. Deed marked plaintiff's *Exhibit 6*, of this date.]

[Also, deed Thomas B. Stillman and wife to William C. Ayers, dated May 1st, 1854, acknowledged 31st August, 1854, recorded December 26th, 1854. Marked plaintiff's *Exhibit 7*, of this date.]

[Deed Thomas B. Stillman and wife to the First Sabbatarian church of New York city, dated the 1st day of April, 1853, acknowledged on the 18th of April, 1853, recorded May 29th, 1853. The same objection as to the previous deeds noted; same ruling and exceptions. Deed marked plaintiff's *Exhibit 8*, of this date.]

[The exceptions to the admission of the above deeds were prayed for by the defendant's counsel and granted, and this exception is hereby sealed accordingly.]

Barzilla J. Randolph, called for the plaintiffs, being duly sworn, testified as follows—

Examined by Mr. Maxson—

Q. Mr. Randolph, you are an old resident of the city of Plainfield?

A. Yes, sir.

Q. Lived there all your life about that vicinity?

A. I never had any other post office.

Q. Did you know Thomas B. Stillman in his lifetime?

30 A. I did, sir.

Q. Look at the map before you, and state whether you ever saw that map before (plaintiff's *Exhibit 3*)?

A. I have seen this or one similar to it.

Q. When did you first see it?

A. The first I saw of a map of this tract of land was in Dr. Charles Stillman's house, shown to me by Thomas B. Stillman.

Q. When was that?

A. Well, it was shortly after he had bought this section of land; I can't give the date.

Q. Bought the land from whom?

A. I. D. Titsworth; a farm that formerly belonged to an uncle of mine.

Q. You remember when he bought the land of Titsworth, do you?

A. Very well.

Q. And it was shortly after that?

A. Yes, sir. 10

Q. Shown to you by Thomas B. Stillman?

A. Yes, sir.

Q. Did you have any conversation with Thomas B. Stillman at that time, can you tell what year it was first?

A. No, sir, I cannot.

Q. How long after he purchased the land?

A. Not but a short time.

Q. Do you know whether it was before or after the map was filed?

A. I can't say as to the filing of the map. 20

Q. When you say a short time, do you mean by that within a year, or something of that sort, or within what; two years, or what do you mean?

A. I mean to say, that I saw a map shown to me, this, or one similar to it, and he pointed out to me a park, and I spoke to him about our burying place; I opposed it—

Q. Never mind about that.

A. (Continuing)—because I had friends buried there, and I didn't want them disturbed. He said it would be much pleasanter than it was, right in the rear of that park, and 30 pointed it out to me.

Q. Did he say at that time that he was going to make any disposition of that map? [Objected to.]

Q. What did he say, if anything, in relation to the park, at that time?

A. He said in relation to that park—he showed me where he was going to build, and where Clark Rogers was going to build, and he said the park would take off that property back there, in the future the park would build that up.

Q. And this was, you think in 1853?

A. I didn't say so; I don't remember the date, because I never had any idea of being called; I had nothing to call my mind to the circumstance.

Mr. Williamson—

[We object to the evidence of this witness; the declaration of Mr. Stillman cannot affect our title. The map speaks for itself, and what he said with regard to the map cannot give any additional force to it. I do not see how the declarations
10 are evidence at all.

The court—

[They are like any declaration of dedication. Objection overruled. Exception prayed and granted, and this exception is hereby sealed accordingly.

B. VAN SYCKEL,
Justice Supreme Court.

Q. If Titsworth sold that land in December, 1862, taking as that your data, how long after that was it that Thomas B. Stillman told you this in relation to this park?

20 A. I have never charged my mind with it, and I could not state any time at all with regard to that.

Q. Did you ever have any other conversations with him in relation to it?

A. In relation to this park?

Q. Yes.

A. He frequently spoke of it, and I have heard him speak of it a great many times.

Q. How?

A. As to its being a park.

30 [Same objection, ruling and exception prayed, which exception was granted, and the same is hereby sealed accordingly.]

Q. Public park?

A. Yes, sir; a park. He called it a park in talking with me and conversing with me.

Q. He called it a public park?

A. Yes, sir; a public park he always called it to me.

By the court—

Q. Which did he speak of as a public park?

A. This lot he pointed out to me as a park—(indicating on map).

By Mr. Maxson—

Q. Were you acquainted with the topography of that land at that time?

A. Yes, sir; well acquainted with it.

Q. Now state to the jury, in 1853, that being the date of this map, whether there were other woods, or whether that plot there embraced all the woods, or whether the woods extended beyond it. 10

A. No, sir; that plot—there was a portion of it cut off into a field, where it was tillable ground, no woods on it, and there is none to-day, and never was in my recollection. I am fifty-eight years old; my uncle owned it formerly, and I think I can recollect that tract of land as far back as forty-eight years positively.

Q. Now let me call your attention to the part where there was woods; I am speaking of the woods; I understand you to say that there was woods in this tract? 20

A. Yes, sir.

Q. Woodland?

A. Yes, sir.

Q. You say that is woodland, with the exception of about a third of it, up at the upper end, and in 1853, when the map was made, it was just so then—there was no woods at the upper end of the park lot?

A. Adjoining the cemetery?

Q. Now, was there woods on the adjoining block here in 1853, when that map was made? 30

A. Yes, sir; it extended a little over Seventh street.

Q. Down here?—(indicating.)

A. Down to here, where we had our cemetery?

Q. How far did the woods extend from Mechanic street at that time?

A. It extended out to Mechanic street; our old burying-place laid into it, a portion of it.

Q. Now, how far did the woods extend out this way, towards Randolph street?

A. It extended over that.

Q. At that time there was a piece of woods extending from or near Mechanic street across that block marked Q and the block marked R, and there were no woods at that time at the upper end of this map, where roads are now pictured upon it?

A. Yes, sir.

By Mr. Magie—

10 Q. You say the upper end—you mean the end toward the cemetery that is south?

A. Yes, sir.

By the court—

Q. The end towards Ninth street?

A. No, sir; on Ninth street was not wood.

By Mr. Maxson—

Q. There has never been any woods down there from that time?

A. Not since I have known it, and I have known it over forty years.

20 Cross-examined by Mr. Magie—

Q. I think you said that the woods extended beyond the block to Seventh street?

A. Yes, sir.

Q. That is, in a northerly direction from this block?

A. Northwest.

Q. And on the west, out toward Mechanic street, nearly to Mechanic street—is that right?

A. Yes, sir.

Q. And on the east to Randolph street?

30 A. Beyond Randolph street part of the woods is there yet.

Q. Where is Seventh street on that map?

A. Here it is—(indicating).

Q. And the woods then extended out to there?

A. The woods extended over in this direction a little more than half; three-quarters of it is covered with woods.

Q. Yes—comprising three-quarters of the whole?

A. Yes, sir.

Q. When did you first become acquainted with Thomas B. Stillman?

A. Well, along in my boyhood; I should think when I was about eighteen years old.

Q. Where did he then reside;

A. In New York City; I think he was doing business there, in the Brass Novelty Works, New York city.

Q. You had some conversations with Thomas B. Stillman 10 which you say you don't exactly remember the time of?

A. I do not; I can't give the date; it was about the time that he bought this land; it was right away after he had the map made out and showed it to me; I couldn't give the date.

Q. Mr. Stillman lived in Plainfield at one time?

A. Thomas B.?

Q. Yes?

A. Yes, sir.

Q. Do you know when that was? 20

A. Yes, sir.

Q. How was it with reference to the time of these conversations?

A. Well, it was before he was a resident of Plainfield; that is, before he built; he pointed out to me where he was going to build.

Q. Now, where did he live when this conversation you say was had?

A. I think the time he pointed that out he was about building a house for his father, if my memory serves me right, on the 30 opposite side of his own residence, and whether he was a resident at that time I can't say, positively, but I think he was not when he first showed me the property.

Q. Do I understand that when he first showed you the property he was about locating a residence for his father?

A. He was, or had.

Q. Either was or had?

A. Yes, sir.

Q. Now, where did Stillman live at that time?

A. Thomas B. ?

Q. Yes ?

A. I think he yet remained in New York ; I believe he did.

Q. At that time of that conversation, what was your age ?

A. That is more than I can tell.

Q. You are now fifty-two, I think you said ?

A. Fifty-eight years old.

Q. Where did the conversation take place ?

10 A. In Dr. Charles Stillman's house, was the first time I ever had—the first I ever saw the map.

Q. That was the first one that you had ?

A. Yes, sir.

Q. Dr. Stillman is yet living there ?

A. Yes, sir ; in the same house.

Q. Was Dr. Stillman at home at this conversation ?

A. I can't say as for that ; I think he was, though.

Q. You think he was present at the conversation ?

20 A. I am not positive whether he was present or not ; I met Mr. Thomas B. very frequently, and I can't say as to that.

Q. But your impression is that he was, I think you say ?

A. Yes, sir.

Q. Do you recollect anyone else that was present ?

A. I do not.

Q. The subsequent conversations—where did they take place ?

30 A. He often spoke to me, coming to and from the city ; I conversed with him, and was pretty intimate with him, always was, from the time I was grown up, particularly after he became a citizen of Plainfield ; I don't know what conversation you refer to—very frequently conversed together—different places.

Q. I refer to the conversation that you spoke of to Mr. Maxson.

Mr. Maxson—

I didn't ask him about any subsequent conversations.

Mr. Williamson—

Then we withdraw our cross-examination on that subject.

Mr. Maxson—

I restricted my evidence to that occasion very soon after or about the time the map was made, and the deeds made in pursuance of its filing.

Q. Mr. Randolph, now as to the first conversation—go back to that conversation at Dr. Stillman's house—can you tell us whether or not it was before 1856?

A. I should think it was. 10

Q. And how long before?

A. I can't say as to that; it was something that I never charged my mind with, particularly.

Q. Now, why do you think it was?

A. Well, I should judge from the way time has passed, is all; I have no mark to go by, at all—no reference; the conversation that passed between Thomas B. Stillman and me, when he drew my attention to it, on account of some conversation we had respecting our burying-place, which has ever since borne it in my mind, and since this excitement has 20 grown up, I can't help thinking of conversations that passed between Stillman and myself with regard to it.

Q. You have no marks and no memorandum?

A. No, sir; no memorandum at all, and no idea of ever being called into court for it.

By the court—

I don't understand what you withdraw, Mr. Maxson—the witness says that Mr. Stillman frequently told him it was a public park—do you withdraw that?

Mr. Maxson— 30

No, sir; he told him that about the time, and I don't withdraw that, of course; all I wanted was to confine it the *res gestæ*; I don't want to go into conversations six or eight years after that.

Q. Now, with reference to these other conversations—I want you to fix the time when they occurred?

A. I can't answer to no conversation, and give the time, sir; I can't answer such questions, because my mind is not

charged with anything of the kind ; I have no minute of the time to recite my mind back to the time of them.

Q. Do you recollect the fact of Mr. Stillman's moving out from New York ?

A. I recollect the fact, but I could not give the year.

Q. Can you tell whether these conversations were before he moved out ?

A. I had a number of conversations with him before he moved out.

10 Q. These that you have spoken of I mean—I don't mean your casual conversations, but these conversations you have spoken of in answer to Mr. Maxson—can you tell us whether they were before or after Mr. Stillman moved to Plainfield ?

A. I cannot.

Q. There is no way in which you can fix them, at all ?

A. I can't think of anything, any way, that I can refer back in my mind, to state the time, at all.

Q. What was your business at that time ?

A. Manufacturing clothing.

20 Q. Where ?

A. Part of the time cutting—Plainfield.

Q. When did you go there ?

A. When did I go to Plainfield ?

Q. Yes.

A. My first life in Plainfield, I suppose I was about two years old ; I was there a good deal with my grandparents, who lived there, and when I was a boy I was there, and served six years' apprenticeship in Plainfield, and for the last twenty-eight years have been a resident in the town ; never

30 had any other post office.

Q. When did you move there the last time ?

A. Twenty-eight years ago the 6th day of April.

[Plaintiff offers in evidence deed from Nathan Rogers to E. Dean Dow, dated August 27th, 1856, acknowledged August 27th, 1856, recorded October 3d, 1856, marked plaintiff's *Exhibit 9* of this date.]

[Deed from Nicholas Rogers to Clark Rogers, dated June 13th, 1856, acknowledged June 15th, 1856, recorded January 14th, 1857, marked plaintiff's *Exhibit 10* of this date.]

Mr. Maxson stated that there were several other deeds which refer to this map that he wishes to offer in evidence, and it was agreed between counsel that the books of record need not be produced in court, but that counsel for plaintiff should make out a list of the deeds, with dates, and submit them to opposing counsel, and with the reservation that those deeds shall be hereafter put in evidence.

Plaintiff rests.

Mr. Magie, on behalf of the defendant, then moved for a non-suit, upon the grounds— 10

First. That there is no authority in the city of Plainfield to receive the property in question, or exercise any functions in respect to it.

Second. That the city of Plainfield is not the proper party to bring this action, even if a right to do so exists anywhere.

Third. That there is not sufficient evidence of dedication to go to the jury.

The court, in denying the motion, said—

I feel unwilling to grant this motion at this time. Of course I have no opportunity to examine the acts of the legis- 20
lature, which constitute the present charter of the city of Plainfield, but, conceding it to be true, as counsel for the defendant asserts, that there is no express power given to the city of Plainfield to exercise any rights or functions over a public park, I still feel that it is not at all clear that the city could not take possession of it preparatory to applying to the legislature for such legislation as would enable them to beautify and adorn it, and make it fit for public use.

As to the second point, that the city of Plainfield, conceding that the right of action exists somewhere, is not the proper 30
party, I think that is not well taken. The fact that the city of Plainfield is of narrower bounds than the township out of which it is created, I think, would not affect the right of the city to bring ejectment; although the political district is a narrower one than that which existed when the dedication was made, I think the right to bring such an action must fall within the limits in which the dedicated district lies.

As to the third point, that there is sufficient evidence of dedication to go to the jury, I think it must go to the jury to say on that ground whether there was in fact a dedication. The motion, therefore, will be denied.

Mr. Magie—

I am afraid your honor has misunderstood me with respect to the second point. The city of Plainfield is of narrower bounds, but the township co-exists with the city over all the city; that is, they all vote at the township elections—the
10 whole inhabitants, including the inhabitants of the city. It is not a mere carving out of the city from the township, but the township still exists for certain purposes over the whole city.

The court—

I was not aware of that, and though that may create some difficulty in the case, still I am not so clear about the right to a non-suit that I would be willing to grant the motion in this case.

[Defendants except, and pray an allowance thereof, which
20 was granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL,

Justice of the Supreme Court.

[The defendant offered in evidence a deed from Thomas B. Stillman and wife to E. Dean Dow, dated August 1st, 1856, acknowledged August 22d, 1856, recorded October 3d, 1856, consideration \$1500, and conveys the land in question by describing it as being known and distinguished on a certain map on file in the office of the clerk of the county of Essex, entitled (as has been stated heretofore,) as block letter Q, and
30 then bounded and described as follows (giving description,) containing two and four-tenths acres of land.]

[Also, certificate of incorporation of the Plainfield College for Young Ladies, incorporated under the general act, dated August 19th, 1867, recorded in the clerk's office of Union county September 12th, 1867.]

[Also, a deed from E. Dean Dow and wife to the Plainfield

College for Young Ladies, dated November 1st, 1867, acknowledged April 8th, 1868, recorded April 9th, 1868, conveys blocks K and Q, subject to two mortgages, one of \$10,000, to the Mutual Benefit Life Insurance Company, and one of \$5,000, to Rudolph M. Titsworth, which the grantee assumed.]

[Also, the record of a deed from the trustees of the Plainfield College for Young Ladies to the defendant, dated July 6th, 1876, acknowledged July 7th, 1876, recorded July 22d, 1876, for the consideration of \$10,000, conveys the property in question, block Q.]

Evan Jones, a witness produced on the part of the plaintiff, being under examination, upon re-direct examination says—

Mr. Maxson—

Q. You have spoken to Mr. Magie of the meeting of the trustees of the association of which you was one, and in which the matter of the sale of this property was discussed—will you be good enough to state to the court and jury what occurred at that meeting in relation to this sale? 20

A. A proposition was brought in to the meeting that parties offered \$10,000 for the property, and it was put to vote, I think, whether they should accept of it or not; a majority was in favor of accepting it.

Q. What was said at the meeting at that time in relation to the right of the association to sell that property? [Objected to. Objection overruled. Exception prayed and granted, and this exception is hereby sealed accordingly.]

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A. Well, I would say that I objected to selling it on account that if the association could give a title to it, it was not half-price for the property; if the association could give a proper title it would certainly bring \$15,000 or \$20,000 the next day. 30

Q. Was the question of the title or right of the association to sell the property there discussed or mentioned? [Ob-

jected to. Same ruling, and exception prayed and granted, and this exception is hereby sealed accordingly.]

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A. For building purposes, it was.

Q. For building purposes, it was?

A. Yes, sir.

Q. What was the objection or ground upon which the objection was based? [Same objection. Objection sustained and exception by the counsel of the plaintiff.]

10 Q. Was the reason given there why the objection was made, and, if so, what was that reason?

A. The reason against selling?

By the court.—

Q. State what was said there?

A. Well, what was said against it was said by myself; I said that I didn't think we had a right to sell it for building purposes—it being a park.

Q. And who was at that meeting, sir?

A. Mr. Titworth, Mr. Clark Rogers, Dr. Stillman, Mr.
20 Pope; I think Mr. Potter; but I wouldn't be positive.

Q. Well, sir, what was said in answer to that doubt upon your part, or that assertion upon your part, that you thought you had no right to sell it for building purposes, because it was a park, by any of them?

A. They asked me if I had any doubt about it, and I told them I had; well, Dr. Stillman said that if that was the case, that he thought we couldn't go back on the heirs of Stillman; that the time had expired.

Q. Then I understand you to say at the meeting referred
30 to by Mr. Magie, that this matter there was discussed as to their right to sell the property, and doubted by you as one of the number?

A. Yes, sir.

Q. And Mr. Pope was there?

A. Yes, sir; Mr. Pope brought the proposition there.

Q. Mr. Pope brought the proposition to sell the property or buy it?

A. Mr. Pope brought the proposition; I wanted to know who the property was for, but he said he thought it was—he didn't know exactly, but he thought it was for Murphy & Brewster; that good improvements would go on to it; my objection was to selling for building purposes, as it was down on the map as a park. [Defendants except to all that part of the evidence of conversation had in the absence of the parties here, which exception was granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL, J. 10

Henry Smith, a witness produced on the part of the plaintiff, being under examination, says—

By Mr. Maxon—

Q. Mr. Smith, you reside in Plainfield?

A. I do, sir.

Q. How long have you lived there?

A. Since March, 1864.

Q. And your business is in New York?

A. I was at that time Treasurer of the Panama Railroad Company. 20

Q. Did you purchase any property in the city of Plainfield from Clark Rogers?

A. I did, sir.

Q. When?

A. Some two months previous to that time; in January or February, 1864.

Q. Will you point on the map where that property is, sir?

A. On block E, on Seventh street.

Q. Did you have, at the time you purchased, any conversation with Clark Rogers in relation to the surrounding 30 property? [Objected to. Objection sustained. Exception by the counsel of the plaintiff.]

Q. Did you have any conversation with Clark Rogers, at the time you purchased that property, in relation to the property in front there?

A. Yes, sir.

Q. What did he say?

A. That it could not be diverted from its present use.

Q. What use was that, sir? [Objected to, which objection was overruled, and an exception prayed and granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL, J.

Ethan Lanphear, a witness produced on the part of the plaintiff, being examined on his direct examination, said—

By Mr. Maxson—

10 Q. Now, state to the court and jury the circumstances of that conversation, and what it was?

A. In 1855, in the fall, I visited Plainfield, for the first time in my life; Mr. Rogers being a relative of mine, I made my headquarters there, me and my wife; at the time which we stopped in Plainfield, they had purchased this property.

Q. Who had purchased the property?

A. Stillman and the Rogerses, and were improving it and putting it in shape for market, and during my stay there he took me over the property, showing me the property and their improvements that they were making on it.

20 Q. Well?

A. During my stay there he took me down to Union street; Clark Rogers had built that house there at that time, on block Q; Thomas B. Stillman had built that house, and was improving around it on block H; the two cottages opposite, I think, Thomas B. Stillman's father—I think he did—those two were built at the time, but I am under the impression that they were doing something toward building that house on G, at the time Mr. Clark Rogers took me down to this street—Union street—and this street was open through
30 here, Union street, through to the cemetery ground, back there.

Q. Now, let me understand you; you say that at that time, in 1855, they took you down to the corner of 7th and Union, and the street was open from 9th to Union?

A. Union and 9th.

Q. How far was Union open?

A. Up to 9th street; there had been apparently a gate there on 8th street at the time, if I remember right.

Q. Was there any gate there then?

A. I think there was no gate up at that time; we went down that street, and stopped at various places.

Q. Did you stop about or near the park?

A. Yes, sir.

Q. What, if anything, did Rogers say to you then about the park? [Objected to. Objection overruled. Exception prayed and granted, and this exception is hereby sealed accordingly.]

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A. He said that was reserved for a public park, and that the cemetery ground and these four lots were not in the market; the rest of the block of their land was for sale. 10

Q. Which blocks were not in the market?

A. These four lots there, he said, were reserved by the firm.

Q. Blocks K, I, H and G were reserved—any other lots?

A. And the park lot was reserved; the cemetery ground was reserved; they had exchanged lands, and removed the burying-ground, on their own expenses, giving this plot a little over here, where the burying-ground was. 20

Q. They had exchanged the cemetery on 9th street, for a little plot on 7th street, that was then used?

A. Yes, sir, in order to get the streets and lots in a satisfactory position for building purposes.

Q. When did you next have any communication with Mr. Rogers in relation to this park?

A. Well, every time almost—I have visited there from time to time—from the time that I went there that time we had conversations about these improvements, and he always showed me up the improvements they were making. 30

Q. In 1861 or 1862, did you see him?

A. In the fall of 1861 or 1862 I visited there, and we went back over the ground and back to the cemetery, and when we got along by the park we stopped there in visiting the grounds; there had been some cleaning up since I was there before, and in the park was a cow; I spoke of the cow, and said it was rather a good-looking cow, and asked whose it was, and I think he said it was Mr. Dow's.

Q. What else did he say then, if anything, in relation to it?

A. Then, in the conversation, he said that they had let Mr. Dow have the use of the park, take charge of it in connection with the school, for convenience sake, so that he could control it in reference to the students.

Q. Well, what else did he say; did he say anything, or not, in relation to its future use or destiny?

A. Only for that use, as I understood it.

10 *Q.* Did he say anything about whether it was to be kept open as a park, or not?

A. I don't recollect he said anything as to that it was to be kept open; he said it was to be retained as a public park, only they had concluded to let him have it for his convenience for the school.

Q. Now, again, after that, did he show you a map of the property?

A. He had a map of this kind that I have seen from time to time, and also he had another map of a second purchase—
20 a small map.

Q. Now, in 1866 did you have any communication with Mr. Rogers in relation to that plot of land?

A. It is ten years ago this fall; I visited Plainfield with a view of purchasing there; my wife decided she would like to come to Plainfield to live, and we came to Clark Rogers'.

Q. What occurred there between you and Rogers?

A. Talking about purchasing land, a map of that description was brought into the room and laid on the table, and lots pointed out that was in market.

30 *Q.* Who pointed out these lots?

A. He and his son together; I wanted a lot of good size, where I could have plenty of room—where nobody could crowd me, for I wanted to build and live there; and in mentioning over lots, he pointed out two lots on the map—block P; he said he thought I could get those if I wanted them; the two lots would make a good lot right next to the park; the park couldn't be built upon so as to interfere with me on this side, anyhow, and he thought he should build a house on that there, on the corner of the same block.

Q. On the corner of the same lot?

A. On the corner of the same block; he offered me lots on Eighth street; he also stated that Mr. Spicer had engaged one of those lots, and somebody else the other, but they hadn't paid for them, and he thought they wouldn't take them.

Q. Have you been intimate with the property since the time you moved to Plainfield?

A. Yes, sir; I have.

Q. What has been the condition of the fence around that 10 block lot for that time?

A. It has been growing worse and worse until the last fence was built, the last few years.

Q. How has that property been used for the last ten or fifteen years?

A. Since I have lived in Plainfield, I have attended several picnics and Sunday school celebrations there.

Q. Has or has there not, to your knowledge, been any restriction as to the public use of it?

A. I have not known of any. 20

Q. Do you know whether or not the public, at all times, have had free ingress and egress there?

A. I know the public have been there. [Defendants ask that their objection and exception be understood as applying to all these conversations between witness and Rogers, and the same was granted, and this exception is hereby sealed accordingly.]

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Q. Did you have any conversation with Thomas B. Stillman in relation to this matter? 30

A. I did, the first time I visited Plainfield. [Defendants object to this examination, the witness having left the stand without cross-examination and having suggested the question to counsel. The court declined to exclude the evidence whereupon an exception was prayed and granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL, J.

Peter P. Good, a witness produced on the part of the plaintiff, being examined on direct examination, says—

By Mr. Maxson—

Q. You reside in the city of Plainfield?

A. I do, sir.

Q. And you are the city judge of Plainfield?

A. Yes, sir.

Q. How long have you lived there?

A. Since March, 1858.

10 Q. Did you know Thomas B. Stillman in his lifetime?

A. I knew Thomas B. Stillman.

Q. Was you on social relations with him?

A. Quite so.

Q. Where did he then live?

A. Part of the time he was living in the city of New York, and some of the time in the city of Plainfield, especially in the summer season.

Q. Did you have any conversation with Thomas B. Stillman in relation to block Q, marked on that map?

20 A. The manner in which that conversation came about, was this—

Mr. Williamson—

He asked you if you had any such conversation about that matter.

A. Yes, sir.

Q. When?

A. I think it was either in the latter part of the summer of 1860, or the early part of the fall of 1860.

30 Q. What was it? [Objected to; objection overruled. Exception.]

A. I was visiting Mr. Stillman occasionally; went there about once a week; and in one of his good humors we were walking together around the premises.

Q. What premises?

A. His own premises; and Mr. Stillman said to me that that piece of property, which is marked there on the map, was reserved for a park, and not to be built upon; that conversa-

tion took place voluntarily on his own part ; I did not introduce it.

Q. And at the time where were you ?

A. We were walking on the back part of his lot, running parallel with Eighth street, I think.

Q. What block was it ?

A. I am not positive as to the block ; it was on block H
—T. B. Stillman's property.

No cross-examination.

James E. Maiture, a witness produced by the plaintiffs, 10
being examined on direct examination, says :

By Mr. Maxson—

Q. Do you know the property in controversy here, sir ?

A. Perfectly, sir.

Q. Did you know Thomas B. Stillman in his lifetime ?

A. I did, sir ; quite well.

Q. Did you ever see one of these maps before ?

A. I have, sir ; I have one that he gave me.

Q. Who gave you ?

20

A. Thomas B. Stillman.

Q. When ?

A. About a year and a half previous to his death.

Q. Was there any conversation with Mr. Stillman at that time in relation to this park ?

A. There was.

Q. What was the date ?

A. To the best of my knowledge, Thomas B. Stillman has been dead about eleven years ; I had two conversations with reference to it ; the first was about two years previous 30 to his death, and the last was about one year previous to his death, which would make the last conversation about twelve years, possibly twelve and a half years, from to-day, or about that time.

Q. State what that conversation was ?

A. Which conversation, the last or the first one ?

Q. At the time he gave you the map, sir? [Same objection, ruling, and exception prayed and granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL,
Justice Supreme Court.

A. The conversation was with reference to the transfer of a piece of property; he had made a transfer of a piece of property with Mr. Manning Stelle, in order to straighten his lines, and finally appealed to me with reference to projecting
10 Cherry street, or what is known now as Park avenue, through the property. He asked me if I had a map of our place, and I told him I had not. He met me out on the ground, the rear southeast part of the property, and produced me one of these maps.

Q. Have you got it?

A. I have the map, sir; (showing) we were out in this part of the premises out here.

Q. Well, what did he say?

A. He showed how the street would cut me, and produced
20 this map, and then I saw the park; and I said "This is the piece, Mr. Stillman," that he had referred to in a previous conversation; and he said, "Yes, that is the park." I said, "That will be a very fine thing for the neighborhood," and he said, "Yes, this will make a beautiful feature of the neighborhood."

Q. When was it you referred to a previous conversation?

A. About a year previous to this time. I made reference to Eighth street not being as handsome a street as Seventh
30 street, and he said "Why?" and I said, because it is getting the backs of the barns and houses. Why, said he, my man, that is to be the cream of the neighborhood, for we have the park here. I asked him where, and he said "the grove," that is to be the park.

[Defendants note same objection and exception to admission of this evidence as to previous evidence on the same subject, which exception was granted, and this exception is hereby sealed accordingly.]

B. VAN SYCKEL,
Justice Supreme Court.

[After the testimony was all submitted, and the counsel had summed up to the jury, the court charged the jury as follows:]

Charge.

Gentlemen of the Jury:

This suit is brought to recover the possession of a plot of ground which the plaintiffs allege was dedicated to the public by Thomas B. Stillman, in 1853, as a park. At that time, the political district within which this land was located, was the township of Plainfield. The city of Plainfield was not 10 chartered until the year 1869, at which time the declaration in this case charges that the plaintiffs' right to the possession accrued. Whatever right the township of Plainfield had to these premises, vested in the new political district of the city of Plainfield, which was carved out of that portion of the township in which these lands were located. Therefore the plaintiffs, if they have succeeded in establishing the fact of dedication, are entitled to maintain this action of ejectment to recover possession of the *locus in quo*. Dedication is the devoting or giving of property by the owner of the fee to 20 some proper public use, in such way as to conclude him. Its foundation is the intent of the owner to make it, expressed in some legal manner, or implied from his conduct. This intention may be manifested in writing, or by parol declarations of the owner, or by acts inconsistent with any inference other than his intent that the public shall have it; but in whatever form the owner may manifest his intention, when he has clearly indicated his purpose to abandon his property to the public use, it is out of his power to revoke the gift; the public will henceforth hold it by as firm a title as though 30 he had passed it to them for a valuable consideration under his hand and seal. The dedication in this case is based on the acts and conduct of the then owners of the fee, which, under established legal principles, are claimed to be irreconcilable with any other presumption than that there was a purpose on their part to give the use of this land to the public for a park. It appears in evidence, that in December, 1852, Isaac D. Tits-

worth conveyed a tract of sixty-one acres, of which the premises in dispute are a part, to Thomas B. Stillman in fee. By a declaration of trust, dated April 6, 1853, it appears that Stillman conveyed and held this tract of land for the benefit of himself, Clark Rogers, Nathan Rogers and Nicholas Rogers; that the tract was to be mapped out into lots, the map to be filed in the county clerk's office, and lots sold according to it for the account of the several parties so interested.

- 10 In pursuance of this design, a map of the tract was made and filed in the office of the clerk of Essex county, prior to the time when Union county was formed. These are admitted facts in the case, and they are supplemented by proof on the part of the plaintiff, of further acts tending to show, as the plaintiffs allege, a complete dedication. The city has produced before you, from the register's office in Newark, a map, which they claim to be the original map prepared by Stillman and his associates, in furtherance of their scheme. The map purports to be a map
- 20 of building lots in Plainfield, New Jersey, owned by T. B. Stillman, Clark Rogers, Nathan Rogers, and Nicholas Rogers, as you will see by reference to it, and it is marked, "filed April 20th, '53, Weeks, Cl'k." Mr. Weeks, who was clerk of Essex county at that time, testifies that this memorandum is in his handwriting, and he has no doubt whatever that this map was filed in his office at that date, and that there are pencil memoranda upon it, also in his handwriting, showing that he had occasion to refer to it and examine it in subsequent years. There are also upon this
- 30 map, in writing, the words, "for record, T. B. Stillman," which are shown by a member of Stillman's family to be in Stillman's handwriting. In a number of deeds for parts of the the sixty-acres tract, executed subsequently by Stillman and by the Rogers, reference is expressly made to a certain map filed in the office of the register of the county of Essex, entitled map of building lots in Plainfield, N. J., owned by T. B. Stillman, Clark Rogers, Nathan Rogers, and Nicholas Rogers, New York, 1853.

Is this map before you the one so referred to? No other

map of like character is shown ever to have had any existence ; no other map relating to this land is shown to have been filed in the register's office, or to have been seen by anybody interested in these lands. Can there be any reasonable doubt that this is the map made and filed by Stillman, and referred to in the conveyances? The fact that in 1853 maps filed in the register's office were not so carefully guarded as they now are, or that some person went there and searched for this map and could not find it, can make no difference in this case. This map, if actually filed in the register's office by Still- 10 man, as the evidence seems so fully to show, must have its legal force and effect in this case, as the recognized map of his premises, according to which he proposed to make his conveyances. If we take this to be the true Stillman map, let us see what he and his associates have done with reference to it. By the declaration of trust, dated April 6th, 1853, and filed in the clerk's office during the same year, they declared that conveyances should be made according to this map. In pursuance of such declaration Thomas B. Stillman, by deed of April 6th, 1853, conveyed lot marked K on the 20 map to Nathan Rogers ; by deed of like date he conveyed another lot to Nicholas Rogers ; by deed of like date he conveyed to Clark Rogers a lot ; by deed dated April 1st, 1853, and acknowledged April 18th, 1853, he conveyed a lot to a religious denomination, and by deed May 1st, 1854, he conveyed a lot to William C. Ayers. In the first four of these deeds the map is referred to in the terms I have already stated, and in the last deed the map is stated to have been filed April 20th, 1853. The fact that the map had not been filed, actually filed, when the first four deeds were executed, 30 will account for the fact that the precise date of filing was not given in those deeds, and this map may have been referred to in anticipation of the fixed intention to file it speedily. The map is referred to in a number of later conveyances as filed April 20th, 1853, and, assuming that this is the map so referred to, it will be very difficult to persuade you, in the absence of any positive evidence, to say that there was another map, and that this is not the map mentioned in the first four deeds already alluded to. If you shall con-

clude that this map was filed and that conveyances were made by reference to it, the well settled rule of law applicable to the case is this: When the owner of lands procures them to be laid off in blocks, streets and squares, and has a map made on which he delineates such streets and squares, and which he files among the public archives of the county, and by reference to which he sells lots, the streets and squares so laid down on such map become thereby dedicated and devoted to the public use. Having found that this map was
10 filed, and that deeds were made by reference to it, let us examine the map and see what Stillman and his associates thereby declared their intention to be with regard to the land now in controversy. Upon this map you will observe that a number of streets are run through the sixty-acre tract. Various plots of land are laid off in lots, and the square in suit is marked "park." The question in the case which I submit to you under all the evidence for your determination is this: Was it the intention of the owners of this land to give the public the right to use this plot of ground for a
20 park, or to reserve it for their own private individual use, and keep it within their own possession and absolute control? To ascertain their intention you must apply the rule of law, as I have stated it, to the facts in the case. Did that map hold out to those who purchased by it the inducement that the lot in dispute was to be and remain a park, to which all persons should have access? That this map represented that there was to be a park there, there can be no doubt. It is so marked. The question is, whether the effect of making and filing such a map and selling by it was to declare that
30 there was to be a park for the public. In a place to be densely built up and populated, a park signifies a place enclosed for exercise or amusement.

That would be the usual acceptance of this wood park as applied to a tract of land laid out in streets and building lots for the purpose of speculation and sale. The donors in this case must be held to have intended what a fair and reasonable mind may justly infer from their acts and conduct. This is the only way we have of finding out what men intend in cases of this kind.

What did these people mean by thus plotting out this land with streets and a park, and selling lots according to it? Did they thereby say to purchasers, we will sell you a lot of ground on this sixty-acre tract, which shall have the benefit of this system of streets which we have laid out on this map? or did they say, we have marked these streets on the map, but the land is ours, and we will sell the streets for any other purpose, by which you will be deprived of them, whenever we choose to do so? Did they declare by this map that they retained the absolute ownership of this park, with the right 10 to dispose of it for their own private purposes, at will, or did they declare that this tract on which they propose to sell lots should have a system of streets and a park laid out to which all persons there might have free access at pleasure? Was that a town laid out with a park for the use of the public, or without such a park? You are now searching after the intention of the persons who made and filed this map, and you must charge them with such intentions as reasonable men may fairly and clearly infer from what they have done.

If the owner of land lays out a town, and exhibits a plan 20 with various streets and squares, and sells lots with reference to such plan, all purchasers acquire appurtenant to their lots every privilege and advantage which the plan represents as belonging to them, as part of the plan, or as owners of lots in a town.

This right so passing to the purchasers of lots is not the mere right to use the streets and public places for themselves, but it is a right that all persons whatever, who have occasion, may so use them. In other words, the sale of lots according to a plan implies an agreement that the streets and 30 other public places indicated on the map shall be forever open to the public use. On this plan this lot is marked park. Why, gentlemen, was it so marked? You must say whether it is consistent with what appears on this map to deny that the intention was to have a park which it was out of the power of the then owners to close up.

Do the circumstances show that it was intended as a park to-day and a building lot to-morrow, at the option of the owners? Why was this park marked so, if they intended to

retain the same power over it that they retained in the other lots not marked in that way? You must answer that question, gentlemen, to your own satisfaction. Whatever was marked and appears on that map they were bound by after the filing of the conveyances; they could not change it so as materially to affect rights already derived under it.

One witness has testified that about the time this map was made Stillman told him a number of times that that lot was intended as a public park.

- 10 This conversation took place twenty-four years ago, and if this evidence stood alone, you might not, on account of the infirmity of human memory, be willing to give it much weight, but in connection with the circumstances I have referred to, you may see fit to give it some consideration as corroborating testimony. If you conclude that these facts and circumstances shown on the part of the plaintiffs are, if unexplained, sufficient to establish an intention on the part of Stillman and his associates to dedicate this lot as a public park, you must inquire whether the evidence shows that they
- 20 were accompanied by other acts or declarations which repelled the existence of the intent necessary to make a gift to the public use.

- Clark Rogers was one of the parties named in the declaration of trust. He says he had no intention to dedicate. The question is not what he now supposes his intention then was, but what intention did he then express by his acts and conduct. He joined in the making and filing of the map, and the conveyances were made by Stillman according to the map, at his instance and by his consent, and he is bound by the
- 30 reasonable and fair conclusions which may be drawn from these acts. He cannot defeat the public right, if it is sufficiently established by the evidence, by declaring now that he then secretly entertained a contrary intention to which he then gave no expression; an intention inconsistent with what he then did and assented to.

If that right of the public to use the streets was now questioned, he could not defeat that right by now declaring that he then entertained a secret, unmanifested intention that they were not to be dedicated to the public use. If he acted at

that time, or directed others to act for him, in such a way as to effectually manifest an intention to give the public the use of this park, he cannot now defeat that right by saying that in fact he did not have the intention which his conduct shows. The same remarks apply to Nathan Rogers' testimony. If these persons gave clear expression to their intention to dedicate the lot for a park, the city is entitled to it, even though they now declare that in fact they had no such intention. And if Mr. Lanphear is to be believed, Clark Rogers told him, repeatedly, that this was to be a public park. Nor will the fact that Stillman, in 1856, executed a deed for this lot to E. Dean Dow, defeat the public right, if the intention to dedicate had been clearly manifested before that time. Dedication operates instantaneously, and when once complete no subsequent act of the donor can affect it. 10

The act of Stillman in executing this deed may be considered by you in ascertaining the intent, if that intention was doubtful. But if that intention before that was made was fully manifested, it was out of the power of Stillman to destroy the effect of his former conduct by saying that he did not intend to dedicate it or by conveying the property away. If dedication was made, Stillman still owned the fee of the land, subject to the right of the public to use it for a park, and for that purpose only. The public could not put upon it any structure inconsistent with its use as a park, nor divert it to any other purpose. 20

The only right the public can claim to it is the right to use the land as a park, the fee still remaining in the person who dedicated it to them. Stillman, therefore, had, after the dedication, a right to convey the land to E. Dean Dow, but in that case Dow took it subject to the public right to use it as a park, and Dow could hold it and keep it against all the world, and do what he pleased with it until the public chose to take possession of it and use it for a park. It may be that when Dow took this title of the park he did not know that it had been dedicated; he may have paid his money for it in perfect good faith, believing that he had a good title, but that wouldn't take away any right which the public had then acquired. This map was referred to in Dow's deed, and if he 30

had examined it and made sufficient inquiry he might have ascertained what right the city had. However that may be, the defendant cannot ask you to let him retain this lot, because he did not know when he purchased that the public had a right to use it as a park. You should not be controlled by any such consideration as that; the public does not lose its right, because some purchaser chose to act in ignorance, or because he failed on his investigation to find out the true state of facts. And here I will call your attention to declarations
10 proved to have been made by Thomas B. Stillman, after he made this map and this deed to Dow, that this was a public park. Stillman, after he made this deed to Dow, could not take away or impair Dow's title by making declarations injurious to him, and you must not consider that as any evidence of dedication in this case at all; it is not competent for the purpose; it is not competent, and was admitted only for another purpose. The defendant called Clark Rogers, who testified that he had never been consulted by his associates about making that a public park; he had
20 never been consulted about any intention or purpose to make this a park. The evidence as to Stillman's declarations after he made the deed to Dow must be considered by you only in connection with this testimony of Clark Rogers to rebut any inference which might be drawn from it that Stillman had no intention to dedicate; it must have no effect as substantial evidence to support the dedication.

The fact that Stillman, and those who claimed under him, for many years after the dedication fenced in this park and used it for their own purposes, did not defeat the public
30 right. Three streets were also fenced in for many years before the public used them, and it might as well be claimed that the public lost the right to the streets. The public was not bound to take possession at once in order to save its rights. It could occupy it at any future time, leaving the owner of the fee in the use of the land until they needed it for streets or a park. Nor does the fact that the owner of the fee paid taxes or assessments upon it, if that is true, take away the public right. It is evidence tending to prove that the public had not taken possession; but if the park was once dedicated, the city had no power to give up the right. That

could only be surrendered by an act of the legislature. The fact that the public has for twenty years failed to accept and take possession of this park, for its contemplated uses, cannot deprive them of their right, if it existed. Acceptance by the public is not necessary to conclude the owner. The public may take it into possession at any future time when their wants, circumstances or convenience require it. They lose no right by lying quiet for twenty years. When the donor has manifested his intention to give his land to the public use, he is bound by it; he cannot withdraw or revoke his gift. The 10 fact of non-user may be considered by the jury in determining whether the dedication is made, if that is a question of doubt, but if the intention to dedicate is shown to have existed, the fact of non-user by the public will not take away the public right. There is no such thing as adverse possession against the public, and you have no right to say that this defendant, and those under whom he claims, have been in possession for twenty years or more, and therefore you will let him have the land as against the public. That would be a clear viola- 20 tion of your duty. The public cannot lose its rights in any such way. It has been urged before you that the public had given nothing for this land, and that they are now seeking to take the defendant's property from him without compensation. You must not permit yourselves to be misled by this suggestion. A dedication is a gift always, as the term implies; it is without any consideration to the giver; it is a dedication; a gift to the public. If this park had been purchased by the public, it would not have been a dedication. It is called in law a dedication because it is given, and it does not lie in the defendant to say to the public I will take it 30 away from you, because I only gave it to you; you paid me nothing for it. Why, gentlemen, upon the same ground, they could take away from the public all the streets they laid out on that map. The public paid nothing for them. Whether Stillman and his associates were moved by their public spirit and generosity to give this park to the public, or by a selfish desire to promote the success of their own scheme, and make their lots sell more readily, for the fact that a park was laid out there, is wholly immaterial. The

question is, did they declare their intention to dedicate this lot as a park for the public use, and if you find that such intent is to be clearly and fairly drawn from their acts and conduct, you should find for the plaintiffs, otherwise, for the defendant.

Exceptions.

Upon the conclusion of the charge, Mr. Magie, of counsel for the defendant, excepted to that portion of the charge of the court which stated as follows :

- 10 “ This suit is brought to recover the possession of a plot of ground which the plaintiffs allege was dedicated to the public by Thomas B. Stillman, in 1853, as a park. At that time, the political district within which this land was located, was the township of Plainfield. The city of Plainfield was not chartered until the year 1869, at which time the declaration in this case charges that the plaintiffs’ right to the possession accrued. Whatever right the township of Plainfield had to these premises, vested in the new political district of the city of Plainfield, which was carved out of that portion of the
- 20 township in which these lands were located. Therefore the plaintiff, if they have succeeded in establishing the fact of dedication, are entitled to maintain this action of ejectment, to recover possession of the *locus in quo*.”

Which said exception was allowed, and this exception is hereby sealed accordingly, subject to what was said in the charge.

The defendants’ counsel also excepted to that part of the charge of the court which reads as follows :

- 30 “ Is this map before you the one so referred to? No other map of like character is shown ever to have had any existence. No other map relating to this land is shown to have been filed in the register’s office, or to have been seen by anybody interested in these lands. Can there be any reasonable doubt that this is the map made and filed by Stillman, and referred to in the conveyances ?

“ The fact that in 1853, maps filed in the register’s office were not so carefully guarded as they are now, or that some person went there and searched for this map and could not find it, can make no difference in this case. This map, if

actually filed in the register's office by Stillman, as the evidence seems so fully to show, must have its legal force and effect in this case as the recognized map of his premises, according to which he proposed to make conveyances."

Which said exception was allowed, and this exception is hereby sealed accordingly, as to so much of the above extract from the charge as states a rule of law.

Also, to that part of the charge which states as follows: "The fact that the public has for twenty years failed to accept and take possession of this park for its contemplated uses, 10 cannot deprive them of their right if it existed. Acceptance by the public is not necessary to conclude the owner. The public may take it into possession at any future time, when their wants, circumstances, or convenience require it. They lose no right by lying quiet for twenty years."

Which said exception was allowed, and this exception is hereby sealed accordingly.

B. VAN SYCKEL, J.

Also, to that part of the charge which states as follows: "It may be that when Dow took this title for the park, he did 20 not know that it had been dedicated. He may have paid his money for it in perfect good faith, believing that he had a good title; but that wouldn't take away any right which the public had then acquired. This map was referred to in Dow's deed, and if he had examined it and made sufficient inquiry, he might have ascertained what right the city had. However that may be, the defendant cannot ask you to let him retain this lot because he did not know, when he purchased, that the public had a right to use it as a park. You 30 should not be controlled by any such consideration as that. The public does not lose its right because some purchaser chose to act in ignorance, or because he failed, on his investigation, to find out the true state of facts."

Which exception was allowed, and this exception is hereby sealed accordingly.

Also to that portion of the said charge which states as follows:

"If the owner of land lays out a town and exhibits a plan

with various streets and squares, and sells lots with reference to such plan, all purchasers acquire, appurtenant to their lots, every privilege and advantage which the plan represents as belonging to them, as part of the plan or as owners of lots in a town.

“This right so passing to the purchasers of lots, is not the mere right to use the streets and public places for themselves, but it is a right that all persons whatever, who have occasion, may so use them. In other words, the sale of lots according
10 to a plan, implies an agreement that the streets and other public places indicated on the map shall be forever open to the public use.”

Which said exception was allowed, and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

Mr. Magie then requested the court to charge as follows:

1. That the jury cannot find an intention existed to dedicate this plot to a public use without some act evincive of such intention during the time that is stated here.

20 Which request the court declined to grant, and refused to charge otherwise than was contained in the said charge on said subject; to which refusal so to charge the said defendant, by his said counsel, excepted; and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

2. Also, that such an act must be of an unequivocal character, and if equivocal, that is, if there is a doubt as to what the act meant, then the jury cannot find a dedication to a public use, the burden being on the plaintiff to show that
30 beyond a reasonable doubt.

Which request the court declined to grant, and refused to charge otherwise than contained in the said charge; to which refusal so to charge as requested, the defendant, by his counsel, excepted, and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

3. Also, that if the act is equivocal in its character, the

construction least injurious to the dedication being taken, there being at that time no grantee in being capable of accepting the dedication.

Which request the court declined to grant otherwise than is contained in the said charge on the subject; to which refusal so to charge, the defendant, by his counsel, excepted, and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

4. Also, that if the acts relied on may be effective in proving an easement as appurtenant to the lands of those 10 who purchased lots delineated on the map, that would not be a public use which would justify a recovery in this case.

Which request the court declined to grant, and refused to charge; on said subject otherwise than is contained in said charge; to which refusal to charge as requested, the defendant, by his counsel, excepted, and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

5. Also, that in looking for the proof of intent, the jury consider all the facts, the non-user by the public, the non-acceptance by the public authorities until it is proved to have 20 taken place, the exclusive possession, and all the other facts in the case, and of alleged dedicator, immediately after the alleged dedication, encloses the property, takes and continues exclusive possession, and makes a deed in fee, and puts the purchaser in possession; these acts must be reconciled by the jury with the intention, including all the other circumstances in the case.

Which request the court declined to grant, and refused to charge on said subject otherwise than is contained in said charge; to which refusal the defendant's counsel excepted, 30 and this exception is hereby sealed accordingly.

B. VAN SYCKEL, *J.*

Assignment of Errors.

Afterwards, that is to say, on the fourteenth day of September, in the year of our Lord one thousand eight hundred and seventy-seven, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, comes the said J. Wilbur Price, by Suydam and Jackson, his attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment
10 aforesaid, there is manifest error in this, to wit :

1. That by the record aforesaid it appears that the judgment in form aforesaid was given for the said The Inhabitants of the City of Plainfield against the said J. Wilbur Price ; whereas, by the law of the land, judgment ought to have been given for the said J. Wilbur Price against the said The Inhabitants of the City of Plainfield.

2. There is also error in this, to wit, for that the said justice before whom the issue was tried, at and upon the aforesaid trial of said issue, admitted in evidence the map marked
20 "plaintiff's *Exhibit No. 3*, of this date ;" whereas, by the law of the land, the said map was not admissible in evidence, because there was no sufficient proof that the same had ever been duly filed : and because, if it had ever been filed, there was no proof that it was on file in the register's office of the county of Essex, at the date of the deed to J. Wilbur Price, the defendant, which deed contains the premises in question in this suit.

3. There is also error in this, that said justice refused to
30 non-suit the said plaintiffs upon any one and all of the three points stated by the counsel of the defendant in his motion for that purpose, viz. :

I. That there is no authority in the city of Plainfield to receive the property in question, or to exercise any functions in respect to it.

II. That the city of Plainfield is not the proper party to bring this action, even if a right to do so exists anywhere.

III. That there is not sufficient evidence of dedication to go to the jury.

4. There is also error in this, to wit, that the said justice admitted in evidence the testimony of Barzilla J. Randolph, detailing the declarations of Thomas B. Stillman with reference to the map *Exhibit 3* and the wood park marked thereon, and other declarations of the said Thomas B. Stillman in respect to the subject matter of this suit, the said Randolph not being able to fix the date of such declarations. 10

5. There is also error in this, viz., that the said justice admitted in evidence, on the part of the plaintiff, deeds marked *Exhibits 4, 5, 6, 7, 8*, on the part of the plaintiff.

6. There is also error in this, viz., that the said justice held and affirmed that the following question, put by the counsel for the plaintiff to Evan Jones, a witness produced on the part of the plaintiff—"What was said at the meeting at that time in relation to the right of the association to sell that property?"—was proper and admissible. 20

7. There is also error in this, to wit, that the said justice held and affirmed that the following question, put by the same counsel to the same witness, viz., "Was the question of the title or right of the association to sell the property there discussed or mentioned?" was proper and admissible.

8. There is also error in this, to wit, that the said justice admitted the testimony of the same witness (Jones) as to conversations had at the meetings of the association a short time before the sale of the premises in question to the defendant with reference to the sale of the said premises, in the absence of the defendant. 30

9. There is also error in this, to wit, that the said justice admitted in evidence the testimony of Henry Smith, a wit-

ness produced on the part of the plaintiff, with reference to the declarations of Clark Rogers concerning the premises in question, and the uses it could be put to, which declarations were made at the time that said Smith purchased his property in Plainfield, viz., March, 1864, and long after the conveyance of the premises to E. Dean Dow.

10 10. There is also error in this, to wit, that the said justice held and affirmed that the following question, put by the counsel of the plaintiff to Ethan Lanphear, a witness produced on the part of the plaintiff, viz., Q. "What, if anything, did Rogers say to you about the park?" was proper and admissible.

11. There is also error in this, to wit, that the said justice admitted the evidence of said Ethan Lanphear detailing the conversations of said witness with said Clark Rogers, respecting the premises in question, on all the three occasions referred to in his testimony, viz , 1855, 1861 or 1862, and 1867.

12. There is also error in this, to wit, that the said justice permitted the following question to be put to the said Ethan Lanphear, and to be answered, viz. :

Q. "Did you have any conversation with Thomas B. Stillman in relation to this matter?"

To which question the said witness answered :

A. "I did, the first time I visited Plainfield."

Which said question was asked and answered after the witness had left the stand, without cross-examination, and had gone to the plaintiff's counsel and suggested to him the question, in this assignment set forth.

13. And there is also error in this, viz. : that the said justice 30 permitted one Peter P. Good, a witness produced on the part of the plaintiff, to give evidence of conversations with Thomas B. Stillman, in relation to block Q, on map *Exhibit 3*, on part of plaintiffs, in the summer or fall of the year 1860.

[14. And there is also error in this, viz., that said justice permitted one James E. Martin, a witness produced on the part of the plaintiff, to give evidence of conversations with Thomas B. Stillman, about a year and a half previous to his death, concerning the premises in question and the said map.

15. And there is also error in this, to wit, that the said justice permitted the following question to be put to the said James E. Maiture, by the counsel for the plaintiff, to wit:

Q. "When was it you referred to a previous conversation?"

To which question the said witness made the following 10
answer:

A. "About a year previous to this time. I made reference to Eighth street not being as handsome a street as Seventh street, and he said 'Why?' and I said 'Because it is getting the backs of the barns and houses.' 'Why,' said he, 'my man, that is to be the cream of the neighborhood, for we have the park here.' I asked him, 'Where?' and he said, 'The grove, that is to be the park.'"

16. There is also error in this, to wit, that the said justice declined to charge the jury otherwise than he had charged on 20
the same subject, as follows: "That the jury cannot find an intention existed to dedicate this plot to a public use, without some act evincive of such intention, during the time that is stated here."

17. There is also error in this, to wit, that the said justice declined to charge the jury otherwise than he had charged on
the same subject, as follows, to wit: "Also, that such an act must be of an unequivocal character, and if equivocal, that is, if there is a doubt as to what the act meant, then the jury cannot find a dedication to a public use, the burden being on 30
the plaintiff to show that beyond a reasonable doubt."

18. There is also error in this, to wit, that the said justice declined to charge the jury otherwise than he had charged on
the same subject, as follows, to wit: "Also, that if the act is equivocal in its character, the construction least injurious to

the dedication be taken, there being at that time no grantee in being capable of accepting the dedication."

19. There is also error in this, to wit, that the said justice declined to charge the jury otherwise than he had charged on the same subject, as follows, to wit: "That if the acts relied on may be effective in proving an easement as appurtenant to the lands of those who purchased lots delineated on the map, that would not be a public use which would justify a recovery in this case."

10 20. There is also error in this, to wit, that the said justice declined to charge the jury otherwise than he had charged on the same subject, as follows, to wit: "That in looking for the proof of intent, the jury must consider all the facts, the non-user by the public, the non-acceptance by the public authorities until it is proved to have taken place, the exclusive possession, and all the other facts in the case, and of alleged dedicator, immediately after the alleged dedication, encloses the property, takes and continues exclusive possession, and makes a deed in fee and puts the purchaser in possession; these acts must be reconciled by the jury with the intention, including all the other circumstances in the case."

30 21. There is also error in this, to wit, that the said justice charged the jury as follows: "This suit is brought to recover the possession of a plot of ground which the plaintiffs allege was dedicated to the public by Thomas B. Stillman, in 1853, as a park. At that time the political district within which this land was located was the township of Plainfield. The city of Plainfield was not chartered until the year 1869, at which time the declaration in this case charges that the plaintiffs' right to the possession accrued. Whatever right the township of Plainfield had to these premises vested in the new political district of the city of Plainfield, which was carved out of that portion of the township in which these lands were located. Therefore the plaintiffs, if they have succeeded in establishing the fact of dedication, are entitled to maintain this action of ejectment to recover possession of the *locus in quo*."

22. There is also error in this, to wit, that the said justice charged the jury as follows: "Is this map before you the one so referred to? No other map of like character is shown ever to have had existence. No other map relating to this land is shown to have been filed in the register's office or to have been seen by anybody interested in these lands. Can there be any reasonable doubt that this is the map made and filed by Stillman, and referred to in the conveyances? The fact that in 1853 maps filed in the register's office were not so carefully guarded as they are now, or that some person went there and searched for this map and could not find it, can make no difference in this case. This map, if actually filed in the register's office by Stillman, as the evidence seems so fully to show, must have its legal force and effect in this case as the recognized map of his premises, according to which he proposed to make conveyances." 10

23. There is also error in this, to wit, that the said justice charged the jury as follows: "The fact that the public has for twenty years failed to accept and take possession of this park for its contemplated uses cannot deprive them of their right, if it existed. Acceptance by the public is not necessary to conclude the owner. The public may take it into possession at any future time when their wants, circumstances or convenience require it. They lose no right by lying quiet for twenty years." 20

24. There is also error in this, to wit, that the said justice charged the jury as follows: "It may be that when Dow took this title for the park he did not know that it had been dedicated; he may have paid his money for it in perfect good faith, believing that he had a good title, but that wouldn't take away any right which the public had then acquired. This map was referred to in Dow's deed, and if he had examined it, and made sufficient inquiry, he might have ascertained what right the city had. However that may be, the defendant cannot ask you to let him retain this lot because he did not know when he purchased that the public had a right to use it as a park. You should not be controlled by 30

any such consideration as that the public does not lose its right because some purchaser chose to act in ignorance, or because he failed on his investigation to find out the true state of facts."

25. There is also an error in this, to wit, that the said justice charged the jury as follows: "If the owner of land lays out a town, and exhibits a plan with various streets and squares, and sells lots with reference to such plan, all purchasers acquire, appurtenant to their lots, every privilege and advantage which the plan represents as belonging to them as
10 part of the plan, or as owners of lots in a town. This right so passing to the purchasers of lots is not the mere right to use the streets and public places for themselves, but it is a right that all persons whatever, who have occasion, may so use them. In other words, the sale of lots according to a plan, implies an agreement that the streets and other public public places indicated on the map shall be forever open to the public use."

And the said defendant prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing,
20 and that he may be restored to all things which he has lost by occasion of the said judgment.

SUYDAM & JACKSON,
Attorneys of Defendant.

E. W. RUNYON,
Of Counsel for Defendant.

Plaintiff's Exhibits.

EXHIBIT No. 1.

Deeds from Isaac D. Titsworth *et ux.* to Thomas B. Stillman, dated December 27th, 1852, acknowledged December 27th, 1852, recorded April 11th, 1853, for the original farm of sixty-one and seventeen-hundredths acres, including the premises in question.

EXHIBIT No. 2.

Agreement between Thomas B. Stillman, Clark Rogers, Nathan Rogers, and Nicholas Rogers, dated April 6th, 1853, 10 recorded April 20th, 1853 :

Whereas, the said parties to this agreement have purchased a tract of land in the township of Plainfield, county of Essex, and State of New Jersey, whereof a map entitled, "Map of Building lots in Plainfield, N. J., owned by T. B. Stillman, Clarke Rogers, Nathan Rogers, and Nicholas Rogers, New York, 1853," is to be filed in the office of the clerk of the said county of Essex, and are interested therein in the following proportions, viz. : the said party of the first part, one-third ; the said party of the second part, one-third ; 30 the said party of the third part, one-sixth, and the said party of the fourth part, one sixth.

And whereas, for convenience, the title to the whole of the said tract has been taken in the name of the said party of the first part alone : now, therefore, this agreement witnesseth that the said party of the first part, for and in consideration of the premises, does, for himself and his heirs, covenant and agree to and with the said parties of the second, third, and fourth parts, their heirs and assigns, that he, the

said party of the first part, or his heirs, shall and will, immediately after the said map shall have been filed as aforesaid, at the proper costs and charges of the said parties of the second, third, and fourth parts, their heirs or assigns, convey, by deeds with covenants against the grantors' own acts, unto the said parties of the second, third, and fourth parts, their heirs or assigns, in severalty as follows, viz. :

Unto the said party of the second part, the blocks designated on said map by the letters D and J; unto the said
10 party of the third part, the block designated on said map by the letter K; and unto the said party of the fourth part, the block designated on said map by the letter G, reserving unto himself, his heirs and assigns forever, the block designated on said map by the letter H, and the lots numbered 3, 4, and 5 on the block designated on said map by the letter C; and the said party of the first part does further, for himself and his heirs, covenant and agree, to and with the said parties of the second, third, and fourth parts, their heirs and assigns, that he, the said party of the first part, or his heirs, shall
20 and will account for and pay over unto the said parties of the second, third, and fourth parts, their heirs or assigns, as fast as the residue of the tract, or any part thereof, shall be sold, their and each of their respective shares, in the proportions hereinbefore mentioned, of the proceeds of such sale or sales, after deducting therefrom the sums paid out for the taxes, assessments, counsel fees, commissions, and all other expenses incident to the management and sale thereof; and the said parties of the second, third and fourth parts, do hereby, for themselves, their heirs and assigns, justly and
30 severally declare, covenant, and agree, to and with the said party of the first part, his heirs and assigns, for and in consideration of the premises, that their interest in the said residue of the said tract is not, and is not to be considered, a lien on the said residue, or on any part thereof, so as to hold the same, or any part thereof, in the hands of any purchaser or purchasers thereof, or of any part thereof, in case of the neglect or failure of the said party of the first part, or his heirs, to account for and pay over unto them or either of

them, their or either of their shares of the net proceeds of the sales thereof, or any part thereof, as aforesaid.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

T. B. STILLMAN, [L. S.]

CLARK ROGERS, [L. S.]

NATHAN ROGERS, [L. S.]

NICHOLAS ROGERS, [L. S.]

Sealed and delivered in the presence of

N. B. LA BAW. 10

United States of America, State of New York, City and County of New York, ss.—On this twelfth day of April, one thousand eight hundred and fifty-three, before me, Nicholas B. La Baw, a commissioner to take the acknowledgment of deeds, &c., for the said ——— of New Jersey, personally appeared Thomas B. Stillman, Clarke Rogers, Nathan Rogers, and Nicholas Rogers, who are, I am satisfied, the same individuals described in, and who executed the above agreement, to whom I first made known the contents thereof, and they they thereupon acknowledged to me that they severally 20 signed, sealed, and delivered the same, as their voluntary act and deed, for the uses and purposes therein expressed.

N. BERGASSE LA BAW,

Commissioner for the State of New Jersey, appointed by the Governor thereof.

EXHIBIT No. 3.

Map referred to in the agreement between Stillman and Rogers brothers, marked "Filed April 20th, 1853—Weeks, Cl'k."

EXHIBIT No. 4.

30

Deed from Thomas B. Stillman *et ux.* to Nathan Rogers, dated April 6th, 1853, acknowledged September 30th, 1853,

recorded November 26th, 1853, conveying lot known and distinguished on the map as block letter K.

EXHIBIT No. 5.

Deed from Thomas B. Skillman *et ux.* to Nicholas Rogers, dated April 6th, 1853, acknowledged April 18th, 1853, recorded November 26th, 1853, for a lot distinguished on said map as block letter G.

EXHIBIT No. 6.

Deed from Thomas B. Stillman *et ux.* to Clark Rogers,
10 dated April 6th, 1853, acknowledged April 18th, 1853, recorded November 26th, 1853, conveying lots No. 1 to 6, inclusive, in block letter D, and all the land in block letter I, on said map.

EXHIBIT No. 7.

Deed from Thomas B. Stillman *et ux.* to William C. Ayers, dated May 1st, 1854, acknowledged August 31st, 1854, recorded December 26th, 1854, conveying lots 1 to 7, both inclusive, in block A, on said map.

EXHIBIT No. 8.

20 Deed from Thomas B. Stillman *et ux.* to The First Sabbatarian Church, of New York city, dated April 1st, 1853, acknowledged on April 18th, 1853, recorded May 19th, 1853, conveying block letter W, on said map.

EXHIBIT No. 9.

Deed from Nathan Rogers *et ux.* to E. Dean Dow, dated August 27th, 1856, acknowledged same date, recorded October 3d, 1856, conveying block letter K, on said map.

EXHIBIT No. 10.

Deed from Nicholas Rogers *et ux.* to Clark Rogers, dated June 13th, 1856, acknowledged June 15th, 1856, recorded January 14th, 1857, conveying his one-sixth part of the original farm.

The following deeds were also offered in evidence by the 10 plaintiff, they all referring to the map *Exhibit No. 3*:

Thomas B. Stillman to Lydia R., dated October 15th, 1856, acknowledged September 8th, 1857, recorded same day.

Thomas B. Stillman *et ux.* to James E. Mosier, dated September 1st, 1857, acknowledged September 8th, 1857, recorded September 9th, 1857.

Thomas B. Stillman *et ux.* to William J. Stillman, dated September 1st, 1857, acknowledged September 11th, 1857, recorded September 12th, 1857. 20

Thomas B. Stillman to Clark Rogers, dated January 1st, 1858, acknowledged January 8th, 1858, recorded November 23d, 1858.

Thomas B. Stillman to Clark Rogers, dated December 1st, 1859, acknowledged February 2d, 1860, recorded February 9th, 1861.

Thomas B. Stillman to D. McCarty, dated February 29th, 1864, acknowledged same day, recorded March 2d, 1864.

Thomas B. Stillman to William B. Clarkson, dated July 26th, 1864, acknowledged same day, recorded September 2d, 1864.

Deed to the Seventh Day Church, dated April 1st, 1853, acknowledged April 18th, 1853, recorded May 25th, 1855.

Deed from Clark Rogers to J. W. Murray, dated March 31st, 1868, acknowledged same day, recorded May 1st, 1868.

10

Defendant's Exhibits.

Deed from Thomas B. Stillman and wife to E. Dean Dow, dated August 1st, 1856, acknowledged August 22d, 1856, recorded October 3d, 1856, conveying block Q, on said map.

Certificate of incorporation of the Plainfield College for Young Ladies, incorporated under the general act, dated August 19th, 1867, recorded in the clerk's office of Union county September 12th, 1867.

20 Deed from E. Dean Dow and wife to the Plainfield College for Young Ladies, dated November 1st, 1867, acknowledged April 8th, 1868, recorded April 9th, 1868, consideration, \$30,000, conveying both blocks K and Q, on said map, subject to two mortgages amounting to \$15,000.

Deed Trustees of the Plainfield College for Young Ladies to J. Wilbur Price, dated July 6th, 1876, acknowledged July 7th, 1876, recorded July 22d, 1876, for consideration of \$10,000, conveying block Q, on map.

